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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2001–NM–311–AD; Amendment 39–12585; AD 2001–26–19]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 767 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes. This action requires a one-time inspection for missing, damaged, or incorrectly installed parts in the separation link assembly on the deployment bar of the emergency escape system on the entry or service door, and installation of new parts, if necessary. This action is necessary to prevent failure of an entry or service door to open fully in the event of an emergency evacuation, which could impede exit from the airplane. This condition could result in injury to passengers or crewmembers. This action is intended to address the identified unsafe condition.

**DATES:** Effective January 18, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 18, 2002.

Comments for inclusion in the Rules Docket must be received on or before March 4, 2002.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–311–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–NM–311–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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. 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:** John Piccola, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1509; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:** The FAA has received reports that entry and service doors did not open fully during deployment of emergency escape slides on several Boeing Model 767 series airplanes. Most reported incidents occurred during testing; however, one incident occurred during an actual emergency evacuation. Investigation has revealed that this condition is due to failure of the separation link assembly to release the deployment cable from the deployment bar of the emergency escape system on the entry or service door. Such failure to release may occur when the snap ring or washer which hold the separation link in place, or the internal spring, is missing or installed incorrectly. Failure of an entry or service door to open fully during an emergency evacuation could impede exit from the airplane. This condition, if not corrected, could result in injury to passengers or crewmembers.

### Explanation of Related Service Information

Boeing has issued Service Letter 767–SL–25–101, dated August 30, 2001. That service letter describes the background of the unsafe condition related to the separation link assembly on the deployment bar of the emergency escape slide system and provides a ''Suggested Operator Action'' for correcting the condition. The service letter suggests performing an inspection to determine whether snap rings are present and properly installed on the separation link assembly, and replacing any damaged snap ring or installing a new snap ring if one is missing or installed incorrectly. The service letter specifies that maintenance information for the separation link assembly is available in the Boeing 767 Component Maintenance Manual.

### Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent failure of an entry or service door to open fully during an emergency evacuation. Failure of a door to open fully could impede exit from the airplane, which could result in injury to passengers or crewmembers. This AD requires a one-time detailed visual inspection for missing, damaged, or incorrectly installed parts in the separation link assembly on the deployment bar of the emergency escape system on the entry or service door, and installation of new parts, if necessary. These actions are required to be accomplished according to the procedures and the applicable sections of the Boeing 767 Airplane Maintenance Manual (AMM) and Component Maintenance Manual (CMM) specified in paragraph (a) of this AD.

This AD also requires that, if any missing, damaged, or incorrectly installed part is found in the separation link assembly on the deployment bar of the emergency escape system on any entry or service door, operators must report the results of the inspection to the FAA Certificate Management Office—Boeing. The intent of this reporting requirement is to enable the FAA to determine the number of missing or damaged parts in the affected fleet.

**Differences Between This AD and Service Letter**

As stated above, Boeing Service Letter 767–SL–25–101 describes the background of the unsafe condition related to the separation link assembly on the deployment bar of the emergency escape slide system. However, this AD requires accomplishment of necessary actions according to certain sections of the AMM and CMM, not according to the ''Suggested Operator Action'' in the service letter. Because the actions required by this AD differ in key ways from those described in the service letter, the FAA finds it necessary to describe specifically how this AD differs from the service letter. The differences are as follows:

• This AD requires a detailed visual inspection for missing, damaged, or incorrectly installed snap rings, washers, or internal springs in the separation link assembly on the deployment bar of the emergency escape system on the entry or service door. The service letter suggests an inspection for missing, damaged, or incorrectly installed snap rings only. The FAA's decision to require an inspection for missing, damaged, or incorrectly installed washers and internal springs, as well as snap rings, is based on inspections of in-service airplanes which have revealed missing washers and missing or incorrectly installed internal springs.

• Although the service letter recommends accomplishing the inspection during any scheduled or unscheduled maintenance on the service door escape slide, the FAA has determined that a specific compliance time is necessary to ensure that the identified unsafe condition is addressed in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation (developed with affected operators through the ''lead airline'' process), but the degree of urgency associated with addressing the subject unsafe condition, and the time necessary to perform the inspection. In light of all of these factors, the FAA finds a 60-day compliance time for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

**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 flight 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 address 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 statement is made: ''Comments to Docket Number 2001–NM–311–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 adding the following new airworthiness directive:

**2001–26–19 Boeing:** Amendment 39–12585. Docket 2001–NM–311–AD.

*Applicability:* Model 767 series airplanes, line numbers 1 through 854 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.

**Note 2:** Boeing Service Letter 767–SL–25–101, dated August 30, 2001, provides information related to this AD; however, the actions required by this AD are not identical to those in the ''Suggested Operator Action'' section of that service letter. Where this AD differs from the service letter, this AD prevails.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of an entry or service door to open fully in the event of an emergency evacuation, which could impede exit from the airplane and result in injury to passengers or crewmembers, accomplish the following:

**One-Time Inspection and Corrective Actions**

(a) Within 60 days after the effective date of this AD, do a one-time detailed visual inspection for missing, damaged, or incorrectly installed parts in the separation link assembly on the deployment bar of the emergency escape system on the entry or service door, according to the procedures specified in paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6) of this AD.

(1) Remove the escape slide pack bustle according to Section 25–66–00 of the Boeing 767 Airplane Maintenance Manual (AMM).

(2) Position the deployment bar of the escape slide to expose the forward and aft separation links, according to Section 25–66–00 of the Boeing 767 AMM and Section 25–66–30 of the Boeing 767 Component Maintenance Manual (CMM), Revision 2, dated November 1, 2000.

(3) Do a detailed visual inspection to determine whether the snap ring, washer, and internal spring of the separation link assembly are installed correctly on both the forward and aft separation links, and to detect any damage of the snap ring, washer, and spring, according to Items 65 and 70 of Section 25–66–30 of the CMM, Revision 2, dated November 1, 2000.

(4) If any snap ring, washer, or internal spring is missing or found damaged or installed incorrectly during the inspection required by paragraph (a)(3) of this AD, before further flight, install a new snap ring, washer, and internal spring according to Section 25–66–30 of the CMM, Revision 2, dated November 1, 2000.

(5) Ensure that the separation links and deployment cables are installed as depicted on placard BAC27TPPS5141 or BAC27TPPS5142, as applicable. Placards are adjacent to each link on the deployment bar. If any separation link or deployment cable is installed incorrectly, before further flight, correct the installation as shown on the applicable placard.

(6) Reinstall the escape slide pack bustle according to Section 25–66–00 of the Boeing 767 AMM.

**Note 3:** 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.''

**Reporting Requirement**

(b) If there is any missing, damaged, or incorrectly installed part in the separation link assembly on the deployment bar of the emergency escape system on any entry or service door: Submit a report of inspection findings to the FAA Certification Management Office—Boeing, ANM–108B, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; at the applicable time specified in paragraph (b)(1) or (b)(2) of this AD. The report must include: the serial number of the affected airplane, the total number of doors inspected, the number of deployment bars with missing or damaged parts, an identification of what parts are missing or damaged, and the calendar date of the last inspection or test of any emergency escape system with missing or damaged parts. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection is accomplished after the effective date of this AD: Submit the report within 10 days after performing the inspection required by paragraph (a) of this AD.

(2) For airplanes on which the inspection has been accomplished before the effective date of this AD: Submit the report within 10 days after the effective date 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, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 4:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

**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) The exposure of the forward and aft separation links; inspection for snap ring, washer, and internal spring; and installation of new snap ring, washer, and internal spring; shall be done in accordance with Section 25–66–30 of the Boeing 767 Component Maintenance Manual, Revision 2, dated November 1, 2000, which contains the following effective pages:

| Page number | Revision level shown on page | Date shown on page |
|---|---|---|
| List of Effective Pages; Page 1. | 2 | Nov. 1, 2000. |

(Only the ''Highlights'' page of Section 25–66–30 shows the appropriate revision level; no other page of this document contains the revision level.) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. 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.

**Effective Date**

(f) This amendment becomes effective on January 18, 2002.

Issued in Renton, Washington, on December 21, 2001.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 02–148 Filed 1–2–02; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No. 30285; Amdt. No. 2084]**

## Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination*—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

*For Purchase*—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription*—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: PO Box 25082, Oklahoma City, OK 73125), telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

**The Rule**

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

**Conclusion**

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant 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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on December 21, 2001.

**James J. Ballough,**

*Director, Flight Standards Service.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]**

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN: § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective February 21, 2002*

Dillingham, AK, Dillingham, VOR RWY 1, Amdt 8
Dillingham, AK, Dillingham, VOR/DME RWY 19, Amdt 6
Dillingham, AK, Dillingham, LOC/DME RWY 19, Amdt 5
Dillingham, AK, Dillingham, NDB RWY 1, Amdt 1
Dillingham, AK, Dillingham, RNAV (GPS) RWY 1, Orig
Dillingham, AK, Dillingham, RNAV (GPS) RWY 19, Orig
Dillingham, AK, Dillingham, GPS RWY 1, Orig CANCELLED
Dillingham, AK, Dillingham, GPS RWY 19, Orig CANCELLED
Gustavus, AK, Gustavus, VOR/DME RWY 29, Orig-A CANCELLED
Gustavus, AK, Gustavus,VOR/DME RWY 29, Orig
Gustavus, AK, Gustavus, NDB–A, Orig
Gustavus, AK, Gustavus, RNAV (GPS) RWY 29, Orig
St. Paul Island, AK, St Paul Island, LOC/DME BC RWY 18, Amdt 2
St. Paul Island, AK, St Paul Island, RNAV (GPS) RWY 18, Orig
St. Paul Island, AK, St Paul Island, GPS RWY 18, Orig CANCELLED
Lancaster, CA, General William J. Fox Airfield, VOR–B, Amdt 3

Lancaster, CA, General William J. Fox Airfield, NDB–C, Amdt 3
Lancaster, CA, General William J. Fox Airfield, RNAV (GPS)–A, Orig
Sacramento, CA, Sacramento Mather, ILS RWY 22L, Amdt 2
Danielson, CT, Danielson, VOR–A, Amdt 6
Danielson, CT, Danielson, RNAV (GPS) RWY 31, Orig
Danielson, CT, Danielson, GPS RWY 31, Orig, CANCELLED
Brooksville, FL, Hernando County, NDB RWY 9, Amdt 6, CANCELLED
Marathon, FL, The Florida Keys Marathon, NDB OR GPS RWY 7, Amdt 3
Miami, FL, Miami, Intl, NDB RWY 27L, Amdt 20
Atlanta, GA, The William B. Hartsfield Atlanta Intl, VOR RWY 27L, Amdt 4B
Ames, IA, Ames Muni, VOR RWY 31, Amdt 10
Ames, IA, Ames Muni, NDB RWY 1, Amdt 2
Ames, IA, Ames Muni, ILS RWY 1, Amdt 1
Ames, IA, Ames Muni, RNAV (GPS) RWY 1, Amdt 1
Ames, IA, Ames Muni, RNAV (GPS) RWY 13, Orig
Ames, IA, Ames Muni, GPS RWY 13, Orig, CANCELLED
Ames, IA, Ames Muni, RNAV (GPS) RWY 19, Orig
Ames, IA, Ames Muni, GPS RWY 19, Orig, CANCELLED
Ames, IA, Ames Muni, RNAV (GPS) RWY 31, Orig
Ames, IA, Ames Muni, GPS RWY 31, Orig, CANCELLED
Audobon, IA, Audobon County, RNAV (GPS) RWY 32, Orig
Audobon, IA, Audobon County, GPS RWY 32, CANCELLED
Carroll, IA, Arthur N. Neu, NDB RWY 31, Amdt 7
Carroll, IA, Arthur N. Neu, RNAV (GPS) RWY 13, Orig
Carroll, IA, Arthur N. Neu, GPS RWY 13, Amdt 1, CANCELLED
Carroll, IA, Arthur N. Neu, RNAV (GPS) RWY 31, Orig
Carroll, IA, Arthur N. Neu, GPS RWY 31, Amdt 1, CANCELLED
Denison, IA, Denison Muni, RNAV (GPS) RWY 12, Orig
Denison, IA, Denison Muni, GPS RWY 12, Orig, CANCELLED
Denison, IA, Denison Muni, RNAV (GPS) RWY 30, Orig
Denison, IA, Denison Muni, GPS RWY 30, Orig, CANCELLED
Mason City, IA, Mason City Muni, RNAV (GPS) RWY 17, Orig
Mason City, IA, Mason City Muni, RNAV (GPS) RWY 35, Orig
Lousiville, KY, Louisville Intl-Standiford Field, VOR OR TACAN RWY 29, Amdt 22A, CANCELLED
Flint, MI, Bishop Intl, VOR RWY 9, Orig
Flint, MI, Bishop Intl, VOR RWY 9, Amdt 23, CANCELLED
Flint, MI, Bishop Intl, VOR, RWY 18, Orig
Flint, MI, Bishop Intl, VOR OR GPS RWY 18, Amdt 18, CANCELLED
Flint, MI, Bishop Intl, VOR RWY 27, Orig
Flint, MI, Bishop Intl, VOR OR GPS RWY 27, Amdt 20, CANCELLED
Flint, MI, Bishop Intl, VOR RWY 36, Orig
Flint, MI, Bishop Intl, VOR OR GPS RWY 36, Amdt 14, CANCELLED
Flint, MI, Bishop Intl, NDB RWY 9, Amdt 25
Flint, MI, Bishop Intl, ILS RWY 9, Amdt 22
Flint, MI, Bishop Intl, ILS RWY 27, Amdt 4
Flint, MI, Bishop Intl, RADAR–1, Amdt 8
Flint, MI, Bishop Intl, RNAV (GPS) RWY 9, Orig
Flint, MI, Bishop Intl, GPS RWY 9, Orig, CANCELLED
Flint, MI, Bishop Intl, RNAV (GPS) RWY 18, Orig
Flint, MI, Bishop Intl, RNAV (GPS) Y RWY 27, Orig
Flint, MI, Bishop Intl, RNAV (GPS) Z RWY 27, Orig
Flint, MI, Bishop Intl, RNAV (GPS) RWY 36, Orig
Lapeer, MI, Dupont-Lapeer, VOR–A, Orig
Lapeer, MI, Dupont-Lapeer, VOR OR GPS–A, Amdt 12, CANCELLED
Owosso, MI, Owosso Community, VOR/DME RWY 28, Orig
Owosso, MI, Owosso Community, VOR OR GPS RWY 28, Amdt 5A, CANCELLED
Owosso, MI, Owosso Community, RNAV (GPS) RWY 28, Orig
Sault Ste Marie, MI, Chippewa County Intl, NDB OR GPS RWY 34, Amdt 4C
Duluth, MN, Sky Harbor, RNAV (GPS) RWY 32, Orig
Duluth, MN, Sky Harbor, GPS RWY 32, Orig, CANCELLED
Park Rapids, MN, Park Rapids Muni-Konshok Field, VOR/DME OR GPS RWY 13, Amdt 8B
Park Rapids, MN, Park Rapids Muni-Konshok Field, NDB OR GPS RWY 31, Amdt 1B
Thief River Falls, MN, Thief River Falls Regional, NDB, OR GPS RWY 31, Amdt 1B
Warroad, MN, Warroad Intl-Swede Carlson Field, NDB OR GPS RWY 31, Amdt 1B
Worthington, MN, Worthington Muni, NDB OR GPS RWY 29, Orig-B
Whitefield, NH, Mount Washington, Regional, LOC RWY 10, Amdt 5
Whitefield, NH, Mount Washington, Regional, NDB RWY 10, Amdt 8
Whitefield, NH, Mount Washington, Regional, RNAV (GPS) RWY 10, Orig
Seneca Falls, NY, Finger Lakes Regional, RNAV (GPS) RWY 36, Orig
Liberty, NC, Causey, VOR OR GPS RWY 2, Amdt 4
Louisburg, NC, Franklin County, ILS RWY 4, Amdt 1
Salisbury, NC, Rowan County, RNAV (GPS) RWY 20, Orig
Block Island, RI, Block Island State, VOR/DME RWY 10, Amdt 5
Block Island, RI, Block Island State, RNAV (GPS) RWY 10, Orig
Muskogee, OK, Davis Field, GPS RWY 31, Orig-A
Okmulgee, OK, Okmulgee Muni, GPS RWY 17, Orig-A
Perry, OK, Perry Muni, GPS RWY 17, orig-A
Shawnee, OK, Shawnee Muni, GPS RWY 17, Orig-A
Medford, OR, Rouge Valley International-Medford, VOR/DME–C, Amdt 3
Medford, OR, Rouge Valley International-Medford, ILS RWY 14, Amdt 1
Medford, OR, Rouge Valley International-Medford, RNAV (GPS)–D, Orig
Medford, OR, Rouge Valley International-Medford, RNAV (GPS) RWY 14, Orig
Honey Grove, PA, EWT 4, Copter RNAV (GPS) 086, Orig
Block Island, RI, Block Island State, VOR/DME RWY 10, Amdt 5
Block Island, RI, Block Island State, RNAV (GPS) RWY 10, Orig
Columbia, SC, Columbia Metropolitan, RADAR–1, Amdt 11
Madisonville, TX, Madisonville Muni, VOR/DME RWY 18, Amdt 2
Madisonville, TX, Madisonville Muni, RNAV (GPS) RWY 18, Orig
Madisonville, TX, Madisonville Muni, RNAV (GPS) RWY 36, Orig
Madisonville, TX, Madisonville Muni, GPS RWY 36, Orig, CANCELLED
Palestine, TX, Palestine Muni, VOR/DME OR GPS RWY 17, Amdt 4A
Temple, TX, Draughon-Miller Central Texas Regional, VOR RWY 15, Amdt 17
Temple, TX, Draughon-Miller Central Texas Regional, VOR RWY 33, Amdt 3
Temple, TX, Draughon-Miller Central Texas Regional, ILS RWY 15, Amdt 11
Temple, TX, Draughon-Miller Central Texas Regional, RNAV (GPS) RWY 15, Orig
Temple, TX, Draughon-Miller Central Texas Regional, RNAV (GPS) RWY 33, Orig
Norfolk, VA, Chesapeake Regional, VOR/DME RWY 23, Orig
Norfolk, VA, Chesapeake Regional, VOR/DME RWY 23, Amdt 2D, CANCELLED
Norfolk, VA, Chesapeake Regional, LOC RWY 5, Orig
Norfolk, VA, Chesapeake Regional, LOC RWY 5, Amdt 2C, CANCELLED
Norfolk, VA, Chesapeake Regional, NDB RWY 5, Orig
Norfolk, VA, Chesapeake Regional, NDB RWY 5, Amdt 1C, CANCELLED
Norfolk, VA, Chesapeake Regional, RNAV (GPS) RWY 5, Orig
Norfolk, VA, Chesapeake Regional, GPS RWY 5, Amdt 1A, CANCELLED

[FR Doc. 02–51 Filed 1–2–02; 8:45 am]
BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No. 30286; Amdt. No. 2085]**

## Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational

facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

*For Examination*—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

*For Purchase*—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which affected airport is located.

*By Subscription*—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

**The Rule**

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standards for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

**Conclusion**

The FAA hs determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant 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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on December 21, 2001.

**James J. Ballough,**

*Director, Flight Standards Service.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Istrument Approach Procecures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

**Authority:** 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]**

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME of TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows: Effective Upon Publication.

| FDC date | State | City | Airport | FDC No. | Subject |
|---|---|---|---|---|---|
| 12/03/01 | NY | New York | La Guardia | 1/2883 | NDB or GPS Rwy 22, Amdt 12A. |
| 12/04/01 | PA | Corry | Corry-Lawrence | 1/2936 | NDB or GPS Rwy 14, Amdt 4. |
| 12/05/01 | KS | Fort Scott | Fort Scott Muni | 1/2934 | NDB or GPS Rwy 17, Amdt 11. |
| 12/05/01 | FL | Dunnellon | Dunnellon/Mario N Co & Park of Commerce. | 1/2977 | GPS Rwy 23, Orig-A. |
| 12/05/01 | NH | Rochester | Skyhaven | 1/2979 | NDB or GPS–B, Amdt 1A. |
| 12/05/01 | NH | Rochester | Skyhaven | 1/2980 | NDB Rwy 33, Amdt 4. |
| 12/05/01 | NH | Rochester | Skyhaven | 1/2981 | VOR/DME or GPS–A, Amdt 1. |
| 12/05/01 | NH | Rochester | Skyhaven | 1/2982 | GPS Rwy 33, Orig. |
| 12/10/01 | ME | Bangor | Bangor Intl | 1/3020 | ILS Rwy 33, Amdt 10A. |
| 12/10/01 | ME | Bangor | Bangor Intl | 1/3021 | NDB Rwy 33, Amdt 5C. |
| 12/10/01 | MN | Faribault | Faribault Intl | 1/3024 | VOR or GPS–A, Amdt 5. |
| 12/10/01 | SC | Orangeburg | Orangeburg Muni | 1/3036 | NDB or GPS Rwy 5, Orig-B. |
| 12/10/01 | NC | Beaufort | Michael J. Smith Field | 1/3044 | LOC Rwy 26, Orig. |
| 12/10/01 | NC | Beaufort | Michael J. Smith Field | 1/3046 | NDB or GPS Rwy 21, Orig. |
| 12/10/01 | AL | Dothan | Dothan Rgnl | 1/3051 | VOR Rwy 14, Amdt 3C. |
| 12/10/01 | AL | Dothan | Dothan Rgnl | 1/3052 | LOC BC Rwy 14, Amdt 6E. |
| 12/10/01 | AL | Dothan | Dothan Rgnl | 1/3053 | ILS Rwy 32, Amdt 7E. |
| 12/10/01 | AL | Dothan | Dothan Rgnl | 1/3056 | RNAV (GPS) Rwy 14, Orig. |
| 12/10/01 | AL | Dothan | Dothan Rgnl | 1/3057 | VOR Rwy 18, Amdt 3B. |
| 12/10/01 | AL | Dothan | Dothan Rgnl | 1/3058 | VOR or TACAN or GPS–A, Amdt 11D. |
| 12/10/01 | DC | Washington | Ronald Reagan Washington National | 1/3108 | VOR Rwy 15, Amdt 9A. |
| 12/10/01 | DC | Washington | Ronald Reagan Washington National | 1/3110 | VOR/DME or GPS Rwy 15, Amdt 1A. |
| 12/10/01 | AL | Dothan | Dothan Rgnl | 1/3120 | RNAV (GPS) Rwy 18, Orig. |
| 12/11/01 | RI | Providence | Theodore Francis Green State | 1/3146 | ILS/DME Rwy 34, Amdt 9B. |
| 12/12/01 | TX | Galveston | Scholes Int at Galveston | 1/3174 | VOR Rwy 13, Amdt 3. |
| 12/13/01 | IA | Dubuque | Dubuque Rgnl | 1/3183 | ILS Rwy 36, Orig-A. |
| 12/13/01 | IA | Dubuque | Dubuque Rgnl | 1/3184 | VOR or GPS Rwy 36, Amdt 5D. |
| 12/13/01 | WI | Green Bay | Austin Straubel Intl | 1/3200 | Radar-1. Amdt 9A. |
| 12/13/01 | AR | Bentonville | Bentonville Muni/Louise M. Thaden Field. | 1/3202 | VOR–A, Amdt 11. |
| 12/13/01 | MN | St Paul | St Paul Downtown Holman Field | 1/3210 | ILS Rwy 14, Orig. |

[FR Doc. 02–50 Filed 1–2–02; 8:45 am]
BILLING CODE 4910–13–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 173

**[Docket No. 00F–1482]**

### Secondary Direct Food Additives Permitted in Food for Human Consumption; Correction

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of June 26, 2001 (66 FR 33829). The document amended the food additive regulations to provide for the safe use of ozone in gaseous and aqueous phases as an antimicrobial agent on food, including meat and poultry. A reference to 9 CFR part 381, subpart P was inadvertently omitted. This document corrects that error.

**DATES:** The rule was effective on June 26, 2001.

**FOR FURTHER INFORMATION CONTACT:** Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, Washington, DC 20204–0001, 202–418–3074.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of June 26, 2001 (66 FR 33829), FDA added a food additive regulation at § 173.368 (21 CFR 173.368) to provide for the safe use of ozone in gaseous and aqueous phases as an antimicrobial agent on food, including meat and poultry (unless precluded by standards of identity in 9 CFR part 319). A reference to 9 CFR part 381, subpart P was inadvertently omitted. Therefore, the agency is amending § 173.368(d) to correct this omission. After publication of the final rule, the agency received an objection within the 30-day comment period. The agency is currently evaluating that objection.

In FR Doc. 01–15963, appearing on pages 33829 to 33830 in the **Federal Register** of Wednesday, June 26, 2001, the following correction is made:

**§ 173.368 [Corrected]**

1. On page 33830, in the second column, under § 173.368 *Ozone*, in paragraph (d), in the fourth line, after ''9 CFR part 319 '' add the phrase ''or 9 CFR part 381, subpart P''.

Dated: December 18, 2001.

**L. Robert Lake,**

*Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.*

[FR Doc. 02–44 Filed 1–2–02; 8:45 am]
BILLING CODE 4160–02–S

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

**[R4–200212(a), FRL–7124–7]**

### Approval and Promulgation of State Plans for Designated Facilities and Pollutants; States of Alabama, Georgia, Kentucky, and South Carolina

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving the small Municipal Waste Combustion (MWC) units section 111(d) negative declarations submitted by the states of Alabama, Georgia, Kentucky, and South Carolina. These negative declarations certify that small MWC units subject to the requirements of sections 111(d) and

129 of the Clean Air Act (CAA) do not exist in these states.

**DATES:** This direct final rule will be effective March 4, 2002 unless EPA receives adverse comments by February 4, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Comments may be mailed to Scott Davis, EPA Region 4, Air Planning Branch, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 4 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Scott Davis at (404) 562–9127 or Sean Lakeman at (404) 562–9043.

**SUPPLEMENTARY INFORMATION:** Section 111(d) of the CAA requires states to submit plans to control certain pollutants (designated pollutants) at existing facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type, and EPA has established emission guidelines for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA, but emissions of which are subject to a standard of performance for new stationary sources.

Emission guidelines for small MWC units were originally promulgated in December 1995 but were vacated by the U.S. Court of Appeals for the District of Columbia Circuit in March 1997. In response to the 1997 vacature, on August 30, 1999, EPA proposed to reestablish emission guidelines for small MWC units. On December 6, 2000 (65 FR 76378), EPA finalized the section 111(d) emission guidelines for existing small MWC units. The emission guidelines contained in this final rule are equivalent to the 1995 emission guidelines for small MWC units. The emission guidelines are codified at 40 CFR part 60, subpart BBBB.

Subpart B of 40 CFR part 60 establishes procedures to be followed and requirements to be met in the development and submission of state plans for controlling designated pollutants. Part 62 of the CFR provides the procedural framework for the submission of these plans. When designated facilities are located in a state, a state must develop and submit a plan for the control of the designated pollutant. However, 40 CFR 62.06 provides that if there are no existing sources of the designated pollutant in the state, the state may submit a letter of certification to that effect, or negative declaration, in lieu of a plan. The negative declaration exempts the state from the requirements of subpart B for that designated pollutant. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

**Final Action**

The states of Alabama, Georgia, Kentucky, and South Carolina have determined there are no existing sources in their states subject to the small MWC units emission guidelines. Consequently, each state has submitted a letter of negative declaration certifying this fact. We are taking final action to approve these negative declarations.

**Administrative Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state negative declarations as meeting Federal requirements and imposes no additional requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves state negative declarations and does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule 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 (64 FR 43255, August 10, 1999), because it merely approves state negative declarations relating to a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing state plan submissions, our role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), we have no authority to disapprove state submissions for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews state submissions, to use VCS in place of state submissions that otherwise satisfy the provisions of the CAA. 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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. We will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of 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).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 4, 2002. 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 62**

Environmental protection, Air pollution control, Municipal waste combustion units, Nitrogen dioxide, Particulate matter, Sulfur oxides.

Dated: December 21, 2001.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

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

### Subpart B—Alabama

2. Subpart B is amended by adding an undesignated center heading and § 62.106 to read as follows:

Air Emissions From Small Existing Municipal Waste Combustion Units

#### § 62.106 Identification of plan—negative declaration.

Letter from the Alabama Department of Environmental Management submitted January 11, 2001, certifying that there are no small municipal waste combustion units subject to 40 CFR part 60, subpart BBBB.

### Subpart L—Georgia

3. Subpart L is amended by adding an undesignated center heading and § 62.2609 to read as follows:

**Air Emissions From Small Existing Municipal Waste Combustion Units**

#### § 62.2609 Identification of plan—negative declaration.

Letter from the Georgia Department of Natural Resources submitted December 13, 2001, certifying that there are no small municipal waste combustion units subject to 40 CFR part 60, subpart BBBB.

### Subpart S—Kentucky

4. Subpart S is amended by adding an undesignated center heading and § 62.4371 to read as follows:

**Air Emissions From Small Existing Municipal Waste Combustion Units**

#### § 62.4371 Identification of plan—negative declaration.

Letter from the Kentucky Department for Environmental Protection submitted March 5, 2001, certifying that there are no small municipal waste combustion units subject to 40 CFR part 60, subpart BBBB.

### Subpart PP—South Carolina

5. Subpart PP is amended by adding an undesignated center heading and § 62.10180 to read as follows:

**Air Emissions From Small Existing Municipal Waste Combustion Units**

#### § 62.10180 Identification of plan—negative declaration.

Letter from the South Carolina Department of Health and Environmental Control submitted November 6, 2001, certifying that there are no small municipal waste combustion units subject to 40 CFR part 60, subpart BBBB.

[FR Doc. 02–104 Filed 1–2–02; 8:45 am]

BILLING CODE 6560–50–P

# Rules and Regulations

Federal Register
Vol. 67, No. 2
Thursday, January 3, 2002

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.

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2001–NM–311–AD; Amendment 39–12585; AD 2001–26–19]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 767 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes. This action requires a one-time inspection for missing, damaged, or incorrectly installed parts in the separation link assembly on the deployment bar of the emergency escape system on the entry or service door, and installation of new parts, if necessary. This action is necessary to prevent failure of an entry or service door to open fully in the event of an emergency evacuation, which could impede exit from the airplane. This condition could result in injury to passengers or crewmembers. This action is intended to address the identified unsafe condition.

**DATES:** Effective January 18, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 18, 2002.

Comments for inclusion in the Rules Docket must be received on or before March 4, 2002.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–311–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–NM–311–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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. 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:** John Piccola, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1509; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:** The FAA has received reports that entry and service doors did not open fully during deployment of emergency escape slides on several Boeing Model 767 series airplanes. Most reported incidents occurred during testing; however, one incident occurred during an actual emergency evacuation. Investigation has revealed that this condition is due to failure of the separation link assembly to release the deployment cable from the deployment bar of the emergency escape system on the entry or service door. Such failure to release may occur when the snap ring or washer which hold the separation link in place, or the internal spring, is missing or installed incorrectly. Failure of an entry or service door to open fully during an emergency evacuation could impede exit from the airplane. This condition, if not corrected, could result in injury to passengers or crewmembers.

### Explanation of Related Service Information

Boeing has issued Service Letter 767–SL–25–101, dated August 30, 2001. That service letter describes the background of the unsafe condition related to the separation link assembly on the deployment bar of the emergency escape slide system and provides a ''Suggested Operator Action'' for correcting the condition. The service letter suggests performing an inspection to determine whether snap rings are present and properly installed on the separation link assembly, and replacing any damaged snap ring or installing a new snap ring if one is missing or installed incorrectly. The service letter specifies that maintenance information for the separation link assembly is available in the Boeing 767 Component Maintenance Manual.

### Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent failure of an entry or service door to open fully during an emergency evacuation. Failure of a door to open fully could impede exit from the airplane, which could result in injury to passengers or crewmembers. This AD requires a one-time detailed visual inspection for missing, damaged, or incorrectly installed parts in the separation link assembly on the deployment bar of the emergency escape system on the entry or service door, and installation of new parts, if necessary. These actions are required to be accomplished according to the procedures and the applicable sections of the Boeing 767 Airplane Maintenance Manual (AMM) and Component Maintenance Manual (CMM) specified in paragraph (a) of this AD.

This AD also requires that, if any missing, damaged, or incorrectly installed part is found in the separation link assembly on the deployment bar of the emergency escape system on any entry or service door, operators must report the results of the inspection to the FAA Certificate Management Office—Boeing. The intent of this reporting requirement is to enable the FAA to determine the number of missing or damaged parts in the affected fleet.

**Differences Between This AD and Service Letter**

As stated above, Boeing Service Letter 767–SL–25–101 describes the background of the unsafe condition related to the separation link assembly on the deployment bar of the emergency escape slide system. However, this AD requires accomplishment of necessary actions according to certain sections of the AMM and CMM, not according to the ''Suggested Operator Action'' in the service letter. Because the actions required by this AD differ in key ways from those described in the service letter, the FAA finds it necessary to describe specifically how this AD differs from the service letter. The differences are as follows:

• This AD requires a detailed visual inspection for missing, damaged, or incorrectly installed snap rings, washers, or internal springs in the separation link assembly on the deployment bar of the emergency escape system on the entry or service door. The service letter suggests an inspection for missing, damaged, or incorrectly installed snap rings only. The FAA's decision to require an inspection for missing, damaged, or incorrectly installed washers and internal springs, as well as snap rings, is based on inspections of in-service airplanes which have revealed missing washers and missing or incorrectly installed internal springs.

• Although the service letter recommends accomplishing the inspection during any scheduled or unscheduled maintenance on the service door escape slide, the FAA has determined that a specific compliance time is necessary to ensure that the identified unsafe condition is addressed in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation (developed with affected operators through the ''lead airline'' process), but the degree of urgency associated with addressing the subject unsafe condition, and the time necessary to perform the inspection. In light of all of these factors, the FAA finds a 60-day compliance time for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

**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 flight 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 address 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 statement is made: ''Comments to Docket Number 2001–NM–311–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 adding the following new airworthiness directive:

**2001–26–19 Boeing:** Amendment 39–12585. Docket 2001–NM–311–AD.

*Applicability:* Model 767 series airplanes, line numbers 1 through 854 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.

**Note 2:** Boeing Service Letter 767–SL–25–101, dated August 30, 2001, provides information related to this AD; however, the actions required by this AD are not identical to those in the ''Suggested Operator Action'' section of that service letter. Where this AD differs from the service letter, this AD prevails.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of an entry or service door to open fully in the event of an emergency evacuation, which could impede exit from the airplane and result in injury to passengers or crewmembers, accomplish the following:

**One-Time Inspection and Corrective Actions**

(a) Within 60 days after the effective date of this AD, do a one-time detailed visual inspection for missing, damaged, or incorrectly installed parts in the separation link assembly on the deployment bar of the emergency escape system on the entry or service door, according to the procedures specified in paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6) of this AD.

(1) Remove the escape slide pack bustle according to Section 25–66–00 of the Boeing 767 Airplane Maintenance Manual (AMM).

(2) Position the deployment bar of the escape slide to expose the forward and aft separation links, according to Section 25–66–00 of the Boeing 767 AMM and Section 25–66–30 of the Boeing 767 Component Maintenance Manual (CMM), Revision 2, dated November 1, 2000.

(3) Do a detailed visual inspection to determine whether the snap ring, washer, and internal spring of the separation link assembly are installed correctly on both the forward and aft separation links, and to detect any damage of the snap ring, washer, and spring, according to Items 65 and 70 of Section 25–66–30 of the CMM, Revision 2, dated November 1, 2000.

(4) If any snap ring, washer, or internal spring is missing or found damaged or installed incorrectly during the inspection required by paragraph (a)(3) of this AD, before further flight, install a new snap ring, washer, and internal spring according to Section 25–66–30 of the CMM, Revision 2, dated November 1, 2000.

(5) Ensure that the separation links and deployment cables are installed as depicted on placard BAC27TPPS5141 or BAC27TPPS5142, as applicable. Placards are adjacent to each link on the deployment bar. If any separation link or deployment cable is installed incorrectly, before further flight, correct the installation as shown on the applicable placard.

(6) Reinstall the escape slide pack bustle according to Section 25–66–00 of the Boeing 767 AMM.

**Note 3:** 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.''

**Reporting Requirement**

(b) If there is any missing, damaged, or incorrectly installed part in the separation link assembly on the deployment bar of the emergency escape system on any entry or service door: Submit a report of inspection findings to the FAA Certification Management Office—Boeing, ANM–108B, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; at the applicable time specified in paragraph (b)(1) or (b)(2) of this AD. The report must include: the serial number of the affected airplane, the total number of doors inspected, the number of deployment bars with missing or damaged parts, an identification of what parts are missing or damaged, and the calendar date of the last inspection or test of any emergency escape system with missing or damaged parts. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection is accomplished after the effective date of this AD: Submit the report within 10 days after performing the inspection required by paragraph (a) of this AD.

(2) For airplanes on which the inspection has been accomplished before the effective date of this AD: Submit the report within 10 days after the effective date 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, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 4:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

**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) The exposure of the forward and aft separation links; inspection for snap ring, washer, and internal spring; and installation of new snap ring, washer, and internal spring; shall be done in accordance with Section 25–66–30 of the Boeing 767 Component Maintenance Manual, Revision 2, dated November 1, 2000, which contains the following effective pages:

| Page number | Revision level shown on page | Date shown on page |
|---|---|---|
| List of Effective Pages; Page 1. | 2 | Nov. 1, 2000. |

(Only the ''Highlights'' page of Section 25–66–30 shows the appropriate revision level; no other page of this document contains the revision level.) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. 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.

**Effective Date**

(f) This amendment becomes effective on January 18, 2002.

Issued in Renton, Washington, on December 21, 2001.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 02–148 Filed 1–2–02; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No. 30285; Amdt. No. 2084]**

## Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination*—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

*For Purchase*—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription*—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: PO Box 25082, Oklahoma City, OK 73125), telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

**The Rule**

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

**Conclusion**

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant 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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on December 21, 2001.

**James J. Ballough,**

*Director, Flight Standards Service.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]**

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN: § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective February 21, 2002*

Dillingham, AK, Dillingham, VOR RWY 1, Amdt 8
Dillingham, AK, Dillingham, VOR/DME RWY 19, Amdt 6
Dillingham, AK, Dillingham, LOC/DME RWY 19, Amdt 5
Dillingham, AK, Dillingham, NDB RWY 1, Amdt 1
Dillingham, AK, Dillingham, RNAV (GPS) RWY 1, Orig
Dillingham, AK, Dillingham, RNAV (GPS) RWY 19, Orig
Dillingham, AK, Dillingham, GPS RWY 1, Orig CANCELLED
Dillingham, AK, Dillingham, GPS RWY 19, Orig CANCELLED
Gustavus, AK, Gustavus, VOR/DME RWY 29, Orig-A CANCELLED
Gustavus, AK, Gustavus,VOR/DME RWY 29, Orig
Gustavus, AK, Gustavus, NDB–A, Orig
Gustavus, AK, Gustavus, RNAV (GPS) RWY 29, Orig
St. Paul Island, AK, St Paul Island, LOC/DME BC RWY 18, Amdt 2
St. Paul Island, AK, St Paul Island, RNAV (GPS) RWY 18, Orig
St. Paul Island, AK, St Paul Island, GPS RWY 18, Orig CANCELLED
Lancaster, CA, General William J. Fox Airfield, VOR–B, Amdt 3

Lancaster, CA, General William J. Fox Airfield, NDB–C, Amdt 3
Lancaster, CA, General William J. Fox Airfield, RNAV (GPS)–A, Orig
Sacramento, CA, Sacramento Mather, ILS RWY 22L, Amdt 2
Danielson, CT, Danielson, VOR–A, Amdt 6
Danielson, CT, Danielson, RNAV (GPS) RWY 31, Orig
Danielson, CT, Danielson, GPS RWY 31, Orig, CANCELLED
Brooksville, FL, Hernando County, NDB RWY 9, Amdt 6, CANCELLED
Marathon, FL, The Florida Keys Marathon, NDB OR GPS RWY 7, Amdt 3
Miami, FL, Miami, Intl, NDB RWY 27L, Amdt 20
Atlanta, GA, The William B. Hartsfield Atlanta Intl, VOR RWY 27L, Amdt 4B
Ames, IA, Ames Muni, VOR RWY 31, Amdt 10
Ames, IA, Ames Muni, NDB RWY 1, Amdt 2
Ames, IA, Ames Muni, ILS RWY 1, Amdt 1
Ames, IA, Ames Muni, RNAV (GPS) RWY 1, Amdt 1
Ames, IA, Ames Muni, RNAV (GPS) RWY 13, Orig
Ames, IA, Ames Muni, GPS RWY 13, Orig, CANCELLED
Ames, IA, Ames Muni, RNAV (GPS) RWY 19, Orig
Ames, IA, Ames Muni, GPS RWY 19, Orig, CANCELLED
Ames, IA, Ames Muni, RNAV (GPS) RWY 31, Orig
Ames, IA, Ames Muni, GPS RWY 31, Orig, CANCELLED
Audobon, IA, Audobon County, RNAV (GPS) RWY 32, Orig
Audobon, IA, Audobon County, GPS RWY 32, CANCELLED
Carroll, IA, Arthur N. Neu, NDB RWY 31, Amdt 7
Carroll, IA, Arthur N. Neu, RNAV (GPS) RWY 13, Orig
Carroll, IA, Arthur N. Neu, GPS RWY 13, Amdt 1, CANCELLED
Carroll, IA, Arthur N. Neu, RNAV (GPS) RWY 31, Orig
Carroll, IA, Arthur N. Neu, GPS RWY 31, Amdt 1, CANCELLED
Denison, IA, Denison Muni, RNAV (GPS) RWY 12, Orig
Denison, IA, Denison Muni, GPS RWY 12, Orig, CANCELLED
Denison, IA, Denison Muni, RNAV (GPS) RWY 30, Orig
Denison, IA, Denison Muni, GPS RWY 30, Orig, CANCELLED
Mason City, IA, Mason City Muni, RNAV (GPS) RWY 17, Orig
Mason City, IA, Mason City Muni, RNAV (GPS) RWY 35, Orig
Lousiville, KY, Louisville Intl-Standiford Field, VOR OR TACAN RWY 29, Amdt 22A, CANCELLED
Flint, MI, Bishop Intl, VOR RWY 9, Orig
Flint, MI, Bishop Intl, VOR RWY 9, Amdt 23, CANCELLED
Flint, MI, Bishop Intl, VOR, RWY 18, Orig
Flint, MI, Bishop Intl, VOR OR GPS RWY 18, Amdt 18, CANCELLED
Flint, MI, Bishop Intl, VOR RWY 27, Orig
Flint, MI, Bishop Intl, VOR OR GPS RWY 27, Amdt 20, CANCELLED
Flint, MI, Bishop Intl, VOR RWY 36, Orig
Flint, MI, Bishop Intl, VOR OR GPS RWY 36, Amdt 14, CANCELLED
Flint, MI, Bishop Intl, NDB RWY 9, Amdt 25
Flint, MI, Bishop Intl, ILS RWY 9, Amdt 22
Flint, MI, Bishop Intl, ILS RWY 27, Amdt 4
Flint, MI, Bishop Intl, RADAR–1, Amdt 8
Flint, MI, Bishop Intl, RNAV (GPS) RWY 9, Orig
Flint, MI, Bishop Intl, GPS RWY 9, Orig, CANCELLED
Flint, MI, Bishop Intl, RNAV (GPS) RWY 18, Orig
Flint, MI, Bishop Intl, RNAV (GPS) Y RWY 27, Orig
Flint, MI, Bishop Intl, RNAV (GPS) Z RWY 27, Orig
Flint, MI, Bishop Intl, RNAV (GPS) RWY 36, Orig
Lapeer, MI, Dupont-Lapeer, VOR–A, Orig
Lapeer, MI, Dupont-Lapeer, VOR OR GPS–A, Amdt 12, CANCELLED
Owosso, MI, Owosso Community, VOR/DME RWY 28, Orig
Owosso, MI, Owosso Community, VOR OR GPS RWY 28, Amdt 5A, CANCELLED
Owosso, MI, Owosso Community, RNAV (GPS) RWY 28, Orig
Sault Ste Marie, MI, Chippewa County Intl, NDB OR GPS RWY 34, Amdt 4C
Duluth, MN, Sky Harbor, RNAV (GPS) RWY 32, Orig
Duluth, MN, Sky Harbor, GPS RWY 32, Orig, CANCELLED
Park Rapids, MN, Park Rapids Muni-Konshok Field, VOR/DME OR GPS RWY 13, Amdt 8B
Park Rapids, MN, Park Rapids Muni-Konshok Field, NDB OR GPS RWY 31, Amdt 1B
Thief River Falls, MN, Thief River Falls Regional, NDB, OR GPS RWY 31, Amdt 1B
Warroad, MN, Warroad Intl-Swede Carlson Field, NDB OR GPS RWY 31, Amdt 1B
Worthington, MN, Worthington Muni, NDB OR GPS RWY 29, Orig-B
Whitefield, NH, Mount Washington, Regional, LOC RWY 10, Amdt 5
Whitefield, NH, Mount Washington, Regional, NDB RWY 10, Amdt 8
Whitefield, NH, Mount Washington, Regional, RNAV (GPS) RWY 10, Orig
Seneca Falls, NY, Finger Lakes Regional, RNAV (GPS) RWY 36, Orig
Liberty, NC, Causey, VOR OR GPS RWY 2, Amdt 4
Louisburg, NC, Franklin County, ILS RWY 4, Amdt 1
Salisbury, NC, Rowan County, RNAV (GPS) RWY 20, Orig
Block Island, RI, Block Island State, VOR/DME RWY 10, Amdt 5
Block Island, RI, Block Island State, RNAV (GPS) RWY 10, Orig
Muskogee, OK, Davis Field, GPS RWY 31, Orig-A
Okmulgee, OK, Okmulgee Muni, GPS RWY 17, Orig-A
Perry, OK, Perry Muni, GPS RWY 17, orig-A
Shawnee, OK, Shawnee Muni, GPS RWY 17, Orig-A
Medford, OR, Rouge Valley International-Medford, VOR/DME–C, Amdt 3
Medford, OR, Rouge Valley International-Medford, ILS RWY 14, Amdt 1
Medford, OR, Rouge Valley International-Medford, RNAV (GPS)–D, Orig
Medford, OR, Rouge Valley International-Medford, RNAV (GPS) RWY 14, Orig
Honey Grove, PA, EWT 4, Copter RNAV (GPS) 086, Orig
Block Island, RI, Block Island State, VOR/DME RWY 10, Amdt 5
Block Island, RI, Block Island State, RNAV (GPS) RWY 10, Orig
Columbia, SC, Columbia Metropolitan, RADAR–1, Amdt 11
Madisonville, TX, Madisonville Muni, VOR/DME RWY 18, Amdt 2
Madisonville, TX, Madisonville Muni, RNAV (GPS) RWY 18, Orig
Madisonville, TX, Madisonville Muni, RNAV (GPS) RWY 36, Orig
Madisonville, TX, Madisonville Muni, GPS RWY 36, Orig, CANCELLED
Palestine, TX, Palestine Muni, VOR/DME OR GPS RWY 17, Amdt 4A
Temple, TX, Draughon-Miller Central Texas Regional, VOR RWY 15, Amdt 17
Temple, TX, Draughon-Miller Central Texas Regional, VOR RWY 33, Amdt 3
Temple, TX, Draughon-Miller Central Texas Regional, ILS RWY 15, Amdt 11
Temple, TX, Draughon-Miller Central Texas Regional, RNAV (GPS) RWY 15, Orig
Temple, TX, Draughon-Miller Central Texas Regional, RNAV (GPS) RWY 33, Orig
Norfolk, VA, Chesapeake Regional, VOR/DME RWY 23, Orig
Norfolk, VA, Chesapeake Regional, VOR/DME RWY 23, Amdt 2D, CANCELLED
Norfolk, VA, Chesapeake Regional, LOC RWY 5, Orig
Norfolk, VA, Chesapeake Regional, LOC RWY 5, Amdt 2C, CANCELLED
Norfolk, VA, Chesapeake Regional, NDB RWY 5, Orig
Norfolk, VA, Chesapeake Regional, NDB RWY 5, Amdt 1C, CANCELLED
Norfolk, VA, Chesapeake Regional, RNAV (GPS) RWY 5, Orig
Norfolk, VA, Chesapeake Regional, GPS RWY 5, Amdt 1A, CANCELLED

[FR Doc. 02–51 Filed 1–2–02; 8:45 am]
BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No. 30286; Amdt. No. 2085]**

## Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational

facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

*For Examination*—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

*For Purchase*—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which affected airport is located.

*By Subscription*—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

**The Rule**

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standards for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

**Conclusion**

The FAA hs determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant 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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on December 21, 2001.

**James J. Ballough,**

*Director, Flight Standards Service.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Istrument Approach Procecures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

**Authority:** 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]**

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME of TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows: Effective Upon Publication.

| FDC date | State | City | Airport | FDC No. | Subject |
|---|---|---|---|---|---|
| 12/03/01 | NY | New York | La Guardia | 1/2883 | NDB or GPS Rwy 22, Amdt 12A. |
| 12/04/01 | PA | Corry | Corry-Lawrence | 1/2936 | NDB or GPS Rwy 14, Amdt 4. |
| 12/05/01 | KS | Fort Scott | Fort Scott Muni | 1/2934 | NDB or GPS Rwy 17, Amdt 11. |
| 12/05/01 | FL | Dunnellon | Dunnellon/Mario N Co & Park of Commerce. | 1/2977 | GPS Rwy 23, Orig-A. |
| 12/05/01 | NH | Rochester | Skyhaven | 1/2979 | NDB or GPS–B, Amdt 1A. |
| 12/05/01 | NH | Rochester | Skyhaven | 1/2980 | NDB Rwy 33, Amdt 4. |
| 12/05/01 | NH | Rochester | Skyhaven | 1/2981 | VOR/DME or GPS–A, Amdt 1. |
| 12/05/01 | NH | Rochester | Skyhaven | 1/2982 | GPS Rwy 33, Orig. |
| 12/10/01 | ME | Bangor | Bangor Intl | 1/3020 | ILS Rwy 33, Amdt 10A. |
| 12/10/01 | ME | Bangor | Bangor Intl | 1/3021 | NDB Rwy 33, Amdt 5C. |
| 12/10/01 | MN | Faribault | Faribault Intl | 1/3024 | VOR or GPS–A, Amdt 5. |
| 12/10/01 | SC | Orangeburg | Orangeburg Muni | 1/3036 | NDB or GPS Rwy 5, Orig-B. |
| 12/10/01 | NC | Beaufort | Michael J. Smith Field | 1/3044 | LOC Rwy 26, Orig. |
| 12/10/01 | NC | Beaufort | Michael J. Smith Field | 1/3046 | NDB or GPS Rwy 21, Orig. |
| 12/10/01 | AL | Dothan | Dothan Rgnl | 1/3051 | VOR Rwy 14, Amdt 3C. |
| 12/10/01 | AL | Dothan | Dothan Rgnl | 1/3052 | LOC BC Rwy 14, Amdt 6E. |
| 12/10/01 | AL | Dothan | Dothan Rgnl | 1/3053 | ILS Rwy 32, Amdt 7E. |
| 12/10/01 | AL | Dothan | Dothan Rgnl | 1/3056 | RNAV (GPS) Rwy 14, Orig. |
| 12/10/01 | AL | Dothan | Dothan Rgnl | 1/3057 | VOR Rwy 18, Amdt 3B. |
| 12/10/01 | AL | Dothan | Dothan Rgnl | 1/3058 | VOR or TACAN or GPS–A, Amdt 11D. |
| 12/10/01 | DC | Washington | Ronald Reagan Washington National | 1/3108 | VOR Rwy 15, Amdt 9A. |
| 12/10/01 | DC | Washington | Ronald Reagan Washington National | 1/3110 | VOR/DME or GPS Rwy 15, Amdt 1A. |
| 12/10/01 | AL | Dothan | Dothan Rgnl | 1/3120 | RNAV (GPS) Rwy 18, Orig. |
| 12/11/01 | RI | Providence | Theodore Francis Green State | 1/3146 | ILS/DME Rwy 34, Amdt 9B. |
| 12/12/01 | TX | Galveston | Scholes Int at Galveston | 1/3174 | VOR Rwy 13, Amdt 3. |
| 12/13/01 | IA | Dubuque | Dubuque Rgnl | 1/3183 | ILS Rwy 36, Orig-A. |
| 12/13/01 | IA | Dubuque | Dubuque Rgnl | 1/3184 | VOR or GPS Rwy 36, Amdt 5D. |
| 12/13/01 | WI | Green Bay | Austin Straubel Intl | 1/3200 | Radar-1. Amdt 9A. |
| 12/13/01 | AR | Bentonville | Bentonville Muni/Louise M. Thaden Field. | 1/3202 | VOR–A, Amdt 11. |
| 12/13/01 | MN | St Paul | St Paul Downtown Holman Field | 1/3210 | ILS Rwy 14, Orig. |

[FR Doc. 02–50 Filed 1–2–02; 8:45 am]
BILLING CODE 4910–13–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 173

**[Docket No. 00F–1482]**

### Secondary Direct Food Additives Permitted in Food for Human Consumption; Correction

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of June 26, 2001 (66 FR 33829). The document amended the food additive regulations to provide for the safe use of ozone in gaseous and aqueous phases as an antimicrobial agent on food, including meat and poultry. A reference to 9 CFR part 381, subpart P was inadvertently omitted. This document corrects that error.

**DATES:** The rule was effective on June 26, 2001.

**FOR FURTHER INFORMATION CONTACT:** Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, Washington, DC 20204–0001, 202–418–3074.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of June 26, 2001 (66 FR 33829), FDA added a food additive regulation at § 173.368 (21 CFR 173.368) to provide for the safe use of ozone in gaseous and aqueous phases as an antimicrobial agent on food, including meat and poultry (unless precluded by standards of identity in 9 CFR part 319). A reference to 9 CFR part 381, subpart P was inadvertently omitted. Therefore, the agency is amending § 173.368(d) to correct this omission. After publication of the final rule, the agency received an objection within the 30-day comment period. The agency is currently evaluating that objection.

In FR Doc. 01–15963, appearing on pages 33829 to 33830 in the **Federal Register** of Wednesday, June 26, 2001, the following correction is made:

**§ 173.368 [Corrected]**

1. On page 33830, in the second column, under § 173.368 *Ozone*, in paragraph (d), in the fourth line, after ''9 CFR part 319 '' add the phrase ''or 9 CFR part 381, subpart P''.

Dated: December 18, 2001.

**L. Robert Lake,**

*Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.*

[FR Doc. 02–44 Filed 1–2–02; 8:45 am]
BILLING CODE 4160–02–S

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

**[R4–200212(a), FRL–7124–7]**

### Approval and Promulgation of State Plans for Designated Facilities and Pollutants; States of Alabama, Georgia, Kentucky, and South Carolina

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving the small Municipal Waste Combustion (MWC) units section 111(d) negative declarations submitted by the states of Alabama, Georgia, Kentucky, and South Carolina. These negative declarations certify that small MWC units subject to the requirements of sections 111(d) and

129 of the Clean Air Act (CAA) do not exist in these states.

**DATES:** This direct final rule will be effective March 4, 2002 unless EPA receives adverse comments by February 4, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Comments may be mailed to Scott Davis, EPA Region 4, Air Planning Branch, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 4 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Scott Davis at (404) 562–9127 or Sean Lakeman at (404) 562–9043.

**SUPPLEMENTARY INFORMATION:** Section 111(d) of the CAA requires states to submit plans to control certain pollutants (designated pollutants) at existing facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type, and EPA has established emission guidelines for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA, but emissions of which are subject to a standard of performance for new stationary sources.

Emission guidelines for small MWC units were originally promulgated in December 1995 but were vacated by the U.S. Court of Appeals for the District of Columbia Circuit in March 1997. In response to the 1997 vacature, on August 30, 1999, EPA proposed to reestablish emission guidelines for small MWC units. On December 6, 2000 (65 FR 76378), EPA finalized the section 111(d) emission guidelines for existing small MWC units. The emission guidelines contained in this final rule are equivalent to the 1995 emission guidelines for small MWC units. The emission guidelines are codified at 40 CFR part 60, subpart BBBB.

Subpart B of 40 CFR part 60 establishes procedures to be followed and requirements to be met in the development and submission of state plans for controlling designated pollutants. Part 62 of the CFR provides the procedural framework for the submission of these plans. When designated facilities are located in a state, a state must develop and submit a plan for the control of the designated pollutant. However, 40 CFR 62.06 provides that if there are no existing sources of the designated pollutant in the state, the state may submit a letter of certification to that effect, or negative declaration, in lieu of a plan. The negative declaration exempts the state from the requirements of subpart B for that designated pollutant. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

**Final Action**

The states of Alabama, Georgia, Kentucky, and South Carolina have determined there are no existing sources in their states subject to the small MWC units emission guidelines. Consequently, each state has submitted a letter of negative declaration certifying this fact. We are taking final action to approve these negative declarations.

**Administrative Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state negative declarations as meeting Federal requirements and imposes no additional requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves state negative declarations and does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule 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 (64 FR 43255, August 10, 1999), because it merely approves state negative declarations relating to a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing state plan submissions, our role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), we have no authority to disapprove state submissions for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews state submissions, to use VCS in place of state submissions that otherwise satisfy the provisions of the CAA. 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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. We will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of 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).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 4, 2002. 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 62**

Environmental protection, Air pollution control, Municipal waste combustion units, Nitrogen dioxide, Particulate matter, Sulfur oxides.

Dated: December 21, 2001.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

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

### Subpart B—Alabama

2. Subpart B is amended by adding an undesignated center heading and § 62.106 to read as follows:

Air Emissions From Small Existing Municipal Waste Combustion Units

#### § 62.106 Identification of plan—negative declaration.

Letter from the Alabama Department of Environmental Management submitted January 11, 2001, certifying that there are no small municipal waste combustion units subject to 40 CFR part 60, subpart BBBB.

### Subpart L—Georgia

3. Subpart L is amended by adding an undesignated center heading and § 62.2609 to read as follows:

**Air Emissions From Small Existing Municipal Waste Combustion Units**

#### § 62.2609 Identification of plan—negative declaration.

Letter from the Georgia Department of Natural Resources submitted December 13, 2001, certifying that there are no small municipal waste combustion units subject to 40 CFR part 60, subpart BBBB.

### Subpart S—Kentucky

4. Subpart S is amended by adding an undesignated center heading and § 62.4371 to read as follows:

**Air Emissions From Small Existing Municipal Waste Combustion Units**

#### § 62.4371 Identification of plan—negative declaration.

Letter from the Kentucky Department for Environmental Protection submitted March 5, 2001, certifying that there are no small municipal waste combustion units subject to 40 CFR part 60, subpart BBBB.

### Subpart PP—South Carolina

5. Subpart PP is amended by adding an undesignated center heading and § 62.10180 to read as follows:

**Air Emissions From Small Existing Municipal Waste Combustion Units**

#### § 62.10180 Identification of plan—negative declaration.

Letter from the South Carolina Department of Health and Environmental Control submitted November 6, 2001, certifying that there are no small municipal waste combustion units subject to 40 CFR part 60, subpart BBBB.

[FR Doc. 02–104 Filed 1–2–02; 8:45 am]

BILLING CODE 6560–50–P

# Proposed Rules

Federal Register
Vol. 67, No. 2
Thursday, January 3, 2002

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.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 35

**[Docket No. PRM–35–15]**

### Jeffery C. Angel; Denial of Petition for Rulemaking

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Petition for rulemaking: denial.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking submitted by Jeffery C. Angel (PRM–35–15). The petitioner requested that the NRC amend its regulations concerning the medical use of byproduct material to prohibit the hand-held administration of radiopharmaceuticals by injection. In addition, the petitioner requests amendments to require the use of the ''Angel Shield'' instead of the currently used syringe radiation shields. The NRC is denying the petition because it would be inconsistent with the Commission's overall program for revising its regulatory framework for the medical use of byproduct material, to make requirements more risk-informed, more performance based, and less prescriptive.

**ADDRESSES:** Copies of the petition for rulemaking, the public comments received, and the NRC's letter to the petitioner are available for public inspection or copying in the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room 0–1F23, Rockville, Maryland 20852. These documents are also available on NRC's rulemaking website at *http://ruleforum.llnl.gov.* For information about the interactive rulemaking website, contact Carol Gallagher, (301) 415–5905, email: *CAG@nrc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Gary Comfort, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, (301) 415–8106, e-mail: *GCC1@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

#### The Petition

On August 23, 1999 (64 FR 45907), the Commission published in the **Federal Register** a notice of receipt of a petition for rulemaking filed by Jeffery C. Angel. The petitioner requested that the NRC amend its regulations concerning the medical use of byproduct material (10 CFR part 35) to prohibit the hand-held administration of radiopharmaceuticals by injection. The petitioner also requested the amendment of 10 CFR 35.60(c), ''Syringe shields and labels,'' to require the use of the ''Angel Shield,'' designed by the petitioner, instead of the syringe radiation shields currently in use. The petitioner believes that recent improvements in technology, specifically the invention of the Angel Shield, support the need to require its use by all NRC licensees when preparing or injecting radiopharmaceuticals in patients or human research subjects.

In his supporting information, the petitioner contends that the use of the Angel Shield instead of the currently required syringe radiation shield would reduce radiation exposures by:

1. Eliminating hand-held injections of radiopharmaceuticals.
2. Completely encapsulating the syringe within the administrator, providing 360 degrees of protection.
3. Shielding 100 percent of low energy (140 Kev) and 88 percent of high energy photons (511 Kev).
4. Allowing for the remote administration of the radiopharmaceutical.
5. Reducing the number of missed injections and subsequent multiple exposures.

The petitioner supports his contention by stating that he has been a nuclear medicine technologist for over 20 years and has been exposed to radiation daily, using the traditional syringe radiation shield. The petitioner invented the Angel Shield to protect himself and others administering radiopharmaceuticals by injection. He states that other syringe radiation shields are neither designed nor engineered according to sound radiation protection principles.

#### Public Comments on the Petition

The NRC received five comment letters. Three comment letters opposed the petition. Two of these were from certified health physicists and consultants in the area of radiation protection, and one was from an industry trade association. Two comment letters supported the petition. One of the letters is from a certified nuclear medicine technologist and the other is signed by five radiology physicians.

One commenter stated that the petition cannot be justified in terms of cost-benefit, and that the petitioner failed to demonstrate that current exposures were excessive, thus presenting a significant risk to workers. Two commenters stated that the petition is self-serving in that it would provide a monopoly for the petitioner, as he is the only manufacturer of the Angel Shield. Another commenter said that licensees should be able to decide what procedures and equipment are necessary for the practice of their ''as low as reasonably achievable'' (ALARA) programs. One commenter said that prohibiting hand-held injections would adversely affect the practice of medicine, while another commenter stated that existing radiation syringe shields have been in use for many years without compromising worker or patient safety.

A commenter supporting the petition stated that the majority of her occupational exposure as a nuclear medicine technologist came from the injection of radiopharmaceuticals and their preparation. The commenter contends that lowering radiation dose rates is more than enough justification for granting the petition, stating that this device will make her profession safer. The commenter also stated that unless the device is mandated, employers would not spend the money to provide adequate protection to achieve ALARA objectives.

The other commenters in favor of the petition cite NRC Regulatory Guides 8.10 and 8.29 in support of their conclusion that the petitioner's device clearly furthers the objective of reducing occupational exposures as far below the specified limits as is reasonably achievable. According to these commenters, the Angel Shield should simply be viewed as a new, better, and safer syringe radiation shield than the ones currently employed and required pursuant to 10 CFR 35.60(c). These commenters also assert that the new

technology would permit the rejection of the antiquated practice and the unnecessary exposure associated with hand-held injections.

**Reasons for Denial**

Based on consideration of the petition and public comments, the NRC is denying the petition because it would be inconsistent with the Commission's overall program for revising its regulatory framework for the medical use of byproduct material. This framework focuses Commission regulation on those medical procedures that pose the highest risk, structures its regulations to be more risk-informed and more performance-based and significantly reduces regulatory burden in many areas, consistent with NRC's ''Strategic Plan for Fiscal Year 1997—Fiscal Year 2002,'' cited in ''Medical Use of Byproduct Material; Policy Statement; revision,'' 65 FR 47654 (August 2, 2000).

The amendment the petitioner seeks would be contrary to this regulatory approach by prohibiting the hand-held administration of radiopharmaceuticals by injection and/or requiring the use of a specific shield (the Angel Shield). Licensees should have the flexibility to determine what kind of syringe or vial shields to use in order to meet the requirements contained in 10 CFR 20.1101, ''Radiation protection programs.'' This regulation requires licensees to use practical procedures and engineering controls designed to achieve doses that are ALARA (as low as reasonably achievable). In its inspection program, the NRC assesses whether licensees have complied with these requirements. Denial of this petition does not prohibit the licensee from using the ''Angel Shield'' or other shields, as practicable to meet these requirements. However, if this petition were granted, it would limit the flexibility of licensees to use other, including more effective, strategies to meet ALARA without additional rulemaking.

The decision to deny the petition is consistent with our performance goals. There is no impact on public health and safety, the environment, or common defense and security. Use of the requested device is not essential to limit or minimize doses to the public, workers, or patients. Public confidence should not be affected because the existing regulations require licensees to minimize doses and this decision continues to allow licensees the flexibility to use the ''Angel Shield'' or other strategies, as best fits their individual practices, in achieving this outcome. The decision maintains the effectiveness, efficiency, and realism of the current regulations. Lastly, the denial decision does not impose unnecessary regulatory burden on licensees or the NRC staff, whereas granting the petition would cause undue burden by imposing prescriptive criteria on licensees.

For reasons cited in this document, the NRC denies the petition.

Dated at Rockville, Maryland, this 18th day of December, 2001.

For the Nuclear Regulatory Commission.

**William D. Travers,**

*Executive Director for Operations.*

[FR Doc. 02–72 Filed 1–2–02; 8:45 am]

**BILLING CODE 7590–01–P**

## DEPARTMENT OF THE INTERIOR

## Minerals Management Service

## 30 CFR Part 250

**RIN 1010–AC83**

## Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Procedures for Dealing With Sustained Casing Pressure

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Extension of comment period for proposed rule.

**SUMMARY:** This document extends to March 9, 2002, the deadline for submitting comments on the proposed rule that describes procedures for dealing with sustained casing pressure (SCP) in oil and gas wells on the Outer Continental Shelf. The rule will codify these procedures and ensure uniform regulatory practices among MMS regional offices, and will also help ensure that lessees will continue to conduct operations in a safe manner.

**DATES:** We will consider all comments received by March 9, 2002, and we may not fully consider comments received after March 9, 2002.

**ADDRESSES:** Mail or hand-carry written comments (three copies) to the Department of the Interior; Minerals Management Service; 381 Elden Street; Mail Stop 4024; Herndon, Virginia 20170–4817; Attention: Rules Processing Team. If you wish to e-mail comments, the e-mail address is: rules.comments@MMS.gov. Reference ''AC83 SCP Comments'' in your e-mail subject line. Include your name and return address in your e-mail message and mark your message for return receipt.

**FOR FURTHER INFORMATION CONTACT:** Larry Ake, Engineering and Operations Division, at (703) 787–1559.

**SUPPLEMENTARY INFORMATION:** MMS was asked to extend the deadline for submitting comments on the proposed regulations revising 30 CFR 250, subpart E to describe procedures for dealing with SCP in oil and gas wells. The request stated that the complexity of the issue and the high cost to the domestic petroleum industry require careful consideration for comprehensive comments.

*Public Comments Procedures:* Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: December 5, 2001.

**John V. Mirabella,**

*Acting Chief, Engineering and Operations Division.*

[FR Doc. 02–42 Filed 1–2–02; 8:45 am]

**BILLING CODE 4310–MR–W**

## POSTAL SERVICE

## 39 CFR Part 111

## Eligibility Standards for Free Matter for the Blind and Other Physically Handicapped Persons

**AGENCY:** Postal Service.

**ACTION:** Proposed rule.

**SUMMARY:** The Postal Service proposes to amend the Domestic Mail Manual (DMM) to clarify and simplify the eligibility standards for free matter for the blind and other physically handicapped persons in conformance, to the extent practicable, with similar standards adopted by the Library of Congress for its National Library Service for the Blind and Physically Handicapped. This proposed rule also would require free matter mailers that

submit mailings of at least 200 pieces to register with the post office(s) of mailing and submit statements of mailing that document information relating to each such mailing.

**DATES:** Comments on the proposed standards must be received on or before February 4, 2002.

**ADDRESSES:** Written comments should be delivered to the Manager, Mail Preparation and Standards, United States Postal Service, 1735 N. Lynn St., Room 3025, Arlington, VA 22209–6038. Comments transmitted via facsimile or by e-mail cannot be accepted. Copies of all written comments will be available for inspection and photocopying at USPS Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor N, Washington, DC 20260–1450 between 9 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Joel Walker, 703–292–3652.

**SUPPLEMENTARY INFORMATION:** Congress established the free matter privilege in 1904 to provide reading materials for the blind when sent by public institutions and public libraries as a loan and when returned by the blind readers to those institutions (Ch. 1612, 33 Stat. 313, Pub. L. No. 171). In 1931, the national books-for-the-blind program was established under the auspices of the Library of Congress to provide books for use by adult residents of the United States, ''including the several States, Territories, insular possessions, and the District of Columbia'' (Ch. 400, 46 Stat. 1487, Pub. L. No. 787). The Library of Congress issued standards for making arrangements for circulation of books (using the free matter privilege) to and from blind users through libraries designated as local or regional centers.

In 1966, Congress expanded the books-for-the-blind program to include other physically handicapped persons (Pub. L. 89–522, 2 U.S.C. secs. 135a and 135b). Congress expanded the program to meet the reading needs of physically handicapped persons who cannot read or use conventional printed books because of impaired eyesight or other factors that make them physically unable to manipulate these materials. Certification by competent authority of individuals for eligibility to participate in the program was (and remains today) pursuant to regulations prescribed by the Library of Congress. From this time on, the program became known as the National Library Service for the Blind and Physically Handicapped (*see* 36 CFR 701.10).

Consistent with the intent of Congress embodied in the Act that created the Library of Congress National Library Service for the Blind and Physically Handicapped, the Postal Reorganization Act (39 U.S.C. 3403(a)(1)) expanded the free matter privilege to include mail for the use of the blind or other persons who cannot use or read conventionally printed material because of a physical impairment. The persons also must be certified by competent authority in accordance with the regulations established by the Library of Congress. Under the current law, Congress reimburses the Postal Service for free matter mailings (39 U.S.C. 2401(c)). Accordingly, the Postal Service is clarifying its eligibility standards for the free matter privilege to incorporate, as closely as practicable, the standards devised by the Library of Congress for establishing eligibility and certification for participation in the National Library Service for the Blind and Physically Handicapped (see 36 CFR 701.10). In addition, the Postal Service is proposing a process to identify the quantity of mailings being made and to verify that those using the free matter privilege are using it for mailings that qualify for the privilege.

On September 1, 2000, the Postal Service published a proposed rule amending the standards for free matter for the blind and other physically handicapped persons (65 FR 53212). In view of changes from the original proposal and because we believe that the public interest will be served by the fullest practicable exposition of views on these issues, the Postal Service is publishing this revised proposal for comment. There are two major changes from the first proposed rule. First, based on comments received from the original proposal, this new proposal eliminates the requirement that organizations maintain individual records of eligible recipients and makes the maintenance of such records optional. Second, this new proposal requires mailers of free matter that enter mailings of 200 or more pieces to register with the post office(s) of mailing and to submit statements of mailing. Mailers are required to register once at each facility where they deposit bulk mailings. Mailers must submit statements of mailing with each free matter mailing of 200 pieces or more. The Postal Service will provide a form that will require minimal mailing information for this purpose. In addition, this proposal includes a provision that the Postal Service may audit an organization's use of the free matter privilege. This standard is new to the Domestic Mail Manual, but codifies existing authority and practice.

The Postal Service received six comments on the original proposed rule. All of them supported the overall goal to clarify standards for eligibility and certification for recipients of free matter. Two commenters supported the rulemaking without reservation or revision. Of the remaining four, each commenter had reservations and recommendations for revisions to proposed DMM E040.1.5, Certification by Organizations. Two organizations objected to the record-keeping requirement described in E040.1.5, asserting that this requirement places an undue burden on the resources of organizations that mail free matter. This objection has been addressed in this new proposed rule by making the standard for maintaining records optional and not requiring organizations to maintain individual records of eligible recipients. Under these standards, any organization that mails under the free matter privilege, whether maintaining individual records or not, is subject to postal reviews of the eligibility of the addressees. This may include a review of the individuals on the organization's mailing list to ensure they meet the eligibility standards for receipt of free matter. The procedures used in these reviews may depend on the records maintained by the organization. Record keeping by organizations making use of the free matter privilege will facilitate any audits that take place. For example, if the organization chooses to maintain records substantiating that each person on its mailing list is eligible to receive free matter, the Postal Service might be able to complete an audit simply by reviewing a sample of those records. If the organization does not maintain such records, the Postal Service might need to contact an outside source, such as the Library of Congress, for addressees registered with that organization to determine whether the addressees are eligible to receive free matter. If no other source is available to provide that confirmation, the Postal Service might, as a last resort, contact the individual addressees directly. However, it should be noted that, under current policy, all recipients of free matter are required to provide such evidence of eligibility to their postmasters; this is not routinely required of all addressees in the new process established under this proposal. It should be noted that, whether or not they maintain records to confirm that addressees meet the eligibility standards for free matter, the entry of matter at the ''free'' rates is the mailer's certification that the matter qualifies for free matter privileges.

Two commenters requested amendments to DMM E040.1.5 to allow permanent eligibility for persons who are ''intermittently'' eligible; one commenter requested an amendment to indicate an organization may certify eligible individuals provided the organization had a ''good faith'' belief of the individual's eligibility; and one commenter requested the ''competent authority'' requirement as defined in E040.1.4 be replaced with a ''self-declaration'' requirement. These requests cannot be accommodated. Eligibility for free matter is established by statute and the postage for this mail is provided to the Postal Service through appropriations. As explained above, this privilege is related to programs provided by the Library of Congress. Accordingly, to ensure consistency and adherence to congressional intent in the administration of the program, the proposed standards for free matter conform as near as practical with the standards of the Library of Congress. Consistent with those standards, this rule proposes that an eligible individual must meet the standards in E040.1.3 at the time of mailing and the proposed rule continues to establish eligibility by a competent authority as defined in E040.1.4. Persons certified by competent authority as meeting the requirements of eligibility resulting from a degenerative, variable disease that renders them unable to read or use conventional printed material because of impaired eyesight or other physical factors are eligible for the period specified by the certifying authority.

One commenter requested an amendment to DMM E040.3.0 to provide for letters sent by eligible individuals to include handwritten letters in equivalent size of 14-point sightsaving type. The history of the free matter privilege does not support that the intent was to include handwritten letters. Section 3404 of Title 39 specifically requires that letters sent using the privilege must be ''in raised characters, or sightsaving type, or in the form of sound recordings * * *'' Therefore, this request is not accommodated in this proposed rule.

Lastly, one commenter objected to the use of the term ''handicapped'' in the proposed standards, suggesting the term be replaced throughout with ''persons with disabilities.'' Although the Postal Service is sympathetic to the request, the proposed standards continue the use of the term ''handicapped'' to remain consistent with the language in the statute and that used by the Library of Congress.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions to the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. (*see* 39 CFR part 111).

For the reasons discussed above, the Postal Service hereby proposes the following amendments to the Domestic Mail Manual, which are incorporated by reference in the Code of Federal Regulations (*see* 39 CFR part 111).

**List of Subjects in 39 CFR Part 111**

Administrative practice and procedure, Postal Service.

## PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the Domestic Mail Manual as follows:

**E Eligibility**

**E000 Special Eligibility Standards**

* * * * *

[Amend E040 to insert the word ''physically'' before the word ''handicapped'' in each instance where it appears.]

*E040 Free Matter for the Blind and Other Physically Handicapped Persons*

1.0 BASIC INFORMATION

[Amend 1.1 to read as follows:]

**1.1 General**

Subject to the standards below, matter may be entered free of postage if mailed by or for the use of blind or other persons who cannot read or use conventionally printed materials due to a physical handicap. The provisions of E040 apply to domestic mail only.

* * * * *

[Amend titles and text of 1.3 and 1.4 and add new 1.5 and 1.6 to read as follows:]

**1.3 Eligibility**

The following persons are eligible to send and receive free matter:

a. Certified participants in the Library of Congress National Library Service for the Blind and Physically Handicapped (NLS).

b. Blind persons whose visual acuity, as determined by competent authority, is 20/200 or less in the better eye with correcting lenses, or whose widest diameter of visual field subtends angular distance no greater than 20 degrees.

c. Other physically handicapped persons as follows:

(1) Persons certified by competent authority as someone whose visual disability, with correction and regardless of optical measurement, prevents the reading of standard printed material.

(2) Persons certified by competent authority as unable to read or unable to use standard printed material as a result of physical limitations.

(3) Persons certified by competent authority as having a reading disability resulting from organic dysfunction and of sufficient severity to prevent their reading printed material in a normal manner.

(4) Persons certified by competent authority as meeting the requirements of eligibility resulting from a degenerative, variable disease that renders them unable to read or use conventional printed material because of impaired eyesight or other physical factors are eligible during the time in which the person is certified by a competent authority as unable to read or use conventional materials.

d. Eligible participants must be residents of the United States, including the several states, territories, insular possessions, and the District of Columbia, or American citizens domiciled abroad.

**1.4 Certifying Authority**

For purposes of this standard:

a. The postmaster may extend the free matter privilege to an individual recipient based on personal knowledge of the individual's eligibility.

b. In cases of blindness, visual impairment, or physical limitations, ''competent authority'' is defined to include doctors of medicine; doctors of osteopathy; ophthalmologists; optometrists; registered nurses; therapists; and professional staff of hospitals, institutions, and public or private welfare agencies (e.g., social workers, caseworkers, counselors, rehabilitation teachers, and superintendents). In the absence of any of these, certification may be made by professional librarians or by any person whose competence under specific circumstances is acceptable to the Library of Congress (See 36 CFR 701.10(b)(2)(i)).

c. In the case of reading disability from organic dysfunction, ''competent authority'' is defined as doctors of medicine and doctors of osteopathy.

**1.5 Certification of Eligible Recipients by Organizations**

An organization using the free matter privilege (for mailings of at least 200 pieces) to mail matter to persons who claim eligibility under 1.3 is required to certify on statements of mailing that each recipient is eligible to receive free matter. An organization is subject to Postal Service audits of addressees receiving free matter to substantiate recipients' eligibility consistent with the standards of eligibility articulated by the Library of Congress on its applications for free library service and as specified in these standards.

**1.6 Qualifying Individuals**

The Postal Service may require individuals claiming entitlement to the free matter privilege to furnish evidence of eligibility consistent with the standards in 1.3 and 1.4, or verify by other means that the recipients are eligible to receive free matter.

2.0 Matter Sent to Blind or Other Physically Handicapped Persons

**2.1 Acceptable Matter**

Subject to 2.2, this matter may be mailed free:

[Amend item a by adding ''in braille or 14-point or larger sightsaving type'' to read as follows:]

a. Reading matter in braille or 14-point or larger sightsaving type and musical scores.

* * * * *

**2.2 Conditions**

The matter listed in 2.1 must meet these conditions:

* * * * *

[Amend item d by adding ''as defined in E211'' to read as follows:]

d. The matter contains no advertising as defined in E211.

* * * * *

3.0 Matter Sent by Blind or Other Physically Handicapped Persons

[Amend 3.1 to read as follows:]

**3.1 Acceptable Letters**

Only letters in braille or in 14-point or larger sightsaving type or in the form of sound recordings, and containing no advertising, may be mailed free, and only if unsealed and sent by a blind or other physically handicapped person as described in 1.3.

* * * * *

[Add new section 5.0 to read as follows:]

5.0 Documentation

**5.1 Register to Mail**

Before submitting free matter mailings of 200 pieces or more, mailers must register with the post office(s) where the mailings will be presented.

**5.2 Reporting Mailings**

Each mailing of 200 pieces or more of free matter must be presented with a statement of mailing, Statement of Mailing, Free Matter for the Blind and Other Physically Handicapped Persons. [Note: This statement of mailing is currently being developed.] The statement of mailing must be completed in ink, by typewriter, or by computer printer (in duplicate if the mailer wants a receipted copy) and signed by the mailer. The mailer may submit a computer-generated facsimile of the USPS form.

* * * * *

An appropriate amendment to 39 CFR. part 111 will be published if this proposal is adopted.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 02–78 Filed 1–2–02; 8:45 am]

**BILLING CODE 7710–12–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 3, 51, 60, 63, 70, 123, 142, 145, 162, 233, 257, 258, 271, 281, 403, 501, 745 and 763

**[FRL–7125–3]**

**RIN 2025–AA07**

### Extension of Comment Period for and Public Meetings on the Proposed Establishment of Electronic Reporting; Electronic Records Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; extension of comment period; announcement of public meetings.

**SUMMARY:** The Environmental Protection Agency (EPA) is extending by an additional 30 days the comment period on its proposed rule for establishment of electronic reporting and electronic records. On August 31, 2001 (66 FR 46162), EPA proposed conditions under which EPA would allow submission of electronic documents and maintenance of electronic records to satisfy federal environmental reporting and recordkeeping requirements in EPA's regulations. The comment period is being extended by 30 days to provide the public with additional time to evaluate and comment upon the complex provisions of this proposed rule. As extended by this action, the comment period will now close on February 27, 2002.

This document also announces the dates and locations for two additional public meetings on the proposed rule's recordkeeping provisions, which will be held before the public comment period closes.

**DATES:** The meetings will be held on: (1) Thursday, January 17, 2002, 10:00 a.m. to 5:30 p.m. (EST); and (2) Thursday, January 31, 2002, 10:00 a.m. to 5:30 p.m. (CST).

In order to be considered, written comments on the proposed electronic reporting and electronic records rule must be submitted on or before February 27, 2002. Comments provided electronically will be considered timely if they are submitted electronically by 11:59 p.m. (Eastern time) February 27, 2002.

**ADDRESSES:** The meetings will be held at: (1) The Wyndham Washington, 1400 M Street, NW, Washington, DC; and (2) the Holiday Inn Select, 4440 West Airport Freeway, Irving, Texas.

Comments should be addressed to the United States Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, (Mail Code 2201A), Attn: Docket Number EC–2000–007, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Commenters are also requested to submit an original and 3 copies of their written comments as well as an original and 3 copies of any attachments, enclosures, or other documents referenced in the comments. Commenters who would like EPA to acknowledge receipt of their comments should include a self-addressed, stamped envelope. All comments must be postmarked or delivered by hand by February 27, 2002. No facsimiles (faxes) will be accepted. Public comments and supporting materials are available for viewing in the Enforcement and Compliance Docket and Information Center, located at 1200 Pennsylvania Avenue, NW, (Ariel Rios Building), 2nd Floor, Room 2213, Washington, DC 20460. The documents are available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (202) 564–2614 or (202) 564–2119. The public may copy a maximum of 266 pages from any regulatory document at no cost. Additional copies cost $0.15 per page. The rule and some supporting materials

are also available electronically on the Internet for public review, using a www browser type, at *http://www.epa.gov/.*

EPA will also accept comments electronically. Comments should be addressed to the following Internet address: docket.oeca@epa.gov. Electronic comments must be submitted as an ASCII, WordPerfect 5.1/6.1/8 format file and avoid the use of special characters or any form of encryption. Comments in electronic format should also be identified by the docket number EC–2000–007. Electronic comments will be transferred into a paper version for the official record. EPA will attempt to clarify electronic comments if there is an apparent error in transmission.

**FOR FURTHER INFORMATION CONTACT:** David Schwarz (2823), Office of Environmental Information, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, (202) 260–2710, schwarz.david@epa.gov, or Evi Huffer (2823), Office of Environmental Information, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, (202) 260–8791, huffer.evi@epa.gov.

**SUPPLEMENTARY INFORMATION:**

On August 31, 2001 (66 FR 46162), EPA proposed a rule that would set forth the conditions under which EPA would prospectively allow submission of electronic documents and maintenance of electronic records to satisfy federal environmental reporting and recordkeeping requirements in EPA's regulations. As noted in the proposal (66 FR 46163), the rule would affect a broad spectrum of EPA programs (not merely those where specific amendments to the Code of Federal Regulations would be made). While the rule is voluntary because it does not require electronic reporting or recordkeeping, for most programs regulated entities that currently maintain electronic records and who wish to continue to do so after the rule takes effect would be required to meet the recordkeeping criteria in subpart D. As currently defined in the proposal, the term electronic record is broad in scope. Given the breadth and complexity of the rule, several commenters have requested additional time to evaluate and comment upon the proposed rule. EPA greatly values the input provided by the regulated community as well as the input from States that administer EPA programs. Accordingly, the comment period was extended by 60 days, to January 28, 2002, in a notice published in the **Federal Register** on Wednesday, November 28, 2001 (66 FR 59392–59393), to provide additional time to evaluate and comment upon the proposed rule.

To help foster this comment and evaluation, EPA has scheduled two additional public meetings on the proposed rule's recordkeeping provisions, on January 17, 2002, and on January 31, 2002. The meetings will focus on electronic recordkeeping issues raised by the proposed rule, and will be structured to take comments on at least the following questions: What kinds of records do companies currently keep electronically to satisfy EPA regulatory requirements? How prevalent is this electronic recordkeeping, and what kinds of systems are used? How are automatically captured data and other raw data maintained electronically? How will the proposed rule affect companies' electronic recordkeeping practices, and do some of the proposed provisions raise more issues than others? How do companies currently ensure the integrity and reliability of their electronic records, especially where they do not use audit trails, and what role do recognized industry standards play? What special issues are raised by proposed criteria for long-term archiving, and how do companies currently address this problem? Where archiving involves the conversion of electronic records to paper, how do companies assure data integrity and reliability, and what role do recognized industry standards play? Are there new products or technologies that will help companies address the proposed standards for electronic recordkeeping?

Also, to allow participants and other interested stakeholders to develop comments based on discussions at these public meetings, EPA is extending the comment period an additional 30 days. During this extended comment period, EPA particularly seeks comment on whether or not the recordkeeping provisions in subpart D of the proposed rule should be withdrawn and addressed in a separate rulemaking. EPA also seeks comment on revisions to the recordkeeping criteria or other provisions of the proposed rule that would make it easier for those in the regulated community who already maintain electronic records to continue to do so after the rule takes effect.

Dated: December 21, 2001.

**Kim Nelson,**

*Assistant Administrator and Chief Information Officer, Office of Environmental Information.*

[FR Doc. 02–109 Filed 1–2–02; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 62

**[R4–200212(b), FRL–7124–8]**

## Approval and Promulgation of State Plans for Designated Facilities and Pollutants; States of Alabama, Georgia, Kentucky, and South Carolina

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve the small Municipal Waste Combustion (MWC) units section 111(d) negative declarations submitted by the states of Alabama, Georgia, Kentucky, and South Carolina. These negative declarations certify that small MWC units subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA) do not exist in these states. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

**DATES:** Written comments must be received on or before February 4, 2002.

**ADDRESSES:** Comments may be mailed to Scott Davis, EPA Region 4, Air Planning Branch, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 4 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Scott Davis at (404) 562–9127 or Sean Lakeman at (404) 562–9043.

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

Dated: December 21, 2001.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 02–105 Filed 1–2–02; 8:45 am]

**BILLING CODE 6560–50–P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

## Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To List the Miami Blue Butterfly as Endangered With Critical Habitat

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 90-day petition finding and initiation of status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding for a petition to list the Miami blue butterfly (*Hemiargus thomasi bethunebakeri*) under the Endangered Species Act of 1973, as amended. The range of this butterfly, which once extended north along the Florida coasts to about St. Petersburg and Daytona, has been shrinking for many years. We find that the petition presented substantial information indicating that listing this species may be warranted. We are initiating a status review to determine if listing the Miami blue butterfly is warranted.

**DATES:** The finding announced in this document was made on December 20, 2001. To be considered in the 12-month finding for this petition, information and comments should be submitted to us by March 4, 2002.

**ADDRESSES:** Data, information, comments, or questions concerning this petition should be submitted to the South Florida Ecological Services Office, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, Florida 32960. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** David Martin at the above address (561–562–3909, extension 230).

**SUPPLEMENTARY INFORMATION:**

### Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. This finding is to be based on all information available to us at the time the finding is made. To the maximum extent practicable, we are to make this finding within 90 days of the date we received the petition and promptly publish it in the **Federal Register**. If the finding is that substantial information was presented, we are also required to promptly commence a review of the status of the species involved if one has not already been initiated under our internal candidate assessment process. After completing the status review, we will issue an additional finding (the 12-month finding) determining whether listing is in fact warranted.

On June 15, 2000, we received a petition, dated June 13, 2000, from Dr. Jeffrey Glassberg, president of the North American Butterfly Association, Morristown, New Jersey, and Mr. Mark Salvato, an entomologist in St. Petersburg, Florida. The petition requested that we list the Miami blue butterfly as an endangered species on an emergency basis, and that critical habitat be designated concurrent with listing.

The petitioners cited habitat loss as a threat to the Miami blue butterfly. They suggested that fragmentation of habitat is a threat to this butterfly because if a local population becomes extinct, surviving populations of Miami blues are unlikely to be nearby, and butterflies will not be able to disperse into the unoccupied habitat. The petition also suggested that vegetation management on public land (notably lack of prescribed fires and suppression of natural ones) is adversely affecting Miami blue butterflies, as it does not maintain the appropriate native plant species required by the butterfly. Further, the petition cited unethical butterfly collection as a potential threat to the Miami blue. Finally, the petition asserted that mosquito control measures (i.e., spraying of adulticides) may threaten this species.

The Miami blue is the only subspecies of *Hemiargus thomasi* in the United States. The other subspecies are in the Bahamas, Hispaniola, and islands further east in the Antilles. Guides to Florida and Caribbean butterflies differ over whether the Miami blue also occurs in the Bahamas. Minno and Emmel (1993) considered it restricted to Florida, while Smith *et al.* (1994) noted that it had been recorded from the Bimini Islands in the Bahamas as does Calhoun (1997). Calhoun *et al.* (in press) surmise that it may not be a permanent resident in the Bahamas. In any case, the vast majority of this subspecies' distribution was in Florida, with any populations in the Bahamas being peripheral.

Little historic information exists on the abundance of the Miami blue, but its distribution has clearly shrunk. Kimball (1965) stated that ''it is not rare in the area from Gainesville and Tampa south, and is common in Dade and Monroe Counties. It has been taken in the Dry Tortugas.'' Opler and Krizek (1984) showed its range as being from Tampa Bay and Cape Canaveral southward. Minno and Emmel (1993) stated that ''although populations of the Miami blue have declined on the southern mainland, it is still locally common in the Keys'' (pp. 134–35). However, this statement was based on a 1980 reference. Calhoun et *al.* (in press) place the historic limits of the species' northern distribution at Hillsborough and Volusia Counties, extending southward along the coasts to the Marquesas Keys to the west of Key West, based on information from Forbes (1941) and Kimball (1965), as well as unpublished data assembled by Calhoun.

The Miami blue is closely related to the nickerbean blue (*Hemiargus ammon*), a Cuban species that has recently become established on Big Pine Key (Calhoun *et al.* in press). The potential for confusing these two species, as well as a third, the Florida blue (*Hemiargus ceraunus antibubastus*), makes it essential to base distribution records on specimens or photographs rather than sightings.

The petitioners' evidence, augmented by other available information, especially a paper by Calhoun et *al.* (in press), demonstrate that this subspecies has become hard to find. No observations of the Miami blue were supported by photographs or specimens from 1993 (Calhoun *et al.* in press) until November 1999, when Jane Ruffin provided a photographically verified report of about 50 individuals at a site in southern Florida. Her report was published in the spring 2000 issue of American Butterflies (Ruffin and Glassberg 2000). Calhoun *et al.* (in press) note an additional confirmed population near the one observed in 1999 as well as a credible sighting by R. Gillmore on Key Largo, which was posted on the North American Butterfly Association's website (*http://www.naba.org/sightings/sightingsMay2001Archive.htm*). The petitioners cited biologists and others who have searched for butterflies in southern Florida in recent years without sighting the Miami blue. This strongly indicates that the Miami blue is now very restricted in its distribution and nowhere abundant.

Larval food plants for the Miami blue butterfly include the seed pods of nickerbeans (*Caesalpinia* spp.), which are common tropical coastal shrubs and vines, as well as blackbeards

(*Pithecellobium* spp.) and perhaps other members of the pea family, such as *Acacia* (Calhoun *et al.* in press). Miami blue larvae also utilize balloon vine (*Cardiospermum halicababum*) seedpods (Opler and Krizek 1984, Minno and Emmel 1994). These vines, belonging to the soapberry family, are not native to Florida, but are relatively common, especially in urban areas. Additionally, Calhoun *et al.* (in press) suggest that larvae of the Miami blue, like those of the nickerbean blue, may feed on species of *Acacia* that are abundant on Big Pine Key.

The petition cites habitat loss and fragmentation as a threat. The Miami blue was a coastal species, known to feed on distinctly coastal trees and shrubs, which occur in tropical coastal hammocks (forests) and scrub. It also occurred in pine rocklands (slash pine with small palms and a grassy understory) on Big Pine Key (Calhoun *et al.* in press) and presumably in Miami-Dade County. Much of that habitat is gone, especially on the mainland, and what is left is fragmented. For example, the entire coastline in Palm Beach, Broward, and Miami-Dade Counties (as far south as Miami Beach) is densely urban, with only small remnants of coastal vegetation conserved in parks. In coastal areas where undeveloped land remains, the Miami blue's larval food plants are likely to be displaced by invasive exotic plants such as Brazilian pepper (*Schinus terebinthifolius*), which is now a dominant plant in coastal Florida. The seriousness of the loss and fragmentation of natural habitats is uncertain, partly because larvae of the Miami blue feed on balloon vines, which are exotic, weedy, and likely to be present in the urban landscape. It is possible that balloon vines could provide patches of suitable larval feeding habitat that would allow Miami blue butterflies to disperse between patches of suitable natural habitats.

The petition suggests that fragmentation of habitat is a threat to this butterfly because if a local population becomes extinct, surviving populations of Miami blues are unlikely to be nearby, and butterflies will not be able to disperse into the unoccupied habitat. Calhoun *et al.* (in press) provide indirect evidence that this may be the case on Big Pine Key, which appears to be unoccupied by the Miami blue, but is occupied by the nickerbean blue butterfly. The food plants of the two species seem similar enough to indicate that the Miami blue became extirpated from Big Pine Key in the 1990s for reasons other than loss of suitable habitat, and has not recolonized the island.

The petition suggests that vegetation management on public land, notably lack of prescribed fires and suppression of natural ones, is adversely affecting butterflies. Calhoun *et al.* (in press) report that, until it disappeared from Big Pine Key in the early 1990s, the Miami blue most commonly occurred in pine rocklands that are now used by the nickerbean blue. This is a fire-dependent habitat and it is conceivable that the success of the Miami blue in pinelands depended on regular burning, although as Calhoun *et al.* (in press) note, host plants (*Caesalpinia* and *Acacia*) appear to be abundant. It did not seem to them that habitat loss or modification was likely to have caused the loss of the Miami blue from Big Pine Key.

The petition cited unethical butterfly collection as a potential threat to this species. While we have listed several butterflies to, in part, protect them from collectors, it is not yet possible to demonstrate that collecting is threatening this species. However, unless this butterfly proves to be more widespread than is currently known, collection may be a threat due to the species rarity and apparently spotty distribution.

Butterflies are potentially subject to intense collection pressures, and recent listings of butterflies as endangered or threatened species have been based on this threat (notably the Saint Francis' satyr (*Neonympha mitchellii francisci*), emergency-listed, 59 FR 18324, April 15, 1994; callippe and Behren's silverspot butterflies (*Speyeria callippe callippe* and *Speyeria zerene behrensii*), 62 FR 64306, December 5, 1997; and Blackburn's sphinx moth (*Manduca blackburni*), 65 FR 4770, February 1, 2000). The Saint Francis' satyr was demonstrated to have been hard hit by collectors in just a 3-year period. On the other hand, our 90-day petition finding for the Santa Monica Mountains hairstreak (*Satyrium auretorum fumosum*) (64 FR 62641, November 17, 1999) found that collection and other threats were not serious enough to warrant listing. Along with collectors interested in making money, butterflies also attract obsessive collectors (Alexander 1996, Williams 1996).

The Miami blue butterfly's apparent rarity makes it vulnerable to random events such as hurricanes or possibly freezes that can temporarily destroy the foliage of larval food plants.

The petition asserted that mosquito control measures (i.e., spraying of adulticides) may threaten this species. Salvato (1999) studied factors influencing the declining populations of three butterfly species in the lower Keys. Although the species he studied have life histories that are different from that of the Miami blue, his masters thesis demonstrates that mosquito adulticide spraying can harm butterflies at the National Key Deer Refuge on Big Pine Key. He suggested specific expansions of the existing no-spray zones to protect the breeding grounds of these butterflies. His study is one of several conducted by a group of researchers on the problems of mosquito control pesticides in the ecosystem (Emmel 1991), which focused on conservation of the endangered Schaus swallowtail butterfly (*Papilio aristodemus*) on Key Largo. They found a ''probably causal'' correlation between the history of mosquito control on Key Largo and the decline of the Schaus swallowtail butterfly there.

The petitioners stated that, due to aspects of the Miami blue's natural history, especially its association with ants, ''roadside adulticide applications may be having much larger negative impacts on *H. t. bethunebakeri* populations than on those of other lycaenid species in the Keys. Miami blue larvae mature in the stem and seed pods of their host. These larvae leave the entrance holes open so that ants can enter the seed pods and stems and interact with the larvae. Dr. Jenella Loge (University of Utah) has discovered that these ants and the Miami blue larvae die when spraying begins in late spring on the Keys. Larvae of other lycaenid species on the Keys, ones without mutualistic relationships with ants, plug the holes of their seed pods and stems to keep would-be predators outside, and this may also restrict the entrance of adulticide spray.'' About half of the world's lycaenid butterfly species associate with ants. Cushman and Murphy (1993) suggest that ant-dependent lycaenid butterflies are inherently more vulnerable to extinction than those that are not ant-dependent because of the consequences of needing both the right food plants and the right ants, simultaneously. Based on information from Calhoun *et al.* (in press) and Salvato (1999), mosquito spraying appears likely to have contributed to the decline of the Miami blue and might be inhibiting recolonization of suitable habitats.

We have reviewed the petition, the literature cited in the petition, and other literature and information available in our files. On the basis of the best scientific and commercial information, we find the petition presents substantial information that listing this species may be warranted. Habitats that were probably formerly occupied by the Miami blue butterfly have been

destroyed or fragmented. The available information suggests that the Miami blue is rare and may exist only in small numbers at a few sites. This probable rarity suggests that the species might not be able to recolonize former portions of its range that may have suitable, but unoccupied, habitat. Also, the available information demonstrates that mosquito spraying in the Florida Keys and probably other parts of the Miami blue's former range has the potential to harm this species.

The petitioners stated that the Miami blue butterfly's last known population may be destroyed by mosquito control adulticide treatments, by human-caused changes to its habitat on the public land it inhabits, or by unethical butterfly collectors, and they requested emergency listing of the species. We may issue an emergency rule when an immediate threat poses a significant risk to the well-being of a species. Although the Miami blue butterfly appears to be in danger of extirpation, we do not believe that the threats are so great that extirpation is imminent. Upon receiving the petition, we reviewed the available information to determine if the existing and foreseeable threats posed an emergency. Consequently, we determined that an emergency listing was not warranted at this time. However, if at any time we determine that emergency listing of the Miami blue butterfly is warranted, we would seek to initiate an emergency listing. The petitioners also requested that critical habitat be designated for this species. We always consider the need for critical habitat designation when listing species. If the 12-month finding determines that listing the Miami blue butterfly is warranted, then the designation of critical habitat will be addressed in the subsequent proposed rule.

### Public Information Solicited

When we make a finding that substantial information exists to indicate that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information on the Miami blue butterfly. We request any additional information, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the status of the Miami blue butterfly. We are seeking information regarding historic and current distribution, habitat use and habitat conditions, biology and ecology, ongoing conservation measures for the species and its habitat, and threats to the species and its habitat.

If you wish to comment, you may submit your comments and materials concerning this finding to the Supervisor, South Florida Ecological Services Office, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, Florida 32960. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

### References Cited

You may request a list of all references cited in this document, as well as others, from the South Florida Ecological Services Office (see **ADDRESSES** section).

### Author

The primary author of this document is David Martin, South Florida Ecological Services Office (see **ADDRESSES** section).

### Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: December 20, 2001.

**Marshall P. Jones Jr.,**

*Director, Fish and Wildlife Service.*

[FR Doc. 02–36 Filed 1–2–02; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 697

**[Docket No. 010918229-1229-01; I.D. 022301A]**

**RIN 0648-AP15**

## American Lobster Fishery

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to modify the management measures applicable to the American lobster fishery. This action responds to the following recommendations made by the Atlantic States Marine Fisheries Commission (ASMFC): To control fishing effort as determined by historical participation in the American lobster trap fisheries conducted in the offshore Lobster Conservation Management Area (LCMA) 3 (Area 3) and in the nearshore LCMAs of the Exclusive Economic Zone (EEZ) from New York through North Carolina (Areas 4 and 5); to implement a mechanism for conservation equivalency and associated trap limits for owners of vessels in possession of a Federal lobster permit (permit holders) fishing in New Hampshire state waters; and to clarify lobster management area boundaries in Massachusetts waters. NMFS includes in this proposed rule a technical amendment to the regulations clarifying that Federal lobster permit holders must attach federally approved lobster trap tags to all lobster traps fished in any portion of any management area (whether in state or Federal waters). This requirement is not new, but was not previously clearly specified in the regulatory text, and this announcement is intended to make the regulations easier to understand.

**DATES:** Comments must be received no later than 5 p.m., eastern standard time, on February 19, 2002.

**ADDRESSES:** Comments on the proposed rule should be sent to Harry Mears, Director, State, Federal and Constituent Programs Office, NMFS, One Blackburn Drive, Gloucester, MA 01930. Comments will not be accepted if submitted via e-mail or the Internet. Comments regarding the collection-of-information requirements contained in the proposed rule should be sent to Harry Mears at the above address, and the Office of Information and Regulatory

Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer). Copies of a Draft Supplemental Environmental Impact Statement/Regulatory Impact Review/ Initial Regulatory Flexibility Analysis (DSEIS/RIR/IRFA) can be obtained from Harry Mears at the above address.

**FOR FURTHER INFORMATION CONTACT:** Robert Ross, NMFS, Northeast Region, 978–281–9234.

**SUPPLEMENTARY INFORMATION:**

**Proposed Action**

NMFS is proposing regulations to modify Federal lobster conservation management measures in the EEZ under the authority of section 803(b) of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), 16 U.S.C. 5101 *et seq.*, which states that, in the absence of an approved and implemented Fishery Management Plan under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and after consultation with the appropriate Fishery Management Council(s), the Secretary of Commerce may implement regulations to govern fishing in the EEZ, i.e., from 3 to 200 nm offshore. These regulations must be (1) compatible with the effective implementation of an Interstate Fishery Management Plan (ISFMP) developed by the ASMFC and (2) consistent with the national standards set forth in section 301 of the Magnuson-Stevens Act.

The lobster management program uses a fishing effort limitation strategy, among other measures, to control lobster fishing mortality. Fishing effort is currently limited by restricting the access of new vessels to the fishery and by limiting the number and size of traps that may be fished by each vessel. This proposed rule, issued as part of a Federal/state cooperative management effort, would implement a historical participation management regime to control lobster fishing effort and to preserve the socio-economic character of the associated lobster fisheries in Areas 3, 4, and 5. It would also establish a process for the evaluation of recommendations from ASMFC for Federal lobster regulations implementing ASMFC-approved conservation-equivalency measures in state coastal waters. In this regard, the proposed action would respond to an ASMFC recommendation to modify trap limit restrictions for Federal lobster permit holders fishing in EEZ Nearshore Management Area 1 who also possess a New Hampshire state lobster license. Finally, the proposed action would modify boundaries of lobster management areas in Massachusetts state waters for clarity and consistency with past fishing practices.

**Effort Control in Lobster Conservation Management Areas 3, 4, and 5**

In 1994, NMFS implemented a 5-year moratorium on new entrants into the EEZ lobster fishery via a limited access permit system. In December 1999, that moratorium was extended indefinitely under Federal regulations found at 50 CFR part 697 (64 FR 68228). Based upon its approval of selected management measures proposed by the Areas 3, 4, and 5 Lobster Conservation Management Teams, the ASMFC recommended that access to, and levels of effort in, the lobster trap fishery in EEZ Offshore Area 3 and Nearshore EEZ waters of Areas 4 and 5 be based on historical participation. The ASMFC recommendations for qualification based on historical participation addressed qualification criteria, allocation of fishing effort, and limitations on vessel upgrades. Qualification criteria are different among the areas and include demonstration of active involvement in the fishery through provision of certain documents. The ASMFC plan for Area 3 proposes that potential participants must meet or exceed both a landing and a fishery intensity threshold in order to qualify, whereas the plans for Areas 4 and 5 would only require fishermen to have held a lobster trap permit during the qualification period (see details provided in subsequent text).

The DSEIS/RIR/IRFA for this action, announced by a notice of availability published on November 24, 2000 (65 FR 70567), used data available to NMFS for the 2000-2001 fishing year from May 2000 through August 2000, on the number of owners of vessels that elected to harvest American lobsters in specific LCMAs. Some owners of vessels in possession of a Federal lobster permit may have elected LCMAs after August 2000, or may have elected LCMAs with no intention to fish with lobster traps in one or more of the elected LCMAs. Therefore, the number of vessels electing to fish in LCMAs 3, 4, or 5 may be higher than the number identified in the DSEIS/RIR/IRFA for this action, and the number of vessels that do not qualify for future participation in the LCMA 3, 4, and/or 5 fisheries may be higher than the number identified in this proposed rule and in the DSEIS/ RIR/IRFA.

**Area 3 Fishing Effort Control Program**

*Area Coordinates*

EEZ Offshore Management Area 3 is defined at 50 CFR 697.18(d). A copy of a map showing the American lobster EEZ management areas is available upon request from the Director of the State, Federal and Constituent Programs Office, see **ADDRESSES**.

*Qualification Period and Establishment of a Federal Control Date*

NMFS proposes to limit the number of traps fished in Area 3 based on proof of historical participation in the Area 3 fishery and the number of traps fished by a vessel during a qualifying period from March 25, 1991 (date recommended by the ASMFC) through September 1, 1999. NMFS is not proposing to use the ASMFC's recommended ending date of November 1, 1997, for this qualification period because of NMFS' policy to provide advance notice to the public of qualification dates. On September 1, 1999, NMFS published an advance notice of proposed rulemaking (ANPR) in the **Federal Register** (64 FR 47756), to give notice that NMFS was considering September 1, 1999, the publication date of the ANPR, as a possible control date, or cut-off date, to be used to determine eligibility for future access to the Federal lobster trap fishery. This proposed qualification period is similar to the recommendations pertaining to historical participation in the EEZ for Areas 3, 4, and 5 approved by the ASMFC under the ISFMP on August 1, 1999.

NMFS is proposing to use the ASMFC's recommended criterion that would require fishermen to demonstrate that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 3 during 2 consecutive calendar months within the qualification period. The use of a 2-consecutive calendar month period would maintain consistency with the ASMFC's ISFMP, and avoid the potential for conflicting state and Federal regulations when implementing this qualification criterion. In addition, the NMFS dealer landing and vessel trip report data, which would likely be used for qualification purposes, is based on calendar month time periods. Due to the calendar month configuration of the NMFS databases, the use of an alternative time frame, such as 60-consecutive days, would be more prone to error.

NMFS is proposing to incorporate the ASMFC's recommendation to qualify vessels based on a calendar year time

period, rather than some other time period, such as a Federal lobster fishing year (May 1 through April 30). The use of calendar years would be consistent with recommendations provided by the ASMFC. In addition, documents provided by fishermen to demonstrate historic participation, such as tax returns, are commonly based on a calendar year rather than a fishing year. Also, there is often less lobster fishing effort in the winter months due to weather conditions and the availability of the resource. Therefore, it is less likely that a 2-consecutive month period used to qualify a vessel would overlap the December to January time period.

**Qualification Criteria**

In order to qualify to fish for lobster with traps in Area 3, Federal lobster permit holders would need to meet all of the following criteria:

1. Possession of a current Federal limited access lobster permit.

2. Provision of documentation to demonstrate that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 3 during a 2-consecutive calendar month period in any calendar year during the qualification period, from March 25, 1991, through September 1, 1999. If 1991 is chosen by the permit holder as the qualifying year, documentation should reflect relevant activity occurring only during the part of the 1991 calendar year that falls within the qualification period (March 25, 1991, through December 31, 1991). If the permit holder chooses 1999 as the qualifying year, the documentation submitted in response to the qualification criteria must reflect relevant fishing activity during the period of the 1999 calendar year that falls within the qualifying period (January 1, 1999, through September 1, 1999). If any other calendar year within the qualification period is chosen, documentation submitted with respect to the qualification criteria may reflect relevant activity during any portion of that calendar year. Documentation may include copies of vessel logbooks; permit applications; Federal Fishing Vessel Trip Reports (NOAA Form 88-30); official state reporting documentation showing the number of traps fished, including, but not limited to, state report cards, license application forms, and catch reports; an approved Federal Fishing Vessel and Gear Damage Compensation Fund Report (NOAA Form 88-176); and/or other forms of credible documentation.

3. Provision of sales receipts or other documents pertaining to the sale of lobsters and indicating the landing of at least 25,000 lb (11,340 kg) of lobster from any location during the year used as the qualifying year from March 25, 1991, through September 1, 1999.

**Trap Allocations**

Federal permit holders intending to fish for lobster with traps in Area 3 would also have to provide a signed affidavit to NMFS certifying the maximum number of individual traps the permit holder set, allowed to soak, hauled back, and re-set in Area 3 at any one time during the qualifying year. This affidavit must be accompanied by the same or similar type of documentation used to demonstrate compliance with qualification criterion number 2. Documentation submitted to support the affidavit may reflect activity during any point within the qualifying year and does not necessarily need to represent activity conducted during the 2-consecutive month period used to substantiate qualification criterion number 2.

The use of Federal Fishing Vessel Trip Reports to document historical fishing effort (fishing location and number of traps fished) in the lobster fishery would be possible for some, but not all, Federal lobster permit holders (e.g., those holding other Federal species permits that, unlike lobster permits, require mandatory reporting). A recent review by NMFS indicates that of 3,153 Federal lobster permit holders in 1997, 1,984 (approximately 62 percent) held Federal permits for other fisheries requiring mandatory reporting. The utility of these reports for documenting lobster fishing effort would be further restricted to those permit holders who accurately noted, on the reports, the number of individual lobster traps fished on an area-by-area basis. Similarly, an informal review of the utility of official state reports for determination of lobster trapping effort concludes that such documents may be relevant only to Connecticut and Massachusetts residents (approximately 34 percent of Federal lobster permit holders).

Use of Federal Fishing Vessel and Gear Damage Compensation Reports will be limited to an unknown number of Federal lobster permit holders who have submitted compensation claims for gear loss under the provisions of the Fishermen's Protective Act (22 U.S.C. 1980 *et seq.*). Vessel logbooks, receipts from the sale of lobsters or the purchase of lobster traps, observer trip reports, and income tax forms provide other examples of documentation that could be used to help substantiate previous levels of lobster fishing effort (i.e., number of traps). Due to the varying degrees to which each of these forms of documentation may be either available or relevant for purposes of certifying historical trapping effort on a case-by-case basis, NMFS proposes that the discretion should be left to the individual permit holder to decide which documents to use. Accordingly, NMFS does not agree with the ASMFC's recommendations that a priority ranking should be assigned to the use of any one form of documentation over another.

Some fishermen would likely need a combination of documents to certify the number of traps fished historically. Although NMFS recognizes the importance of this information as a basis to certify historical participation in the Area 3 fishery, it is sensitive to the fact that no mandatory reporting requirements in the lobster fishery exist. NMFS believes, at this point, that the use of an affidavit, with the provision of supporting documentation to NMFS, would accommodate the necessary procedures to implement lobster trap fishing effort controls on the basis of historical participation.

The ASMFC has also recommended that NMFS contract with an independent outside entity to determine and recommend trap allocations and publish a notice that specifies initial trap allocations for each lobster permit holder. NMFS disagrees and believes that an in-house review would be the most efficient and equitable means of approving trap allocations. In addition, the release of personal documents and records to an outside review body raises privacy issues. NMFS also believes that the issuance of a public notice that would specify individual trap allocations for each Federal permit holder, as recommended by the ASMFC, also raises privacy issues and serves no constructive purpose.

**Trap Reduction Plan**

Once qualified, a lobster permit holder would be allocated a certain number of lobster traps, based on the affidavit and supporting documentation provided, but no Federal lobster permit holder would be given an initial lobster trap allocation of more than 2,656 lobster traps. (This maximum trap allocation was recommended by ASMFC as a result of Addendum II to Amendment 3 of the ISFMP.) Each trap allocation of more than 1,200 traps would be reduced annually on a sliding scale basis over 4 years. Trap reductions would not go below a baseline of 1,200 traps. Each initial allocation in Area 3 of fewer than 1,200 traps would remain at that allocation. The reduction schedule recommended by the ASMFC is shown in Table 1.

TABLE 1. AREA 3 TRAP REDUCTION SCHEDULE

| Number of Traps Approved by the Regional Administrator | Trap Allocation by Fishing Year* | | | |
|---|---|---|---|---|
| | 2002 | 2003 | 2004 | 2005 and beyond until changed |
| 1200-1299 | 1200 | 1200 | 1200 | 1200 |
| 1300-1399 | 1200 | 1200 | 1200 | 1200 |
| 1400-1499 | 1290 | 1251 | 1213 | 1200 |
| 1500-1599 | 1388 | 1337 | 1297 | 1276 |
| 1600-1699 | 1467 | 1423 | 1380 | 1352 |
| 1700-1799 | 1548 | 1498 | 1452 | 1417 |
| 1800-1899 | 1628 | 1573 | 1523 | 1482 |
| 1900-1999 | 1705 | 1644 | 1589 | 1549 |
| 2000-2099 | 1782 | 1715 | 1654 | 1616 |
| 2100-2199 | 1856 | 1782 | 1715 | 1674 |
| 2200-2299 | 1930 | 1849 | 1776 | 1732 |
| 2300–2399 | 2003 | 1905 | 1836 | 1789 |
| 2400-2499 | 2076 | 1981 | 1896 | 1845 |
| 2500-2599 | 2197 | 2034 | 1952 | 1897 |
| 2600-2699 | 2218 | 2107 | 2008 | 1949 |
| 2700-2799 | 2288 | 2169 | 2063 | 2000 |
| 2800-2899 | 2357 | 2230 | 2117 | 2050 |
| 2900-2999 | 2425 | 2291 | 2171 | 2100 |
| 3000-3099 | 2493 | 2351 | 2225 | 2150 |
| 3100-3199 | 2575 | 2422 | 2288 | 2209 |
| ≥3200 | 2656 | 2493 | 2351 | 2267 |

* Trap allocations below 1,200 will not be subject to further reductions.

This proposed rule would require that any Federal lobster permit holder applying for an Area 3 trap allocation who also applies for a trap allocation in Area 4, Area 5, or in all three of those areas use the same qualifying year for all areas and avoid a combined trap allocation greater than the number of traps that the permit holder fished with any one vessel in any one year. In addition, the current requirement that Federal permit holders who elect to fish in multiple areas must abide by the most restrictive regulations, including trap allocations, in any one elected area at any one time, would remain in effect.

**Vessel Upgrades**

NMFS is not proposing to adopt the ASMFC's recommendation to limit vessel upgrades for Federal permit holders receiving an Area 3 trap allocation. This limitation, if implemented, would preclude federally permitted vessels in the Area 3 lobster fishery that measure over 50 ft (15.24 m) in length, or upgrading to over 50 ft (15.24 m) in length, from upgrades or replacement that would result in more than a 10-percent increase in length overall, or a 20-percent increase in shaft horsepower, for 2 years.

NMFS does not concur with this recommendation. A prohibition on an increase in vessel length or an increase in horsepower for a 2-year period would require existing permit holders to substantiate existing baseline vessel characteristics. Lobster trap vessels are generally small, with an average length of 39 ft (11.9 m). Many such vessels are not U.S. Coast Guard documented, and, therefore, information on length and horsepower may not be available to NMFS. The implementation of lobster vessel upgrade criteria may accordingly require a marine survey to establish legal vessel specifications, adding a financial burden on vessel owners. The potential cost to hire a marine surveyor or naval architect to verify existing baseline vessel characteristics can range from $150 to $600, with associated costs increasing with vessel size, and would result in added delays for vessel replacement and transfers, if implemented. NMFS' review of requests for transfers would take more time, because NMFS would need to verify whether the specific vessel with a limited access American lobster permit would qualify to fish in Area 3 and, therefore, would be restricted by the upgrade provision.

NMFS is concerned that implementation of the ASMFC's recommended, temporary upgrade restrictions would be unnecessarily burdensome for fishermen and NMFS and would afford no obvious conservation benefits to the lobster resource, unlike the permanent restrictions on vessel and horsepower upgrades in the scallop and groundfish fisheries. In addition, an unknown number of vessels that would qualify for historical participation in Area 3 as specified in this proposed rule may currently hold a Federal fisheries permit in another fishery that permanently restricts vessel and horsepower upgrades. The implementation of trap limits, either fixed or based on a historical level of participation, has the potential to effectively limit fishing effort in the offshore lobster fishery without an additional requirement for vessel upgrade restrictions.

**Areas 4 and 5 Fishing Effort Control Program**

*Area Coordinates*

EEZ Nearshore Management Area 4 and EEZ Nearshore Management Area 5 are defined in 50 CFR 697.18(e) and (f), respectively. A copy of a map showing the American lobster EEZ management areas is available upon request to the Director, State, Federal and Constituent Programs Office, see **ADDRESSES**.

*Qualification Period and Establishment of a Federal Control Date*

The eligibility of Federal lobster permit holders to fish with traps in the Areas 4 and/or 5 fishery would be based on proof of historical participation and numbers of traps fished by a vessel during a qualifying period from March 25, 1991, through September 1, 1999. NMFS is not proposing to adopt the ASMFC-recommended ending date (control date) of September 15, 1998, for this qualification period because NMFS previously notified the public that it may use September 1, 1999, as the control date. See Area 3 discussion for

associated rationale. NMFS is proposing to use the ASMFC's recommended 2-consecutive calendar month period criterion within the qualification period to demonstrate that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Areas 4 or 5. See Area 3 discussion for associated rationale. NMFS is proposing to incorporate the ASMFC's recommendation to qualify vessels based on a calendar year time period, rather than some other time period such as a Federal lobster fishing year (May 1 through April 30). See Area 3 discussion for associated rationale.

**Qualification Criteria for EEZ Nearshore Management Area 4**

This proposed rule would require Federal lobster permit holders to meet the following criteria in order to fish for lobster with traps in Federal waters of Area 4:

1. Possession of a current Federal limited access lobster permit.

2. Provision of documentation to demonstrate that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 4 during a 2-consecutive calendar month period in any calendar year during the qualification period from March 25, 1991, through September 1, 1999. If 1991 is chosen by the permit holder as the qualifying year, documentation should reflect relevant activity occurring only during the part of the 1991 calendar year that falls within the qualification period (March 25, 1991, through December 31, 1991). If the permit holder chooses 1999 as the qualifying year, the documentation submitted in response to the qualification criteria must reflect relevant fishing activity during the period of the 1999 calendar year that falls within the qualifying period (January 1, 1999, through September 1, 1999). If any other calendar year within the qualification period is chosen, documentation submitted with respect to the qualification criteria may reflect relevant activity during any portion of that calendar year.

Documentation may include copies of vessel logbooks; permit applications; Federal Fishing Vessel Trip Reports (NOAA Form 88-30); official state reporting documentation showing the number of traps fished, including, but not limited to, state report cards, license application forms, and catch reports; an approved Federal Fishing Vessel and Gear Damage Compensation Fund Report (NOAA Form 88-176); and/or other forms of credible documentation.

**Qualification Criteria for EEZ Nearshore Management Area 5**

This proposed rule would require Federal lobster permit holders to meet the following criteria in order to fish for lobster with traps in Federal waters of Area 5:

1. Possession of a current Federal limited access lobster permit.

2. Provision of documentation to demonstrate that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 5 during a 2-consecutive calendar month period in any calendar year during the qualification period from March 25, 1991, through September 1, 1999. If 1991 is chosen by the permit holder as the qualifying year, documentation should reflect relevant activity occurring only during the part of the 1991 calendar year that falls within the qualification period (March 25, 1991, through December 31, 1991). If the permit holder chooses 1999 as the qualifying year, the documentation submitted in response to the qualification criteria must reflect relevant fishing activity during the period of the 1999 calendar year that falls within the qualifying period (January 1, 1999, through September 1, 1999). If any other calendar year within the qualification period is chosen as the qualifying year, documentation submitted with respect to the qualification criteria may reflect relevant activity during any portion of that calendar year. Documentation may include copies of vessel logbooks; permit applications; Federal Fishing Vessel Trip Reports (NOAA Form 88-30); official state reporting documentation showing the number of traps fished, including, but not limited to, state report cards, license application forms, and catch reports; an approved Federal Fishing Vessel and Gear Damage Compensation Fund Report (NOAA Form 88-176); and/or other forms of credible documentation indicating that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 5 during a 2-consecutive calendar month period in any calendar year during the qualification period.

**Rationale for Provision of Documentation in Support of a History of Lobster Trap Fishing in Areas 4 or 5**

Although not recommended by the ASMFC, NMFS believes that requiring documentation to substantiate that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in either or both Areas 4 or 5, during a 2-consecutive calendar month period in any calendar year during the qualification period is necessary to effectively establish historical participation, consistent with the qualification criteria of the Area 3 plan. NMFS has no conclusive data for determining historical numbers of traps fished in Areas 4 and 5. However, on the basis of the best information available to NMFS and associated comments received with respect to the DSEIS, NMFS believes that the setting, soaking, hauling back, and re-setting of at least 200 lobster traps in Areas 4 or 5 during a 2-consecutive calendar month period in any calendar year during the qualification period represents a reasonable indicator of a fisherman's socio-economic reliance on the lobster fishery.

**Trap Allocations for Areas 4 and 5**

Similar to the proposed action for Area 3, this proposed rule would require Federal permit holders qualifying to fish for lobster with traps in Areas 4 and/or 5 to provide a signed affidavit certifying the maximum number of individual traps the permit holder set, allowed to soak, hauled back, and re-set in Areas 4 and/or 5 at any one time during the qualifying year. The affidavit would be submitted to the Regional Administrator for use in determining the permitted vessel's lobster trap allocation for Areas 4 and/or 5. This proposed rule would require that such certification be based upon the same or similar type of documentation used to fulfill the qualification criterion number 2, and that the affidavit be accompanied by credible, written documents that corroborate the number of individual lobster traps claimed in the affidavit. Documentation submitted to support the affidavit may reflect activity during any point within the qualifying year and does not necessarily need to represent activity conducted during the 2-consecutive month period used to substantiate trap fishing activity in qualification criterion number 2.

ASMFC recommendations for the Areas 4 and 5 fisheries, unlike those for the Area 3 fishery, do not contain either trap limits or trap reduction schedules. Although not recommended by the ASMFC, NMFS is proposing a trap limit not to exceed 1,440 lobster traps per vessel, on the basis of public comment received on the DSEIS, and the conservation benefit to the resource. NMFS believes the removal of existing trap limits in Areas 4 and 5 (800 lobster traps per vessel under current Federal Regulations), without implementation of an alternative trap limit, would likely result in excessive lobster fishing mortality. Implementation of a

maximum trap limit in Areas 4 and 5 of 1,440 lobster traps per vessel, in combination with the proposed qualification criteria for participation in the Areas 4 and 5 trap fishery, may preclude excessive trap fishing effort and corresponding levels of lobster fishing mortality.

The implementation of a trap limit is also consistent with the proposed measure for controlling lobster trap fishing effort on the basis of historical participation proposed for Area 3. A trap limit not to exceed 1,440 lobster traps was initially analyzed as a non-preferred alternative in the DSEIS. In accordance with ASMFC recommendations, NMFS is not proposing a trap reduction requirement once the initial trap allocations have been determined for qualified participants in the Areas 4 and 5 trap fisheries.

This proposed rule would require any Federal lobster permit holder applying for access to more than one of the 3 areas (Areas 3, 4, or 5) to use the same qualifying year for all areas in order to avoid a combined allocation greater than the number of traps that the permit holder ever fished with any one vessel at any one time during any one year. In addition, the current requirement that Federal permit holders who elect to fish in multiple areas must abide at all times by the most restrictive regulations, including trap allocations, in any one elected area regardless of the area being fished, would remain in effect.

**Appeals Process**

Any applicant denied a limited access American lobster permit for Areas 3, 4, and/or 5 could appeal to the Regional Administrator within 30 days of the date indicated on the notice of denial. Any such appeal would need to be in writing. The only ground for appeal would be that the Regional Administrator erred in concluding that the vessel did not meet the criteria specified in this proposed rule. The appeal would need to set forth the basis for the applicant's belief that the Regional Administrator's decision was made in error.

The Regional Administrator would appoint a designee to make the initial decision on the appeal. Within 30 days of the date on the notice of the initial decision on the appeal, the appellant could request in writing a review by the Regional Administrator of the initial decision. The appellant could present his/her objections to the initial decision on the appeal at a hearing before an officer appointed by the Regional Administrator. The hearing officer would make findings of fact and a recommendation to the Regional Administrator. Upon receiving the findings and the recommendation, the Regional Administrator would make a decision on the appeal, which would be the final decision of the Department of Commerce. If the appellant did not request a review within 30 days of the date on the notice of the initial decision on the appeal, the initial decision would be the final administrative action of the Department of Commerce.

A vessel denied a limited access American lobster permit for Areas 3, 4, and/or 5 could fish in Areas 3, 4, and/or 5, provided that the denial had been appealed, the appeal was pending, and the vessel had on board a letter from the Regional Administrator authorizing the vessel to fish in Areas 3, 4, and/or 5. The Regional Administrator would issue such a letter for the pendency of any appeal. This letter of authorization would be the final administrative action of the Department of Commerce pending a final decision on the appeal. While the appeal was pending, the vessel could fish up to 800 lobster traps, unless the vessel's Federal lobster permit had designated only Area 3 for lobster trap fishing, whereby, the vessel could fish up to 1,800 lobster traps in Area 3 only. If the appeal was finally denied, the Regional Administrator would send a notice of final denial to the vessel owner; the authorizing letter would become invalid 5 days after receipt of the notice of denial or 15 days after the date it was sent, whichever occurred first.

**Clarification of Procedures for Consideration of Conservation Equivalency Measures as They Apply to Federal Lobster Permit Holders**

The ISFMPs developed by ASMFC allow states to adopt management measures that differ from the specific management measures in the ISFMPs as long as the states' alternative measures achieve the same quantified level of conservation for the resource under management. Such alternative management measures are referred to as ''conservation equivalent measures.'' For example, any state may request a change to regulations in waters under its jurisdiction pertaining to the default trap limits specified in the ISFMP. Such requests are reviewed by ASMFC's Lobster Technical Committee, which provides its evaluation of the biological merit of such proposals to ASMFC's Lobster Board for subsequent policy review and approval. Upon approval of such measures, the ASMFC, under the provisions of the ACFCMA, may decide to recommend modifications to Federal lobster regulations, as may be deemed necessary, to complement a state's conservation equivalent measures. This proposed rule would clarify a procedure by which NMFS would consider such recommended modifications to Federal lobster regulations as they may pertain to the activities of Federal lobster permit holders from the affected state(s).

Specifically, under 50 CFR 697.25, NMFS would consider any future recommendations for modifications to Federal regulations based on conservation equivalency that are formally submitted to the agency in writing by the ASMFC and that contain the following supporting information: (1) a description of how Federal regulations would be modified; (2) an explanation of how the recommended measure(s) would achieve a level of conservation benefits for the resource equivalent to the applicable Federal regulations; (3) an explanation of how Federal implementation of the conservation equivalent measure(s) would achieve ISFMP objectives, be consistent with the Magnuson-Stevens Act national standards, and be compatible with the effective implementation of the ISFMP; and (4) a detailed analysis of the biological, economic, and social impacts of the recommended conservation equivalent measure(s). After considering a recommendation for conservation equivalent measures and the necessary supporting information, NMFS may issue a proposed rule to implement the conservation equivalent measures. After considering public comment, NMFS may issue a final rule to implement such measures.

In the DSEIS prepared for this action, NMFS expressed concern that recommendations from the ASMFC for Federal implementation of conservation equivalent measures may unduly burden the agency, given that there are 15 member states in the ASMFC and that each state may seek Federal implementation of the conservation equivalent of several different types of measures under the ISFMP. NMFS believes that receiving the supporting information and analyses along with a recommendation for Federal implementation of conservation equivalent measures is necessary to enable NMFS to respond to recommendations for Federal rulemaking in a more timely and efficient manner. This cooperative approach to the implementation of conservation equivalent measures would benefit the states, fishermen, and enforcement of fishery regulations by minimizing the time lag between state and Federal implementation of approved conservation equivalent

measures and by reducing the time period during which state-only permit holders and Federal permit holders from the same state may be subject to different requirements.

**Modification of Area 1 Trap Limits for New Hampshire Lobster License Holders**

In October 1998, ASMFC approved a proposal from the State of New Hampshire for conservation equivalent lobster trap limits that vary from the 800 lobster trap limit in Area 1. That state's lobster management program provides for a two-tier lobster license system: State fishermen who provide documentation of landing more than 12,000 lb (5,443 kg) of lobster in at least 2 years, from 1994 to 1998, receive a full commercial lobster license issued by the State of New Hampshire; those who cannot provide this documentation are issued a limited commercial lobster license. Those fishermen who qualify for a full license may fish up to 1,200 lobster traps in state waters, and those in the limited category may fish a maximum of 600 lobster traps in state waters. Following approval of the New Hampshire proposal under the ISFMP, the ASMFC recommended that NMFS modify Federal regulations to maintain the biological and socio-economic basis of New Hampshire's lobster management program. The ASMFC has not received similar proposals, although allowable, from the States of Maine and Massachusetts, which also border Area 1. The ASMFC requested that NMFS modify Federal regulations to allow Federal permit holders who elect to fish in Area 1 and also possess a New Hampshire full commercial lobster license to fish 400 lobster traps in New Hampshire state waters in addition to the 800 lobster traps they may fish in state and Federal waters of Area 1 under current Federal regulations. However, these fishermen would not be allowed to fish more than 800 lobster traps in the Federal waters of Area 1.

There are approximately 80 Federal lobster permit holders with vessel ports in New Hampshire (1998 data) who harvest lobster primarily with trap gear. Twenty-two of these individuals also possess a full commercial lobster license, and 26 possess a limited commercial lobster license issued by the State of New Hampshire, as described in the DSEIS.

Under current regulations, Federal lobster permit holders must abide by the stricter of either Federal or state lobster management measures. Under the preferred alternative, NMFS would waive this requirement with respect to the number of lobster traps for Federal lobster permit holders who elect to fish in Area 1 and who possess a valid New Hampshire full commercial lobster license for Area 1. Specifically, this proposed rule would not make any change in the number of traps allowed to be fished in the Federal waters of Area 1. However, a New Hampshire full commercial lobster licensee fishing aboard a federally permitted vessel would be allowed to fish an additional 400 lobster traps in New Hampshire state waters.

**Lobster Management Area Boundary Clarification**

In Addendum 1 to the American Lobster ISFMP, the ASMFC revised the boundary lines for three of the LCMAs adjacent to Massachusetts, including Area 1, Area 2, and the Outer Cape Area, to bring the area boundaries more in line with traditional fishing practices in those areas and to correct an oversight in the specification of an Area 1 boundary line in Amendment 3 to the ISFMP.

NMFS proposes to implement compatible boundary lines for Area 1, Area 2, and the Outer Cape Area to maintain consistency with the ASMFC's American lobster ISFMP and to avoid confusion if the Federal and ASMFC area boundaries and their associated lobster management measures differ.

**Cape Cod Canal Overlap**

The Cape Cod Canal (Canal) cuts through the Cape Cod peninsula in Massachusetts and connects the waters of Cape Cod Bay to the north (within Area 1) with the waters of Buzzards Bay to the south (within Area 2). The Canal is large enough at certain points to allow the setting of lobster trap gear, and lobster fishermen from both Areas 1 and 2 have historically set trap gear in the Canal.

To allow fishermen in the adjacent areas of Area 1 and Area 2 to maintain their historical ability to fish in the Canal, the Cape Cod Canal would be considered an area of overlap between Areas 1 and 2. To establish this overlap area, the existing boundaries of both Area 1 and Area 2 would be modified to encompass the Cape Cod Canal.

**Outer Cape Lobster Management Area's Northern Boundary**

As a result of an oversight contained in Amendment 3 to the ISFMP, the boundary line coordinates separating the Outer Cape Area from Area 1 did not extend to the shoreline of Massachusetts and, therefore, did not effectively separate these management areas. To correct this situation, under Addendum 1 to the ISFMP, the coordinates for the boundary line separating Area 1 and the northern boundary of the Outer Cape Area were revised and extended around the western tip of Cape Cod. This revision effectively extended the boundary line to the shoreline of Massachusetts and created an area of overlap between Area 1 and the Outer Cape Area.

NMFS proposes to revise the existing boundary line coordinates as follows:

Northern Boundary: Following the LORAN C 9960-Y-44120 line to the intersection with the 9960-W-13850 line (42°04.25′ N. lat., 70°17.22′ W. long.), then following that line in a southeasterly direction to the intersection with the 9960-Y-44110 line (42°02.84′ N. lat., 70°16.1′ W. long.), then following that line in an easterly direction to Race Point (42°03.35′ N. lat., 70°14.2′ W. long.) in the town of Provincetown, MA.

Overlap Zone Boundary: Beginning at Race Point, MA (42°03.35′ N. lat., 70°14.2′ W. long.) following the LORAN C 9960-Y-44110 in a westerly direction to its intersection with 9960-W-13850 line (42°02.84′ N. lat., 70°16.1′ W. long.), then following that line in a southeasterly direction to its intersection with a 9960-X-25330 line (41°52′ N. lat., 70°07.49′ W. long.), then following that line in a northeasterly direction to where it meets the shoreline of Great Island in the town of Wellfleet, MA (41°54.46′ N. lat., 70°03.99′ W. long.), then following the shoreline in a northerly direction back to the beginning.

When the coordinates for the recommended revision to the Overlap Zone boundary between Area 1 and the Outer Cape Area were plotted, there was a problem with the information provided in Addendum I. As a result, the chart included in the Addendum does not agree with the associated LORAN C coordinates. The chart in Addendum I indicates that the area of overlap extends to a point northeast of and beyond Race Point, MA, continuing around the tip of Cape Cod, while the coordinates denote an overlap area beginning at Race Point, MA. NMFS developed the coordinates in this section based on the coordinates in Addendum I, not on the graphics (chart) in Addendum I. The ASMFC has been informed of this discrepancy.

**Boundary Change Between Area 2 and The Outer Cape Management Area**

In Addendum I the ASMFC revised the boundary separating Area 2 and the Outer Cape Area, which runs from the southeastern tip of Cape Cod to Nantucket Island, by shifting it west by

5 minutes of longitude, from 70° W. Long. to 70° 05′ W. Long.

**Revised Boundary Description for Area 1, Area 2, and the Outer Cape Area**

*EEZ Nearshore Management Area 1*

EEZ Nearshore Management Area 1 is defined by the area including state and Federal waters that are nearshore in the Gulf of Maine. This proposed rule would re-define Area 1 to be the area bounded by straight lines connecting the following points, in the order stated, and the coastline of Maine, New Hampshire, and Massachusetts to the northernmost point of Cape Cod:

| Point | Latitude | Longitude |
|---|---|---|
| A | 43°58′ N. | 67°22′ W. |
| B | 43°41′ N. | 68°00′ W. |
| C | 43°12′ N. | 69°00′ W. |
| D | 42°49′ N. | 69°40′ W. |
| E | 42°15.5′ N. | 70°40′ W. |
| F | 42°10′ N. | 69°56′ W. |
| G | 42°05.5′ N. | 70°14′ W. |
| G1 | 42°04.25′ N. | 70°17.22′ W. |
| G2 | 42°02.84′ N. | 70°16.1′ W. |
| G3 | 42°03.35′ N. | 70°14.2′ W. |

From point ''G3'' along the coastline of Massachusetts, including the southwestern end of the Cape Cod Canal, continuing along the coastlines of Massachusetts, New Hampshire, Maine, and the seaward EEZ boundary back to Point A.

*EEZ Nearshore Management Area 2*

EEZ Nearshore Management Area 2 is defined by the area, including state and Federal waters that are nearshore in Southern New England, bounded by straight lines connecting the following points, in the order stated:

| Point | Latitude | Longitude |
|---|---|---|
| H | 41°40′ N. | 70°05′ W. |
| I | 41°15′ N. | 70°05′ W. |
| J | 41°21.5′ N. | 69°16.5′ W. |
| K | 41°10′ N. | 69°06.5′ W. |
| L | 40°55′ N. | 68°54′ W. |
| M | 40°27.5′ N. | 71°14′ W. |
| N | 40°45.5′ N. | 71°34′ W. |
| O | 41°07′ N. | 71°43′ W. |
| P | 41°06.5′ N. | 71°47′ W. |
| Q | 41°11.5′ N. | 71°47.25′ W. |
| R | 41°18.5′ N. | 71°54.5′ W. |

From point ''R'' along the maritime boundary between Connecticut and Rhode Island to the coastal Connecticut/Rhode Island boundary and then back to point ''H'' along the Rhode Island and Massachusetts coast, including the northeastern end of the Cape Cod Canal.

*EEZ Nearshore Outer Cape Lobster Management Area*

EEZ Nearshore Outer Cape Lobster Management Area is defined by the area, including state and Federal waters off Cape Cod, bounded by straight lines connecting the following points, in the order stated:

| Point | Latitude | Longitude |
|---|---|---|
| F | 42°10′ N. | 69°56′ W. |
| G | 42°05.5′ N. | 70°14′ W. |
| G1 | 42°04.25′ N. | 70°17.22′ W. |
| G2 | 42°02.84′ N. | 70°16.1′ W. |
| G4 | 41°52′ N. | 70°07.49′ W. |
| G5 | 41°54.46′ N. | 70°03.99′ W. |
| From Point ''G5'' along the outer Cape Cod coast to point ''H'' | | |
| H | 41°40′ N. | 70°05′ W. |
| H1 | 41°18′ N. | 70°05′ W. |
| From Point ''H1'' along the eastern coast of Nantucket Island, MA, to Point ''I'' | | |
| I | 41°15′ N | 70°00′ W. |
| J | 41°21.5′ N. | 69°16′ W. |
| From Point ''J'' Back to Point ''F.'' | | |

**Clarification of Lobster Trap Tag Requirements**

NMFS includes in this proposed rule a technical amendment to the regulations clarifying that Federal lobster permit holders must attach federally approved lobster trap tags to all lobster traps fished in any portion of any management area (whether in state or Federal waters). This requirement is not new, but was not clearly specified in the regulatory text. This amendment would clarify a tagging requirement that was previously specified by reading several sections in combination, including regulations found under 50 CFR 697.7 and 50 CFR 697.19. This technical amendment is intended to make the regulations easier to understand.

**Classification**

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

NMFS prepared a DSEIS/RIR/IRFA for this action; a notice of availability was published on November 24, 2000 (65 FR 70567). The Initial Regulatory Flexibility Analysis (IRFA), in compliance with the Regulatory Flexibility Act, describes the economic impacts of the proposed rule, if adopted, on small entities. A summary of the IRFA follows: Reasons why the action is considered, as well as the objectives and legal basis for this rule, are described in the IRFA and the preamble to this rule and are not repeated here. All participants in the lobster fishery are considered to be small entities. Implementation of historical participation and lobster trap limits in Areas 3, 4, and 5 is expected to result in a reduction in the number of Federal permit holders qualified to fish for lobster with traps in these management areas. Individuals failing to meet the proposed qualification criteria may: (1) decide to fish in areas not subject to historical participation; (2) decide to retain their lobster fishing permit but not use it; (3) leave the lobster fishery entirely by selling his/her lobster vessel; or (4) fail to renew their Federal lobster permit.

Although it can be assumed that there will be no immediate impact on existing fishing operations that do not harvest lobster in substantial numbers with lobster trap gear, the option to do so in the future will be precluded under a trap fishing effort program based on historical participation. This may affect the economic value associated with their Federal lobster permit in the event that permit holders wish to sell their vessel to buyers who would otherwise desire to fish for lobster with traps. Vessels that qualify to participate in Areas 3, 4, and/or 5 will likely see a reduction in gear conflict and be protected from lobster fishing effort expansion. The proposed action will also alleviate socio-economic impacts from any reduction in lobster harvests which may have resulted if qualifying vessels historically fished a number of lobster traps in excess of the current fixed trap limits. Permit holders who fish greater amounts of gear than allowed by the proposed maximum lobster trap limits may experience a small, yet unquantifiable, reduction in landings if they are unable to alter their fishing practices to mitigate this lower level of lobster trap fishing effort.

The proposed action to allow owners of vessels who are in possession of a Federal limited access lobster permit and who also possess a New Hampshire full commercial lobster fishing license to fish up to 800 lobster traps in Federal waters and a maximum of 400 additional lobster traps in New Hampshire state waters would alleviate adverse impacts on fishing practices and income which would otherwise be imposed by a lower lobster trap limit. Due to more restrictive lobster trap limits imposed on New Hampshire part time commercial lobster permit holders, a potential overall reduction in traps fished by commercial lobster permit holders in that state could result in some unquantified decrease in lobster fishing mortality and marine mammal and sea turtle trap gear entanglements.

The proposed action to revise and clarify the boundary coordinates within the state waters of Massachusetts for Area 1, 2, and the Outer Cape

Management Area would: allow Federal lobster permit holders to maintain traditional fishing practices; avoid confusion and maintain consistency with the ISFMP; and allow Federal American lobster permit holders to fish under lobster management measures associated with the respective management area. If implemented, the proposed boundary revisions would have no direct effect on the lobster resource since it is specific to a minor modification of coordinates for lobster area boundaries in Massachusetts state waters and is not expected to substantially affect marine mammals or sea turtles.

The DSEIS/RIR/IRFA analyzed a preferred alternative which recommended the implementation of historical participation measures to control lobster fishing effort in Areas 3, 4 and 5, with a maximum lobster trap limit and a lobster trap reduction schedule for Area 3; implementation of conservation equivalent trap limits in New Hampshire waters of Area 1; and clarification of boundaries of specific lobster management areas. The DSEIS/RIR/IRFA also analyzed five alternatives to specific components of the preferred alternative. Three of these alternatives propose implementation of historical participation as a means to control lobster fishing effort in Areas 3, 4, and 5. Due to the unique nature of the proposed action relating to Area 1 lobster trap limits for Federal lobster permit holders fishing in New Hampshire waters and management area boundary clarifications, only one alternative (no action-status quo) was presented for each of these two components of this proposed rule.

**Impacts of Historical Participation for Areas 3, 4, and 5**

The three alternatives relating to historical participation included: taking no action; implementing historical participation requirements for Areas 3, 4, and 5, but retaining current trap limits; and implementing historical participation requirements as identified under the proposed action, but incorporating a maximum trap allocation for Areas 4 and 5.

Under current Federal regulations, owners of vessels that elect to harvest American lobsters with traps are required to inform NMFS each year of the lobster management area(s) they intend to set trap gear in. The election of one or more LCMA requires only that the vessel possess a current Federal American lobster limited access permit. The DSEIS/RIR/IRFA for this action, announced by a notice of availability published on November 24, 2000 (65 FR 70567), used data available to NMFS for the 2000-2001 fishing year, from May 2000 through August 2000, on the number of owners of vessels that elected to harvest American lobsters in specific LCMAs. Some owners of vessels in possession of a Federal lobster permit may have elected LCMAs after August 2000, or may have elected LCMAs with no intention to fish with lobster traps in one or more of the elected LCMAs. Therefore, the number of vessels electing to fish in LCMAs 3, 4, or 5 may be higher than the number identified in the DSEIS/RIR/IRFA for this action and the total number that do not qualify may be higher. Following the comment period on this proposed rule, a Final Supplemental Environmental Impact Statement/Regulatory Impact Review/Final Regulatory Flexibility Analysis (FSEIS/RIR/FRFA) will analyze and evaluate the effects of implementing regulations for this action and will incorporate the most current data available to NMFS at that time.

The DSEIS/RIR/IRFA analysis for this action indicated that approximately 3,361 vessels possess a current Federal lobster permit and fish for lobster with either trap or non-trap gear. Of the 3,361 lobster vessels that possess a current Federal lobster permit, 769 have designated Area 3 as at least one of their areas for trap fishing. Of these, NMFS estimates that the total number of vessels that would qualify under the proposed historical qualification criteria to continue fishing for lobster with traps in the Area 3 lobster trap fishery would range from a low of 53 to a high of 117.

Similarly, of the approximately 405 vessels in possession of current Federal lobster permits that were designated for trap fishing in either Areas 4 or 5, the total number of vessels that would qualify to continue fishing with traps in Areas 4 and 5 on the basis of the proposed qualification criteria for the Areas 4 and 5 lobster trap fisheries would range from 47 to 60. The proposed implementation of a maximum trap limit of 1,440 lobster traps in Areas 4 and 5 is expected to result in a reduction in the number of lobster traps fished in these areas. Although NMFS has no information on the total number of lobster traps fished in those areas, data provided to NMFS by New Jersey, summarizing the results of a survey of New Jersey lobstermen, indicate that approximately 15% (14 individuals) of fishermen responding to the survey who possess both a New Jersey lobster trap license and a Federal lobster permit have fished with greater than 1,440 traps in LCMA 4. The fishing effort for these 14 permit holders has ranged from 1,500 to 2,500 (with an average of 1,868) traps. On the basis of this information, establishment of a maximum trap limit for LCMA 4 would result in at least a reduction of 26,152 traps, with a corresponding, but unquantifiable, reduction in lobster fishing mortality.

The exact degree of lobster trap reductions in Areas 4 and 5 is unquantifiable because, in the Federal American lobster fishery, there are currently no requirements to submit vessel trip reports. In Area 3, where lobster traps will be reduced over a 4-year period, the scheduled lobster trap reductions are likely to result in a small, yet unquantifiable, reduction in Area 3 landings. If markets are affected, the effect is likely to be small. Landings in Areas 4 and 5 accounted for less than 10 percent of total domestic lobster landings in 1999, and market effects from lobster trap reductions in Area 3 may occur in a limited segment of the market for larger lobsters (i.e., the offshore fishery lands larger lobsters, on average, than other components of the lobster fishery as a whole). If lobster prices do increase, vessels fishing in areas not subject to historical participation and where expansion of trap effort is possible (i.e., up to the 800 lobster trap limit) may increase their effort and offset any reduction in landings from Areas 3, 4, and 5. In this dynamic setting, lobster prices are likely to be unaffected by regulatory action under this proposed rule.

The effect of limiting access to historical participants in Areas 3, 4, and 5 is expected to have two major economic effects. First, limiting access in these areas will protect qualifiers from effort expansion. Second, lobster trap allocations in Areas 3, 4, and 5 and overall trap reductions in Area 3 over a 4-year period based on historical participation will preserve the competitive position and structure of the offshore fishery. Although it can be assumed that there will be no immediate impact on current fishing operations that do not harvest lobster in substantial numbers with trap gear, the option to do so in the future will be precluded under a trap fishing effort program based on historical participation. This situation may also impact the ''economic value'' associated with these permits in the event that permit holders wish to sell their vessels to buyers who would otherwise desire to fish in the lobster trap fishery, but would be unable to do so. Economic effects will be greater for those vessels that are currently fishing lobster traps in Areas 3, 4, or 5, but will not qualify for historical participation in these areas because they will not be able to meet

one or more of the qualification criteria. Effective on May 1, 2000, Federal lobster permit holders are required to elect on their permits the lobster management areas in which they intend to fish for lobster with traps. However, NMFS does not have adequate data on the extent to which permit holders, although authorized, actually fish with traps in the elected management areas. Given this uncertainty, Federal lobster permit data indicates that a maximum of 769 permit holders elected to fish for lobster with traps in Area 3. On the basis of NMFS analyses, a low of 652 to a high of 716 Federal permit holders, who would meet the qualification criteria to fish with lobster traps in Area 3 under this proposed rule, would no longer be able to continue fishing with lobster traps in this management area.

Analyses of impacts for current participants in the Areas 4 and 5 lobster trap fisheries are combined because of the lack of more precise information on lobster trap fishing locations in these areas. Federal lobster permit data indicates that, under current Federal regulations, 405 vessels in possession of current Federal lobster permits were designated for lobster trap fishing in Areas 4 and/or 5. NMFS estimates that a low of 47 to a high of 60 vessels would be able to meet the proposed qualification criteria for Areas 4 and/or 5 under this proposed rule and, consequently, would be able to continue fishing with lobster traps in Areas 4 and 5. Lobster vessels that do not qualify will still be able to fish for lobster with traps, but they will have to do so by moving their traps into lobster management areas (other than Areas 3, 4, and 5) that may already be congested, likely resulting in increased fishing effort, additional congestion, and a potential reduction in overall productivity and profitability. The extent to which non-qualifiers would potentially decide to move trap operations to other management areas is unknown. Furthermore, moving may be most difficult for non-qualifying lobster permit holders who fish traps in inshore areas and have vessel ports south of New York, since Area 2 (waters between Cape Cod and Long Island Sound) would be the closest lobster management area not requiring historical participation.

Based on available information, approximately 14 vessels fished more than 1,440 lobster traps in Areas 4 and 5 combined, out of the total number of vessels electing to fish in Areas 4 and/or 5. On average, these vessels fished 1,868 lobster traps prior to the implementation of a fixed trap limit in January 2000. However, current regulations limit vessels electing to fish in Areas 4 and/or 5 to 800 lobster traps. There may be a small, yet unquantifiable, reduction in landings if impacted vessels are unable to alter their fishing practices to mitigate this lower level of trap fishing effort compared to historical trap levels. Yet, given that the current regulations limit these vessels to 800 lobster traps, some qualifying vessels that previously fished traps in excess of the current fixed trap limit may be able to increase the number of traps fished up to the proposed trap cap of 1,440 lobster traps for Areas 4 and 5, assuming they are allocated 1,440 lobster traps under a historical participation regime.

The incentive and/or ability to increase traps fished would depend on the scale of operation and other socio-economic factors. Incentives may include a desire to establish and document a history of lobster trap fishing in anticipation of future fishing effort reduction measures and of a decline in alternative fishing opportunities in other fisheries. Since the lobster trap fishery is a territorial fishery, removal of traps by non-qualifiers or by vessels fishing in excess of the proposed 1,440 lobster trap cap will open up territory that other vessels may exploit.

In addition, an increase in the number of lobster traps fished does not automatically translate to higher gross revenue; other factors such as market conditions and operating costs have to be evaluated. Fishermen setting lobster traps close to shore are likely to be able to maintain landing levels because they can tend their lobster traps more often. Harvest costs may decline for vessels that have historically fished more than 1,440 lobster traps prior to the implementation of a fixed trap limit; however, revenues may decline if fishing fewer lobster traps translates into fewer lobster being landed. Assuming non-qualifiers cannot or will not move trap operations to other management areas, they would no longer be able to fish for lobster with trap gear. Some such fishermen may be able to switch to other fisheries.

**Historical Qualification Costs**

Vessel owners would be required to provide an affidavit and supporting documentation to substantiate their historical participation application when attempting to qualify in one, two, or in all three of the lobster management areas proposing to implement historical participation in this proposed rule. The estimated time required to provide an affidavit and supporting documentation to substantiate the historical participation application are specified under collection-of-information requirements, while historical qualification costs are primarily associated with costs to locate, copy, telephone, and mail the submission of the supporting documentation. The average historical qualification cost, per vessel, for vessel owners who have been notified by NMFS that they pre-qualify for historical participation in Areas 3, 4, and/or 5, based on data available to NMFS, is estimated to be $5.45 to provide an affidavit concurring with the NMFS pre-qualification determination.

Vessels that do not pre-qualify need to submit the necessary forms and all supporting documentation. The average historical qualification cost, per vessel, for vessels submitting documentation to qualify in one area ranges from $7.38 for Areas 4 and 5 to $8.89 for Area 3. Documentation costs are higher for Area 3 due to the requirement to show landings of at least 25,000 pounds during the qualifying year, while criteria for Areas 4 and 5 have no minimum landings requirement. The average historical qualification cost, per vessel, for vessels submitting documentation to qualify in two lobster management areas reflects the higher documentation costs associated with the Area 3 minimum landings criteria. The per vessel qualification costs range from $9.98 for vessels submitting documentation to qualify for Areas 4 and 5 (but not Area 3), to $10.45 for vessels submitting documentation to qualify for Area 3 and either Areas 4 or 5. The average historical qualification cost, per vessel, for vessels submitting documentation to qualify in all three lobster management areas is $14.35. These costs are considered insignificant relative to other costs of doing business.

The proposed action concerning New Hampshire conservation equivalent trap limits would allow those Federal lobster permit holders who are also authorized by the State of New Hampshire to fish more lobster traps in state waters (1,200 rather than 600 lobster traps) to maintain or increase their relative share of landings in state waters and to preserve the competitive position of that industry sector. It is expected that Federal permit holders who are authorized to fish only 600 rather than 1,200 lobster traps in state waters under New Hampshire state regulations would also be able to retain their historical competitive position but will be unable to expand fishing operations above 600 lobster traps.

Revision and clarification of the boundary coordinates for lobster management areas in Massachusetts waters will allow fishermen to maintain

traditional fishing practices and fish under the lobster management measures associated with the respective management area. Implementation of the proposed revision to these boundary lines will also maintain consistency with the identification of lobster management areas as established under the ISFMP and will avoid the confusion that could result if ISFMP and Federal area boundaries and their associated lobster management measures differ.

This proposed rule, supplemented by the DSEIS, describes associated reporting, record keeping, and compliance requirements. Special professional skills would not be required to fulfill these requirements. There are no other Federal regulations that overlap or duplicate measures under this proposed rule. This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The following collection-of-information requirements are being restated and have already been approved by the Office of Management and Budget (OMB) as shown: vessel permit applications approved under OMB control number 0648–0202 with the response times per application of 30 minutes for a new application, and 15 minutes for renewal applications; and a lobster trap tag requirement approved under OMB control number 0648–0351 with a response time of 1 minute per tag.

This proposed rule also contains new collection-of-information requirements subject to the PRA which have been submitted to OMB for approval. The public reporting burden for each collection of information per response is indicated in parentheses in the following list of new requirements, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The new requirements are as follows:

1. Provision of documentation of possession of a current valid Federal lobster permit (5 minutes);

2. Provision of documentation to demonstrate at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Areas 3, 4, or 5 during a 2-consecutive calendar month period in any calendar year during the qualification period from March 25, 1991, through September 1, 1999 (15 minutes);

3. (For Area 3 only) Provision of sales receipts or other documents pertaining to the sale of lobsters indicating the landing of at least 25,000 pounds of lobster from any location during the year used as the qualifying year from March 25, 1991, to September 1, 1999 (10 minutes);

4. Provision of documentation for proof of historical participation in two rather than one lobster management area (additional 15 minutes if different consecutive two-month periods of trap fishing are used);

5. Provision of documentation for proof of historical participation in three rather than one lobster management area (additional 30 minutes if three different consecutive two-month periods are used);

6. Completion of lobster trap fishing area eligibility application form (2 minutes for each area selected);

7. Provision of affidavit stating total number of individual lobster traps the permit holder set, allowed to soak, hauled back, and re-set in Areas 3, 4, or 5 at any one time during the qualifying year (15 minutes); and

8. Provision of a written appeal request to the Regional Administrator by non-qualifying permit holders (15 minutes).

Public comment is sought regarding: whether these proposed collections-of-information are necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including information through the use of automated collection techniques or other forms of information technology.

Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS and to the Office of Information and Regulatory Affairs, Office of Management and Budget (see **ADDRESSES**).

Notwithstanding any other provision of 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 requirements of the PRA, unless that collection-of-information displays a currently valid OMB control number.

An updated Biological Opinion under Section 7 of the Endangered Species Act (ESA) was issued for the American lobster fishery on December 17, 1998. A formal consultation concluded that the continued operation of the American lobster fishery operating under new measures implemented to reduce entanglements, ''may affect but is not likely to jeopardize the continued existence of the northern right whale, humpback whale, fin whale, blue whale, sperm whale, sei whale, leatherback sea turtle, and loggerhead sea turtle and is not likely to destroy or adversely modify critical habitat that has been designated for the northern right whale.'' In June 2000, formal consultations on the lobster fishery were reinitiated. An updated Biological Opinion under Section 7 of the ESA was issued for the Federal American lobster fishery on June 14, 2001. The updated Biological Opinion concluded that the Federal American lobster fishery is likely to jeopardize the continued existence of the western North Atlantic right whale, but is not likely to destroy or adversely modify critical habitat designated for the right whale. The Biological Opinion also concluded that the Federal American lobster fishery is not likely to jeopardize the continued existence of humpback, fin, sei, blue, and sperm whales; or loggerhead, Kemp's ridley, green, leatherback, and hawksbill sea turtles. Following release of the updated Biological Opinion on June 14, 2001, a formal consultation was initiated on the effects of this proposed action on endangered and threatened species.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 20, 2001.

**Rebecca Lent.**

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

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

## PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

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

**Authority:** 16 U.S.C. 5101 *et seq.*

2. In § 697.4, paragraphs (a)(7)(vi) through (xi) are added to read as follows:

### § 697.4 Vessel permits and trap tags.

(a) * * *

(7) * * *

(vi) *Participation requirements for EEZ Nearshore Management Area 4.* For fishing year 2002 and beyond, to fish for lobster with lobster traps in EEZ Nearshore Management Area 4 (Area 4), the owner of a vessel with a Federal lobster permit must provide the following to the Regional Administrator within [45 days after the date of publication of the final rule]:

(A) A copy of the vessel's current Federal lobster permit;

(B) Written documentation demonstrating that at least 200 lobster

traps were set, allowed to soak, hauled back, and re-set in Area 4 during a 2-consecutive calendar month period in any calendar year (hereinafter, ''the qualifying year'') during the period from March 25, 1991, through September 1, 1999 (hereinafter, ''the qualification period'') excluding the time periods in calendar years 1991 and 1999 that are outside the qualification period (i.e., January 1, 1991, through March 24, 1991, and September 2, 1999, through December 31, 1999). Documentation may include copies of vessel logbooks; permit applications; Federal Fishing Vessel Trip Reports (NOAA Form 88-30); official state reporting documentation showing the number of lobster traps fished, including, but not limited to, state report cards, license application forms, and catch reports; an approved Federal Fishing Vessel and Gear Damage Compensation Fund Report (NOAA Form 88-176); and/or other forms of credible documentation; and

(C) A signed affidavit that certifies the number of individual lobster traps the permit holder set, allowed to soak, hauled back, and re-set in Area 4 at any one time during the chosen qualifying year must be submitted to the Regional Administrator for use in determining the permitted vessel's lobster trap allocation. This affidavit must be accompanied by credible, written documents that corroborate the number of individual lobster traps claimed in the affidavit. Such documents may include the types of documents identified in paragraph (a)(7)(vi)(B) of this section. Documentation submitted to support the affidavit may reflect activity during any point within the qualifying year and does not necessarily need to represent the 2-consecutive month period used in paragraph (a)(7)(vi)(B) of this section.

(vii) *Participation requirements for EEZ Nearshore Management Area 5.* For fishing year 2002 and beyond, to fish for lobster with lobster traps in EEZ Nearshore Management Area 5 (Area 5), the owner of a vessel with a Federal lobster permit must provide the following to the Regional Administrator within [45 days after the date of publication of the final rule]:

(A) A copy of the vessel's current Federal lobster permit;

(B) Written documentation demonstrating that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 5 during a 2-consecutive calendar month period in any calendar year (hereinafter, ''the qualifying year) during the period from March 25, 1991, through September 1, 1999 (hereinafter, ''the qualification period'') excluding the time period in calendar years 1991 and 1999 that are outside the qualification period (i.e., January 1, 1991, through March 24, 1991, and September 2, 1999, through December 31, 1999). Documentation may include copies of vessel logbooks; permit applications; Federal Fishing Vessel Trip Reports (NOAA Form 88-30); official state reporting documentation showing the number of lobster traps fished, including, but not limited to, state report cards, license application forms, and catch reports; an approved Federal Fishing Vessel and Gear Damage Compensation Fund Report (NOAA Form 88-176); and/or other forms of credible documentation; and

(C) A signed affidavit that certifies the number of individual lobster traps the permit holder set, allowed to soak, hauled back, and re-set in Area 5 at any one time during the qualifying year must be submitted to the Regional Administrator for use in determining the permitted vessel's lobster trap allocation. This affidavit must be accompanied by credible, written documents that corroborate the number of individual lobster traps claimed in the affidavit. Such documents may include the types of documents identified in paragraph (a)(7)(vii)(B) of this section. Documentation submitted to support the affidavit may reflect activity during any point within the qualifying year and does not necessarily need to represent the 2-consecutive month period used in paragraph (a)(7)(vii)(B) of this section.

(viii) *Participation requirements for EEZ Offshore Management Area 3.* For fishing year 2002 and beyond, to fish for lobster with traps in EEZ Offshore Management Area 3 (Area 3), a Federal lobster permit holder must provide the following to the Regional Administrator within [45 days after the date of publication of the final rule]:

(A) A copy of the vessel's current Federal lobster permit;

(B) Written documentation demonstrating that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 3 during a 2-consecutive calendar month period in any calendar year (hereinafter, ''the qualifying year'') during the period from March 25, 1991, through September 1, 1999 (hereinafter, ''the qualification period'') excluding the time periods in calendar years 1991 and 1999 that are outside the qualification period (i.e., January 1, 1991, through March 24, 1991, and September 2, 1999, through December 31, 1999). Documentation may include copies of vessel logbooks; permit applications; Federal Fishing Vessel Trip Reports (NOAA Form 88-30); official state reporting documentation showing the number of lobster traps fished, including, but not limited to, state report cards, license application forms, and catch reports; an approved Federal Fishing Vessel and Gear Damage Compensation Fund Report (NOAA Form 88-176); and/or other forms of credible documentation that indicate that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 3 during a 2-consecutive calendar month period in any chosen qualifying year during the qualification period.

(C) Sales receipts or other documents pertaining to the sale of lobsters and indicating the landing of at least 25,000 lb (11,340 kg) of lobster from any location during the calendar year used as the qualifying year from March 25, 1991, through September 1, 1999, to qualify to fish for lobster with traps Area 3; and

(D) A signed affidavit to NMFS, certifying the total number of individual lobster traps the permit holder set, allowed to soak, hauled back, and re-set in Area 3 at any one time during the qualifying year. This affidavit must be accompanied by the same or similar type of documentation identified in paragraph (a)(7)(viii)(B). Documentation submitted to support the affidavit may reflect activity during any point within the qualifying year and does not necessarily need to represent the 2-consecutive month period used in paragraph (a)(7)(viii)(B) of this section.

(ix) *Qualifying year for vessels seeking to fish for lobster with traps in more than one area of Areas 3, 4, and 5.* Any Federal lobster permit holder applying for a lobster trap allocation under this section who also applies for a second or third lobster trap allocation among Areas 3, 4, and 5, must use the same qualifying year for all areas, to avoid a combined lobster trap allocation greater than the number of lobster traps that the permit holder ever fished with any one vessel in any one year.

(x) *Notification of eligibility to fish for lobster with lobster traps in 2002 in Areas 3, 4, and 5.* (A) NMFS will attempt to notify all owners of vessels for which NMFS has credible evidence available that they meet some or all of the qualification criteria described in paragraph (a)(7)(vi), (a)(7)(vii), or (a)(7)(viii) of this section and that they may qualify for a limited access American lobster permit for one or more of Areas 3, 4, and/or 5. Vessel owners must still provide documentation indicating that the vessel meets the qualification criteria for which NMFS lacks information, complete an affidavit

certifying the total number of individual lobster traps the permit holder set, allowed to soak, hauled back, and re-set in Areas 3, 4, and/or 5 at any one time during the qualifying year, and apply for a limited access lobster permit for Areas 3, 4, and/or 5 by April 30, 2002, to be considered for an Areas 3, 4, and/or 5 limited access lobster permit. Consistent with paragraph (a)(7)(ix) of this section, any Federal lobster permit holder applying for a lobster trap allocation under this section who also applies for a second or third lobster trap allocation among Areas 3, 4, and 5, must use the same qualifying year for all areas to avoid a combined lobster trap allocation greater than the number of lobster traps that the permit holder ever fished with any one vessel in any one year. In addition, Federal lobster permit holders who elect to fish in multiple lobster conservation management areas are required under paragraph (a)(7)(iv) of this section to abide by the most restrictive regulations of all areas elected, regardless of which area the permit holder is fishing in at any given time.

(B) If a vessel owner has not been notified that the vessel is eligible to be issued a limited access American lobster permit for Areas 3, 4, and/or 5, and the vessel owner believes that there is credible evidence that the vessel does qualify under the listed criteria, the vessel owner must apply for a limited access American lobster permit for Areas 3, 4, and/or 5 by April 30, 2002, to fish for lobster with traps in Areas 3, 4, and/or 5 after that date and submit documentation substantiating that the vessel meets the area qualification criteria as described in paragraphs (a)(7)(vi)(A) and (B); (a)(7)(vii)(A) and (B); and (a)(7)(viii)(A) through (C) of this section; and submit a signed affidavit certifying the total number of lobster traps he/she set, allowed to soak, hauled back, and re-set in Areas 3, 4, and/or 5 at any one time during the qualifying year as described in paragraphs (a)(7)(vi)(C), (a)(7)(vii)(C), and (a)(7)(viii)(D) of this section.

(xi) *Appeal of denial of permit.* (A) Any applicant denied a limited access American lobster permit for Areas 3, 4, and/or 5, may appeal to the Regional Administrator within 30 days of the date indicated on the notice of denial. Any such appeal must be in writing. The only ground for appeal is that the Regional Administrator erred in concluding that the vessel did not meet the criteria in paragraph (a)(7)(vi), (vii), and/or (viii) of this section. The appeal must set forth the basis for the applicant's belief that the Regional Administrator's decision was made in error.

(B) *Appeal review.* (*1*) The Regional Administrator will appoint a designee who will make the initial decision on the appeal.

(*2*) The appellant may request a review by the Regional Administrator of the initial decision on the appeal by so requesting such a review in writing within 30 days of the date on the notice of the initial decision on the appeal. The appellant may present his/her objections to the initial decision on the appeal at a hearing before an officer appointed by the Regional Administrator. The hearing officer must make findings of fact and a recommendation to the Regional Administrator. Upon receiving the findings and the recommendation, the Regional Administrator must decide on the appeal, which will be the final decision of the Department of Commerce. If the appellant does not request a review of the initial decision on the appeal within 30 days of the date on the notice of the initial decision on the appeal, then the initial decision is the final administrative action of the Department of Commerce.

(C) *Status of vessels pending appeal.* A vessel denied a limited access American lobster permit for Areas 3, 4, and/or 5 may fish in Areas 3, 4, and/or 5, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish in the area for which access is sought through the appeals process, unless otherwise determined by the Regional Administrator. The Regional Administrator will issue such a letter for the pendency of any appeal. This letter of authorization would be the final administrative action of the Department of Commerce pending a final decision on the appeal. While the appeal is pending, the vessel may fish up to 800 lobster traps, unless the vessel's Federal lobster permit has designated only Area 3 for lobster trap fishing, whereby, the vessel may fish up to 1,800 lobster traps in Area 3 only. If the appeal is finally denied, the Regional Administrator must send a notice of final denial to the vessel owner; the letter of authorization will become invalid 5 days after receipt of the notice of denial or 15 days after the date it is sent, whichever occurs first.

* * * * *

3. In § 697.18, paragraphs (a), (b), and (h) are revised to read as follows:

**§ 697.18 Lobster management areas.**

* * * * *

(a) *EEZ Nearshore Management Area 1.* EEZ Nearshore Management Area 1 is defined by the area, including state and Federal waters that are nearshore in the Gulf of Maine, bounded by straight lines connecting the following points, in the order stated, and the coastline of Maine, New Hampshire, and Massachusetts to the northernmost point of Cape Cod:

| Point | Latitude | Longitude |
|---|---|---|
| A | 43°58′ N. | 67°22′ W. |
| B | 43°41′ N. | 68°00′ W. |
| C | 43°12′ N. | 69°00′ W. |
| D | 42°49′ N. | 69°40′ W. |
| E | 42°15.5′ N. | 70°40′ W. |
| F | 42°10′ N. | 69°56′ W. |
| G | 42°05.5′ N. | 70°14′ W. |
| G1 | 42°04.25′ N. | 70°17.22′ W. |
| G2 | 42°02.84′ N. | 70°16.1′ W. |
| G3 | 42°03.35′ N. | 70°14.2′ W. |

From point ''G3'' along the coastline of Massachusetts, including the southwestern end of the Cape Cod Canal, continuing along the coastlines of Massachusetts, New Hampshire, Maine, and the seaward EEZ boundary back to Point A.

(b) *EEZ Nearshore Management Area 2.* EEZ Nearshore Management Area 2 is defined by the area, including state and Federal waters that are nearshore in Southern New England, bounded by straight lines connecting the following points, in the order stated:

| Point | Latitude | Longitude |
|---|---|---|
| H | 41°40′ N. | 70°05′ W. |
| I | 41°15′ N. | 70°05′ W. |
| J | 41°21.5′ N. | 69°16.5′ W. |
| K | 41°10′ N. | 69°06.5′ W. |
| L | 40°55′ N. | 68°54′ W. |
| M | 40°27.5′ N. | 71°14′ W. |
| N | 40°45.5′ N. | 71°34′ W. |
| O | 41°07′ N. | 71°43′ W. |
| P | 41°06.5′ N. | 71°47′ W. |
| Q | 41°11.5′ N. | 71°47.25′ W. |
| R | 41°18.5′ N. | 71°54.5′ W. |

From point ''R'' along the maritime boundary between Connecticut and Rhode Island to the coastal Connecticut/Rhode Island boundary and then back to point ''H'' along the Rhode Island and Massachusetts coast, including the northeastern end of the Cape Cod Canal.

* * * * *

(h) *EEZ Nearshore Outer Cape Lobster Management Area.* EEZ Nearshore Outer Cape Lobster Management Area is defined by the area, including state and Federal waters off Cape Cod, bounded by straight lines connecting the following points, in the order stated:

| Point | Latitude | Longitude |
|---|---|---|
| F | 42°10′ N. | 69°56′ W. |
| G | 42°05.5′ N. | 70°14′ W. |
| G1 | 42°04.25′ N. | 70°17.22′ W. |
| G2 | 42°02.84′ N. | 70°16.1′ W. |
| G4 | 41°52′ N. | 70°07.49′ W. |
| G5 | 41°54.46′ N. | 70°03.99′ W. |

| Point | Latitude | Longitude |
|---|---|---|
| From Point ''G5'' along the outer Cape Cod coast to point ''H'' | | |
| H | 41°40′ N. | 70°05′ W. |
| H1 | 41°18′ N. | 70°05′ W. |
| From Point ''H1'' along the eastern coast of Nantucket Island to Point ''I'' | | |
| I | 41°15′ N. | 70°00′ W. |
| J | 41°21.5′ N. | 69°16′ W. |
| From Point ''J'' Back to Point ''F.'' | | |

* * * * *

4. Section 697.19 is revised to read as follows:

**§ 697.19 Trap limits and trap tag requirements for vessels fishing with lobster traps.**

(a) *Trap limits for vessels fishing or authorized to fish in any Nearshore Management Area.* (1) Through April 30, 2002, vessels fishing in or issued a management area designation certificate or valid limited access American lobster permit specifying one or more EEZ Nearshore Management Area(s), whether or not in combination with the Area 2/3 Overlap, shall not fish with, deploy in, possess in, or haul back from such area more than 800 lobster traps.

(2) Beginning May 1, 2002, vessels fishing in or issued a valid limited access American lobster permit specifying one or more of EEZ Nearshore Management Areas 1, 2, or the Outer Cape Management Area, regardless of whether it is in combination with the Area 2/3 Overlap, shall not fish with, deploy in, possess in, or haul back from such area(s) more than 800 lobster traps, except as noted in paragraph (d) of this section.

(3) Beginning May 1, 2002, vessels fishing in or issued a management area designation certificate or valid limited access American lobster permit specifying EEZ Management Area 4 may not fish more lobster traps in Area 4 than the number approved by the Regional Administrator pursuant to § 697.4 (a)(7)(vi), which will not exceed 1,440 lobster traps.

(4) Beginning May 1, 2002, vessels fishing in or issued a management area designation certificate or valid limited access American lobster permit specifying EEZ Management Area 5 may not fish more lobster traps in Area 5 than the number approved by the Regional Administrator pursuant to § 697.4 (a)(7)(vii), which will not exceed 1,440 lobster traps, unless the vessel is operating under an Area 5 Trap Waiver permit issued under § 697.26.

(b) *Trap limits for vessels fishing or authorized to fish in the EEZ Offshore Management Area.* (1) Through April 30, 2002, vessels fishing only in or issued a management area designation certificate or valid limited access American lobster permit specifying only EEZ Offshore Management Area 3, or, specifying only EEZ Offshore Management Area 3 and the Area 2/3 Overlap, may not fish with, deploy in, possess in, or haul back from such areas more than 1,800 lobster traps.

(2) Beginning May 1, 2002, for fishing years 2002, 2003, 2004, 2005, and beyond until changed, vessels fishing only in or issued a management area designation certificate or valid limited access American lobster permit specifying only EEZ Offshore Management Area 3, or, specifying only EEZ Offshore Management Area 3 and the Area 2/3 Overlap, may not fish with, deploy in, possess in, or haul back from such areas more than the number of lobster traps indicated in Table 1 for the appropriate fishing year with respect to the number of lobster traps approved by the Regional Administrator under § 697.4(a)(7)(vii) for each vessel. Area 3 lobster trap allocations for the initial fishing year, beginning May 1, 2002, will not exceed 2,656 lobster traps.

TABLE 1. AREA 3 TRAP REDUCTION SCHEDULE

| Number of Traps Approved by the Regional Administrator | Trap Allocation by Fishing Year* | | | |
|---|---|---|---|---|
| | 2002 | 2003 | 2004 | 2005 and beyond until changed |
| 1200-1299 | 1200 | 1200 | 1200 | 1200 |
| 1300-1399 | 1200 | 1200 | 1200 | 1200 |
| 1400-1499 | 1290 | 1251 | 1213 | 1200 |
| 1500-1599 | 1388 | 1337 | 1297 | 1276 |
| 1600-1699 | 1467 | 1423 | 1380 | 1352 |
| 1700-1799 | 1548 | 1498 | 1452 | 1417 |
| 1800-1899 | 1628 | 1573 | 1523 | 1482 |
| 1900-1999 | 1705 | 1644 | 1589 | 1549 |
| 2000-2099 | 1782 | 1715 | 1654 | 1616 |
| 2100-2199 | 1856 | 1782 | 1715 | 1674 |
| 2200-2299 | 1930 | 1849 | 1776 | 1732 |
| 2300–2399 | 2003 | 1905 | 1836 | 1789 |
| 2400-2499 | 2076 | 1981 | 1896 | 1845 |
| 2500-2599 | 2197 | 2034 | 1952 | 1897 |
| 2600-2699 | 2218 | 2107 | 2008 | 1949 |
| 2700-2799 | 2288 | 2169 | 2063 | 2000 |
| 2800-2899 | 2357 | 2230 | 2117 | 2050 |
| 2900-2999 | 2425 | 2291 | 2171 | 2100 |
| 3000-3099 | 2493 | 2351 | 2225 | 2150 |
| 3100-3199 | 2575 | 2422 | 2288 | 2209 |
| ≥3200 | 2656 | 2493 | 2351 | 2267 |

* Trap allocations below 1,200 will not be subject to further reductions.

(3) For example, if a limited access Federal lobster permit holder elects 1991 as the qualifying year, and is assigned a fishing effort level of 2,323 lobster traps under §697.4(a)(7)(viii), then the lobster trap allocation for that vessel would be 2,003 lobster traps during fishing year 2002 and would decrease annually by incremental reductions until reaching a lobster trap allocation of 1,789 lobster traps in fishing year 2005. Thus, each lobster trap allocation of greater than 1,200 lobster traps will be reduced on a sliding scale over 4 years. The

respective lobster trap reductions will not go below a baseline of 1,200 lobster traps. Each initial allocation in Area 3 of fewer than 1,200 lobster traps will remain at that allocation.

(c) *Lobster trap limits for vessels fishing or authorized to fish in more than one EEZ Management Area.* A vessel owner who elects to fish in more than one EEZ Management Area may not fish with, deploy in, possess in, or haul back from any of those elected management areas more lobster traps than the lowest number of lobster traps allocated to that vessel for any one elected management area.

(d) *Notwithstanding any other provision, lobster trap limits in New Hampshire state waters.* Any vessel with a Federal lobster permit and a New Hampshire Full Commercial Lobster license may fish up to a maximum of 1,200 lobster traps in New Hampshire state waters, as may be authorized by New Hampshire lobster fishery regulations. However, such vessel may not fish, possess, deploy, or haul back more than 800 lobster traps at any one time in the Federal waters of EEZ Nearshore Management Area 1, and may not fish more than a combined total of 1,200 lobster traps in the Federal and New Hampshire state waters portions of EEZ Nearshore Management Area 1. When fishing in the Federal waters of EEZ Nearshore Management Area 1, any vessel with a Federal lobster permit may not possess, deploy, or haul back lobster traps in excess of the maximum number of lobster traps specified at paragraph (a)(2) of this section.

(e) *Trap tag requirements for vessels fishing with lobster traps.* Any lobster trap fished in Federal waters must have a valid Federal lobster trap tag permanently attached to the trap bridge or central cross-member. Any vessel with a Federal lobster permit may not possess, deploy, or haul back lobster traps in any portion of any management area that do not have a valid, federally recognized lobster trap tag permanently attached to the trap bridge or central cross-member.

(f) *Maximum Lobster Trap Tags Authorized for Direct Purchase.* In any fishing year, the maximum number of tags authorized for direct purchase by each permit holder is the applicable trap limit specified in paragraphs (a) and (b) of this section plus an additional 10 percent to cover trap loss.

(g) *EEZ Management Area 5 Trap Waiver Exemption.* Any vessel issued an Area 5 Trap Waiver permit under § 697.4(p) is exempt from the provisions of this section.

5. In § 697.25, paragraphs (b) and (c) are redesignated as paragraphs (c) and (d), and new paragraph (b) is added to read as follows:

**§ 697.25 Adjustment to management measures.**

* * * * *

(b) Conservation equivalency measures. A conservation equivalency measure is defined as a measure adopted by a state that differs from the specific requirements of the interstate fishery management plan, but achieves the same quantified level of conservation for the resource under management. Under this section, the Regional Administrator may consider any future recommendations for modifications to Federal regulations based on conservation equivalency that are formally submitted to him/her in writing by the ASMFC and that contain the following supporting information:

(1) A description of how Federal regulations should be modified;

(2) An explanation of how the recommended measure(s) would achieve a level of conservation benefits for the resource equivalent to the applicable Federal regulations;

(3) An explanation of how Federal implementation of the conservation equivalent measure(s) would achieve ISFMP objectives, be consistent with the Magnuson-Stevens Act national standards, and be compatible with the effective implementation of the ISFMP; and

(4) A detailed analysis of the biological, economic, and social impacts of the recommended conservation equivalent measure(s). After considering the recommendation and the necessary supporting information, NMFS may issue a proposed rule to implement the conservation equivalent measures. After considering public comment, NMFS may issue a final rule to implement such measures.

* * * * *

[FR Doc. 02–142 Filed 1–2–02; 8:45 am]
BILLING CODE 3510–22–S

# Proposed Rules

Federal Register
Vol. 67, No. 2
Thursday, January 3, 2002

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.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 35

**[Docket No. PRM–35–15]**

### Jeffery C. Angel; Denial of Petition for Rulemaking

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Petition for rulemaking: denial.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking submitted by Jeffery C. Angel (PRM–35–15). The petitioner requested that the NRC amend its regulations concerning the medical use of byproduct material to prohibit the hand-held administration of radiopharmaceuticals by injection. In addition, the petitioner requests amendments to require the use of the ''Angel Shield'' instead of the currently used syringe radiation shields. The NRC is denying the petition because it would be inconsistent with the Commission's overall program for revising its regulatory framework for the medical use of byproduct material, to make requirements more risk-informed, more performance based, and less prescriptive.

**ADDRESSES:** Copies of the petition for rulemaking, the public comments received, and the NRC's letter to the petitioner are available for public inspection or copying in the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room 0–1F23, Rockville, Maryland 20852. These documents are also available on NRC's rulemaking website at *http://ruleforum.llnl.gov.* For information about the interactive rulemaking website, contact Carol Gallagher, (301) 415–5905, email: *CAG@nrc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Gary Comfort, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, (301) 415–8106, e-mail: *GCC1@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

#### The Petition

On August 23, 1999 (64 FR 45907), the Commission published in the **Federal Register** a notice of receipt of a petition for rulemaking filed by Jeffery C. Angel. The petitioner requested that the NRC amend its regulations concerning the medical use of byproduct material (10 CFR part 35) to prohibit the hand-held administration of radiopharmaceuticals by injection. The petitioner also requested the amendment of 10 CFR 35.60(c), ''Syringe shields and labels,'' to require the use of the ''Angel Shield,'' designed by the petitioner, instead of the syringe radiation shields currently in use. The petitioner believes that recent improvements in technology, specifically the invention of the Angel Shield, support the need to require its use by all NRC licensees when preparing or injecting radiopharmaceuticals in patients or human research subjects.

In his supporting information, the petitioner contends that the use of the Angel Shield instead of the currently required syringe radiation shield would reduce radiation exposures by:

1. Eliminating hand-held injections of radiopharmaceuticals.
2. Completely encapsulating the syringe within the administrator, providing 360 degrees of protection.
3. Shielding 100 percent of low energy (140 Kev) and 88 percent of high energy photons (511 Kev).
4. Allowing for the remote administration of the radiopharmaceutical.
5. Reducing the number of missed injections and subsequent multiple exposures.

The petitioner supports his contention by stating that he has been a nuclear medicine technologist for over 20 years and has been exposed to radiation daily, using the traditional syringe radiation shield. The petitioner invented the Angel Shield to protect himself and others administering radiopharmaceuticals by injection. He states that other syringe radiation shields are neither designed nor engineered according to sound radiation protection principles.

#### Public Comments on the Petition

The NRC received five comment letters. Three comment letters opposed the petition. Two of these were from certified health physicists and consultants in the area of radiation protection, and one was from an industry trade association. Two comment letters supported the petition. One of the letters is from a certified nuclear medicine technologist and the other is signed by five radiology physicians.

One commenter stated that the petition cannot be justified in terms of cost-benefit, and that the petitioner failed to demonstrate that current exposures were excessive, thus presenting a significant risk to workers. Two commenters stated that the petition is self-serving in that it would provide a monopoly for the petitioner, as he is the only manufacturer of the Angel Shield. Another commenter said that licensees should be able to decide what procedures and equipment are necessary for the practice of their ''as low as reasonably achievable'' (ALARA) programs. One commenter said that prohibiting hand-held injections would adversely affect the practice of medicine, while another commenter stated that existing radiation syringe shields have been in use for many years without compromising worker or patient safety.

A commenter supporting the petition stated that the majority of her occupational exposure as a nuclear medicine technologist came from the injection of radiopharmaceuticals and their preparation. The commenter contends that lowering radiation dose rates is more than enough justification for granting the petition, stating that this device will make her profession safer. The commenter also stated that unless the device is mandated, employers would not spend the money to provide adequate protection to achieve ALARA objectives.

The other commenters in favor of the petition cite NRC Regulatory Guides 8.10 and 8.29 in support of their conclusion that the petitioner's device clearly furthers the objective of reducing occupational exposures as far below the specified limits as is reasonably achievable. According to these commenters, the Angel Shield should simply be viewed as a new, better, and safer syringe radiation shield than the ones currently employed and required pursuant to 10 CFR 35.60(c). These commenters also assert that the new

technology would permit the rejection of the antiquated practice and the unnecessary exposure associated with hand-held injections.

**Reasons for Denial**

Based on consideration of the petition and public comments, the NRC is denying the petition because it would be inconsistent with the Commission's overall program for revising its regulatory framework for the medical use of byproduct material. This framework focuses Commission regulation on those medical procedures that pose the highest risk, structures its regulations to be more risk-informed and more performance-based and significantly reduces regulatory burden in many areas, consistent with NRC's ''Strategic Plan for Fiscal Year 1997—Fiscal Year 2002,'' cited in ''Medical Use of Byproduct Material; Policy Statement; revision,'' 65 FR 47654 (August 2, 2000).

The amendment the petitioner seeks would be contrary to this regulatory approach by prohibiting the hand-held administration of radiopharmaceuticals by injection and/or requiring the use of a specific shield (the Angel Shield). Licensees should have the flexibility to determine what kind of syringe or vial shields to use in order to meet the requirements contained in 10 CFR 20.1101, ''Radiation protection programs.'' This regulation requires licensees to use practical procedures and engineering controls designed to achieve doses that are ALARA (as low as reasonably achievable). In its inspection program, the NRC assesses whether licensees have complied with these requirements. Denial of this petition does not prohibit the licensee from using the ''Angel Shield'' or other shields, as practicable to meet these requirements. However, if this petition were granted, it would limit the flexibility of licensees to use other, including more effective, strategies to meet ALARA without additional rulemaking.

The decision to deny the petition is consistent with our performance goals. There is no impact on public health and safety, the environment, or common defense and security. Use of the requested device is not essential to limit or minimize doses to the public, workers, or patients. Public confidence should not be affected because the existing regulations require licensees to minimize doses and this decision continues to allow licensees the flexibility to use the ''Angel Shield'' or other strategies, as best fits their individual practices, in achieving this outcome. The decision maintains the effectiveness, efficiency, and realism of the current regulations. Lastly, the denial decision does not impose unnecessary regulatory burden on licensees or the NRC staff, whereas granting the petition would cause undue burden by imposing prescriptive criteria on licensees.

For reasons cited in this document, the NRC denies the petition.

Dated at Rockville, Maryland, this 18th day of December, 2001.

For the Nuclear Regulatory Commission.

**William D. Travers,**

*Executive Director for Operations.*

[FR Doc. 02–72 Filed 1–2–02; 8:45 am]

**BILLING CODE 7590–01–P**

## DEPARTMENT OF THE INTERIOR

## Minerals Management Service

## 30 CFR Part 250

**RIN 1010–AC83**

## Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Procedures for Dealing With Sustained Casing Pressure

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Extension of comment period for proposed rule.

**SUMMARY:** This document extends to March 9, 2002, the deadline for submitting comments on the proposed rule that describes procedures for dealing with sustained casing pressure (SCP) in oil and gas wells on the Outer Continental Shelf. The rule will codify these procedures and ensure uniform regulatory practices among MMS regional offices, and will also help ensure that lessees will continue to conduct operations in a safe manner.

**DATES:** We will consider all comments received by March 9, 2002, and we may not fully consider comments received after March 9, 2002.

**ADDRESSES:** Mail or hand-carry written comments (three copies) to the Department of the Interior; Minerals Management Service; 381 Elden Street; Mail Stop 4024; Herndon, Virginia 20170–4817; Attention: Rules Processing Team. If you wish to e-mail comments, the e-mail address is: rules.comments@MMS.gov. Reference ''AC83 SCP Comments'' in your e-mail subject line. Include your name and return address in your e-mail message and mark your message for return receipt.

**FOR FURTHER INFORMATION CONTACT:** Larry Ake, Engineering and Operations Division, at (703) 787–1559.

**SUPPLEMENTARY INFORMATION:** MMS was asked to extend the deadline for submitting comments on the proposed regulations revising 30 CFR 250, subpart E to describe procedures for dealing with SCP in oil and gas wells. The request stated that the complexity of the issue and the high cost to the domestic petroleum industry require careful consideration for comprehensive comments.

*Public Comments Procedures:* Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: December 5, 2001.

**John V. Mirabella,**

*Acting Chief, Engineering and Operations Division.*

[FR Doc. 02–42 Filed 1–2–02; 8:45 am]

**BILLING CODE 4310–MR–W**

## POSTAL SERVICE

## 39 CFR Part 111

## Eligibility Standards for Free Matter for the Blind and Other Physically Handicapped Persons

**AGENCY:** Postal Service.

**ACTION:** Proposed rule.

**SUMMARY:** The Postal Service proposes to amend the Domestic Mail Manual (DMM) to clarify and simplify the eligibility standards for free matter for the blind and other physically handicapped persons in conformance, to the extent practicable, with similar standards adopted by the Library of Congress for its National Library Service for the Blind and Physically Handicapped. This proposed rule also would require free matter mailers that

submit mailings of at least 200 pieces to register with the post office(s) of mailing and submit statements of mailing that document information relating to each such mailing.

**DATES:** Comments on the proposed standards must be received on or before February 4, 2002.

**ADDRESSES:** Written comments should be delivered to the Manager, Mail Preparation and Standards, United States Postal Service, 1735 N. Lynn St., Room 3025, Arlington, VA 22209–6038. Comments transmitted via facsimile or by e-mail cannot be accepted. Copies of all written comments will be available for inspection and photocopying at USPS Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor N, Washington, DC 20260–1450 between 9 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Joel Walker, 703–292–3652.

**SUPPLEMENTARY INFORMATION:** Congress established the free matter privilege in 1904 to provide reading materials for the blind when sent by public institutions and public libraries as a loan and when returned by the blind readers to those institutions (Ch. 1612, 33 Stat. 313, Pub. L. No. 171). In 1931, the national books-for-the-blind program was established under the auspices of the Library of Congress to provide books for use by adult residents of the United States, ''including the several States, Territories, insular possessions, and the District of Columbia'' (Ch. 400, 46 Stat. 1487, Pub. L. No. 787). The Library of Congress issued standards for making arrangements for circulation of books (using the free matter privilege) to and from blind users through libraries designated as local or regional centers.

In 1966, Congress expanded the books-for-the-blind program to include other physically handicapped persons (Pub. L. 89–522, 2 U.S.C. secs. 135a and 135b). Congress expanded the program to meet the reading needs of physically handicapped persons who cannot read or use conventional printed books because of impaired eyesight or other factors that make them physically unable to manipulate these materials. Certification by competent authority of individuals for eligibility to participate in the program was (and remains today) pursuant to regulations prescribed by the Library of Congress. From this time on, the program became known as the National Library Service for the Blind and Physically Handicapped (*see* 36 CFR 701.10).

Consistent with the intent of Congress embodied in the Act that created the Library of Congress National Library Service for the Blind and Physically Handicapped, the Postal Reorganization Act (39 U.S.C. 3403(a)(1)) expanded the free matter privilege to include mail for the use of the blind or other persons who cannot use or read conventionally printed material because of a physical impairment. The persons also must be certified by competent authority in accordance with the regulations established by the Library of Congress. Under the current law, Congress reimburses the Postal Service for free matter mailings (39 U.S.C. 2401(c)). Accordingly, the Postal Service is clarifying its eligibility standards for the free matter privilege to incorporate, as closely as practicable, the standards devised by the Library of Congress for establishing eligibility and certification for participation in the National Library Service for the Blind and Physically Handicapped (see 36 CFR 701.10). In addition, the Postal Service is proposing a process to identify the quantity of mailings being made and to verify that those using the free matter privilege are using it for mailings that qualify for the privilege.

On September 1, 2000, the Postal Service published a proposed rule amending the standards for free matter for the blind and other physically handicapped persons (65 FR 53212). In view of changes from the original proposal and because we believe that the public interest will be served by the fullest practicable exposition of views on these issues, the Postal Service is publishing this revised proposal for comment. There are two major changes from the first proposed rule. First, based on comments received from the original proposal, this new proposal eliminates the requirement that organizations maintain individual records of eligible recipients and makes the maintenance of such records optional. Second, this new proposal requires mailers of free matter that enter mailings of 200 or more pieces to register with the post office(s) of mailing and to submit statements of mailing. Mailers are required to register once at each facility where they deposit bulk mailings. Mailers must submit statements of mailing with each free matter mailing of 200 pieces or more. The Postal Service will provide a form that will require minimal mailing information for this purpose. In addition, this proposal includes a provision that the Postal Service may audit an organization's use of the free matter privilege. This standard is new to the Domestic Mail Manual, but codifies existing authority and practice.

The Postal Service received six comments on the original proposed rule. All of them supported the overall goal to clarify standards for eligibility and certification for recipients of free matter. Two commenters supported the rulemaking without reservation or revision. Of the remaining four, each commenter had reservations and recommendations for revisions to proposed DMM E040.1.5, Certification by Organizations. Two organizations objected to the record-keeping requirement described in E040.1.5, asserting that this requirement places an undue burden on the resources of organizations that mail free matter. This objection has been addressed in this new proposed rule by making the standard for maintaining records optional and not requiring organizations to maintain individual records of eligible recipients. Under these standards, any organization that mails under the free matter privilege, whether maintaining individual records or not, is subject to postal reviews of the eligibility of the addressees. This may include a review of the individuals on the organization's mailing list to ensure they meet the eligibility standards for receipt of free matter. The procedures used in these reviews may depend on the records maintained by the organization. Record keeping by organizations making use of the free matter privilege will facilitate any audits that take place. For example, if the organization chooses to maintain records substantiating that each person on its mailing list is eligible to receive free matter, the Postal Service might be able to complete an audit simply by reviewing a sample of those records. If the organization does not maintain such records, the Postal Service might need to contact an outside source, such as the Library of Congress, for addressees registered with that organization to determine whether the addressees are eligible to receive free matter. If no other source is available to provide that confirmation, the Postal Service might, as a last resort, contact the individual addressees directly. However, it should be noted that, under current policy, all recipients of free matter are required to provide such evidence of eligibility to their postmasters; this is not routinely required of all addressees in the new process established under this proposal. It should be noted that, whether or not they maintain records to confirm that addressees meet the eligibility standards for free matter, the entry of matter at the ''free'' rates is the mailer's certification that the matter qualifies for free matter privileges.

Two commenters requested amendments to DMM E040.1.5 to allow permanent eligibility for persons who are ''intermittently'' eligible; one commenter requested an amendment to indicate an organization may certify eligible individuals provided the organization had a ''good faith'' belief of the individual's eligibility; and one commenter requested the ''competent authority'' requirement as defined in E040.1.4 be replaced with a ''self-declaration'' requirement. These requests cannot be accommodated. Eligibility for free matter is established by statute and the postage for this mail is provided to the Postal Service through appropriations. As explained above, this privilege is related to programs provided by the Library of Congress. Accordingly, to ensure consistency and adherence to congressional intent in the administration of the program, the proposed standards for free matter conform as near as practical with the standards of the Library of Congress. Consistent with those standards, this rule proposes that an eligible individual must meet the standards in E040.1.3 at the time of mailing and the proposed rule continues to establish eligibility by a competent authority as defined in E040.1.4. Persons certified by competent authority as meeting the requirements of eligibility resulting from a degenerative, variable disease that renders them unable to read or use conventional printed material because of impaired eyesight or other physical factors are eligible for the period specified by the certifying authority.

One commenter requested an amendment to DMM E040.3.0 to provide for letters sent by eligible individuals to include handwritten letters in equivalent size of 14-point sightsaving type. The history of the free matter privilege does not support that the intent was to include handwritten letters. Section 3404 of Title 39 specifically requires that letters sent using the privilege must be ''in raised characters, or sightsaving type, or in the form of sound recordings * * *'' Therefore, this request is not accommodated in this proposed rule.

Lastly, one commenter objected to the use of the term ''handicapped'' in the proposed standards, suggesting the term be replaced throughout with ''persons with disabilities.'' Although the Postal Service is sympathetic to the request, the proposed standards continue the use of the term ''handicapped'' to remain consistent with the language in the statute and that used by the Library of Congress.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions to the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. (*see* 39 CFR part 111).

For the reasons discussed above, the Postal Service hereby proposes the following amendments to the Domestic Mail Manual, which are incorporated by reference in the Code of Federal Regulations (*see* 39 CFR part 111).

**List of Subjects in 39 CFR Part 111**

Administrative practice and procedure, Postal Service.

## PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the Domestic Mail Manual as follows:

**E Eligibility**

**E000 Special Eligibility Standards**

* * * * *

[Amend E040 to insert the word ''physically'' before the word ''handicapped'' in each instance where it appears.]

*E040 Free Matter for the Blind and Other Physically Handicapped Persons*

1.0 BASIC INFORMATION

[Amend 1.1 to read as follows:]

**1.1 General**

Subject to the standards below, matter may be entered free of postage if mailed by or for the use of blind or other persons who cannot read or use conventionally printed materials due to a physical handicap. The provisions of E040 apply to domestic mail only.

* * * * *

[Amend titles and text of 1.3 and 1.4 and add new 1.5 and 1.6 to read as follows:]

**1.3 Eligibility**

The following persons are eligible to send and receive free matter:

a. Certified participants in the Library of Congress National Library Service for the Blind and Physically Handicapped (NLS).

b. Blind persons whose visual acuity, as determined by competent authority, is 20/200 or less in the better eye with correcting lenses, or whose widest diameter of visual field subtends angular distance no greater than 20 degrees.

c. Other physically handicapped persons as follows:

(1) Persons certified by competent authority as someone whose visual disability, with correction and regardless of optical measurement, prevents the reading of standard printed material.

(2) Persons certified by competent authority as unable to read or unable to use standard printed material as a result of physical limitations.

(3) Persons certified by competent authority as having a reading disability resulting from organic dysfunction and of sufficient severity to prevent their reading printed material in a normal manner.

(4) Persons certified by competent authority as meeting the requirements of eligibility resulting from a degenerative, variable disease that renders them unable to read or use conventional printed material because of impaired eyesight or other physical factors are eligible during the time in which the person is certified by a competent authority as unable to read or use conventional materials.

d. Eligible participants must be residents of the United States, including the several states, territories, insular possessions, and the District of Columbia, or American citizens domiciled abroad.

**1.4 Certifying Authority**

For purposes of this standard:

a. The postmaster may extend the free matter privilege to an individual recipient based on personal knowledge of the individual's eligibility.

b. In cases of blindness, visual impairment, or physical limitations, ''competent authority'' is defined to include doctors of medicine; doctors of osteopathy; ophthalmologists; optometrists; registered nurses; therapists; and professional staff of hospitals, institutions, and public or private welfare agencies (e.g., social workers, caseworkers, counselors, rehabilitation teachers, and superintendents). In the absence of any of these, certification may be made by professional librarians or by any person whose competence under specific circumstances is acceptable to the Library of Congress (See 36 CFR 701.10(b)(2)(i)).

c. In the case of reading disability from organic dysfunction, ''competent authority'' is defined as doctors of medicine and doctors of osteopathy.

**1.5 Certification of Eligible Recipients by Organizations**

An organization using the free matter privilege (for mailings of at least 200 pieces) to mail matter to persons who claim eligibility under 1.3 is required to certify on statements of mailing that each recipient is eligible to receive free matter. An organization is subject to Postal Service audits of addressees receiving free matter to substantiate recipients' eligibility consistent with the standards of eligibility articulated by the Library of Congress on its applications for free library service and as specified in these standards.

**1.6 Qualifying Individuals**

The Postal Service may require individuals claiming entitlement to the free matter privilege to furnish evidence of eligibility consistent with the standards in 1.3 and 1.4, or verify by other means that the recipients are eligible to receive free matter.

2.0 Matter Sent to Blind or Other Physically Handicapped Persons

**2.1 Acceptable Matter**

Subject to 2.2, this matter may be mailed free:

[Amend item a by adding ''in braille or 14-point or larger sightsaving type'' to read as follows:]

a. Reading matter in braille or 14-point or larger sightsaving type and musical scores.

* * * * *

**2.2 Conditions**

The matter listed in 2.1 must meet these conditions:

* * * * *

[Amend item d by adding ''as defined in E211'' to read as follows:]

d. The matter contains no advertising as defined in E211.

* * * * *

3.0 Matter Sent by Blind or Other Physically Handicapped Persons

[Amend 3.1 to read as follows:]

**3.1 Acceptable Letters**

Only letters in braille or in 14-point or larger sightsaving type or in the form of sound recordings, and containing no advertising, may be mailed free, and only if unsealed and sent by a blind or other physically handicapped person as described in 1.3.

* * * * *

[Add new section 5.0 to read as follows:]

5.0 Documentation

**5.1 Register to Mail**

Before submitting free matter mailings of 200 pieces or more, mailers must register with the post office(s) where the mailings will be presented.

**5.2 Reporting Mailings**

Each mailing of 200 pieces or more of free matter must be presented with a statement of mailing, Statement of Mailing, Free Matter for the Blind and Other Physically Handicapped Persons. [Note: This statement of mailing is currently being developed.] The statement of mailing must be completed in ink, by typewriter, or by computer printer (in duplicate if the mailer wants a receipted copy) and signed by the mailer. The mailer may submit a computer-generated facsimile of the USPS form.

* * * * *

An appropriate amendment to 39 CFR. part 111 will be published if this proposal is adopted.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 02–78 Filed 1–2–02; 8:45 am]

**BILLING CODE 7710–12–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 3, 51, 60, 63, 70, 123, 142, 145, 162, 233, 257, 258, 271, 281, 403, 501, 745 and 763

**[FRL–7125–3]**

**RIN 2025–AA07**

### Extension of Comment Period for and Public Meetings on the Proposed Establishment of Electronic Reporting; Electronic Records Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; extension of comment period; announcement of public meetings.

**SUMMARY:** The Environmental Protection Agency (EPA) is extending by an additional 30 days the comment period on its proposed rule for establishment of electronic reporting and electronic records. On August 31, 2001 (66 FR 46162), EPA proposed conditions under which EPA would allow submission of electronic documents and maintenance of electronic records to satisfy federal environmental reporting and recordkeeping requirements in EPA's regulations. The comment period is being extended by 30 days to provide the public with additional time to evaluate and comment upon the complex provisions of this proposed rule. As extended by this action, the comment period will now close on February 27, 2002.

This document also announces the dates and locations for two additional public meetings on the proposed rule's recordkeeping provisions, which will be held before the public comment period closes.

**DATES:** The meetings will be held on: (1) Thursday, January 17, 2002, 10:00 a.m. to 5:30 p.m. (EST); and (2) Thursday, January 31, 2002, 10:00 a.m. to 5:30 p.m. (CST).

In order to be considered, written comments on the proposed electronic reporting and electronic records rule must be submitted on or before February 27, 2002. Comments provided electronically will be considered timely if they are submitted electronically by 11:59 p.m. (Eastern time) February 27, 2002.

**ADDRESSES:** The meetings will be held at: (1) The Wyndham Washington, 1400 M Street, NW, Washington, DC; and (2) the Holiday Inn Select, 4440 West Airport Freeway, Irving, Texas.

Comments should be addressed to the United States Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, (Mail Code 2201A), Attn: Docket Number EC–2000–007, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Commenters are also requested to submit an original and 3 copies of their written comments as well as an original and 3 copies of any attachments, enclosures, or other documents referenced in the comments. Commenters who would like EPA to acknowledge receipt of their comments should include a self-addressed, stamped envelope. All comments must be postmarked or delivered by hand by February 27, 2002. No facsimiles (faxes) will be accepted. Public comments and supporting materials are available for viewing in the Enforcement and Compliance Docket and Information Center, located at 1200 Pennsylvania Avenue, NW, (Ariel Rios Building), 2nd Floor, Room 2213, Washington, DC 20460. The documents are available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (202) 564–2614 or (202) 564–2119. The public may copy a maximum of 266 pages from any regulatory document at no cost. Additional copies cost $0.15 per page. The rule and some supporting materials

are also available electronically on the Internet for public review, using a www browser type, at *http://www.epa.gov/.*

EPA will also accept comments electronically. Comments should be addressed to the following Internet address: docket.oeca@epa.gov. Electronic comments must be submitted as an ASCII, WordPerfect 5.1/6.1/8 format file and avoid the use of special characters or any form of encryption. Comments in electronic format should also be identified by the docket number EC–2000–007. Electronic comments will be transferred into a paper version for the official record. EPA will attempt to clarify electronic comments if there is an apparent error in transmission.

**FOR FURTHER INFORMATION CONTACT:** David Schwarz (2823), Office of Environmental Information, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, (202) 260–2710, schwarz.david@epa.gov, or Evi Huffer (2823), Office of Environmental Information, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, (202) 260–8791, huffer.evi@epa.gov.

**SUPPLEMENTARY INFORMATION:**

On August 31, 2001 (66 FR 46162), EPA proposed a rule that would set forth the conditions under which EPA would prospectively allow submission of electronic documents and maintenance of electronic records to satisfy federal environmental reporting and recordkeeping requirements in EPA's regulations. As noted in the proposal (66 FR 46163), the rule would affect a broad spectrum of EPA programs (not merely those where specific amendments to the Code of Federal Regulations would be made). While the rule is voluntary because it does not require electronic reporting or recordkeeping, for most programs regulated entities that currently maintain electronic records and who wish to continue to do so after the rule takes effect would be required to meet the recordkeeping criteria in subpart D. As currently defined in the proposal, the term electronic record is broad in scope. Given the breadth and complexity of the rule, several commenters have requested additional time to evaluate and comment upon the proposed rule. EPA greatly values the input provided by the regulated community as well as the input from States that administer EPA programs. Accordingly, the comment period was extended by 60 days, to January 28, 2002, in a notice published in the **Federal Register** on Wednesday, November 28, 2001 (66 FR 59392–59393), to provide additional time to evaluate and comment upon the proposed rule.

To help foster this comment and evaluation, EPA has scheduled two additional public meetings on the proposed rule's recordkeeping provisions, on January 17, 2002, and on January 31, 2002. The meetings will focus on electronic recordkeeping issues raised by the proposed rule, and will be structured to take comments on at least the following questions: What kinds of records do companies currently keep electronically to satisfy EPA regulatory requirements? How prevalent is this electronic recordkeeping, and what kinds of systems are used? How are automatically captured data and other raw data maintained electronically? How will the proposed rule affect companies' electronic recordkeeping practices, and do some of the proposed provisions raise more issues than others? How do companies currently ensure the integrity and reliability of their electronic records, especially where they do not use audit trails, and what role do recognized industry standards play? What special issues are raised by proposed criteria for long-term archiving, and how do companies currently address this problem? Where archiving involves the conversion of electronic records to paper, how do companies assure data integrity and reliability, and what role do recognized industry standards play? Are there new products or technologies that will help companies address the proposed standards for electronic recordkeeping?

Also, to allow participants and other interested stakeholders to develop comments based on discussions at these public meetings, EPA is extending the comment period an additional 30 days. During this extended comment period, EPA particularly seeks comment on whether or not the recordkeeping provisions in subpart D of the proposed rule should be withdrawn and addressed in a separate rulemaking. EPA also seeks comment on revisions to the recordkeeping criteria or other provisions of the proposed rule that would make it easier for those in the regulated community who already maintain electronic records to continue to do so after the rule takes effect.

Dated: December 21, 2001.

**Kim Nelson,**

*Assistant Administrator and Chief Information Officer, Office of Environmental Information.*

[FR Doc. 02–109 Filed 1–2–02; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 62

**[R4–200212(b), FRL–7124–8]**

## Approval and Promulgation of State Plans for Designated Facilities and Pollutants; States of Alabama, Georgia, Kentucky, and South Carolina

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve the small Municipal Waste Combustion (MWC) units section 111(d) negative declarations submitted by the states of Alabama, Georgia, Kentucky, and South Carolina. These negative declarations certify that small MWC units subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA) do not exist in these states. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

**DATES:** Written comments must be received on or before February 4, 2002.

**ADDRESSES:** Comments may be mailed to Scott Davis, EPA Region 4, Air Planning Branch, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 4 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Scott Davis at (404) 562–9127 or Sean Lakeman at (404) 562–9043.

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

Dated: December 21, 2001.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 02–105 Filed 1–2–02; 8:45 am]

**BILLING CODE 6560–50–P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

## Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To List the Miami Blue Butterfly as Endangered With Critical Habitat

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 90-day petition finding and initiation of status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding for a petition to list the Miami blue butterfly (*Hemiargus thomasi bethunebakeri*) under the Endangered Species Act of 1973, as amended. The range of this butterfly, which once extended north along the Florida coasts to about St. Petersburg and Daytona, has been shrinking for many years. We find that the petition presented substantial information indicating that listing this species may be warranted. We are initiating a status review to determine if listing the Miami blue butterfly is warranted.

**DATES:** The finding announced in this document was made on December 20, 2001. To be considered in the 12-month finding for this petition, information and comments should be submitted to us by March 4, 2002.

**ADDRESSES:** Data, information, comments, or questions concerning this petition should be submitted to the South Florida Ecological Services Office, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, Florida 32960. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** David Martin at the above address (561–562–3909, extension 230).

**SUPPLEMENTARY INFORMATION:**

### Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. This finding is to be based on all information available to us at the time the finding is made. To the maximum extent practicable, we are to make this finding within 90 days of the date we received the petition and promptly publish it in the **Federal Register**. If the finding is that substantial information was presented, we are also required to promptly commence a review of the status of the species involved if one has not already been initiated under our internal candidate assessment process. After completing the status review, we will issue an additional finding (the 12-month finding) determining whether listing is in fact warranted.

On June 15, 2000, we received a petition, dated June 13, 2000, from Dr. Jeffrey Glassberg, president of the North American Butterfly Association, Morristown, New Jersey, and Mr. Mark Salvato, an entomologist in St. Petersburg, Florida. The petition requested that we list the Miami blue butterfly as an endangered species on an emergency basis, and that critical habitat be designated concurrent with listing.

The petitioners cited habitat loss as a threat to the Miami blue butterfly. They suggested that fragmentation of habitat is a threat to this butterfly because if a local population becomes extinct, surviving populations of Miami blues are unlikely to be nearby, and butterflies will not be able to disperse into the unoccupied habitat. The petition also suggested that vegetation management on public land (notably lack of prescribed fires and suppression of natural ones) is adversely affecting Miami blue butterflies, as it does not maintain the appropriate native plant species required by the butterfly. Further, the petition cited unethical butterfly collection as a potential threat to the Miami blue. Finally, the petition asserted that mosquito control measures (i.e., spraying of adulticides) may threaten this species.

The Miami blue is the only subspecies of *Hemiargus thomasi* in the United States. The other subspecies are in the Bahamas, Hispaniola, and islands further east in the Antilles. Guides to Florida and Caribbean butterflies differ over whether the Miami blue also occurs in the Bahamas. Minno and Emmel (1993) considered it restricted to Florida, while Smith *et al.* (1994) noted that it had been recorded from the Bimini Islands in the Bahamas as does Calhoun (1997). Calhoun *et al.* (in press) surmise that it may not be a permanent resident in the Bahamas. In any case, the vast majority of this subspecies' distribution was in Florida, with any populations in the Bahamas being peripheral.

Little historic information exists on the abundance of the Miami blue, but its distribution has clearly shrunk. Kimball (1965) stated that ''it is not rare in the area from Gainesville and Tampa south, and is common in Dade and Monroe Counties. It has been taken in the Dry Tortugas.'' Opler and Krizek (1984) showed its range as being from Tampa Bay and Cape Canaveral southward. Minno and Emmel (1993) stated that ''although populations of the Miami blue have declined on the southern mainland, it is still locally common in the Keys'' (pp. 134–35). However, this statement was based on a 1980 reference. Calhoun et *al.* (in press) place the historic limits of the species' northern distribution at Hillsborough and Volusia Counties, extending southward along the coasts to the Marquesas Keys to the west of Key West, based on information from Forbes (1941) and Kimball (1965), as well as unpublished data assembled by Calhoun.

The Miami blue is closely related to the nickerbean blue (*Hemiargus ammon*), a Cuban species that has recently become established on Big Pine Key (Calhoun *et al.* in press). The potential for confusing these two species, as well as a third, the Florida blue (*Hemiargus ceraunus antibubastus*), makes it essential to base distribution records on specimens or photographs rather than sightings.

The petitioners' evidence, augmented by other available information, especially a paper by Calhoun et *al.* (in press), demonstrate that this subspecies has become hard to find. No observations of the Miami blue were supported by photographs or specimens from 1993 (Calhoun *et al.* in press) until November 1999, when Jane Ruffin provided a photographically verified report of about 50 individuals at a site in southern Florida. Her report was published in the spring 2000 issue of American Butterflies (Ruffin and Glassberg 2000). Calhoun *et al.* (in press) note an additional confirmed population near the one observed in 1999 as well as a credible sighting by R. Gillmore on Key Largo, which was posted on the North American Butterfly Association's website (*http://www.naba.org/sightings/sightingsMay2001Archive.htm*). The petitioners cited biologists and others who have searched for butterflies in southern Florida in recent years without sighting the Miami blue. This strongly indicates that the Miami blue is now very restricted in its distribution and nowhere abundant.

Larval food plants for the Miami blue butterfly include the seed pods of nickerbeans (*Caesalpinia* spp.), which are common tropical coastal shrubs and vines, as well as blackbeards

(*Pithecellobium* spp.) and perhaps other members of the pea family, such as *Acacia* (Calhoun *et al.* in press). Miami blue larvae also utilize balloon vine (*Cardiospermum halicababum*) seedpods (Opler and Krizek 1984, Minno and Emmel 1994). These vines, belonging to the soapberry family, are not native to Florida, but are relatively common, especially in urban areas. Additionally, Calhoun *et al.* (in press) suggest that larvae of the Miami blue, like those of the nickerbean blue, may feed on species of *Acacia* that are abundant on Big Pine Key.

The petition cites habitat loss and fragmentation as a threat. The Miami blue was a coastal species, known to feed on distinctly coastal trees and shrubs, which occur in tropical coastal hammocks (forests) and scrub. It also occurred in pine rocklands (slash pine with small palms and a grassy understory) on Big Pine Key (Calhoun *et al.* in press) and presumably in Miami-Dade County. Much of that habitat is gone, especially on the mainland, and what is left is fragmented. For example, the entire coastline in Palm Beach, Broward, and Miami-Dade Counties (as far south as Miami Beach) is densely urban, with only small remnants of coastal vegetation conserved in parks. In coastal areas where undeveloped land remains, the Miami blue's larval food plants are likely to be displaced by invasive exotic plants such as Brazilian pepper (*Schinus terebinthifolius*), which is now a dominant plant in coastal Florida. The seriousness of the loss and fragmentation of natural habitats is uncertain, partly because larvae of the Miami blue feed on balloon vines, which are exotic, weedy, and likely to be present in the urban landscape. It is possible that balloon vines could provide patches of suitable larval feeding habitat that would allow Miami blue butterflies to disperse between patches of suitable natural habitats.

The petition suggests that fragmentation of habitat is a threat to this butterfly because if a local population becomes extinct, surviving populations of Miami blues are unlikely to be nearby, and butterflies will not be able to disperse into the unoccupied habitat. Calhoun *et al.* (in press) provide indirect evidence that this may be the case on Big Pine Key, which appears to be unoccupied by the Miami blue, but is occupied by the nickerbean blue butterfly. The food plants of the two species seem similar enough to indicate that the Miami blue became extirpated from Big Pine Key in the 1990s for reasons other than loss of suitable habitat, and has not recolonized the island.

The petition suggests that vegetation management on public land, notably lack of prescribed fires and suppression of natural ones, is adversely affecting butterflies. Calhoun *et al.* (in press) report that, until it disappeared from Big Pine Key in the early 1990s, the Miami blue most commonly occurred in pine rocklands that are now used by the nickerbean blue. This is a fire-dependent habitat and it is conceivable that the success of the Miami blue in pinelands depended on regular burning, although as Calhoun *et al.* (in press) note, host plants (*Caesalpinia* and *Acacia*) appear to be abundant. It did not seem to them that habitat loss or modification was likely to have caused the loss of the Miami blue from Big Pine Key.

The petition cited unethical butterfly collection as a potential threat to this species. While we have listed several butterflies to, in part, protect them from collectors, it is not yet possible to demonstrate that collecting is threatening this species. However, unless this butterfly proves to be more widespread than is currently known, collection may be a threat due to the species rarity and apparently spotty distribution.

Butterflies are potentially subject to intense collection pressures, and recent listings of butterflies as endangered or threatened species have been based on this threat (notably the Saint Francis' satyr (*Neonympha mitchellii francisci*), emergency-listed, 59 FR 18324, April 15, 1994; callippe and Behren's silverspot butterflies (*Speyeria callippe callippe* and *Speyeria zerene behrensii*), 62 FR 64306, December 5, 1997; and Blackburn's sphinx moth (*Manduca blackburni*), 65 FR 4770, February 1, 2000). The Saint Francis' satyr was demonstrated to have been hard hit by collectors in just a 3-year period. On the other hand, our 90-day petition finding for the Santa Monica Mountains hairstreak (*Satyrium auretorum fumosum*) (64 FR 62641, November 17, 1999) found that collection and other threats were not serious enough to warrant listing. Along with collectors interested in making money, butterflies also attract obsessive collectors (Alexander 1996, Williams 1996).

The Miami blue butterfly's apparent rarity makes it vulnerable to random events such as hurricanes or possibly freezes that can temporarily destroy the foliage of larval food plants.

The petition asserted that mosquito control measures (i.e., spraying of adulticides) may threaten this species. Salvato (1999) studied factors influencing the declining populations of three butterfly species in the lower Keys. Although the species he studied have life histories that are different from that of the Miami blue, his masters thesis demonstrates that mosquito adulticide spraying can harm butterflies at the National Key Deer Refuge on Big Pine Key. He suggested specific expansions of the existing no-spray zones to protect the breeding grounds of these butterflies. His study is one of several conducted by a group of researchers on the problems of mosquito control pesticides in the ecosystem (Emmel 1991), which focused on conservation of the endangered Schaus swallowtail butterfly (*Papilio aristodemus*) on Key Largo. They found a ''probably causal'' correlation between the history of mosquito control on Key Largo and the decline of the Schaus swallowtail butterfly there.

The petitioners stated that, due to aspects of the Miami blue's natural history, especially its association with ants, ''roadside adulticide applications may be having much larger negative impacts on *H. t. bethunebakeri* populations than on those of other lycaenid species in the Keys. Miami blue larvae mature in the stem and seed pods of their host. These larvae leave the entrance holes open so that ants can enter the seed pods and stems and interact with the larvae. Dr. Jenella Loge (University of Utah) has discovered that these ants and the Miami blue larvae die when spraying begins in late spring on the Keys. Larvae of other lycaenid species on the Keys, ones without mutualistic relationships with ants, plug the holes of their seed pods and stems to keep would-be predators outside, and this may also restrict the entrance of adulticide spray.'' About half of the world's lycaenid butterfly species associate with ants. Cushman and Murphy (1993) suggest that ant-dependent lycaenid butterflies are inherently more vulnerable to extinction than those that are not ant-dependent because of the consequences of needing both the right food plants and the right ants, simultaneously. Based on information from Calhoun *et al.* (in press) and Salvato (1999), mosquito spraying appears likely to have contributed to the decline of the Miami blue and might be inhibiting recolonization of suitable habitats.

We have reviewed the petition, the literature cited in the petition, and other literature and information available in our files. On the basis of the best scientific and commercial information, we find the petition presents substantial information that listing this species may be warranted. Habitats that were probably formerly occupied by the Miami blue butterfly have been

destroyed or fragmented. The available information suggests that the Miami blue is rare and may exist only in small numbers at a few sites. This probable rarity suggests that the species might not be able to recolonize former portions of its range that may have suitable, but unoccupied, habitat. Also, the available information demonstrates that mosquito spraying in the Florida Keys and probably other parts of the Miami blue's former range has the potential to harm this species.

The petitioners stated that the Miami blue butterfly's last known population may be destroyed by mosquito control adulticide treatments, by human-caused changes to its habitat on the public land it inhabits, or by unethical butterfly collectors, and they requested emergency listing of the species. We may issue an emergency rule when an immediate threat poses a significant risk to the well-being of a species. Although the Miami blue butterfly appears to be in danger of extirpation, we do not believe that the threats are so great that extirpation is imminent. Upon receiving the petition, we reviewed the available information to determine if the existing and foreseeable threats posed an emergency. Consequently, we determined that an emergency listing was not warranted at this time. However, if at any time we determine that emergency listing of the Miami blue butterfly is warranted, we would seek to initiate an emergency listing. The petitioners also requested that critical habitat be designated for this species. We always consider the need for critical habitat designation when listing species. If the 12-month finding determines that listing the Miami blue butterfly is warranted, then the designation of critical habitat will be addressed in the subsequent proposed rule.

### Public Information Solicited

When we make a finding that substantial information exists to indicate that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information on the Miami blue butterfly. We request any additional information, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the status of the Miami blue butterfly. We are seeking information regarding historic and current distribution, habitat use and habitat conditions, biology and ecology, ongoing conservation measures for the species and its habitat, and threats to the species and its habitat.

If you wish to comment, you may submit your comments and materials concerning this finding to the Supervisor, South Florida Ecological Services Office, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, Florida 32960. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

### References Cited

You may request a list of all references cited in this document, as well as others, from the South Florida Ecological Services Office (see **ADDRESSES** section).

### Author

The primary author of this document is David Martin, South Florida Ecological Services Office (see **ADDRESSES** section).

### Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: December 20, 2001.

**Marshall P. Jones Jr.,**

*Director, Fish and Wildlife Service.*

[FR Doc. 02–36 Filed 1–2–02; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 697

**[Docket No. 010918229-1229-01; I.D. 022301A]**

**RIN 0648-AP15**

## American Lobster Fishery

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to modify the management measures applicable to the American lobster fishery. This action responds to the following recommendations made by the Atlantic States Marine Fisheries Commission (ASMFC): To control fishing effort as determined by historical participation in the American lobster trap fisheries conducted in the offshore Lobster Conservation Management Area (LCMA) 3 (Area 3) and in the nearshore LCMAs of the Exclusive Economic Zone (EEZ) from New York through North Carolina (Areas 4 and 5); to implement a mechanism for conservation equivalency and associated trap limits for owners of vessels in possession of a Federal lobster permit (permit holders) fishing in New Hampshire state waters; and to clarify lobster management area boundaries in Massachusetts waters. NMFS includes in this proposed rule a technical amendment to the regulations clarifying that Federal lobster permit holders must attach federally approved lobster trap tags to all lobster traps fished in any portion of any management area (whether in state or Federal waters). This requirement is not new, but was not previously clearly specified in the regulatory text, and this announcement is intended to make the regulations easier to understand.

**DATES:** Comments must be received no later than 5 p.m., eastern standard time, on February 19, 2002.

**ADDRESSES:** Comments on the proposed rule should be sent to Harry Mears, Director, State, Federal and Constituent Programs Office, NMFS, One Blackburn Drive, Gloucester, MA 01930. Comments will not be accepted if submitted via e-mail or the Internet. Comments regarding the collection-of-information requirements contained in the proposed rule should be sent to Harry Mears at the above address, and the Office of Information and Regulatory

Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer). Copies of a Draft Supplemental Environmental Impact Statement/Regulatory Impact Review/ Initial Regulatory Flexibility Analysis (DSEIS/RIR/IRFA) can be obtained from Harry Mears at the above address.

**FOR FURTHER INFORMATION CONTACT:** Robert Ross, NMFS, Northeast Region, 978–281–9234.

**SUPPLEMENTARY INFORMATION:**

**Proposed Action**

NMFS is proposing regulations to modify Federal lobster conservation management measures in the EEZ under the authority of section 803(b) of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), 16 U.S.C. 5101 *et seq.*, which states that, in the absence of an approved and implemented Fishery Management Plan under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and after consultation with the appropriate Fishery Management Council(s), the Secretary of Commerce may implement regulations to govern fishing in the EEZ, i.e., from 3 to 200 nm offshore. These regulations must be (1) compatible with the effective implementation of an Interstate Fishery Management Plan (ISFMP) developed by the ASMFC and (2) consistent with the national standards set forth in section 301 of the Magnuson-Stevens Act.

The lobster management program uses a fishing effort limitation strategy, among other measures, to control lobster fishing mortality. Fishing effort is currently limited by restricting the access of new vessels to the fishery and by limiting the number and size of traps that may be fished by each vessel. This proposed rule, issued as part of a Federal/state cooperative management effort, would implement a historical participation management regime to control lobster fishing effort and to preserve the socio-economic character of the associated lobster fisheries in Areas 3, 4, and 5. It would also establish a process for the evaluation of recommendations from ASMFC for Federal lobster regulations implementing ASMFC-approved conservation-equivalency measures in state coastal waters. In this regard, the proposed action would respond to an ASMFC recommendation to modify trap limit restrictions for Federal lobster permit holders fishing in EEZ Nearshore Management Area 1 who also possess a New Hampshire state lobster license. Finally, the proposed action would modify boundaries of lobster management areas in Massachusetts state waters for clarity and consistency with past fishing practices.

**Effort Control in Lobster Conservation Management Areas 3, 4, and 5**

In 1994, NMFS implemented a 5-year moratorium on new entrants into the EEZ lobster fishery via a limited access permit system. In December 1999, that moratorium was extended indefinitely under Federal regulations found at 50 CFR part 697 (64 FR 68228). Based upon its approval of selected management measures proposed by the Areas 3, 4, and 5 Lobster Conservation Management Teams, the ASMFC recommended that access to, and levels of effort in, the lobster trap fishery in EEZ Offshore Area 3 and Nearshore EEZ waters of Areas 4 and 5 be based on historical participation. The ASMFC recommendations for qualification based on historical participation addressed qualification criteria, allocation of fishing effort, and limitations on vessel upgrades. Qualification criteria are different among the areas and include demonstration of active involvement in the fishery through provision of certain documents. The ASMFC plan for Area 3 proposes that potential participants must meet or exceed both a landing and a fishery intensity threshold in order to qualify, whereas the plans for Areas 4 and 5 would only require fishermen to have held a lobster trap permit during the qualification period (see details provided in subsequent text).

The DSEIS/RIR/IRFA for this action, announced by a notice of availability published on November 24, 2000 (65 FR 70567), used data available to NMFS for the 2000-2001 fishing year from May 2000 through August 2000, on the number of owners of vessels that elected to harvest American lobsters in specific LCMAs. Some owners of vessels in possession of a Federal lobster permit may have elected LCMAs after August 2000, or may have elected LCMAs with no intention to fish with lobster traps in one or more of the elected LCMAs. Therefore, the number of vessels electing to fish in LCMAs 3, 4, or 5 may be higher than the number identified in the DSEIS/RIR/IRFA for this action, and the number of vessels that do not qualify for future participation in the LCMA 3, 4, and/or 5 fisheries may be higher than the number identified in this proposed rule and in the DSEIS/ RIR/IRFA.

**Area 3 Fishing Effort Control Program**

*Area Coordinates*

EEZ Offshore Management Area 3 is defined at 50 CFR 697.18(d). A copy of a map showing the American lobster EEZ management areas is available upon request from the Director of the State, Federal and Constituent Programs Office, see **ADDRESSES**.

*Qualification Period and Establishment of a Federal Control Date*

NMFS proposes to limit the number of traps fished in Area 3 based on proof of historical participation in the Area 3 fishery and the number of traps fished by a vessel during a qualifying period from March 25, 1991 (date recommended by the ASMFC) through September 1, 1999. NMFS is not proposing to use the ASMFC's recommended ending date of November 1, 1997, for this qualification period because of NMFS' policy to provide advance notice to the public of qualification dates. On September 1, 1999, NMFS published an advance notice of proposed rulemaking (ANPR) in the **Federal Register** (64 FR 47756), to give notice that NMFS was considering September 1, 1999, the publication date of the ANPR, as a possible control date, or cut-off date, to be used to determine eligibility for future access to the Federal lobster trap fishery. This proposed qualification period is similar to the recommendations pertaining to historical participation in the EEZ for Areas 3, 4, and 5 approved by the ASMFC under the ISFMP on August 1, 1999.

NMFS is proposing to use the ASMFC's recommended criterion that would require fishermen to demonstrate that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 3 during 2 consecutive calendar months within the qualification period. The use of a 2-consecutive calendar month period would maintain consistency with the ASMFC's ISFMP, and avoid the potential for conflicting state and Federal regulations when implementing this qualification criterion. In addition, the NMFS dealer landing and vessel trip report data, which would likely be used for qualification purposes, is based on calendar month time periods. Due to the calendar month configuration of the NMFS databases, the use of an alternative time frame, such as 60-consecutive days, would be more prone to error.

NMFS is proposing to incorporate the ASMFC's recommendation to qualify vessels based on a calendar year time

period, rather than some other time period, such as a Federal lobster fishing year (May 1 through April 30). The use of calendar years would be consistent with recommendations provided by the ASMFC. In addition, documents provided by fishermen to demonstrate historic participation, such as tax returns, are commonly based on a calendar year rather than a fishing year. Also, there is often less lobster fishing effort in the winter months due to weather conditions and the availability of the resource. Therefore, it is less likely that a 2-consecutive month period used to qualify a vessel would overlap the December to January time period.

**Qualification Criteria**

In order to qualify to fish for lobster with traps in Area 3, Federal lobster permit holders would need to meet all of the following criteria:

1. Possession of a current Federal limited access lobster permit.

2. Provision of documentation to demonstrate that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 3 during a 2-consecutive calendar month period in any calendar year during the qualification period, from March 25, 1991, through September 1, 1999. If 1991 is chosen by the permit holder as the qualifying year, documentation should reflect relevant activity occurring only during the part of the 1991 calendar year that falls within the qualification period (March 25, 1991, through December 31, 1991). If the permit holder chooses 1999 as the qualifying year, the documentation submitted in response to the qualification criteria must reflect relevant fishing activity during the period of the 1999 calendar year that falls within the qualifying period (January 1, 1999, through September 1, 1999). If any other calendar year within the qualification period is chosen, documentation submitted with respect to the qualification criteria may reflect relevant activity during any portion of that calendar year. Documentation may include copies of vessel logbooks; permit applications; Federal Fishing Vessel Trip Reports (NOAA Form 88-30); official state reporting documentation showing the number of traps fished, including, but not limited to, state report cards, license application forms, and catch reports; an approved Federal Fishing Vessel and Gear Damage Compensation Fund Report (NOAA Form 88-176); and/or other forms of credible documentation.

3. Provision of sales receipts or other documents pertaining to the sale of lobsters and indicating the landing of at least 25,000 lb (11,340 kg) of lobster from any location during the year used as the qualifying year from March 25, 1991, through September 1, 1999.

**Trap Allocations**

Federal permit holders intending to fish for lobster with traps in Area 3 would also have to provide a signed affidavit to NMFS certifying the maximum number of individual traps the permit holder set, allowed to soak, hauled back, and re-set in Area 3 at any one time during the qualifying year. This affidavit must be accompanied by the same or similar type of documentation used to demonstrate compliance with qualification criterion number 2. Documentation submitted to support the affidavit may reflect activity during any point within the qualifying year and does not necessarily need to represent activity conducted during the 2-consecutive month period used to substantiate qualification criterion number 2.

The use of Federal Fishing Vessel Trip Reports to document historical fishing effort (fishing location and number of traps fished) in the lobster fishery would be possible for some, but not all, Federal lobster permit holders (e.g., those holding other Federal species permits that, unlike lobster permits, require mandatory reporting). A recent review by NMFS indicates that of 3,153 Federal lobster permit holders in 1997, 1,984 (approximately 62 percent) held Federal permits for other fisheries requiring mandatory reporting. The utility of these reports for documenting lobster fishing effort would be further restricted to those permit holders who accurately noted, on the reports, the number of individual lobster traps fished on an area-by-area basis. Similarly, an informal review of the utility of official state reports for determination of lobster trapping effort concludes that such documents may be relevant only to Connecticut and Massachusetts residents (approximately 34 percent of Federal lobster permit holders).

Use of Federal Fishing Vessel and Gear Damage Compensation Reports will be limited to an unknown number of Federal lobster permit holders who have submitted compensation claims for gear loss under the provisions of the Fishermen's Protective Act (22 U.S.C. 1980 *et seq.*). Vessel logbooks, receipts from the sale of lobsters or the purchase of lobster traps, observer trip reports, and income tax forms provide other examples of documentation that could be used to help substantiate previous levels of lobster fishing effort (i.e., number of traps). Due to the varying degrees to which each of these forms of documentation may be either available or relevant for purposes of certifying historical trapping effort on a case-by-case basis, NMFS proposes that the discretion should be left to the individual permit holder to decide which documents to use. Accordingly, NMFS does not agree with the ASMFC's recommendations that a priority ranking should be assigned to the use of any one form of documentation over another.

Some fishermen would likely need a combination of documents to certify the number of traps fished historically. Although NMFS recognizes the importance of this information as a basis to certify historical participation in the Area 3 fishery, it is sensitive to the fact that no mandatory reporting requirements in the lobster fishery exist. NMFS believes, at this point, that the use of an affidavit, with the provision of supporting documentation to NMFS, would accommodate the necessary procedures to implement lobster trap fishing effort controls on the basis of historical participation.

The ASMFC has also recommended that NMFS contract with an independent outside entity to determine and recommend trap allocations and publish a notice that specifies initial trap allocations for each lobster permit holder. NMFS disagrees and believes that an in-house review would be the most efficient and equitable means of approving trap allocations. In addition, the release of personal documents and records to an outside review body raises privacy issues. NMFS also believes that the issuance of a public notice that would specify individual trap allocations for each Federal permit holder, as recommended by the ASMFC, also raises privacy issues and serves no constructive purpose.

**Trap Reduction Plan**

Once qualified, a lobster permit holder would be allocated a certain number of lobster traps, based on the affidavit and supporting documentation provided, but no Federal lobster permit holder would be given an initial lobster trap allocation of more than 2,656 lobster traps. (This maximum trap allocation was recommended by ASMFC as a result of Addendum II to Amendment 3 of the ISFMP.) Each trap allocation of more than 1,200 traps would be reduced annually on a sliding scale basis over 4 years. Trap reductions would not go below a baseline of 1,200 traps. Each initial allocation in Area 3 of fewer than 1,200 traps would remain at that allocation. The reduction schedule recommended by the ASMFC is shown in Table 1.

TABLE 1. AREA 3 TRAP REDUCTION SCHEDULE

| Number of Traps Approved by the Regional Administrator | Trap Allocation by Fishing Year* | | | |
|---|---|---|---|---|
| | 2002 | 2003 | 2004 | 2005 and beyond until changed |
| 1200-1299 | 1200 | 1200 | 1200 | 1200 |
| 1300-1399 | 1200 | 1200 | 1200 | 1200 |
| 1400-1499 | 1290 | 1251 | 1213 | 1200 |
| 1500-1599 | 1388 | 1337 | 1297 | 1276 |
| 1600-1699 | 1467 | 1423 | 1380 | 1352 |
| 1700-1799 | 1548 | 1498 | 1452 | 1417 |
| 1800-1899 | 1628 | 1573 | 1523 | 1482 |
| 1900-1999 | 1705 | 1644 | 1589 | 1549 |
| 2000-2099 | 1782 | 1715 | 1654 | 1616 |
| 2100-2199 | 1856 | 1782 | 1715 | 1674 |
| 2200-2299 | 1930 | 1849 | 1776 | 1732 |
| 2300–2399 | 2003 | 1905 | 1836 | 1789 |
| 2400-2499 | 2076 | 1981 | 1896 | 1845 |
| 2500-2599 | 2197 | 2034 | 1952 | 1897 |
| 2600-2699 | 2218 | 2107 | 2008 | 1949 |
| 2700-2799 | 2288 | 2169 | 2063 | 2000 |
| 2800-2899 | 2357 | 2230 | 2117 | 2050 |
| 2900-2999 | 2425 | 2291 | 2171 | 2100 |
| 3000-3099 | 2493 | 2351 | 2225 | 2150 |
| 3100-3199 | 2575 | 2422 | 2288 | 2209 |
| ≥3200 | 2656 | 2493 | 2351 | 2267 |

* Trap allocations below 1,200 will not be subject to further reductions.

This proposed rule would require that any Federal lobster permit holder applying for an Area 3 trap allocation who also applies for a trap allocation in Area 4, Area 5, or in all three of those areas use the same qualifying year for all areas and avoid a combined trap allocation greater than the number of traps that the permit holder fished with any one vessel in any one year. In addition, the current requirement that Federal permit holders who elect to fish in multiple areas must abide by the most restrictive regulations, including trap allocations, in any one elected area at any one time, would remain in effect.

**Vessel Upgrades**

NMFS is not proposing to adopt the ASMFC's recommendation to limit vessel upgrades for Federal permit holders receiving an Area 3 trap allocation. This limitation, if implemented, would preclude federally permitted vessels in the Area 3 lobster fishery that measure over 50 ft (15.24 m) in length, or upgrading to over 50 ft (15.24 m) in length, from upgrades or replacement that would result in more than a 10-percent increase in length overall, or a 20-percent increase in shaft horsepower, for 2 years.

NMFS does not concur with this recommendation. A prohibition on an increase in vessel length or an increase in horsepower for a 2-year period would require existing permit holders to substantiate existing baseline vessel characteristics. Lobster trap vessels are generally small, with an average length of 39 ft (11.9 m). Many such vessels are not U.S. Coast Guard documented, and, therefore, information on length and horsepower may not be available to NMFS. The implementation of lobster vessel upgrade criteria may accordingly require a marine survey to establish legal vessel specifications, adding a financial burden on vessel owners. The potential cost to hire a marine surveyor or naval architect to verify existing baseline vessel characteristics can range from $150 to $600, with associated costs increasing with vessel size, and would result in added delays for vessel replacement and transfers, if implemented. NMFS' review of requests for transfers would take more time, because NMFS would need to verify whether the specific vessel with a limited access American lobster permit would qualify to fish in Area 3 and, therefore, would be restricted by the upgrade provision.

NMFS is concerned that implementation of the ASMFC's recommended, temporary upgrade restrictions would be unnecessarily burdensome for fishermen and NMFS and would afford no obvious conservation benefits to the lobster resource, unlike the permanent restrictions on vessel and horsepower upgrades in the scallop and groundfish fisheries. In addition, an unknown number of vessels that would qualify for historical participation in Area 3 as specified in this proposed rule may currently hold a Federal fisheries permit in another fishery that permanently restricts vessel and horsepower upgrades. The implementation of trap limits, either fixed or based on a historical level of participation, has the potential to effectively limit fishing effort in the offshore lobster fishery without an additional requirement for vessel upgrade restrictions.

**Areas 4 and 5 Fishing Effort Control Program**

*Area Coordinates*

EEZ Nearshore Management Area 4 and EEZ Nearshore Management Area 5 are defined in 50 CFR 697.18(e) and (f), respectively. A copy of a map showing the American lobster EEZ management areas is available upon request to the Director, State, Federal and Constituent Programs Office, see **ADDRESSES**.

*Qualification Period and Establishment of a Federal Control Date*

The eligibility of Federal lobster permit holders to fish with traps in the Areas 4 and/or 5 fishery would be based on proof of historical participation and numbers of traps fished by a vessel during a qualifying period from March 25, 1991, through September 1, 1999. NMFS is not proposing to adopt the ASMFC-recommended ending date (control date) of September 15, 1998, for this qualification period because NMFS previously notified the public that it may use September 1, 1999, as the control date. See Area 3 discussion for

associated rationale. NMFS is proposing to use the ASMFC's recommended 2-consecutive calendar month period criterion within the qualification period to demonstrate that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Areas 4 or 5. See Area 3 discussion for associated rationale. NMFS is proposing to incorporate the ASMFC's recommendation to qualify vessels based on a calendar year time period, rather than some other time period such as a Federal lobster fishing year (May 1 through April 30). See Area 3 discussion for associated rationale.

**Qualification Criteria for EEZ Nearshore Management Area 4**

This proposed rule would require Federal lobster permit holders to meet the following criteria in order to fish for lobster with traps in Federal waters of Area 4:

1. Possession of a current Federal limited access lobster permit.

2. Provision of documentation to demonstrate that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 4 during a 2-consecutive calendar month period in any calendar year during the qualification period from March 25, 1991, through September 1, 1999. If 1991 is chosen by the permit holder as the qualifying year, documentation should reflect relevant activity occurring only during the part of the 1991 calendar year that falls within the qualification period (March 25, 1991, through December 31, 1991). If the permit holder chooses 1999 as the qualifying year, the documentation submitted in response to the qualification criteria must reflect relevant fishing activity during the period of the 1999 calendar year that falls within the qualifying period (January 1, 1999, through September 1, 1999). If any other calendar year within the qualification period is chosen, documentation submitted with respect to the qualification criteria may reflect relevant activity during any portion of that calendar year.

Documentation may include copies of vessel logbooks; permit applications; Federal Fishing Vessel Trip Reports (NOAA Form 88-30); official state reporting documentation showing the number of traps fished, including, but not limited to, state report cards, license application forms, and catch reports; an approved Federal Fishing Vessel and Gear Damage Compensation Fund Report (NOAA Form 88-176); and/or other forms of credible documentation.

**Qualification Criteria for EEZ Nearshore Management Area 5**

This proposed rule would require Federal lobster permit holders to meet the following criteria in order to fish for lobster with traps in Federal waters of Area 5:

1. Possession of a current Federal limited access lobster permit.

2. Provision of documentation to demonstrate that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 5 during a 2-consecutive calendar month period in any calendar year during the qualification period from March 25, 1991, through September 1, 1999. If 1991 is chosen by the permit holder as the qualifying year, documentation should reflect relevant activity occurring only during the part of the 1991 calendar year that falls within the qualification period (March 25, 1991, through December 31, 1991). If the permit holder chooses 1999 as the qualifying year, the documentation submitted in response to the qualification criteria must reflect relevant fishing activity during the period of the 1999 calendar year that falls within the qualifying period (January 1, 1999, through September 1, 1999). If any other calendar year within the qualification period is chosen as the qualifying year, documentation submitted with respect to the qualification criteria may reflect relevant activity during any portion of that calendar year. Documentation may include copies of vessel logbooks; permit applications; Federal Fishing Vessel Trip Reports (NOAA Form 88-30); official state reporting documentation showing the number of traps fished, including, but not limited to, state report cards, license application forms, and catch reports; an approved Federal Fishing Vessel and Gear Damage Compensation Fund Report (NOAA Form 88-176); and/or other forms of credible documentation indicating that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 5 during a 2-consecutive calendar month period in any calendar year during the qualification period.

**Rationale for Provision of Documentation in Support of a History of Lobster Trap Fishing in Areas 4 or 5**

Although not recommended by the ASMFC, NMFS believes that requiring documentation to substantiate that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in either or both Areas 4 or 5, during a 2-consecutive calendar month period in any calendar year during the qualification period is necessary to effectively establish historical participation, consistent with the qualification criteria of the Area 3 plan. NMFS has no conclusive data for determining historical numbers of traps fished in Areas 4 and 5. However, on the basis of the best information available to NMFS and associated comments received with respect to the DSEIS, NMFS believes that the setting, soaking, hauling back, and re-setting of at least 200 lobster traps in Areas 4 or 5 during a 2-consecutive calendar month period in any calendar year during the qualification period represents a reasonable indicator of a fisherman's socio-economic reliance on the lobster fishery.

**Trap Allocations for Areas 4 and 5**

Similar to the proposed action for Area 3, this proposed rule would require Federal permit holders qualifying to fish for lobster with traps in Areas 4 and/or 5 to provide a signed affidavit certifying the maximum number of individual traps the permit holder set, allowed to soak, hauled back, and re-set in Areas 4 and/or 5 at any one time during the qualifying year. The affidavit would be submitted to the Regional Administrator for use in determining the permitted vessel's lobster trap allocation for Areas 4 and/or 5. This proposed rule would require that such certification be based upon the same or similar type of documentation used to fulfill the qualification criterion number 2, and that the affidavit be accompanied by credible, written documents that corroborate the number of individual lobster traps claimed in the affidavit. Documentation submitted to support the affidavit may reflect activity during any point within the qualifying year and does not necessarily need to represent activity conducted during the 2-consecutive month period used to substantiate trap fishing activity in qualification criterion number 2.

ASMFC recommendations for the Areas 4 and 5 fisheries, unlike those for the Area 3 fishery, do not contain either trap limits or trap reduction schedules. Although not recommended by the ASMFC, NMFS is proposing a trap limit not to exceed 1,440 lobster traps per vessel, on the basis of public comment received on the DSEIS, and the conservation benefit to the resource. NMFS believes the removal of existing trap limits in Areas 4 and 5 (800 lobster traps per vessel under current Federal Regulations), without implementation of an alternative trap limit, would likely result in excessive lobster fishing mortality. Implementation of a

maximum trap limit in Areas 4 and 5 of 1,440 lobster traps per vessel, in combination with the proposed qualification criteria for participation in the Areas 4 and 5 trap fishery, may preclude excessive trap fishing effort and corresponding levels of lobster fishing mortality.

The implementation of a trap limit is also consistent with the proposed measure for controlling lobster trap fishing effort on the basis of historical participation proposed for Area 3. A trap limit not to exceed 1,440 lobster traps was initially analyzed as a non-preferred alternative in the DSEIS. In accordance with ASMFC recommendations, NMFS is not proposing a trap reduction requirement once the initial trap allocations have been determined for qualified participants in the Areas 4 and 5 trap fisheries.

This proposed rule would require any Federal lobster permit holder applying for access to more than one of the 3 areas (Areas 3, 4, or 5) to use the same qualifying year for all areas in order to avoid a combined allocation greater than the number of traps that the permit holder ever fished with any one vessel at any one time during any one year. In addition, the current requirement that Federal permit holders who elect to fish in multiple areas must abide at all times by the most restrictive regulations, including trap allocations, in any one elected area regardless of the area being fished, would remain in effect.

**Appeals Process**

Any applicant denied a limited access American lobster permit for Areas 3, 4, and/or 5 could appeal to the Regional Administrator within 30 days of the date indicated on the notice of denial. Any such appeal would need to be in writing. The only ground for appeal would be that the Regional Administrator erred in concluding that the vessel did not meet the criteria specified in this proposed rule. The appeal would need to set forth the basis for the applicant's belief that the Regional Administrator's decision was made in error.

The Regional Administrator would appoint a designee to make the initial decision on the appeal. Within 30 days of the date on the notice of the initial decision on the appeal, the appellant could request in writing a review by the Regional Administrator of the initial decision. The appellant could present his/her objections to the initial decision on the appeal at a hearing before an officer appointed by the Regional Administrator. The hearing officer would make findings of fact and a recommendation to the Regional Administrator. Upon receiving the findings and the recommendation, the Regional Administrator would make a decision on the appeal, which would be the final decision of the Department of Commerce. If the appellant did not request a review within 30 days of the date on the notice of the initial decision on the appeal, the initial decision would be the final administrative action of the Department of Commerce.

A vessel denied a limited access American lobster permit for Areas 3, 4, and/or 5 could fish in Areas 3, 4, and/or 5, provided that the denial had been appealed, the appeal was pending, and the vessel had on board a letter from the Regional Administrator authorizing the vessel to fish in Areas 3, 4, and/or 5. The Regional Administrator would issue such a letter for the pendency of any appeal. This letter of authorization would be the final administrative action of the Department of Commerce pending a final decision on the appeal. While the appeal was pending, the vessel could fish up to 800 lobster traps, unless the vessel's Federal lobster permit had designated only Area 3 for lobster trap fishing, whereby, the vessel could fish up to 1,800 lobster traps in Area 3 only. If the appeal was finally denied, the Regional Administrator would send a notice of final denial to the vessel owner; the authorizing letter would become invalid 5 days after receipt of the notice of denial or 15 days after the date it was sent, whichever occurred first.

**Clarification of Procedures for Consideration of Conservation Equivalency Measures as They Apply to Federal Lobster Permit Holders**

The ISFMPs developed by ASMFC allow states to adopt management measures that differ from the specific management measures in the ISFMPs as long as the states' alternative measures achieve the same quantified level of conservation for the resource under management. Such alternative management measures are referred to as ''conservation equivalent measures.'' For example, any state may request a change to regulations in waters under its jurisdiction pertaining to the default trap limits specified in the ISFMP. Such requests are reviewed by ASMFC's Lobster Technical Committee, which provides its evaluation of the biological merit of such proposals to ASMFC's Lobster Board for subsequent policy review and approval. Upon approval of such measures, the ASMFC, under the provisions of the ACFCMA, may decide to recommend modifications to Federal lobster regulations, as may be deemed necessary, to complement a state's conservation equivalent measures. This proposed rule would clarify a procedure by which NMFS would consider such recommended modifications to Federal lobster regulations as they may pertain to the activities of Federal lobster permit holders from the affected state(s).

Specifically, under 50 CFR 697.25, NMFS would consider any future recommendations for modifications to Federal regulations based on conservation equivalency that are formally submitted to the agency in writing by the ASMFC and that contain the following supporting information: (1) a description of how Federal regulations would be modified; (2) an explanation of how the recommended measure(s) would achieve a level of conservation benefits for the resource equivalent to the applicable Federal regulations; (3) an explanation of how Federal implementation of the conservation equivalent measure(s) would achieve ISFMP objectives, be consistent with the Magnuson-Stevens Act national standards, and be compatible with the effective implementation of the ISFMP; and (4) a detailed analysis of the biological, economic, and social impacts of the recommended conservation equivalent measure(s). After considering a recommendation for conservation equivalent measures and the necessary supporting information, NMFS may issue a proposed rule to implement the conservation equivalent measures. After considering public comment, NMFS may issue a final rule to implement such measures.

In the DSEIS prepared for this action, NMFS expressed concern that recommendations from the ASMFC for Federal implementation of conservation equivalent measures may unduly burden the agency, given that there are 15 member states in the ASMFC and that each state may seek Federal implementation of the conservation equivalent of several different types of measures under the ISFMP. NMFS believes that receiving the supporting information and analyses along with a recommendation for Federal implementation of conservation equivalent measures is necessary to enable NMFS to respond to recommendations for Federal rulemaking in a more timely and efficient manner. This cooperative approach to the implementation of conservation equivalent measures would benefit the states, fishermen, and enforcement of fishery regulations by minimizing the time lag between state and Federal implementation of approved conservation equivalent

measures and by reducing the time period during which state-only permit holders and Federal permit holders from the same state may be subject to different requirements.

**Modification of Area 1 Trap Limits for New Hampshire Lobster License Holders**

In October 1998, ASMFC approved a proposal from the State of New Hampshire for conservation equivalent lobster trap limits that vary from the 800 lobster trap limit in Area 1. That state's lobster management program provides for a two-tier lobster license system: State fishermen who provide documentation of landing more than 12,000 lb (5,443 kg) of lobster in at least 2 years, from 1994 to 1998, receive a full commercial lobster license issued by the State of New Hampshire; those who cannot provide this documentation are issued a limited commercial lobster license. Those fishermen who qualify for a full license may fish up to 1,200 lobster traps in state waters, and those in the limited category may fish a maximum of 600 lobster traps in state waters. Following approval of the New Hampshire proposal under the ISFMP, the ASMFC recommended that NMFS modify Federal regulations to maintain the biological and socio-economic basis of New Hampshire's lobster management program. The ASMFC has not received similar proposals, although allowable, from the States of Maine and Massachusetts, which also border Area 1. The ASMFC requested that NMFS modify Federal regulations to allow Federal permit holders who elect to fish in Area 1 and also possess a New Hampshire full commercial lobster license to fish 400 lobster traps in New Hampshire state waters in addition to the 800 lobster traps they may fish in state and Federal waters of Area 1 under current Federal regulations. However, these fishermen would not be allowed to fish more than 800 lobster traps in the Federal waters of Area 1.

There are approximately 80 Federal lobster permit holders with vessel ports in New Hampshire (1998 data) who harvest lobster primarily with trap gear. Twenty-two of these individuals also possess a full commercial lobster license, and 26 possess a limited commercial lobster license issued by the State of New Hampshire, as described in the DSEIS.

Under current regulations, Federal lobster permit holders must abide by the stricter of either Federal or state lobster management measures. Under the preferred alternative, NMFS would waive this requirement with respect to the number of lobster traps for Federal lobster permit holders who elect to fish in Area 1 and who possess a valid New Hampshire full commercial lobster license for Area 1. Specifically, this proposed rule would not make any change in the number of traps allowed to be fished in the Federal waters of Area 1. However, a New Hampshire full commercial lobster licensee fishing aboard a federally permitted vessel would be allowed to fish an additional 400 lobster traps in New Hampshire state waters.

**Lobster Management Area Boundary Clarification**

In Addendum 1 to the American Lobster ISFMP, the ASMFC revised the boundary lines for three of the LCMAs adjacent to Massachusetts, including Area 1, Area 2, and the Outer Cape Area, to bring the area boundaries more in line with traditional fishing practices in those areas and to correct an oversight in the specification of an Area 1 boundary line in Amendment 3 to the ISFMP.

NMFS proposes to implement compatible boundary lines for Area 1, Area 2, and the Outer Cape Area to maintain consistency with the ASMFC's American lobster ISFMP and to avoid confusion if the Federal and ASMFC area boundaries and their associated lobster management measures differ.

**Cape Cod Canal Overlap**

The Cape Cod Canal (Canal) cuts through the Cape Cod peninsula in Massachusetts and connects the waters of Cape Cod Bay to the north (within Area 1) with the waters of Buzzards Bay to the south (within Area 2). The Canal is large enough at certain points to allow the setting of lobster trap gear, and lobster fishermen from both Areas 1 and 2 have historically set trap gear in the Canal.

To allow fishermen in the adjacent areas of Area 1 and Area 2 to maintain their historical ability to fish in the Canal, the Cape Cod Canal would be considered an area of overlap between Areas 1 and 2. To establish this overlap area, the existing boundaries of both Area 1 and Area 2 would be modified to encompass the Cape Cod Canal.

**Outer Cape Lobster Management Area's Northern Boundary**

As a result of an oversight contained in Amendment 3 to the ISFMP, the boundary line coordinates separating the Outer Cape Area from Area 1 did not extend to the shoreline of Massachusetts and, therefore, did not effectively separate these management areas. To correct this situation, under Addendum 1 to the ISFMP, the coordinates for the boundary line separating Area 1 and the northern boundary of the Outer Cape Area were revised and extended around the western tip of Cape Cod. This revision effectively extended the boundary line to the shoreline of Massachusetts and created an area of overlap between Area 1 and the Outer Cape Area.

NMFS proposes to revise the existing boundary line coordinates as follows:

Northern Boundary: Following the LORAN C 9960-Y-44120 line to the intersection with the 9960-W-13850 line (42°04.25′ N. lat., 70°17.22′ W. long.), then following that line in a southeasterly direction to the intersection with the 9960-Y-44110 line (42°02.84′ N. lat., 70°16.1′ W. long.), then following that line in an easterly direction to Race Point (42°03.35′ N. lat., 70°14.2′ W. long.) in the town of Provincetown, MA.

Overlap Zone Boundary: Beginning at Race Point, MA (42°03.35′ N. lat., 70°14.2′ W. long.) following the LORAN C 9960-Y-44110 in a westerly direction to its intersection with 9960-W-13850 line (42°02.84′ N. lat., 70°16.1′ W. long.), then following that line in a southeasterly direction to its intersection with a 9960-X-25330 line (41°52′ N. lat., 70°07.49′ W. long.), then following that line in a northeasterly direction to where it meets the shoreline of Great Island in the town of Wellfleet, MA (41°54.46′ N. lat., 70°03.99′ W. long.), then following the shoreline in a northerly direction back to the beginning.

When the coordinates for the recommended revision to the Overlap Zone boundary between Area 1 and the Outer Cape Area were plotted, there was a problem with the information provided in Addendum I. As a result, the chart included in the Addendum does not agree with the associated LORAN C coordinates. The chart in Addendum I indicates that the area of overlap extends to a point northeast of and beyond Race Point, MA, continuing around the tip of Cape Cod, while the coordinates denote an overlap area beginning at Race Point, MA. NMFS developed the coordinates in this section based on the coordinates in Addendum I, not on the graphics (chart) in Addendum I. The ASMFC has been informed of this discrepancy.

**Boundary Change Between Area 2 and The Outer Cape Management Area**

In Addendum I the ASMFC revised the boundary separating Area 2 and the Outer Cape Area, which runs from the southeastern tip of Cape Cod to Nantucket Island, by shifting it west by

5 minutes of longitude, from 70° W. Long. to 70° 05′ W. Long.

**Revised Boundary Description for Area 1, Area 2, and the Outer Cape Area**

*EEZ Nearshore Management Area 1*

EEZ Nearshore Management Area 1 is defined by the area including state and Federal waters that are nearshore in the Gulf of Maine. This proposed rule would re-define Area 1 to be the area bounded by straight lines connecting the following points, in the order stated, and the coastline of Maine, New Hampshire, and Massachusetts to the northernmost point of Cape Cod:

| Point | Latitude | Longitude |
|---|---|---|
| A | 43°58′ N. | 67°22′ W. |
| B | 43°41′ N. | 68°00′ W. |
| C | 43°12′ N. | 69°00′ W. |
| D | 42°49′ N. | 69°40′ W. |
| E | 42°15.5′ N. | 70°40′ W. |
| F | 42°10′ N. | 69°56′ W. |
| G | 42°05.5′ N. | 70°14′ W. |
| G1 | 42°04.25′ N. | 70°17.22′ W. |
| G2 | 42°02.84′ N. | 70°16.1′ W. |
| G3 | 42°03.35′ N. | 70°14.2′ W. |

From point ''G3'' along the coastline of Massachusetts, including the southwestern end of the Cape Cod Canal, continuing along the coastlines of Massachusetts, New Hampshire, Maine, and the seaward EEZ boundary back to Point A.

*EEZ Nearshore Management Area 2*

EEZ Nearshore Management Area 2 is defined by the area, including state and Federal waters that are nearshore in Southern New England, bounded by straight lines connecting the following points, in the order stated:

| Point | Latitude | Longitude |
|---|---|---|
| H | 41°40′ N. | 70°05′ W. |
| I | 41°15′ N. | 70°05′ W. |
| J | 41°21.5′ N. | 69°16.5′ W. |
| K | 41°10′ N. | 69°06.5′ W. |
| L | 40°55′ N. | 68°54′ W. |
| M | 40°27.5′ N. | 71°14′ W. |
| N | 40°45.5′ N. | 71°34′ W. |
| O | 41°07′ N. | 71°43′ W. |
| P | 41°06.5′ N. | 71°47′ W. |
| Q | 41°11.5′ N. | 71°47.25′ W. |
| R | 41°18.5′ N. | 71°54.5′ W. |

From point ''R'' along the maritime boundary between Connecticut and Rhode Island to the coastal Connecticut/Rhode Island boundary and then back to point ''H'' along the Rhode Island and Massachusetts coast, including the northeastern end of the Cape Cod Canal.

*EEZ Nearshore Outer Cape Lobster Management Area*

EEZ Nearshore Outer Cape Lobster Management Area is defined by the area, including state and Federal waters off Cape Cod, bounded by straight lines connecting the following points, in the order stated:

| Point | Latitude | Longitude |
|---|---|---|
| F | 42°10′ N. | 69°56′ W. |
| G | 42°05.5′ N. | 70°14′ W. |
| G1 | 42°04.25′ N. | 70°17.22′ W. |
| G2 | 42°02.84′ N. | 70°16.1′ W. |
| G4 | 41°52′ N. | 70°07.49′ W. |
| G5 | 41°54.46′ N. | 70°03.99′ W. |
| From Point ''G5'' along the outer Cape Cod coast to point ''H'' | | |
| H | 41°40′ N. | 70°05′ W. |
| H1 | 41°18′ N. | 70°05′ W. |
| From Point ''H1'' along the eastern coast of Nantucket Island, MA, to Point ''I'' | | |
| I | 41°15′ N | 70°00′ W. |
| J | 41°21.5′ N. | 69°16′ W. |
| From Point ''J'' Back to Point ''F.'' | | |

**Clarification of Lobster Trap Tag Requirements**

NMFS includes in this proposed rule a technical amendment to the regulations clarifying that Federal lobster permit holders must attach federally approved lobster trap tags to all lobster traps fished in any portion of any management area (whether in state or Federal waters). This requirement is not new, but was not clearly specified in the regulatory text. This amendment would clarify a tagging requirement that was previously specified by reading several sections in combination, including regulations found under 50 CFR 697.7 and 50 CFR 697.19. This technical amendment is intended to make the regulations easier to understand.

**Classification**

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

NMFS prepared a DSEIS/RIR/IRFA for this action; a notice of availability was published on November 24, 2000 (65 FR 70567). The Initial Regulatory Flexibility Analysis (IRFA), in compliance with the Regulatory Flexibility Act, describes the economic impacts of the proposed rule, if adopted, on small entities. A summary of the IRFA follows: Reasons why the action is considered, as well as the objectives and legal basis for this rule, are described in the IRFA and the preamble to this rule and are not repeated here. All participants in the lobster fishery are considered to be small entities. Implementation of historical participation and lobster trap limits in Areas 3, 4, and 5 is expected to result in a reduction in the number of Federal permit holders qualified to fish for lobster with traps in these management areas. Individuals failing to meet the proposed qualification criteria may: (1) decide to fish in areas not subject to historical participation; (2) decide to retain their lobster fishing permit but not use it; (3) leave the lobster fishery entirely by selling his/her lobster vessel; or (4) fail to renew their Federal lobster permit.

Although it can be assumed that there will be no immediate impact on existing fishing operations that do not harvest lobster in substantial numbers with lobster trap gear, the option to do so in the future will be precluded under a trap fishing effort program based on historical participation. This may affect the economic value associated with their Federal lobster permit in the event that permit holders wish to sell their vessel to buyers who would otherwise desire to fish for lobster with traps. Vessels that qualify to participate in Areas 3, 4, and/or 5 will likely see a reduction in gear conflict and be protected from lobster fishing effort expansion. The proposed action will also alleviate socio-economic impacts from any reduction in lobster harvests which may have resulted if qualifying vessels historically fished a number of lobster traps in excess of the current fixed trap limits. Permit holders who fish greater amounts of gear than allowed by the proposed maximum lobster trap limits may experience a small, yet unquantifiable, reduction in landings if they are unable to alter their fishing practices to mitigate this lower level of lobster trap fishing effort.

The proposed action to allow owners of vessels who are in possession of a Federal limited access lobster permit and who also possess a New Hampshire full commercial lobster fishing license to fish up to 800 lobster traps in Federal waters and a maximum of 400 additional lobster traps in New Hampshire state waters would alleviate adverse impacts on fishing practices and income which would otherwise be imposed by a lower lobster trap limit. Due to more restrictive lobster trap limits imposed on New Hampshire part time commercial lobster permit holders, a potential overall reduction in traps fished by commercial lobster permit holders in that state could result in some unquantified decrease in lobster fishing mortality and marine mammal and sea turtle trap gear entanglements.

The proposed action to revise and clarify the boundary coordinates within the state waters of Massachusetts for Area 1, 2, and the Outer Cape

Management Area would: allow Federal lobster permit holders to maintain traditional fishing practices; avoid confusion and maintain consistency with the ISFMP; and allow Federal American lobster permit holders to fish under lobster management measures associated with the respective management area. If implemented, the proposed boundary revisions would have no direct effect on the lobster resource since it is specific to a minor modification of coordinates for lobster area boundaries in Massachusetts state waters and is not expected to substantially affect marine mammals or sea turtles.

The DSEIS/RIR/IRFA analyzed a preferred alternative which recommended the implementation of historical participation measures to control lobster fishing effort in Areas 3, 4 and 5, with a maximum lobster trap limit and a lobster trap reduction schedule for Area 3; implementation of conservation equivalent trap limits in New Hampshire waters of Area 1; and clarification of boundaries of specific lobster management areas. The DSEIS/RIR/IRFA also analyzed five alternatives to specific components of the preferred alternative. Three of these alternatives propose implementation of historical participation as a means to control lobster fishing effort in Areas 3, 4, and 5. Due to the unique nature of the proposed action relating to Area 1 lobster trap limits for Federal lobster permit holders fishing in New Hampshire waters and management area boundary clarifications, only one alternative (no action-status quo) was presented for each of these two components of this proposed rule.

**Impacts of Historical Participation for Areas 3, 4, and 5**

The three alternatives relating to historical participation included: taking no action; implementing historical participation requirements for Areas 3, 4, and 5, but retaining current trap limits; and implementing historical participation requirements as identified under the proposed action, but incorporating a maximum trap allocation for Areas 4 and 5.

Under current Federal regulations, owners of vessels that elect to harvest American lobsters with traps are required to inform NMFS each year of the lobster management area(s) they intend to set trap gear in. The election of one or more LCMA requires only that the vessel possess a current Federal American lobster limited access permit. The DSEIS/RIR/IRFA for this action, announced by a notice of availability published on November 24, 2000 (65 FR 70567), used data available to NMFS for the 2000-2001 fishing year, from May 2000 through August 2000, on the number of owners of vessels that elected to harvest American lobsters in specific LCMAs. Some owners of vessels in possession of a Federal lobster permit may have elected LCMAs after August 2000, or may have elected LCMAs with no intention to fish with lobster traps in one or more of the elected LCMAs. Therefore, the number of vessels electing to fish in LCMAs 3, 4, or 5 may be higher than the number identified in the DSEIS/RIR/IRFA for this action and the total number that do not qualify may be higher. Following the comment period on this proposed rule, a Final Supplemental Environmental Impact Statement/Regulatory Impact Review/Final Regulatory Flexibility Analysis (FSEIS/RIR/FRFA) will analyze and evaluate the effects of implementing regulations for this action and will incorporate the most current data available to NMFS at that time.

The DSEIS/RIR/IRFA analysis for this action indicated that approximately 3,361 vessels possess a current Federal lobster permit and fish for lobster with either trap or non-trap gear. Of the 3,361 lobster vessels that possess a current Federal lobster permit, 769 have designated Area 3 as at least one of their areas for trap fishing. Of these, NMFS estimates that the total number of vessels that would qualify under the proposed historical qualification criteria to continue fishing for lobster with traps in the Area 3 lobster trap fishery would range from a low of 53 to a high of 117.

Similarly, of the approximately 405 vessels in possession of current Federal lobster permits that were designated for trap fishing in either Areas 4 or 5, the total number of vessels that would qualify to continue fishing with traps in Areas 4 and 5 on the basis of the proposed qualification criteria for the Areas 4 and 5 lobster trap fisheries would range from 47 to 60. The proposed implementation of a maximum trap limit of 1,440 lobster traps in Areas 4 and 5 is expected to result in a reduction in the number of lobster traps fished in these areas. Although NMFS has no information on the total number of lobster traps fished in those areas, data provided to NMFS by New Jersey, summarizing the results of a survey of New Jersey lobstermen, indicate that approximately 15% (14 individuals) of fishermen responding to the survey who possess both a New Jersey lobster trap license and a Federal lobster permit have fished with greater than 1,440 traps in LCMA 4. The fishing effort for these 14 permit holders has ranged from 1,500 to 2,500 (with an average of 1,868) traps. On the basis of this information, establishment of a maximum trap limit for LCMA 4 would result in at least a reduction of 26,152 traps, with a corresponding, but unquantifiable, reduction in lobster fishing mortality.

The exact degree of lobster trap reductions in Areas 4 and 5 is unquantifiable because, in the Federal American lobster fishery, there are currently no requirements to submit vessel trip reports. In Area 3, where lobster traps will be reduced over a 4-year period, the scheduled lobster trap reductions are likely to result in a small, yet unquantifiable, reduction in Area 3 landings. If markets are affected, the effect is likely to be small. Landings in Areas 4 and 5 accounted for less than 10 percent of total domestic lobster landings in 1999, and market effects from lobster trap reductions in Area 3 may occur in a limited segment of the market for larger lobsters (i.e., the offshore fishery lands larger lobsters, on average, than other components of the lobster fishery as a whole). If lobster prices do increase, vessels fishing in areas not subject to historical participation and where expansion of trap effort is possible (i.e., up to the 800 lobster trap limit) may increase their effort and offset any reduction in landings from Areas 3, 4, and 5. In this dynamic setting, lobster prices are likely to be unaffected by regulatory action under this proposed rule.

The effect of limiting access to historical participants in Areas 3, 4, and 5 is expected to have two major economic effects. First, limiting access in these areas will protect qualifiers from effort expansion. Second, lobster trap allocations in Areas 3, 4, and 5 and overall trap reductions in Area 3 over a 4-year period based on historical participation will preserve the competitive position and structure of the offshore fishery. Although it can be assumed that there will be no immediate impact on current fishing operations that do not harvest lobster in substantial numbers with trap gear, the option to do so in the future will be precluded under a trap fishing effort program based on historical participation. This situation may also impact the ''economic value'' associated with these permits in the event that permit holders wish to sell their vessels to buyers who would otherwise desire to fish in the lobster trap fishery, but would be unable to do so. Economic effects will be greater for those vessels that are currently fishing lobster traps in Areas 3, 4, or 5, but will not qualify for historical participation in these areas because they will not be able to meet

one or more of the qualification criteria. Effective on May 1, 2000, Federal lobster permit holders are required to elect on their permits the lobster management areas in which they intend to fish for lobster with traps. However, NMFS does not have adequate data on the extent to which permit holders, although authorized, actually fish with traps in the elected management areas. Given this uncertainty, Federal lobster permit data indicates that a maximum of 769 permit holders elected to fish for lobster with traps in Area 3. On the basis of NMFS analyses, a low of 652 to a high of 716 Federal permit holders, who would meet the qualification criteria to fish with lobster traps in Area 3 under this proposed rule, would no longer be able to continue fishing with lobster traps in this management area.

Analyses of impacts for current participants in the Areas 4 and 5 lobster trap fisheries are combined because of the lack of more precise information on lobster trap fishing locations in these areas. Federal lobster permit data indicates that, under current Federal regulations, 405 vessels in possession of current Federal lobster permits were designated for lobster trap fishing in Areas 4 and/or 5. NMFS estimates that a low of 47 to a high of 60 vessels would be able to meet the proposed qualification criteria for Areas 4 and/or 5 under this proposed rule and, consequently, would be able to continue fishing with lobster traps in Areas 4 and 5. Lobster vessels that do not qualify will still be able to fish for lobster with traps, but they will have to do so by moving their traps into lobster management areas (other than Areas 3, 4, and 5) that may already be congested, likely resulting in increased fishing effort, additional congestion, and a potential reduction in overall productivity and profitability. The extent to which non-qualifiers would potentially decide to move trap operations to other management areas is unknown. Furthermore, moving may be most difficult for non-qualifying lobster permit holders who fish traps in inshore areas and have vessel ports south of New York, since Area 2 (waters between Cape Cod and Long Island Sound) would be the closest lobster management area not requiring historical participation.

Based on available information, approximately 14 vessels fished more than 1,440 lobster traps in Areas 4 and 5 combined, out of the total number of vessels electing to fish in Areas 4 and/or 5. On average, these vessels fished 1,868 lobster traps prior to the implementation of a fixed trap limit in January 2000. However, current regulations limit vessels electing to fish in Areas 4 and/or 5 to 800 lobster traps. There may be a small, yet unquantifiable, reduction in landings if impacted vessels are unable to alter their fishing practices to mitigate this lower level of trap fishing effort compared to historical trap levels. Yet, given that the current regulations limit these vessels to 800 lobster traps, some qualifying vessels that previously fished traps in excess of the current fixed trap limit may be able to increase the number of traps fished up to the proposed trap cap of 1,440 lobster traps for Areas 4 and 5, assuming they are allocated 1,440 lobster traps under a historical participation regime.

The incentive and/or ability to increase traps fished would depend on the scale of operation and other socio-economic factors. Incentives may include a desire to establish and document a history of lobster trap fishing in anticipation of future fishing effort reduction measures and of a decline in alternative fishing opportunities in other fisheries. Since the lobster trap fishery is a territorial fishery, removal of traps by non-qualifiers or by vessels fishing in excess of the proposed 1,440 lobster trap cap will open up territory that other vessels may exploit.

In addition, an increase in the number of lobster traps fished does not automatically translate to higher gross revenue; other factors such as market conditions and operating costs have to be evaluated. Fishermen setting lobster traps close to shore are likely to be able to maintain landing levels because they can tend their lobster traps more often. Harvest costs may decline for vessels that have historically fished more than 1,440 lobster traps prior to the implementation of a fixed trap limit; however, revenues may decline if fishing fewer lobster traps translates into fewer lobster being landed. Assuming non-qualifiers cannot or will not move trap operations to other management areas, they would no longer be able to fish for lobster with trap gear. Some such fishermen may be able to switch to other fisheries.

**Historical Qualification Costs**

Vessel owners would be required to provide an affidavit and supporting documentation to substantiate their historical participation application when attempting to qualify in one, two, or in all three of the lobster management areas proposing to implement historical participation in this proposed rule. The estimated time required to provide an affidavit and supporting documentation to substantiate the historical participation application are specified under collection-of-information requirements, while historical qualification costs are primarily associated with costs to locate, copy, telephone, and mail the submission of the supporting documentation. The average historical qualification cost, per vessel, for vessel owners who have been notified by NMFS that they pre-qualify for historical participation in Areas 3, 4, and/or 5, based on data available to NMFS, is estimated to be $5.45 to provide an affidavit concurring with the NMFS pre-qualification determination.

Vessels that do not pre-qualify need to submit the necessary forms and all supporting documentation. The average historical qualification cost, per vessel, for vessels submitting documentation to qualify in one area ranges from $7.38 for Areas 4 and 5 to $8.89 for Area 3. Documentation costs are higher for Area 3 due to the requirement to show landings of at least 25,000 pounds during the qualifying year, while criteria for Areas 4 and 5 have no minimum landings requirement. The average historical qualification cost, per vessel, for vessels submitting documentation to qualify in two lobster management areas reflects the higher documentation costs associated with the Area 3 minimum landings criteria. The per vessel qualification costs range from $9.98 for vessels submitting documentation to qualify for Areas 4 and 5 (but not Area 3), to $10.45 for vessels submitting documentation to qualify for Area 3 and either Areas 4 or 5. The average historical qualification cost, per vessel, for vessels submitting documentation to qualify in all three lobster management areas is $14.35. These costs are considered insignificant relative to other costs of doing business.

The proposed action concerning New Hampshire conservation equivalent trap limits would allow those Federal lobster permit holders who are also authorized by the State of New Hampshire to fish more lobster traps in state waters (1,200 rather than 600 lobster traps) to maintain or increase their relative share of landings in state waters and to preserve the competitive position of that industry sector. It is expected that Federal permit holders who are authorized to fish only 600 rather than 1,200 lobster traps in state waters under New Hampshire state regulations would also be able to retain their historical competitive position but will be unable to expand fishing operations above 600 lobster traps.

Revision and clarification of the boundary coordinates for lobster management areas in Massachusetts waters will allow fishermen to maintain

traditional fishing practices and fish under the lobster management measures associated with the respective management area. Implementation of the proposed revision to these boundary lines will also maintain consistency with the identification of lobster management areas as established under the ISFMP and will avoid the confusion that could result if ISFMP and Federal area boundaries and their associated lobster management measures differ.

This proposed rule, supplemented by the DSEIS, describes associated reporting, record keeping, and compliance requirements. Special professional skills would not be required to fulfill these requirements. There are no other Federal regulations that overlap or duplicate measures under this proposed rule. This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The following collection-of-information requirements are being restated and have already been approved by the Office of Management and Budget (OMB) as shown: vessel permit applications approved under OMB control number 0648–0202 with the response times per application of 30 minutes for a new application, and 15 minutes for renewal applications; and a lobster trap tag requirement approved under OMB control number 0648–0351 with a response time of 1 minute per tag.

This proposed rule also contains new collection-of-information requirements subject to the PRA which have been submitted to OMB for approval. The public reporting burden for each collection of information per response is indicated in parentheses in the following list of new requirements, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The new requirements are as follows:

1. Provision of documentation of possession of a current valid Federal lobster permit (5 minutes);

2. Provision of documentation to demonstrate at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Areas 3, 4, or 5 during a 2-consecutive calendar month period in any calendar year during the qualification period from March 25, 1991, through September 1, 1999 (15 minutes);

3. (For Area 3 only) Provision of sales receipts or other documents pertaining to the sale of lobsters indicating the landing of at least 25,000 pounds of lobster from any location during the year used as the qualifying year from March 25, 1991, to September 1, 1999 (10 minutes);

4. Provision of documentation for proof of historical participation in two rather than one lobster management area (additional 15 minutes if different consecutive two-month periods of trap fishing are used);

5. Provision of documentation for proof of historical participation in three rather than one lobster management area (additional 30 minutes if three different consecutive two-month periods are used);

6. Completion of lobster trap fishing area eligibility application form (2 minutes for each area selected);

7. Provision of affidavit stating total number of individual lobster traps the permit holder set, allowed to soak, hauled back, and re-set in Areas 3, 4, or 5 at any one time during the qualifying year (15 minutes); and

8. Provision of a written appeal request to the Regional Administrator by non-qualifying permit holders (15 minutes).

Public comment is sought regarding: whether these proposed collections-of-information are necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including information through the use of automated collection techniques or other forms of information technology.

Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS and to the Office of Information and Regulatory Affairs, Office of Management and Budget (see **ADDRESSES**).

Notwithstanding any other provision of 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 requirements of the PRA, unless that collection-of-information displays a currently valid OMB control number.

An updated Biological Opinion under Section 7 of the Endangered Species Act (ESA) was issued for the American lobster fishery on December 17, 1998. A formal consultation concluded that the continued operation of the American lobster fishery operating under new measures implemented to reduce entanglements, ''may affect but is not likely to jeopardize the continued existence of the northern right whale, humpback whale, fin whale, blue whale, sperm whale, sei whale, leatherback sea turtle, and loggerhead sea turtle and is not likely to destroy or adversely modify critical habitat that has been designated for the northern right whale.'' In June 2000, formal consultations on the lobster fishery were reinitiated. An updated Biological Opinion under Section 7 of the ESA was issued for the Federal American lobster fishery on June 14, 2001. The updated Biological Opinion concluded that the Federal American lobster fishery is likely to jeopardize the continued existence of the western North Atlantic right whale, but is not likely to destroy or adversely modify critical habitat designated for the right whale. The Biological Opinion also concluded that the Federal American lobster fishery is not likely to jeopardize the continued existence of humpback, fin, sei, blue, and sperm whales; or loggerhead, Kemp's ridley, green, leatherback, and hawksbill sea turtles. Following release of the updated Biological Opinion on June 14, 2001, a formal consultation was initiated on the effects of this proposed action on endangered and threatened species.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 20, 2001.

**Rebecca Lent.**

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

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

## PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

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

**Authority:** 16 U.S.C. 5101 *et seq.*

2. In § 697.4, paragraphs (a)(7)(vi) through (xi) are added to read as follows:

### § 697.4 Vessel permits and trap tags.

(a) * * *

(7) * * *

(vi) *Participation requirements for EEZ Nearshore Management Area 4.* For fishing year 2002 and beyond, to fish for lobster with lobster traps in EEZ Nearshore Management Area 4 (Area 4), the owner of a vessel with a Federal lobster permit must provide the following to the Regional Administrator within [45 days after the date of publication of the final rule]:

(A) A copy of the vessel's current Federal lobster permit;

(B) Written documentation demonstrating that at least 200 lobster

traps were set, allowed to soak, hauled back, and re-set in Area 4 during a 2-consecutive calendar month period in any calendar year (hereinafter, ''the qualifying year'') during the period from March 25, 1991, through September 1, 1999 (hereinafter, ''the qualification period'') excluding the time periods in calendar years 1991 and 1999 that are outside the qualification period (i.e., January 1, 1991, through March 24, 1991, and September 2, 1999, through December 31, 1999). Documentation may include copies of vessel logbooks; permit applications; Federal Fishing Vessel Trip Reports (NOAA Form 88-30); official state reporting documentation showing the number of lobster traps fished, including, but not limited to, state report cards, license application forms, and catch reports; an approved Federal Fishing Vessel and Gear Damage Compensation Fund Report (NOAA Form 88-176); and/or other forms of credible documentation; and

(C) A signed affidavit that certifies the number of individual lobster traps the permit holder set, allowed to soak, hauled back, and re-set in Area 4 at any one time during the chosen qualifying year must be submitted to the Regional Administrator for use in determining the permitted vessel's lobster trap allocation. This affidavit must be accompanied by credible, written documents that corroborate the number of individual lobster traps claimed in the affidavit. Such documents may include the types of documents identified in paragraph (a)(7)(vi)(B) of this section. Documentation submitted to support the affidavit may reflect activity during any point within the qualifying year and does not necessarily need to represent the 2-consecutive month period used in paragraph (a)(7)(vi)(B) of this section.

(vii) *Participation requirements for EEZ Nearshore Management Area 5.* For fishing year 2002 and beyond, to fish for lobster with lobster traps in EEZ Nearshore Management Area 5 (Area 5), the owner of a vessel with a Federal lobster permit must provide the following to the Regional Administrator within [45 days after the date of publication of the final rule]:

(A) A copy of the vessel's current Federal lobster permit;

(B) Written documentation demonstrating that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 5 during a 2-consecutive calendar month period in any calendar year (hereinafter, ''the qualifying year) during the period from March 25, 1991, through September 1, 1999 (hereinafter, ''the qualification period'') excluding the time period in calendar years 1991 and 1999 that are outside the qualification period (i.e., January 1, 1991, through March 24, 1991, and September 2, 1999, through December 31, 1999). Documentation may include copies of vessel logbooks; permit applications; Federal Fishing Vessel Trip Reports (NOAA Form 88-30); official state reporting documentation showing the number of lobster traps fished, including, but not limited to, state report cards, license application forms, and catch reports; an approved Federal Fishing Vessel and Gear Damage Compensation Fund Report (NOAA Form 88-176); and/or other forms of credible documentation; and

(C) A signed affidavit that certifies the number of individual lobster traps the permit holder set, allowed to soak, hauled back, and re-set in Area 5 at any one time during the qualifying year must be submitted to the Regional Administrator for use in determining the permitted vessel's lobster trap allocation. This affidavit must be accompanied by credible, written documents that corroborate the number of individual lobster traps claimed in the affidavit. Such documents may include the types of documents identified in paragraph (a)(7)(vii)(B) of this section. Documentation submitted to support the affidavit may reflect activity during any point within the qualifying year and does not necessarily need to represent the 2-consecutive month period used in paragraph (a)(7)(vii)(B) of this section.

(viii) *Participation requirements for EEZ Offshore Management Area 3.* For fishing year 2002 and beyond, to fish for lobster with traps in EEZ Offshore Management Area 3 (Area 3), a Federal lobster permit holder must provide the following to the Regional Administrator within [45 days after the date of publication of the final rule]:

(A) A copy of the vessel's current Federal lobster permit;

(B) Written documentation demonstrating that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 3 during a 2-consecutive calendar month period in any calendar year (hereinafter, ''the qualifying year'') during the period from March 25, 1991, through September 1, 1999 (hereinafter, ''the qualification period'') excluding the time periods in calendar years 1991 and 1999 that are outside the qualification period (i.e., January 1, 1991, through March 24, 1991, and September 2, 1999, through December 31, 1999). Documentation may include copies of vessel logbooks; permit applications; Federal Fishing Vessel Trip Reports (NOAA Form 88-30); official state reporting documentation showing the number of lobster traps fished, including, but not limited to, state report cards, license application forms, and catch reports; an approved Federal Fishing Vessel and Gear Damage Compensation Fund Report (NOAA Form 88-176); and/or other forms of credible documentation that indicate that at least 200 lobster traps were set, allowed to soak, hauled back, and re-set in Area 3 during a 2-consecutive calendar month period in any chosen qualifying year during the qualification period.

(C) Sales receipts or other documents pertaining to the sale of lobsters and indicating the landing of at least 25,000 lb (11,340 kg) of lobster from any location during the calendar year used as the qualifying year from March 25, 1991, through September 1, 1999, to qualify to fish for lobster with traps Area 3; and

(D) A signed affidavit to NMFS, certifying the total number of individual lobster traps the permit holder set, allowed to soak, hauled back, and re-set in Area 3 at any one time during the qualifying year. This affidavit must be accompanied by the same or similar type of documentation identified in paragraph (a)(7)(viii)(B). Documentation submitted to support the affidavit may reflect activity during any point within the qualifying year and does not necessarily need to represent the 2-consecutive month period used in paragraph (a)(7)(viii)(B) of this section.

(ix) *Qualifying year for vessels seeking to fish for lobster with traps in more than one area of Areas 3, 4, and 5.* Any Federal lobster permit holder applying for a lobster trap allocation under this section who also applies for a second or third lobster trap allocation among Areas 3, 4, and 5, must use the same qualifying year for all areas, to avoid a combined lobster trap allocation greater than the number of lobster traps that the permit holder ever fished with any one vessel in any one year.

(x) *Notification of eligibility to fish for lobster with lobster traps in 2002 in Areas 3, 4, and 5.* (A) NMFS will attempt to notify all owners of vessels for which NMFS has credible evidence available that they meet some or all of the qualification criteria described in paragraph (a)(7)(vi), (a)(7)(vii), or (a)(7)(viii) of this section and that they may qualify for a limited access American lobster permit for one or more of Areas 3, 4, and/or 5. Vessel owners must still provide documentation indicating that the vessel meets the qualification criteria for which NMFS lacks information, complete an affidavit

certifying the total number of individual lobster traps the permit holder set, allowed to soak, hauled back, and re-set in Areas 3, 4, and/or 5 at any one time during the qualifying year, and apply for a limited access lobster permit for Areas 3, 4, and/or 5 by April 30, 2002, to be considered for an Areas 3, 4, and/or 5 limited access lobster permit. Consistent with paragraph (a)(7)(ix) of this section, any Federal lobster permit holder applying for a lobster trap allocation under this section who also applies for a second or third lobster trap allocation among Areas 3, 4, and 5, must use the same qualifying year for all areas to avoid a combined lobster trap allocation greater than the number of lobster traps that the permit holder ever fished with any one vessel in any one year. In addition, Federal lobster permit holders who elect to fish in multiple lobster conservation management areas are required under paragraph (a)(7)(iv) of this section to abide by the most restrictive regulations of all areas elected, regardless of which area the permit holder is fishing in at any given time.

(B) If a vessel owner has not been notified that the vessel is eligible to be issued a limited access American lobster permit for Areas 3, 4, and/or 5, and the vessel owner believes that there is credible evidence that the vessel does qualify under the listed criteria, the vessel owner must apply for a limited access American lobster permit for Areas 3, 4, and/or 5 by April 30, 2002, to fish for lobster with traps in Areas 3, 4, and/or 5 after that date and submit documentation substantiating that the vessel meets the area qualification criteria as described in paragraphs (a)(7)(vi)(A) and (B); (a)(7)(vii)(A) and (B); and (a)(7)(viii)(A) through (C) of this section; and submit a signed affidavit certifying the total number of lobster traps he/she set, allowed to soak, hauled back, and re-set in Areas 3, 4, and/or 5 at any one time during the qualifying year as described in paragraphs (a)(7)(vi)(C), (a)(7)(vii)(C), and (a)(7)(viii)(D) of this section.

(xi) *Appeal of denial of permit.* (A) Any applicant denied a limited access American lobster permit for Areas 3, 4, and/or 5, may appeal to the Regional Administrator within 30 days of the date indicated on the notice of denial. Any such appeal must be in writing. The only ground for appeal is that the Regional Administrator erred in concluding that the vessel did not meet the criteria in paragraph (a)(7)(vi), (vii), and/or (viii) of this section. The appeal must set forth the basis for the applicant's belief that the Regional Administrator's decision was made in error.

(B) *Appeal review.* (*1*) The Regional Administrator will appoint a designee who will make the initial decision on the appeal.

(*2*) The appellant may request a review by the Regional Administrator of the initial decision on the appeal by so requesting such a review in writing within 30 days of the date on the notice of the initial decision on the appeal. The appellant may present his/her objections to the initial decision on the appeal at a hearing before an officer appointed by the Regional Administrator. The hearing officer must make findings of fact and a recommendation to the Regional Administrator. Upon receiving the findings and the recommendation, the Regional Administrator must decide on the appeal, which will be the final decision of the Department of Commerce. If the appellant does not request a review of the initial decision on the appeal within 30 days of the date on the notice of the initial decision on the appeal, then the initial decision is the final administrative action of the Department of Commerce.

(C) *Status of vessels pending appeal.* A vessel denied a limited access American lobster permit for Areas 3, 4, and/or 5 may fish in Areas 3, 4, and/or 5, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish in the area for which access is sought through the appeals process, unless otherwise determined by the Regional Administrator. The Regional Administrator will issue such a letter for the pendency of any appeal. This letter of authorization would be the final administrative action of the Department of Commerce pending a final decision on the appeal. While the appeal is pending, the vessel may fish up to 800 lobster traps, unless the vessel's Federal lobster permit has designated only Area 3 for lobster trap fishing, whereby, the vessel may fish up to 1,800 lobster traps in Area 3 only. If the appeal is finally denied, the Regional Administrator must send a notice of final denial to the vessel owner; the letter of authorization will become invalid 5 days after receipt of the notice of denial or 15 days after the date it is sent, whichever occurs first.

* * * * *

3. In § 697.18, paragraphs (a), (b), and (h) are revised to read as follows:

**§ 697.18 Lobster management areas.**

* * * * *

(a) *EEZ Nearshore Management Area 1.* EEZ Nearshore Management Area 1 is defined by the area, including state and Federal waters that are nearshore in the Gulf of Maine, bounded by straight lines connecting the following points, in the order stated, and the coastline of Maine, New Hampshire, and Massachusetts to the northernmost point of Cape Cod:

| Point | Latitude | Longitude |
|---|---|---|
| A | 43°58′ N. | 67°22′ W. |
| B | 43°41′ N. | 68°00′ W. |
| C | 43°12′ N. | 69°00′ W. |
| D | 42°49′ N. | 69°40′ W. |
| E | 42°15.5′ N. | 70°40′ W. |
| F | 42°10′ N. | 69°56′ W. |
| G | 42°05.5′ N. | 70°14′ W. |
| G1 | 42°04.25′ N. | 70°17.22′ W. |
| G2 | 42°02.84′ N. | 70°16.1′ W. |
| G3 | 42°03.35′ N. | 70°14.2′ W. |

From point ''G3'' along the coastline of Massachusetts, including the southwestern end of the Cape Cod Canal, continuing along the coastlines of Massachusetts, New Hampshire, Maine, and the seaward EEZ boundary back to Point A.

(b) *EEZ Nearshore Management Area 2.* EEZ Nearshore Management Area 2 is defined by the area, including state and Federal waters that are nearshore in Southern New England, bounded by straight lines connecting the following points, in the order stated:

| Point | Latitude | Longitude |
|---|---|---|
| H | 41°40′ N. | 70°05′ W. |
| I | 41°15′ N. | 70°05′ W. |
| J | 41°21.5′ N. | 69°16.5′ W. |
| K | 41°10′ N. | 69°06.5′ W. |
| L | 40°55′ N. | 68°54′ W. |
| M | 40°27.5′ N. | 71°14′ W. |
| N | 40°45.5′ N. | 71°34′ W. |
| O | 41°07′ N. | 71°43′ W. |
| P | 41°06.5′ N. | 71°47′ W. |
| Q | 41°11.5′ N. | 71°47.25′ W. |
| R | 41°18.5′ N. | 71°54.5′ W. |

From point ''R'' along the maritime boundary between Connecticut and Rhode Island to the coastal Connecticut/Rhode Island boundary and then back to point ''H'' along the Rhode Island and Massachusetts coast, including the northeastern end of the Cape Cod Canal.

* * * * *

(h) *EEZ Nearshore Outer Cape Lobster Management Area.* EEZ Nearshore Outer Cape Lobster Management Area is defined by the area, including state and Federal waters off Cape Cod, bounded by straight lines connecting the following points, in the order stated:

| Point | Latitude | Longitude |
|---|---|---|
| F | 42°10′ N. | 69°56′ W. |
| G | 42°05.5′ N. | 70°14′ W. |
| G1 | 42°04.25′ N. | 70°17.22′ W. |
| G2 | 42°02.84′ N. | 70°16.1′ W. |
| G4 | 41°52′ N. | 70°07.49′ W. |
| G5 | 41°54.46′ N. | 70°03.99′ W. |

| Point | Latitude | Longitude |
|---|---|---|
| From Point ''G5'' along the outer Cape Cod coast to point ''H'' | | |
| H | 41°40′ N. | 70°05′ W. |
| H1 | 41°18′ N. | 70°05′ W. |
| From Point ''H1'' along the eastern coast of Nantucket Island to Point ''I'' | | |
| I | 41°15′ N. | 70°00′ W. |
| J | 41°21.5′ N. | 69°16′ W. |
| From Point ''J'' Back to Point ''F.'' | | |

* * * * *

4. Section 697.19 is revised to read as follows:

**§ 697.19 Trap limits and trap tag requirements for vessels fishing with lobster traps.**

(a) *Trap limits for vessels fishing or authorized to fish in any Nearshore Management Area.* (1) Through April 30, 2002, vessels fishing in or issued a management area designation certificate or valid limited access American lobster permit specifying one or more EEZ Nearshore Management Area(s), whether or not in combination with the Area 2/3 Overlap, shall not fish with, deploy in, possess in, or haul back from such area more than 800 lobster traps.

(2) Beginning May 1, 2002, vessels fishing in or issued a valid limited access American lobster permit specifying one or more of EEZ Nearshore Management Areas 1, 2, or the Outer Cape Management Area, regardless of whether it is in combination with the Area 2/3 Overlap, shall not fish with, deploy in, possess in, or haul back from such area(s) more than 800 lobster traps, except as noted in paragraph (d) of this section.

(3) Beginning May 1, 2002, vessels fishing in or issued a management area designation certificate or valid limited access American lobster permit specifying EEZ Management Area 4 may not fish more lobster traps in Area 4 than the number approved by the Regional Administrator pursuant to § 697.4 (a)(7)(vi), which will not exceed 1,440 lobster traps.

(4) Beginning May 1, 2002, vessels fishing in or issued a management area designation certificate or valid limited access American lobster permit specifying EEZ Management Area 5 may not fish more lobster traps in Area 5 than the number approved by the Regional Administrator pursuant to § 697.4 (a)(7)(vii), which will not exceed 1,440 lobster traps, unless the vessel is operating under an Area 5 Trap Waiver permit issued under § 697.26.

(b) *Trap limits for vessels fishing or authorized to fish in the EEZ Offshore Management Area.* (1) Through April 30, 2002, vessels fishing only in or issued a management area designation certificate or valid limited access American lobster permit specifying only EEZ Offshore Management Area 3, or, specifying only EEZ Offshore Management Area 3 and the Area 2/3 Overlap, may not fish with, deploy in, possess in, or haul back from such areas more than 1,800 lobster traps.

(2) Beginning May 1, 2002, for fishing years 2002, 2003, 2004, 2005, and beyond until changed, vessels fishing only in or issued a management area designation certificate or valid limited access American lobster permit specifying only EEZ Offshore Management Area 3, or, specifying only EEZ Offshore Management Area 3 and the Area 2/3 Overlap, may not fish with, deploy in, possess in, or haul back from such areas more than the number of lobster traps indicated in Table 1 for the appropriate fishing year with respect to the number of lobster traps approved by the Regional Administrator under § 697.4(a)(7)(vii) for each vessel. Area 3 lobster trap allocations for the initial fishing year, beginning May 1, 2002, will not exceed 2,656 lobster traps.

TABLE 1. AREA 3 TRAP REDUCTION SCHEDULE

| Number of Traps Approved by the Regional Administrator | Trap Allocation by Fishing Year* | | | |
|---|---|---|---|---|
| | 2002 | 2003 | 2004 | 2005 and beyond until changed |
| 1200-1299 | 1200 | 1200 | 1200 | 1200 |
| 1300-1399 | 1200 | 1200 | 1200 | 1200 |
| 1400-1499 | 1290 | 1251 | 1213 | 1200 |
| 1500-1599 | 1388 | 1337 | 1297 | 1276 |
| 1600-1699 | 1467 | 1423 | 1380 | 1352 |
| 1700-1799 | 1548 | 1498 | 1452 | 1417 |
| 1800-1899 | 1628 | 1573 | 1523 | 1482 |
| 1900-1999 | 1705 | 1644 | 1589 | 1549 |
| 2000-2099 | 1782 | 1715 | 1654 | 1616 |
| 2100-2199 | 1856 | 1782 | 1715 | 1674 |
| 2200-2299 | 1930 | 1849 | 1776 | 1732 |
| 2300–2399 | 2003 | 1905 | 1836 | 1789 |
| 2400-2499 | 2076 | 1981 | 1896 | 1845 |
| 2500-2599 | 2197 | 2034 | 1952 | 1897 |
| 2600-2699 | 2218 | 2107 | 2008 | 1949 |
| 2700-2799 | 2288 | 2169 | 2063 | 2000 |
| 2800-2899 | 2357 | 2230 | 2117 | 2050 |
| 2900-2999 | 2425 | 2291 | 2171 | 2100 |
| 3000-3099 | 2493 | 2351 | 2225 | 2150 |
| 3100-3199 | 2575 | 2422 | 2288 | 2209 |
| ≥3200 | 2656 | 2493 | 2351 | 2267 |

* Trap allocations below 1,200 will not be subject to further reductions.

(3) For example, if a limited access Federal lobster permit holder elects 1991 as the qualifying year, and is assigned a fishing effort level of 2,323 lobster traps under §697.4(a)(7)(viii), then the lobster trap allocation for that vessel would be 2,003 lobster traps during fishing year 2002 and would decrease annually by incremental reductions until reaching a lobster trap allocation of 1,789 lobster traps in fishing year 2005. Thus, each lobster trap allocation of greater than 1,200 lobster traps will be reduced on a sliding scale over 4 years. The

respective lobster trap reductions will not go below a baseline of 1,200 lobster traps. Each initial allocation in Area 3 of fewer than 1,200 lobster traps will remain at that allocation.

(c) *Lobster trap limits for vessels fishing or authorized to fish in more than one EEZ Management Area.* A vessel owner who elects to fish in more than one EEZ Management Area may not fish with, deploy in, possess in, or haul back from any of those elected management areas more lobster traps than the lowest number of lobster traps allocated to that vessel for any one elected management area.

(d) *Notwithstanding any other provision, lobster trap limits in New Hampshire state waters.* Any vessel with a Federal lobster permit and a New Hampshire Full Commercial Lobster license may fish up to a maximum of 1,200 lobster traps in New Hampshire state waters, as may be authorized by New Hampshire lobster fishery regulations. However, such vessel may not fish, possess, deploy, or haul back more than 800 lobster traps at any one time in the Federal waters of EEZ Nearshore Management Area 1, and may not fish more than a combined total of 1,200 lobster traps in the Federal and New Hampshire state waters portions of EEZ Nearshore Management Area 1. When fishing in the Federal waters of EEZ Nearshore Management Area 1, any vessel with a Federal lobster permit may not possess, deploy, or haul back lobster traps in excess of the maximum number of lobster traps specified at paragraph (a)(2) of this section.

(e) *Trap tag requirements for vessels fishing with lobster traps.* Any lobster trap fished in Federal waters must have a valid Federal lobster trap tag permanently attached to the trap bridge or central cross-member. Any vessel with a Federal lobster permit may not possess, deploy, or haul back lobster traps in any portion of any management area that do not have a valid, federally recognized lobster trap tag permanently attached to the trap bridge or central cross-member.

(f) *Maximum Lobster Trap Tags Authorized for Direct Purchase.* In any fishing year, the maximum number of tags authorized for direct purchase by each permit holder is the applicable trap limit specified in paragraphs (a) and (b) of this section plus an additional 10 percent to cover trap loss.

(g) *EEZ Management Area 5 Trap Waiver Exemption.* Any vessel issued an Area 5 Trap Waiver permit under § 697.4(p) is exempt from the provisions of this section.

5. In § 697.25, paragraphs (b) and (c) are redesignated as paragraphs (c) and (d), and new paragraph (b) is added to read as follows:

**§ 697.25 Adjustment to management measures.**

* * * * *

(b) Conservation equivalency measures. A conservation equivalency measure is defined as a measure adopted by a state that differs from the specific requirements of the interstate fishery management plan, but achieves the same quantified level of conservation for the resource under management. Under this section, the Regional Administrator may consider any future recommendations for modifications to Federal regulations based on conservation equivalency that are formally submitted to him/her in writing by the ASMFC and that contain the following supporting information:

(1) A description of how Federal regulations should be modified;

(2) An explanation of how the recommended measure(s) would achieve a level of conservation benefits for the resource equivalent to the applicable Federal regulations;

(3) An explanation of how Federal implementation of the conservation equivalent measure(s) would achieve ISFMP objectives, be consistent with the Magnuson-Stevens Act national standards, and be compatible with the effective implementation of the ISFMP; and

(4) A detailed analysis of the biological, economic, and social impacts of the recommended conservation equivalent measure(s). After considering the recommendation and the necessary supporting information, NMFS may issue a proposed rule to implement the conservation equivalent measures. After considering public comment, NMFS may issue a final rule to implement such measures.

* * * * *

[FR Doc. 02–142 Filed 1–2–02; 8:45 am]
BILLING CODE 3510–22–S

# Notices

**Federal Register**

Vol. 2, No. 67

Thursday, January 3, 2002

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.

## BROADCASTING BOARD OF GOVERNORS

### Sunshine Act Notice

*Date and Time:* January 8, 2002; 11:15 a.m.–5 p.m.

*Place:* Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

*Closed Meeting:* The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6))

**CONTACT PERSON FOR MORE INFORMATION:** Persons interested in obtaining more information should contact either Brenda Hardnett or William Ohlhausen at (202) 401–3736.

Dated: December 28, 2001.

**William Ohlhausen,**

*Acting General Counsel.*

[FR Doc. 01–32257 Filed 12–28–01; 4:28 pm]

**BILLING CODE 8230–01–M**

## COMMISSION ON CIVIL RIGHTS

### Sunshine Act Notice

**AGENCY:** U.S. Commission on Civil Rights.

**DATE AND TIME:** Friday, January 11, 2002, 8:30 a.m.

**PLACE:** Hilton Washington, 1919 Connecticut Avenue, NW., Monroe Room, Washington, DC 20425.

**STATUS:** Open to the public.

*Agenda*

I. Approval of Agenda
II. Approval of Minutes of December 7, 2001 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Committee Appointments of District of Columbia, Maryland, Virginia, and West Virginia
VI. Future Agenda Items

9:30 a.m. Document Production Hearing for the Education Accountability Project.
10:00 a.m. Environmental Justice Hearing.

**Debra Carr,**

*Deputy General Counsel.*

[FR Doc. 01–32258 Filed 12–28–01; 4:56 pm]

**BILLING CODE 6335–00–M**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–809]**

### Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Rescission of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Rescission of Antidumping Duty Administrative Review.

**SUMMARY:** In response to a November 30, 2001 request made by Shinho Steel Co., a producer/exporter from the Republic of Korea of circular welded non-alloy steel pipe, the Department of Commerce published the initiation of an administrative review of the antidumping duty order on circular welded non-alloy steel pipe from the Republic of Korea for Shinho Steel Co. (covering the period November 1, 2000 to October 31, 2001). *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 66 FR 65470 (December 19, 2001). This review has now been rescinded as a result of the withdrawal of the request for review by Shinho Steel Co.

**EFFECTIVE DATE:** January 3, 2002.

**FOR FURTHER INFORMATION CONTACT:** Suresh Maniam or Andrew McAllister, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0176 or (202) 482–1174, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the ''Act'') by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (''Department'') regulations refer to 19 CFR part 351 (2001).

#### Background

On November 30, 2001, Shinho Steel Co. (''Shinho''), a producer/exporter of circular welded non-alloy steel pipe in the Republic of Korea, requested an administrative review of the antidumping duty order on circular welded non-alloy steel pipe from the Republic of Korea covering the period November 1, 2000 to October 31, 2001. In accordance with 19 CFR 351.221(c)(1)(i), we published the initiation of the review on December 19, 2001. *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 66 FR 65470. On December 19, 2001, Shinho withdrew its request for review.

#### Rescission of Review

The Department's regulations provide that the Department will rescind an administrative review if a party that requested a review withdraws the request within ninety days of the date of publication of the notice of initiation of the requested review. 19 CFR 351.213(d)(1). Shinho's request for

review was withdrawn within the ninety-day deadline.

As a result of the withdrawal of the request for review and because the Department received no other request for review, the Department is rescinding this administrative review.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: December 26, 2001.

**Richard W. Moreland,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 02–128 Filed 1–2–02; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–489–805]**

### Certain Pasta From Turkey: Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke the Antidumping Duty Order in Part

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order in Part: Certain Pasta from Turkey.

**SUMMARY:** On June 28, 2001, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain pasta from Turkey. This review covers the following exporters/producers of subject merchandise: (1) Pastavilla Makarnacilik Sanayi ve Ticaret A.S. (Pastavilla); and (2) Filiz Gida Sanayi ve Ticaret A.S. (Filiz). The period of review (POR) is July 1, 1999, through June 30, 2000.

Based on our analysis of the comments received, these final results differ from the preliminary results. The final results are listed in the section *''Final Results of Review.''* For our final results, we have found that during the POR, Pastavilla sold subject merchandise at less than normal value (NV). In addition, we are not revoking the antidumping order with respect to Pastavilla, because it has not had three years of sales in commercial quantities at less than NV. See *''Determination Not to Revoke''* section of this notice. We have also found that during the POR, Filiz did not make sales of the subject merchandise at less than NV (*i.e.,* it had ''zero'' or *de minimis* dumping margins).

**EFFECTIVE DATE:** January 3, 2002.

**FOR FURTHER INFORMATION CONTACT:** James Terpstra or Lyman Armstrong, AD/CVD Enforcement, Office VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3965 or (202) 482–3601, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations codified at 19 CFR part 351 (2000).

#### Case History

On June 28, 2001, the Department published the preliminary results of its administrative review of the antidumping duty order on certain pasta from Turkey. *See Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta from Turkey,* 66 FR 34410 (June 28, 2001) (*Preliminary Results*). The review covers two manufacturers/exporters. The POR is July 1, 1999, through June 30, 2000. We invited parties to comment on our preliminary results of review. In response to the Department's invitation to comment on the preliminary results of this review, New World Pasta, a petitioner[1] in the case, filed a case brief on August 2, 2001, and the respondents filed case briefs on August 6, 2001. We received rebuttal briefs from New World Pasta and Pastavilla on August 13, 2001. A public hearing was not held with respect to this review because no party requested one. On September 26, 2001, respondents requested that the Department extend its final results in order to incorporate in our margin calculation programs the results from the most recently completed reviews of the countervailing duty order on pasta from Turkey. On November 1, 2001, the Department published a notice postponing the final results of this review until December 25, 2001 (66 FR 55160). The Department has conducted this administrative review in accordance with section 751(a) of the Act.

[1] The petitioners are Borden Inc., Hershey Foods Corp. (Hershey Pasta), Grocery Corp Inc., and Gooch Foods, Inc. (effective January 1, 1999, Hershey Pasta and Grocery Corp., Inc. became New World Pasta, Inc.).

#### Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States (HTSUS).* Although the *HTSUS* subheading is provided for convenience and Customs purposes, the written description of the merchandise subject to the order is dispositive.

#### Scope Rulings

The Department has issued the following scope ruling to date:

(1) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See Memorandum from John Brinkmann to Richard Moreland,* dated May 24, 1999, in the case file in the

Central Records Unit, main Commerce building, room B–099 (the CRU).

**Determination Not To Revoke**

Pastavilla has had zero or *de minimis* dumping margins for the previous two review periods. *See Notice of Final Results of Antidumping Duty Administrative Review: Certain Pasta from Turkey* 64 FR 69493 (December 13, 1999); *see also, Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review: Certain Pasta from Turkey* 63 FR 68429 (December 11, 1998). However, as shown in the final results of this review, Pastavilla's weight-averaged dumping margin is 2.78 percent, which is above the *de minimis* rate of 0.50 percent. *See* 19 CFR 351.106(c). Consequently, Pastavilla has not made sales of subject merchandise ''at not less than NV for a period of at least three consecutive years'' as required by the Department's regulations. Because one of the requirements to qualify for revocation has not been met, the Department has not addressed the issues of commercial quantities and whether the continued application of the antidumping duty order is necessary to offset dumping with regard to Pastavilla. Thus, we determine not to revoke this order with respect to Pastavilla.

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the *Issues and Decision Memorandum for the Fourth Antidumping Duty Administrative Review (Decision Memorandum)* from Bernard Carreau, Deputy Assistant Secretary for Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated concurrently with this notice, which is hereby adopted by this notice. A list of the issues which parties have raised, and to which we have responded 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 the CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at http://ia.ita.doc.gov. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

**Changes Since the Preliminary Results**

Based on our analysis of comments received, we have made certain changes in the margin calculations. We calculated the export price and normal value using the same methodology stated in the *Preliminary Results*, except as follows:

- For the countervailing duty field (*i.e.*, CVDU) reported by Filiz, in the preliminary results, the Department mistakenly divided Filiz's reported figure by one thousand, on the premise that the figure was reported in $/metric ton and therefore must be converted to $/kilogram. We have corrected this error by not converting this field for purposes of these final results. In addition, we have reevaluated the appropriate amount of countervailing duties applicable to the dumping calculations for Filiz and Pastavilla.
- The Department has deleted its re-indexing of Pastavilla's fixed overhead (FOH) field and, instead, accepted Pastavilla's indexing of its FOH reported in the cost database.
- The Department corrected a typographical error for the amount to be indexed for hyper-inflation for the month of August 1999 in its affiliated party program.

These changes are discussed in the relevant sections of the *Decision Memorandum.*

**Final Results of Review**

As a result of our review, we determine that the following weighted-average percentage margins exist for the period July 1, 1999, through June 30, 2000:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Filiz | 0.00 |
| Pastavilla | 2.78 |

**Assessment Rate**

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. Where the importer-specific assessment rate is above *de minimis*, we will instruct Customs to assess antidumping duties on that importer's entries of subject merchandise. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the order during the POR.

**Cash Deposit Requirements**

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of certain pasta from Turkey entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rates shown above, except where the margin is *de minimis* or zero we will instruct Customs not to collect cash deposits; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 51.49 percent, the ''All Others'' rate established in the LTFV investigation. *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey*, 61 FR 38545 (July 24, 1996). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 26, 2001.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

## Appendix

List of Comments and Issues in the Decision Memorandum

Filiz and Pastavilla

1. Calculation of the Countervailing Duty (CVD) Field

Pastavilla

2. Calculation of Warranty Expense
3. Application of Negative Interest Cost
4. Indexing Fixed Overhead Costs
5. Revocation of the Antidumping Duty Order with Respect to Pastavilla
6. Clerical Error in the Affiliated Party Program

[FR Doc. 02–126 Filed 1–2–02; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–475–818]**

### Notice of Final Results of Antidumping Duty Administrative Review, Partial Rescission of Antidumping Duty Administrative Review and Revocation of Antidumping Duty Order in Part: Certain Pasta From Italy

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review, partial rescission of antidumping duty administrative review and revocation of antidumping duty order in part.

**SUMMARY:** On June 28, 2001, the Department of Commerce (the ''Department'') published the preliminary results of the administrative review of the antidumping duty order on certain pasta from Italy. This review covers the following exporters/producers of subject merchandise: (1) Barilla G.e.R. F.lli S.p.A.. (''Barilla''), (2) CO.R.EX S.p.A. (''Corex''), (3) Delverde S.p.A. and its affiliate, Tamma Industrie Alimentari di Capitanata, S.r.L. (collectively,'Delverde''), (4) Pastificio Guido Ferrara S.r.l. (''Ferrara''), (5) Pastificio F.lli Pagani S.p.A.(''Pagani''), (6) Pastificio Antonio Pallante S.r.l. and its affiliate, Industrie Alimentari Molisane S.r.l. (collectively, ''Pallante''), (7) P.A.M., S.r.l. and its affiliate, Liguori (collectively, ''PAM''), (8) N. Puglisi & F. Industria Paste Alimentari S.p.A. (''Puglisi''), (9) Pastificio Riscossa F.lli Mastromauro S.r.l (''Riscossa''), and (10) Rummo S.p.A. Molino e Pastificio (''Rummo''). The period of review (''POR'') is July 1, 1999, through June 30, 2000.

Based on our analysis of the comments received, these final results differ from the preliminary results. The final results are listed in the section ''*Final Results of Review*.'' For our final results, we have found that during the POR, Barilla, Ferrara, Pallante, PAM, and Riscossa sold subject merchandise at less than normal value (''NV''). We have also found that during the POR, Corex, Pagani, Puglisi and Rummo did not make sales of the subject merchandise at less than NV (*i.e.*, they had ''zero'' or de minimis dumping margins). Based on a decision of the U.S. Court of Appeals for the Federal Circuit, we are rescinding the review with respect to Delverde. *See Determination to Rescind* section of this notice. In addition, we are revoking the antidumping order with respect to Corex and Puglisi, based on three years of sales in commercial quantities at not less than NV. *See Determination to Revoke* section of this notice.

**EFFECTIVE DATE:** January 3, 2002.

**FOR FURTHER INFORMATION CONTACT:** James Terpstra or Geoffrey Craig, AD/CVD Enforcement, Office VI, Group II, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3965, or (202) 482–4161, respectively.

**SUPPLEMENTARY INFORMATION:**

### The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2000).

### Background

On June 28, 2001, the Department published the preliminary results of administrative review of the antidumping duty order on certain pasta from Italy. *See Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Intent To Revoke Antidumping Duty Order in Part: Certain Pasta From Italy*, 66 FR 34414 (June 28, 2001) (''*Preliminary Results*''). The review covers ten manufacturers/exporters. The POR is July 1, 1999, through June 30, 2000. We invited parties to comment on our preliminary results of review. We received case briefs on August 6, 2001, from Ferrara, Pallante, and PAM. On August 6, 2001, Riscossa submitted a letter with one clerical error allegation. A public hearing was not held with respect to this review.[1] On November 1, 2001, the Department published a notice extending the final results until no later than December 25, 2001. *See Certain Pasta from Italy and Turkey: Extension of Final Results of Antidumping Duty Administrative Reviews,* 66 FR 55160 (November 1, 2001). We also received a letter from PAM dated December 5, 2001.[2] The Department has conducted this administrative review in accordance with section 751 of the Act.

### Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of

[1] On July 22, 2001, PAM requested a hearing. However, instead the Department and PAM held an *ex parte* meeting. *See* Memorandum from Melissa G. Skinner to the File, ''Ex Parte Meeting with Counsel for PAM S.r.l. in the Antidumping Duty Administrative Review of Certain Pasta from Italy,'' dated August 22, 2001, on file in the Central Records Unit, room B–099, of the Department's main building (the ''CRU'').

[2] This letter requests that the Department combine shape categories 5 (short cuts), 6 (specialty short cuts) and 7 (soupettes). PAM argues that the Department has acknowledged that it erred with respect to this issue in the judicial review of the third administrative review. In its brief to the Court of International Trade, the Department stated, ''We respectfully request that the Court remand this issue to Commerce for the limited purpose of reviewing the record with regard to shape categories.'' *See* United States' Memorandum in Opposition to Plaintiff's Motion for Judgment Pursuant to Rule 56.2,'' dated November 2, 2001. PAM has inferred from this statement that ''this is a clear and unequivocal statement in which the U.S. concedes that it erred in the original determination in the 98/99 administrative review.'' Therefore, PAM has requested that the Department modify the final results of the current review (*i.e.,* combine shape categories 5, 6, and 7) in light of the Department's request to the Court for a remand. To the contrary, we simply requested from the Court the opportunity ''to review the record with regard to shape categories.''

organic pasta from Italy that are accompanied by the appropriate certificate issued by the Istituto Mediterraneo Di Certificazione, by Bioagricoop Scrl, by QC&I International Services, by Ecocert Italia, by Consorzio per il Controllo dei Prodotti Biologici, by Associazione Italiana per l'Agricoltura Biologica, or by Codex S.R.L.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (''*HTSUS*''). Although the *HTSUS* subheading is provided for convenience and Customs purposes, the written description of the merchandise subject to the order is dispositive.

**Scope Rulings**

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders. *See* Memorandum from Edward Easton to Richard Moreland, dated August 25, 1997, in the case file in the CRU.

(2) On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the antidumping and countervailing duty orders. *See* Letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import Administration, to Barbara P. Sidari, Vice President, Joseph A. Sidari Company, Inc., dated July 30, 1998, which is available in the CRU.

(3) On October 23, 1997, the petitioners filed an application requesting that the Department initiate an anti-circumvention investigation of Barilla, an Italian producer and exporter of pasta. The Department initiated the investigation on December 8, 1997 (62 FR 65673). On October 5, 1998, the Department issued its final determination that Barilla's importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention, with respect to the antidumping duty order on pasta from Italy pursuant to section 781(a) of the Act. *See Anti-circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 63 FR 54672 (October 13, 1998).

(4) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See* Memorandum from John Brinkmann to Richard Moreland, dated May 24, 1999, which is available in the CRU.

The following scope ruling is pending:

(5) On April 27, 2000, the Department self-initiated an anti-circumvention inquiry to determine whether Pagani's importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention, with respect to the antidumping and countervailing duty orders on pasta from Italy pursuant to section 781(a) of the Act and 19 CFR 351.225(b). *See Certain Pasta from Italy: Notice of Initiation of Anti-circumvention Inquiry of the Antidumping and Countervailing Duty Orders*, 65 FR 26179 (May 5, 2000).

**Verification**

As provided in section 782(i) of the Act, we verified U.S. sales information provided by Puglisi's U.S. affiliate, Rienzi & Sons. We used standard verification procedures, including an examination of relevant sales and financial records. Our verification results are outlined in the Puglisi verification report placed in the case file in the CRU. We revised certain sales verification findings. *See* the Puglisi verification report and calculation memorandum.

**Determination To Rescind**

On March 12, 2001, the U.S. Court of Appeals for the Federal Circuit (''Federal Circuit'') reversed a ruling by the U.S. Court of International Trade (''CIT'') and issued an order remanding to the CIT the final determination of the antidumping duty less-than-fair-value (''LTFV'') investigation (covering the period from May 1, 1994 through April 31, 1995) on certain pasta from Italy. The CIT subsequently remanded the case to the Department. Delverde's LTFV margin is now *de minimis*. *See Notice of Amendment of Final Determination of Sales at Less Than Fair Value Pursuant to Court Decision and Revocation in Part: Certain Pasta From Italy*, 66 FR 65889 (December 21, 2001). Therefore, because Delverde's LTFV margin is de minimis, Delverde is not subject to suspension of liquidation and has been excluded from the antidumping duty order on Pasta from Italy. We are rescinding this review with respect to Delverde because it has been excluded from the antidumping duty order.

**Determination To Revoke**

On July 13, 2000, and July 31, 2000, Puglisi and Corex, respectively, submitted letters to the Department requesting, pursuant to 19 CFR 351.222(b) and (e), revocation of the antidumping duty order with respect to their sales of the subject merchandise. In accordance with 19 CFR 351.222(e), on July 31, 2000 and September 13, 2000, respectively, Puglisi and Corex submitted the required certifications and agreements that they had not sold the subject merchandise at less than NV for a period of three consecutive reviews, which included this review period, and that they sold the subject merchandise in commercial quantities to the United States during each of these three years. Puglisi and Corex also have stated that they would not sell the subject merchandise at less than NV to the United States in the future, and each agreed to the reinstatement of the antidumping order with respect to its merchandise, as long as any exporter or producer is subject to the order, if the Department concludes that either Puglisi or Corex sold the subject merchandise at less than NV. See 19 CFR 351.222(e)(1)(i)–(iii).

In our preliminary results, in accordance with 19 CFR 351.222(f)(2), we stated our intent to revoke, in part, the order for certain pasta from Italy as it pertains to Corex and Puglisi sales of the subject merchandise. *See Preliminary Results.* No parties submitted comments on either Puglisi's or Corex's requests for revocation.

Therefore, because Puglisi has made sales at not less than NV for three consecutive reviews in commercial quantities (*see* Memorandum from Geoffrey Craig to File, ''Shipments of Pasta to the United States by Puglisi,'' dated June 21, 2001) and because there is no evidence on the record to indicate the likelihood of resumption of sales at dumped prices, we are revoking the antidumping duty order, in part, with respect to subject merchandise produced or produced and sold by Puglisi. *See Certain Welded Stainless Steel Pipe From Taiwan: Final Results of Antidumping Duty Administrative Review and Determination To Revoke Order In Part*, 65 FR 39367 (June 26, 2000). Also, because Corex has made

sales at not less than NV for three consecutive reviews in commercial quantities (*see* Memorandum from Cindy Robinson to File, ''Shipments of Pasta to the United States by Corex,'' dated June 21, 2001) and because there is no evidence on the record to indicate continued application of the order is necessary to offset dumping, we are revoking the antidumping duty order, in part, with respect to subject merchandise produced or produced and sold by Corex. In accordance with 19 CFR 351.222(f)(3), we will terminate the suspension of liquidation for Puglisi's and Corex's merchandise entered, or withdrawn from warehouse, for consumption on or after July 1, 2000 (the first day after the period under review), and will instruct the U.S. Customs Service to release any bond and refund any cash deposit.

**Use of Facts Available**

In the *Preliminary Results*, we applied adverse facts available (''FA'') to determine Barilla's dumping margin. *See Preliminary Results*, at 66 FR 34116. We did not receive comments regarding this issue; therefore, pursuant to section 776(a)(2)(A) of the Act, we have continued to apply adverse FA to determine Barilla's dumping margin in the final results.

**Selection of Adverse FA**

Consistent with the *Preliminary Results*, in accordance with section 776(b) of the Act, we are assigning Barilla an adverse facts available rate of 45.59 percent. *See Id.* We did not receive comments with respect to the selection of this rate; therefore we have continued to apply the 45.59 percent rate for Barilla.

**Analysis of Comments Received**

All issues raised in the case briefs by parties to this administrative review are addressed in the ''*Issues and Decision Memorandum for the Fourth Antidumping Duty Administrative Review*'' (''*Decision Memorandum*'') from Bernard T. Carreau, Deputy Assistant Secretary for Import Administration, to Richard W. Moreland, Acting Assistant Secretary for Import Administration, dated concurrently with this notice, which is hereby adopted by this notice. A list of the issues which parties have raised, and to which we have responded 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 the CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov.* The paper copy and electronic version of the *Decision Memorandum* are identical in content.

**Final Results of Review**

As a result of our review, we determine that the following weighted-average percentage margins exist for the period July 1, 1999, through June 30, 2000:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Barilla | 45.59 |
| Corex | 0 |
| Ferrara | 2.03 |
| Pagani | 0 |
| Pallante | 1.78 |
| PAM | 4.10 |
| Puglisi | *0.09 |
| Riscossa | 1.03 |
| Rummo | *0.01 |

*De minimis.

**Assessment**

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. In situations in which the importer-specific assessment rate is above de miminis, we will instruct Customs to assess antidumping duties on that importer's entries of subject merchandise. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the order during the POR.

**Cash Deposit Requirements**

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of certain pasta from Italy entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rates shown above, except where the margin is *de minimis* or zero we will instruct Customs not to collect cash deposits; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.26 percent, the ''All Others'' rate established in the LTFV investigation. *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 38547 (July 24, 1996). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

**Notification**

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO are sanctionable violations.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 777(i)(1) of the Act.

Dated: December 26, 2001.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

**Appendix**

List of Comments and Issues in the Decision Memorandum

**Ferrara**

1. Billing adjustments
2. CONNUM construction

**Pallante**

3. Entered value calculation
4. Export subsidy rate
5. Mismatched CONNUM and shape product characteristic
6. Level of trade

**PAM**

7. Cost of production and constructed value data
8. Classification of certain sales as U.S. sales
9. Home market sales used in below-cost test
10. Entry-by-entry basis
11. ''Zeroing'' negative margins
12. Startup adjustment
13. Exchange rate conversions
14. De minimis amounts
15. Currency of transaction
16. Level of trade methodology
17. Level of trade adjustment
18. General shape methodology
19. Department's shape classification of certain cuts
20. Release of data
21. Inclusion of constructed export price language in the margin program
22. Miscellaneous
23. Accuracy of final results

**Riscossa**

24. Clerical error

[FR Doc. 02–127 Filed 1–2–02; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administartion

**[A–570–001]**

### Potassium Permanganate From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Preliminary Results of Antidumping Duty New Shipper Review of Potassium Permanganate from the People's Republic of China.

**SUMMARY:** The Department of Commerce (the Department) is conducting a new shipper review of the antidumping duty order on potassium permanganate from the People's Republic of China (PRC) in response to a request from Groupstars Chemical Co. Ltd. (Groupstars). The review covers the period January 1, 2000 through December 31, 2000. The Department has preliminarily determined that the sale of subject merchandise during the period of review (POR) was made below normal value (NV). If the preliminary results are adopted in our final results of review, we will instruct the U.S. Customs Service (Customs) to assess antidumping duties on the entry under review.

The Department invites interested parties to comment on the preliminary results.

**EFFECTIVE DATE:** January 3, 2002.

**FOR FURTHER INFORMATION CONTACT:** John Conniff or Chris Brady, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1009 and (202) 482–4406, respectively.

**SUPPLEMENTARY INFORMATION:**

#### The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended, (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (2000).

#### Background

On January 31, 1984, the Department published in the **Federal Register** (49 FR 3897) the antidumping duty order on potassium permanganate from the PRC. On January 30, 2001, in accordance with section 751(a)(2)(B) of the Act and section 351.214 of the Department's regulations, the Department received a timely request from Groupstars to conduct a new shipper review of the antidumping order on potassium permanganate from the PRC.

Section 351.214(b) of the Department's regulations requires that the exporter or producer requesting a new shipper review include the following in its request: (i) A statement from such exporter or producer that it did not export subject merchandise to the United States during the period of investigation (POI); (ii) certification that, since the investigation was initiated, such exporter or producer has never been affiliated with any exporter or producer who exported the subject merchandise to the United States during the POI; (iii) in an antidumping proceeding involving inputs from a non-market economy (NME) country, a certification that the export activities of such exporter or producer are not controlled by the central government; and (iv) documentation establishing: (a) The date on which the subject merchandise was first entered, or withdrawn from warehouse, for consumption, or, if this date cannot be established, the date on which the exporter or producer first shipped the subject merchandise for export to the United States; (b) the volume of that shipment and subsequent shipments; and (c) the date of the first sale to an unaffiliated customer in the United States. Groupstars' new shipper review request was accompanied by information and certifications establishing the date on which the company first shipped and entered potassium permanganate for consumption in the United States, the volume of the shipment, and the date of first sale to an unaffiliated customer in the United States. Also, Groupstars certified that it did not export potassium permanganate from the PRC during the POI and was not affiliated with any company which had exported during the POI. In addition, Groupstars certified that its export activities are not controlled by the PRC's central government.

On February 28, 2001, the Department initiated a new shipper review of Groupstars covering the period January 1, 2000, through December 31, 2000. *See Potassium Permanganate From the People's Republic of China: Initiation of Antidumping New Shipper Review,* 66 FR 13895 (March 8, 2001). On August 17, 2001, the Department published an extension of the deadline for completion of the preliminary results of this new shipper review until December 25, 2001. *See Potassium Permanganate From the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping New Shipper Review,* 66 FR 43183.

On March 28, 2001, the Department issued its antidumping questionnaire to Groupstars. Groupstars responded to the Department's questionnaire on May 11, 2001 and June 14, 2001. Additionally, Groupstars submitted responses to the Department's May, August and October, 2001 supplemental questionnaires during May, August and October 2001, respectively. On September 28, 2001, the Department provided all interested parties the opportunity to submit any information which they wanted the Department to consider when valuing factors of production (FOP) in this new shipper review. On October 14, 2001, Groupstars submitted publicly available information and comments for consideration in valuing the FOP used in our NV calculations. On October 15, 2001, petitioner also submitted publicly available information and comments for this purpose.

#### Scope of the Review

Imports covered by this review are shipments of potassium permanganate, an inorganic chemical produced in free-flowing, technical, and pharmaceutical grades. During the review period, potassium permanganate was classifiable under item 2841.60.0010 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and Customs purposes.

The written description remains dispositive.

**Verification**

As provided in section 782(i) of the Act, we conducted a verification of the responses of Groupstars. We used standard verification procedures, including on-site inspection of the manufacturer's facilities and examination of relevant sales and financial records. At verification, we found that the Groupstars-Jinan plant, one of the two plants that produced the merchandise which Groupstars sold during the POR, was not operating. Company officials explained that other than producing a portion of the sale under review in July 2000, and 20 metric tons of potassium permanganate in September 2001, one month before verification, the Groupstars-Jinan plant had not produced any potassium permanganate due to problems with machinery. During our tour of the plant, we did not observe any repairs being performed on plant machinery. Moreover, none of the personnel that we interviewed at the plant were able to recall when the plant had last produced potassium permanganate. However, company officials were able to provide documentation to substantiate the FOP reported for the Groupstars-Jinan plant. For the preliminary results, we have used these FOP, as well as the verified FOP for Groupstars' other supplier, to calculate the margin reported in this notice. Complete information regarding our verification results is in our verification reports, which are in the public file of the Central Records Unit (CRU) in room B099 of the main Commerce building.

**Affiliation**

In its June 18, 2001 submission to the Department, Carus Chemical Company, the petitioner in this proceeding, alleged that Mr. Eugene Ji (also known as Ji Yue Qin), Groupstars' owner during the POR, has had multiple close affiliations with producers and exporters of potassium permanganate covered by the investigation in this proceeding, and therefore, pursuant to section 751(a)(2)(B) of the Act, and section 351.214 of the Department's regulations, Groupstars cannot be considered a new shipper.[1] Specifically, the petitioner alleges that Groupstars is or has been affiliated with investigated producers and exporters from the PRC because in 1992, Mr. Ji formed Waterman Chemical Company Ltd. (Waterman), a U.S. company which attempted to build a potassium permanganate plant in Baton Rouge, Louisiana using PRC equipment and technology from Jinan Tailu, the PRC joint venture that in the mid-1980's took over the Jinan Huaiyin plant, one of the plants that supplied the exporter examined in the original investigation. In addition, the petitioner notes that Groupstars operated and produced potassium permanganate during the POR using the facilities of the former Jinan Huaiyin.

Based upon the questionnaire responses received from Groupstars, and our verification thereof, we preliminarily determine that Groupstars qualifies for a new shipper review. We have determined that Groupstars made its first sale or shipment of subject merchandise to the United States during the POR, and that it was not affiliated with any exporter or producer that previously shipped to the United States. For a complete discussion of this issue, see the memorandum *Whether Groupstars Chemical Co. Ltd. Qualifies as a New Shipper* from Holly A. Kuga to Bernard T. Carreau, dated December 26, 2001, which is in the CRU public file.

**Separate Rates Determination**

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in a NME country this single rate, unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Groupstars provided the separate rates information requested by the Department and reported that its export activities are not subject to government control.

We examined the separate rates information provided by Groupstars in order to determine whether the company is eligible for a separate rate. The Department's separate rates test which is used to determine whether an exporter is independent from government control does not consider, in general, macroeconomic/border-type controls, *e.g.*, export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value,* 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (Sparklers), as amplified by Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) (Silicon Carbide). In accordance with the separate rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and de facto governmental control over export activities.

*1. Absence of De Jure Control*

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers,* 56 FR at 20508 (May 6, 1991).

Groupstars reported that the subject merchandise was not restricted to any government list regarding export provisions or export licensing, and was not subject to export quotas during the POR. Groupstars submitted copies of its business license in its May 11, 2001 submission. See May 11, 2001 submission at attachment 3. We found no inconsistencies with Groupstars' statement regarding the absence of restrictive stipulations associated with its business license. Groupstars submitted copies of PRC legislation demonstrating the statutory authority for establishing the de jure absence of government control over the company. Thus, we believe that the evidence on the record supports a preliminary finding of de jure absence of governmental control based on: (1) an absence of restrictive stipulations associated with Groupstars' business

[1] As noted previously, these provisions require that an exporter or producer requesting a review under section 751 (a)(2)(B) of the Act (a new shipper review) must not have been affiliated, within the meaning of section 771(33) of the Act, with any exporter or producer who exported the subject merchandise during the POI.

license; and (2) the applicable legislative enactments decentralizing control of PRC companies.

*2. Absence of De Facto Control*

The Department typically considers four factors in evaluating whether a respondent is subject to de facto governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. See Silicon Carbide, 59 FR at 22586–87 (May 2, 1994); *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995).

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide,* 56 FR at 22587 (May 2, 1994). Therefore, the Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

Groupstars reported that it determines its prices for sales of the subject merchandise based on the cost of the merchandise, movement expenses, overhead, profit, and the market situation in the United States. Moreover, Groupstars stated that it negotiated the price directly with its customer. Also, Groupstars claimed that its prices are not subject to review or guidance from any governmental organization. In addition, the record indicates that Groupstars has the authority to negotiate and sign contracts and other agreements. Further, Groupstars claimed that its negotiations are not subject to review or guidance from any governmental organization. Finally, there is no evidence on the record to suggest that there is any governmental involvement in the negotiation of contracts.

Furthermore, Groupstars reported that it has autonomy in making decisions regarding the selection of management. Groupstars claimed that its selection of management is not subject to review or guidance from any governmental organization and there is no evidence on the record to suggest that there is any governmental involvement in the selection of Groupstars' management.

Finally, Groupstars reported that it retains the proceeds of its export sales, it uses profits according to its business needs, and its management determines how to allocate profits. There is no evidence on the record to suggest that there is any governmental involvement in decisions regarding disposition of profits or financing of losses. Therefore, we find that the evidence on the record supports a preliminary finding of de facto absence of governmental control based on record statements and supporting documentation showing that: (1) Groupstars sets its own export prices independent of the government and without the approval of a government authority; (2) Groupstars has the authority to negotiate and sign contracts and other agreements; (3) Groupstars has autonomy from the government regarding the selection of management; and (4) Groupstars retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses.

The evidence placed on the record of this investigation by Groupstars demonstrates an absence of government control, both in law and in fact, with respect to its exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide.* Therefore, for the purposes of this preliminary determination, we are granting a separate rate to Groupstars.

**Normal Value Comparisons**

To determine whether the respondent's sale of subject merchandise was made at less than normal value, we compared the constructed export price (CEP) to the NV, as described in the *Constructed Export Price* and *Normal Value* sections of this notice, below.

**Constructed Export Price**

For all sales made by Groupstars to the United States, we used CEP in accordance with section 772(b) of the Act. Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold in the United States before or after the date of importation, by or for the account of the producer or exporter of the merchandise, or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, as adjusted under sections 772(c) and (d) of the Act.

We calculated CEP based on the packed prices from Groupstars Chemical L.L.C. (Groupstars LLC) (Groupstars' affiliated U.S. reseller) to the first unaffiliated U.S. customer. We made deductions, where appropriate, from the starting price for foreign inland freight, foreign brokerage and handling, ocean freight, U.S. Customs charges, and U.S. brokerage. Foreign inland freight, foreign brokerage and handling, and ocean freight, were provided by NME vendors, and thus, we based the deductions for these movement charges on surrogate values as discussed below. In accordance with 772(d)(1) of the Act, we deducted from the starting price those selling expenses that related to economic activity in the United States. In accordance with section 772(d)(3) of the Act, we deducted from the starting price an amount for profit. For additional information regarding these adjustments, see the calculation memorandum from John Conniff to the File dated December 26, 2001 which is in the CRU public file.

We valued foreign brokerage and handling using the Indian values that were reported in the public version of the questionnaire response placed on the record in *Certain Stainless Steel Wire Rod from India; Final Results of Antidumping Duty Administrative and New Shipper Review,* 65 FR 31302 (May 17, 2000). We valued ocean freight using the international freight expense reported in the public version of the questionnaire response that the Viraj Group submitted in the stainless steel wire rod from India review covering the period December 1996 through November 1997. *See Certain Stainless Steel Wire Rod from India; Final Results of Antidumping Duty Administrative and New Shipper Reviews* 64 FR 856 (January 6, 1999). We identify the source used to value foreign inland freight in the *Normal Value* section of this notice, below. We accounted for inflation or deflation between the time period that the values for movement charges were in effect and the POR, as described below in the *Normal Value* section of this notice.

**Use of Facts Otherwise Available**

Section 776(a)(2) of the Act provides that if an interested party or any other person: ''(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 * * * or (D) provides such information but the information cannot be verified as provided in section 782(i), the [Department] * * * shall, subject to section 782(d), use the facts otherwise

available in reaching the applicable determination under this title.''

The Department was unable to verify the total amount of indirect selling expenses incurred by Groupstars LLC during the POR. At verification, the Department found that Mr. Ji paid for certain indirect selling expenses incurred on Groupstars LLC's behalf using both his personal funds and the funds of New Phoenix Ltd. (New Phoenix), a company which he wholly owns. See US Verification Report at 8. Thus, not all of Groupstars LLC's indirect selling expenses were reported in the company's financial statement. At verification, Mr. Ji identified certain expenses (*e.g.,* rent) that did not appear on the company's financial statement and provided documents to substantiate the amount of such expenses. In addition, Mr. Ji provided the Department with access to his personal records and the records of New Phoenix. However, the record keeping systems he employed did not allow Department officials to identify which expenses related to Groupstars LLC. Because Groupstars LLC failed to provide the information the Department requested in the form and manner requested, and because we could not verify the information as provided, we find that the use of facts otherwise available is appropriate. As facts available, we allocated a portion of New Phoenix's expenses to Groupstars LLC. For further discussion of this issue, see the calculation memorandum from John Conniff to the File dated December 26, 2001 which is in the CRU public file.

**Normal Value**

For exports from NME countries, section 773(c)(1) of the Act provides that the Department shall determine NV using a FOP methodology if: (1) the subject merchandise is exported from a NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value pursuant to section 773(a) of the Act. Section 351.408 of the Department's regulations sets forth the methodology used by the Department to calculate the NV of merchandise exported from NME countries. In every case conducted by the Department involving the PRC, the PRC has been treated as a NME. Because none of the parties to this proceeding contested such treatment, we calculated NV in accordance with section 773(c)(3) and (4) of the Act and section 351.408(c) of the Department's regulations.

In accordance with section 773(c)(3) of the Act, the FOP utilized in producing potassium permanganate include, but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs, including depreciation. In accordance with section 773(c)(4) of the Act, the Department valued the FOP, to the extent possible, using the costs of the FOP in a market economy that is (1) at a level of economic development comparable to the PRC, and (2) a significant producer of comparable merchandise. We determined that India is comparable to the PRC in terms of per capita gross national product and the national distribution of labor. Furthermore, India is a significant producer of comparable merchandise. See Memorandum *From Jeff May, Director, Office of Policy, to Holly Kuga, Senior Office Director, AD/CVD Enforcement,* dated July 31, 2001, which is in the CRU public file.

In accordance with section 773(c)(1) of the Act, for purposes of calculating NV, we attempted to value the FOP using surrogate values that were in effect during the POR. However, when we were unable to obtain surrogate values in effect during the POR, we adjusted the values, as appropriate, to account for inflation or deflation between the effective period and the POR. We calculated the inflation or deflation adjustments for all factor values, except labor, using the wholesale price indices (WPI) for India as published in the International Monetary Fund's (IMF) publication, *International Financial Statistics.* We valued the FOP as follows:

(1) We valued the direct materials, potassium hydroxide and manganese dioxide using the rupee per metric ton or rupee per kilogram value of imports that entered India during the months of January-February and April-December 2000, as published in the Monthly Statistics of the Foreign Trade of India, Volume II—Imports (*Indian Import Statistics*).[2]

(2) We valued salt using the rupee per kilogram value of imports that entered India during the months of January-February and April-December 2000, as published in Indian Import Statistics.

(3) We valued coal using the rupee per metric ton or rupee per kilogram value of imports that entered India during the months of January-February and April-December 2000, as published in *Indian Import Statistics.*

(4) We valued electricity using the 1997 Indian electricity prices for industrial use as reported by the International Energy Agency (IEA), as adjusted for inflation. This rate is available in the IEA publication *Energy, Prices and Taxes, 2nd Quarter 2000.*

(5) We valued labor using a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3). This rate is identified on the Import Administration's Web site. *See http://ia.ita.doc.gov/wages.*

(6) We derived ratios for factory overhead, selling, general and administrative (SG&A) expenses, and profit using information reported for 1992–1993 in the *Reserve Bank of India Bulletin* of January 1997. This is the most recent information that we were able to obtain. Using the information from the *Reserve Bank of India Bulletin,* we were able to calculate factory overhead as a percentage of direct materials, labor, and energy expenses; SG&A expenses as a percentage of the total cost of manufacturing; and profit as a percentage of the sum of the total cost of manufacturing and SG&A expenses.

(7) We valued packing materials, including pallets and steel drums using the rupee per piece or rupee per kilogram value of imports that entered India during the months of January-February and April-December 2000, as published in *Indian Import Statistics.*

(8) We used the following sources to value truck and rail freight services incurred to transport the finished product to the port and direct materials, packing materials, and coal from the suppliers of the inputs to Groupstars:

*Truck Freight*: We valued truck freight services using the 1999 rate quotes reported by Indian freight companies. *See Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China,* 65 FR 33805 (May 25, 2000).

*Rail Freight:* We valued rail freight services using the April 1995 rates published by the Indian Railway Conference Association, as adjusted for inflation.

(9) We used the following sources to value ocean freight and marine insurance services incurred to transport the finished product to the port and direct materials, packing materials, and coal from the suppliers of the inputs to Groupstars:

*Ocean Freight:* We valued ocean freight services using the 1997 rate quotes reported by the Viraj Group in *Certain Stainless Steel Wire Rod from India; Notice of Preliminary Results of the Administrative and New Shipper Review,* 63 FR 48184.

*Marine Insurance:* We valued marine insurance using the 1997 rate quotes reported by the Viraj Group in *Certain Stainless Steel Wire Rod from India;*

[2] For each of the FOP, we were unable to find Indian import statistics for March 2000.

*Notice of Preliminary Results of the Administrative and New Shipper Review,* 63 FR 48184. For further discussion of the surrogate values used in this review, see *Memorandum From Chris Brady to the File Regarding Surrogate Values Used for the Preliminary Results of the New Shipper Review of Potassium Permanganate from the People's Republic of China,* dated December 26, 2001, which is in the CRU public file.

**Preliminary Results of Review**

As a result of our review, we preliminarily determine that the following weighted-average percentage dumping margin exists for the period January 1, 2000 through December 31, 2000:

| Exporter/Manufacturer | Margin (percent) |
|---|---|
| Groupstars Chemical Co., Ltd.[3] | 262.90. |

The Department will disclose the calculations it performed in this review to the parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Any interested party may request a hearing within 30 days of publication of this notice in accordance with section 351.310(c) of the Department's regulations. Any hearing would normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing. Unless otherwise notified by the Department, interested parties may submit case briefs within 21 days of the date of publication of this notice in accordance with 351.309(c)(ii) of the Department's regulations. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

**Assessment**

The Department will issue the final results of this new shipper review, which will include the results of its analysis of issues raised in the briefs, within 90 days from the date of this preliminary result, unless the time limit is extended. Upon completion of this new shipper review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the U.S. Customs Service upon completion of this review. For assessment purposes, we calculated importer-specific assessment rates for potassium permanganate from the PRC. We divided the total dumping margin (calculated as the difference between NV and CEP) for the importer by the entered value of the reviewed sale. Where the importer-specific assessment rate is above de minimis, we will direct U.S. Customs to assess the resulting ad valorem rate against the entered value of the entry of the subject merchandise by that importer during the POR.

**Cash Deposit**

Furthermore, the following deposit rates will be effective upon publication of the final results of this review for all shipments of potassium permanganate from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the reviewed firm will be the rate established in the final results of this review; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period; (3) for all other PRC exporters, the rate will be the current PRC-wide rate, 128.94 percent; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

**Notification**

This notice also serves as a preliminary reminder to importers of their responsibility under Sec. 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper review and this notice are published in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: December 26, 2001.

**Richard W. Moreland,**

*Acting Assistant Secretary, for Import Administration.*

[FR Doc. 02–125 Filed 1–2–02; 8:45 am]

BILLING CODE 3510–DS–P

[3] Although the new shipper review was initiated on Groupstars Chemical Co., Ltd. (''Shandong'') (66 FR 13895, March 8, 2001), it was later clarified by respondent's counsel that the correct name should be Groupstars Chemical Co., Ltd.

## DEPARTMENT OF COMMERCE

### International Trade Administration

### United States-Egypt Presidents' Council: Membership

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Amendment to Notice of Membership Opportunity: Extension to deadline for applications.

**SUMMARY:** The International Trade Administration of the U.S. Department of Commerce established and monitors the activities of the U.S.-Egypt Presidents' Council. The purpose of the Council is to provide a forum through which American and Egyptian private sector representatives can provide advice and counsel to both governments. The **Federal Register** published a notice of membership opportunities for American business representatives on the U.S. side of the Council on November 19, 2001. The deadline was December 28, 2001. This notice hereby extends the deadline by which applications must be received.

**DATES:** In order to receive full consideration, requests must be received no later than: Friday, January 25, 2002.

**ADDRESSES:** Please send your requests for consideration to Maram R. Talaat, Egypt Desk Officer, Office of the Middle East, U.S. Department of Commerce by fax on 202–482–0878 and by mail to Room H–2029B, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

**FOR FURTHER INFORMATION, CONTACT:** Maram R. Talaat, Office of the Middle East, Room H–2029B, U.S. Department of Commerce, Washington, D.C. 20230, phone: 202–482–3752.

**SUPPLEMENTARY INFORMATION:** This amends the notice of membership opportunities on the U.S.-Egypt Presidents' Council published in the **Federal Register** on November 19, 2001 (66 FR 57937–57938).

Dated: December 27, 2001.

**Cherie A. Loustaunau,**

*Director, Office of the Middle East.*

[FR Doc. 02–82 Filed 1–2–02; 8:45 am]

**BILLING CODE 3510–DA–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 121401A]**

### Endangered Species; Permits

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

**ACTION:** Receipt of applications for two research permits (1355, 1356).

**SUMMARY:** Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research under the Endangered Species Act (ESA): NMFS has received an application for a scientific research permit from Mr. Eugene Greer, of Columbia Environmental Research Center (CERC) and NMFS has received an application for a scientific research permit from Mr. Michael J. Bresette, of Inwater Research Group Inc.

**DATES:** Comments or requests for a public hearing on any of the new applications must be received at the appropriate address or fax number no later than 5 p.m. eastern standard time on February 4, 2002.

**ADDRESSES:** Written comments on any of the new applications or modification requests should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application or modification request. Comments will not be accepted if submitted via e-mail or the Internet. The applications and related documents are available for review in the indicated office, by appointment:

Permits, Conservation and Education Division, F/PR1, 1315 East West Highway, Silver Spring, MD 20910 (phone: 301–713–2289, fax: 301–713–0376).

Documents may also be reviewed by appointment in the Office of Protected Resources, F/PR1, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (phone: 301–713–2289).

**FOR FURTHER INFORMATION CONTACT:** Lillian Becker, Silver Spring, MD (phone: 301-713-2319, fax: 301–713–0376, e-mail: Lillian.Becker@noaa.gov)

**SUPPLEMENTARY INFORMATION:**

#### Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Scientific research and/or enhancement permits are issued under section 10(a)(1)(A) of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222-226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

#### Species Covered in This Notice

The following species are covered in this notice:

*Sea turtles*

Threatened and endangered green turtle (*Chelonia mydas*)

Endangered hawksbill turtle (*Eretmochelys imbricata*)

Endangered Kemp's ridley turtle (*Lepidochelys kempii*)

Threatened loggerhead turtle (*Caretta caretta*)

*Fish*

Endangered shortnose sturgeon (Acipenser brevirostrum)

#### New Applications Received

*Application 1355*

The applicant proposes to test the effects of the ambient levels of discharged waste found in the waters of North Carolina on the growth and survival of shortnose sturgeon fry. Preliminary results of acute toxicity tests indicate these species are among the more sensitive fish relative to contaminant effects, indicating the importance of testing the hypothesis that water quality may be a limiting factor to the species recovery. Up to 3,000 fry will be placed into water shipped in from the rivers of North Carolina and observed for growth and survival.

*Application 1356*

The applicant proposes to investigate the demographic composition and genetic origin of sea turtles within the Key West National Wildlife Refuge. This will be done by the capturing of up to 100 green, 100 loggerhead, 50 Kemp's ridley, and 50 hawksbill turtles with nets and by hand. The turtles will be weighed, measured, blood sampled, PIT and flipper tagged, have stomach lavage and released back into the area where they were captured.

Dated: December 21, 2001.

**Ann Terbush,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 02–130 Filed 1–2–02; 8:45 am]

**BILLING CODE 3510–22–S**

## 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).

**DATES:** Consideration will be given to all comments received by February 4, 2002.

*Title, Form, and OMB Number:* United States Air Force Academy Application; USAFA Form 149; OMB Number 0701–0087.

*Type of Request:* Extension.

*Number of Respondents:* 9,850.

*Responses per Respondent:* 1.

*Annual Responses:* 9,850.

*Average Burden Per Response:* 24 minutes.

*Annual Burden Hours:* 3,940.

*Needs and Uses:* The information collection requirement is necessary to obtain data on candidates' background and aptitude in determining eligibility and selection to the Air Force Academy. The information collected on this form is required by 10 U.S.C. 9346. The respondents are students who are applying for admission to the United States Air Force Academy. Each student's background and aptitude is reviewed to determine eligibility.

*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: December 21, 2001.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 02–29 Filed 1–2–02; 8:45 am]

**BILLING CODE 5001–08–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Joint Advisory Committee on Nuclear Weapons Surety: Meeting

**AGENCY:** Department of Defense.

**ACTION:** Notice of Advisory Committee Meeting.

**SUMMARY:** The Joint Advisory Committee on Nuclear Weapons Surety will conduct a closed session on February 4 and 5, 2002 at Science Applications International Corporation, San Diego, California.

The Joint Advisory Committee is charged with advising the Secretaries of Defense and Energy, and the Joint Nuclear Weapons Council on nuclear weapons surety matters. At this meeting the Joint Advisory Committee will receive classified briefings on nuclear weapons systems safety and security.

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended, Title 5, U.S.C. App. II, (1988)), this meeting concerns matters sensitive to the interests of national security, listed in 5 U.S.C. Section 552b(c)(1) and accordingly this meeting will be closed to the public.

Dated: December 21, 2001.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 02–28 Filed 1–2–02; 8:45 am]

**BILLING CODE 5001–08–M**

## DEPARTMENT OF DEFENSE

### National Security Agency/Central Security Service; Privacy Act of 1974; System of Records

**AGENCY:** National Security Agency/ Central Security Service, DoD.

**ACTION:** Notice to alter a system of records.

**SUMMARY:** The National Security Agency/Central Security Service is proposing to alter a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This proposed action would be effective without further notice on February 4, 2002 unless comments are received which result in a contrary determination.

**ADDRESSES:** Send comments to the National Security Agency/Central Security Service, Office of Policy, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

**FOR FURTHER INFORMATION CONTACT:** Ms. Anne Hill at (301) 688–6527.

**SUPPLEMENTARY INFORMATION:** The National Security Agency's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 19, 2001, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: December 21, 2001.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**GNSA 18**

**SYSTEM NAME:**

NSA/CSS Operations Files (February 22, 1993, 58 FR 10531).

**CHANGES:**

* * * * *

**SYSTEM NAME:**

Delete 'NSA/CSS' from entry.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete entry and replace with 'Individuals identified in foreign intelligence, counterintelligence, or information system security reports, and supportive materials, including individuals involved in matters of foreign intelligence interest, information systems security interest, the compromise of classified information, or terrorism.'

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Add to entry 'information systems security analysis and reporting.'

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Add to entry 'National Security Directive 42.'

**PURPOSE(S):**

Add to entry 'and information systems security.'

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Add to second paragraph 'information systems security information.'

* * * * *

**RETRIEVABILITY:**

Delete entry and replace with 'Information is retrieved by individual's name, Social Security Number, or identification number.'

* * * * *

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Delete the first paragraph and replace with 'Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal

law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source. NOTE: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

Investigatory material complied solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.'

* * * * *

**GNSA 18**

**SYSTEM NAME:**

Operations Files.

**SYSTEM LOCATION:**

National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals identified in foreign intelligence, counterintelligence, or information system security reports and supportive materials, including individuals involved in matters of foreign intelligence interest, information systems security interest, the compromise of classified information, or terrorism.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records include administrative information; biographic information; intelligence requirements, analysis, and reporting; information systems security analysis and reporting; operational records; articles, public-source data, and other published information on individuals and events of interest to NSA/CSS; actual or purported compromises of classified intelligence; countermeasures in connection therewith; and identification of classified source documents and distribution thereof. Authority for maintenance of the system: National Security Act of 1947, as amended, 50 U.S.C. 403–3(d)(2); National Security Agency Act of 1959, Pub. L. 86–36, as amended, 50 U.S.C. 402 Note; E.O. 12333; E.O. 12958; E.O. 9397 (SSN); and National Security Directive 42.

**PURPOSE(S):**

To maintain records on foreign intelligence, counterintelligence, and information systems security matters relating to the mission of the National Security Agency.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To U.S. Government agencies, and in some instances foreign government agencies or their representatives, to provide foreign intelligence, counterintelligence, information systems security information, and other information.

To U.S. Government officials regarding compromises of classified information including the document(s) apparently compromised, implications of disclosure of intelligence sources and methods, investigative data on compromises, and statistical and substantive analysis of the data.

To any U.S. Government organization in order to facilitate any security, employment, detail, liaison, or contractual decision by any U.S. Government organization.

Records may further be disclosed to agencies involved in the protection of intelligence sources and methods to facilitate such protection and to support intelligence analysis and reporting.

The DoD 'Blanket Routine Uses' set forth at the beginning of the NSA/CSS' compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Magnetic tape, disk or other computer storage media, computer listings and databases, paper in file folders, audio recordings, microfilm or microfiche.

**RETRIEVABILITY:**

Information is retrieved by individual's name, Social Security Number, or identification number.

**SAFEGUARDS:**

For paper, computer printouts, audio recordings, and microfilm secure limited access facilities, within those facilities secure limited access rooms, and within those rooms lockable containers. Access to information is limited to those individuals specifically authorized and granted access by NSA/CSS regulations. For records on the computer system, access is controlled by passwords or physical protection and limited to authorized personnel only.

**RETENTION AND DISPOSAL:**

Records are reviewed for retention on a scheduled basis every 120 days to 5 years. Evidential, informational, and historical data are archived as permanent records. All other records are destroyed.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

**CONTESTING RECORD PROCEDURES:**

The NSA/CSS rules for contesting contents and appealing initial determinations are published at 32 CFR part 322 or may be obtained by written request addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

**RECORD SOURCE CATEGORIES:**

Individuals themselves; U.S. agencies and organizations; media, including periodicals, newspapers, and broadcast transcripts; public and classified reporting, intelligence source documents, investigative reports, and correspondence. Exemptions claimed for the system:

Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be entitled, as a result of the maintenance

of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identify of a confidential source.

**Note:** When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated according to the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 322. For additional information contact the system manager.

[FR Doc. 02–31 Filed 1–2–02; 8:45 am]

BILLING CODE 5001–08–M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Release of the Notice of Availability (NOA) on the Final Environmental Impact Statement (FEIS) on the Disposal and Reuse of the Oakland Army Base, Oakland, California

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of Availability.

**SUMMARY:** The Army prepared this FEIS in compliance with the National Environmental Policy Act (NEPA) of 1969 and the President's Council on Environmental Quality. The closure of the Oakland Army Base (OARB), Oakland, California, was mandated in accordance with the recommendations of the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended (the ''BRAC law''). The July 27, 2001, edition of the **Federal Register** (66 FR 39153–54 and 39162) contained the NOA for the Army's OARB Supplemental Draft EIS.

**DATES:** The review period for the Final EIS will end 30 days after publication of the Notice of Availability in the **Federal Register** by the U.S. Environmental Protection Agency.

**ADDRESSES:** Direct questions and/or written comments regarding the Final EIS to, or a request for a copy of the document from: Mr. Chuck Hubbard, U.S. Army Corps of Engineers, Sacramento District (CESPK–PD) 1325 J Street, Sacramento, California 95814–2922.

**FOR FURTHER INFORMATION CONTACT:** Mr. Chuck Hubbard at (916) 557–6958; by facsimile at (916) 557–7850; or by e-mail at CHubbard@spk.usace.army.mil.

**SUPPLEMENTARY INFORMATION:** The FEIS analyzes three alternative courses of action with respect to the disposal and subsequent reuse of the 425 acres (371 land acres and 54 submerged land acres) comprising the OARB: (1) The no action disposal alternative, under which the property would be maintained in a caretaker status after closure; (2) the unencumbered disposal alternative, under which the Army would transfer the property without encumbrances, such as environmental restrictions, land use controls, and easements; and (3) the encumbered disposal alternative, under which the Army would transfer the property with various environmental restrictions, land use controls, and easements, limiting the future use of the property. The FEIS also analyzes the potential environmental and socioeconomic consequences of a range of community reuse alternatives: (1) Low intensity reuse alternative; (2) low-medium intensity reuse alternative, (3) medium intensity reuse alternative; (4) medium-high intensity reuse alternative (5) medium-high/high intensity reuse alternative; (6) high intensity reuse alternative; and (7) very-high intensity reuse alternative.

The FEIS concludes the no action alternative is not reasonable because the BRAC law mandates closure of the Oakland Army Base, and the Army has no requirement to retain the property. This FEIS also concludes that the unencumbered disposal alternative is not feasible given environmental conditions and legal requirements.

The Army's preferred alternative course of action is the encumbered disposal of excess property. Possible encumbrances include: covenants and restrictions pertaining to asbestos-containing material; lead-based paint; biological resources; historic properties; ground water usage; excavations; future remedial activities after transfer; infrastructure easements; and rights-of-way.

The FIES analyzes community reuse of the OARB property as a secondary action resulting from closure and disposal by the Army. While the Army does not control the community's reuse of the property, NEPA requires the Army to analyze the reasonable foreseeable impacts of its disposal action. The local community established the Oakland Base Reuse Authority (OBRA) to develop and implement a reuse plan for the installation. Approval and implementation of the reuse plan are within the discretion of the OBRA.

Comments on the FEIS, received during the 30-day public comment period, will be considered in preparing the Army's Record of Decision.

Copies the FEIS are available for review at the following libraries: the Oakland Public Library Main Branch, Science, Social Science and Documents Section, 125 Fourteenth Street, Oakland, California 94612; the West Oakland Branch Library, 1801 Adeline Street, Oakland, California 94607; and the Base Transition Office, 2475–D West 12th Street, Oakland, California 94607.

Dated: December 21 2001.

**Raymond J. Fatz,**

*Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA(I&E).*

[FR Doc. 02–77 Filed 1–2–02; 8:45 am]

BILLING CODE 3710–08–M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice to Amend a System of Records.

**SUMMARY:** The Department of the Army is amending a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on Febuary 4, 2002 unless comments are received which result in a contrary determination.

**ADDRESSES:** Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC-PDD-RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

**FOR FURTHER INFORMATION CONTACT:** Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

**SUPPLEMENTARY INFORMATION:** The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The

proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: December 21, 2001.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**A0351 DAPE**

**SYSTEM NAME:**

Army Training Requirements and Resources System (ATRRS) (March 29, 2000, 65 FR 16568).

**CHANGES:**

* * * * *

**RETENTION AND DISPOSAL:**

Delete entry and replace with ''The following ATRRS reports are permanent for the offices performing Army-wide responsibility only: Army Program for Individual Training (ARPRINT), the Mobilization Army Program for Individual Training (MOB ARPRINT), and the Military Manpower Training Report (MMTR).

For all other offices, the ARPRINT, MOB ARPRINT and MMTR reports and all other ATRRS reports are kept until no longer needed for conducting business, but not longer than 6 years, then destroyed.

Records not classified as reports are destroyed when no longer needed for current operations.''

* * * * *

**A0351 DAPE**

**SYSTEM NAME:**

Army Training Requirements and Resources System (ATRRS).

**SYSTEM LOCATION:**

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, 300 Army Pentagon, Washington, DC 20310–0300; U.S. Army Personnel Command; major commands; Army Reserve Personnel Center; National Guard Bureau; Schools and Army Training Centers worldwide. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Members of the Army, Navy, Air Force, Marine Corps, Reserve Officers' Training Corps students, Department of Defense (DoD) civilian employees and approved foreign military personnel attending a course of instruction conducted under the auspices of all Army schools and some DoD schools.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The system contains records pertaining to course administrative data, course scope and prerequisites, course training requirements, course equipment, personnel and facilities constraints, requirements for instructors, class schedules, class quotas, prioritized order of merit list for input into Noncommissioned Officers Education System (NCOES) training, by name reservations, limited individual personnel data, and course input and completion data by name/Social Security Number. Data related to an individual is as follows:

Training course completion data and reason codes for attrition are maintained for an individual, as well as training seat reservations.

Limited personnel data is maintained on an individual as long as the individual has a valid reservation for training or is currently in the training base.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013, Secretary of the Army and 4301; and E.O. 9397 (SSN).

**PURPOSE(S):**

The Army Training Requirements and Resources System is the system of records for the management of personnel input to training for the Army; is the repository for training requirements, training programs, selected training cost data, and training personnel data; contains detailed class information on all courses taught and taken by Army personnel; and produces reports and analyses and can display selected data pertinent to training-requirements, programs, inputs, graduates, loads and associated information.

Training managers use this information to schedule classes, fill training seats, and train soldiers.

The major subsystems of the Army Training Requirements and Resources System include:

(a) The Mobilization Planning System is used to plan individual training requirements and training programs for all courses upon mobilization. The product of Mobilization Planning System is the Mobilization Army Program for Individual Training.

(b) The Structure Manning Decision Review (SMDR) is the process for reviewing training requirements and modifying them into executable training programs based on available resources. The product of the SMDR is the Army Program for Individual Training which is the mission and resourcing document used by schools and training centers to establish class schedule. Additionally, the Training Resource Arbitration Panel is used to adjust training programs during the execution year.

(c) The Student Trainee Management System—Enlisted manages initial entry training seats and provides projected graduate information to PERSCOM.

(d) The Quota Management System is used to allocate training quotas by class and redistribute those seats among components in order to maximize the fill of training seats.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Electronic storage medium.

**RETRIEVABILITY:**

Retrieved by individual's name and Social Security Number.

**SAFEGUARDS:**

Visitor registration system is in effect. Hard copy printouts which contain data by Social Security Number are maintained with an 'Official Use Only' cover. Access to the Army Training Requirements and Resources System is limited to authorized personnel and as determined by the system manager.

**RETENTION AND DISPOSAL:**

The following ATRRS reports are permanent for the offices performing Army-wide responsibility only: Army Program for Individual Training (ARPRINT), the Mobilization Army Program for Individual Training (MOB ARPRINT), and the Military Manpower Training Report (MMTR).

For all other offices, the ARPRINT, MOB ARPRINT and MMTR reports and all other ATRRS reports are kept until no longer needed for conducting business, but not longer than 6 years, then destroyed.

Records not classified as reports are destroyed when no longer needed for current operations.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, 300 Army Pentagon, Washington, DC 20310–0300.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the local commander. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

Individual should provide the full name, Social Security Number, and military status or other information verifiable from the record itself.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves is contained in this system should address written inquiries to the local commander. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

Individual should provide the full name, Social Security Number, and military status or other information verifiable from the record itself.

CONTESTING RECORD PROCEDURES:

The Army rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is received from DoD staff, field installations, and automated systems.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–30 Filed 1–2–02; 8:45 am]

BILLING CODE 5001–08–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. ER02–300–001 and ER02–301–001]**

### Armstrong Energy Limited Partnership, LLLP and Troy Energy, LLC; Notice of Filing

December 27, 2001.

Take notice on December 14, 2001, Pleasants Energy, LLC (Pleasants Energy), Armstrong Energy limited Partnership, LLLP (Armstrong Energy) and Troy Energy LLC (Troy Energy) tendered for filing with the Federal Energy Regulatory Commission (Commission) a letter requesting the Commission to issue an order on the merits of their Purchase Power Agreements with Virginia Electric and Power Company.

Armstrong Energy and Troy Energy request that the Commission take action by February 18, 2002 since the units will commence test energy operations shortly after that date.

Copies of the filing were served upon the Ohio Public Utilities Commission, Pennsylvania Public utility Commission, Public Service Commission of West Virginia and Virginia State Corporation Commission.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's web site 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.

*Comment Date:* January 4, 2002.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 02–70 Filed 1–2–02; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. ER02–40–000 and ER02–40–001]**

### Attala Energy Company, LLC; Notice of Issuance of Order

December 27, 2001.

Attala Energy Company, LLC (Attala) filed with the Commission, in the above-docketed proceeding, an application for market-based rate authority with accompanying tariffs that provides for the sale of capacity, energy, and/or ancillary services, the resale of firm transmission rights and the reassignment of transmission capacity. Attala also requested certain waivers and authorizations. In particular, Attala requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by Attala. On December 19, 2001, the Commission issued an order (Order) that accepted Applicants application, subject to any tariff condition adopted by the Commission in Docket No. ER01–118–000.

The Commission's December 19, 2001 Order granted Attala's request for blanket approval under Part 34, subject to the conditions found in Appendix A in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Attala 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.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, Attala is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Attala, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Attala's issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 22, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the 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. 02–68 Filed 1–2–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. ER02–305–000, ER00–2998–001, ER00–2999–001, ER00–3000–001, and ER00–3001–001]**

## Condon Wind Power, LLC; Notice of Issuance of Order

December 27, 2001.

Condon Wind Power, LLC (Condon) filed with the Commission, in the above-docketed proceedings, an application requesting acceptance of initial rate schedule that provides for Condon to make wholesale sales of electric energy and capacity form new wind energy project at market-based rates. Condon's application also requested certain waivers and authorizations. In particular, Condon requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by Condon. On December 19, 2001, the Commission issued an order (Order) that accepted Condon's application, subject to any tariff condition adopted by the Commission in Docket No. ER01–118–000.

The Commission's December 19, 2001 Order granted the Condon's request for blanket approval under Part 34, subject to the conditions found in Appendix A in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Condon 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.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, Condon are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Condon, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Condon's issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 22, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the 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. 02–71 Filed 1–2–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP02–44–000]**

## Dominion Transmission, Inc.; Notice of Application

December 27, 2001.

Take notice that on December 7, 2001, Dominion Transmission, Inc. (Dominion), 445 West Main Street, Clarksburg, West Virginia 26301, filed an application pursuant to Section 7 of the Natural Gas Act and Part 157 of the Commission's Rules and Regulations for a certificate of public convenience and necessity to construct and operate pipeline facilities for the transportation of natural gas all as more fully set forth in the application 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).

Specifically, Dominion seeks to construct and operate 4,735 of additional horsepower at its existing Little Greenlick Compressor Station located in Potter County, Pennsylvania. Dominion, together with Tennessee Gas Pipeline Company (Tennessee), has also filed to lease 150,000 Dth per day of capacity to Tennessee from Ellisburg, Pennsylvania to Leidy, Pennsylvania.[1] The capacity created by this proposal, 130,000 Dth per day, and by a proposal to expand the facilities jointly owned by Dominion and National Fuel Gas Supply Corporation (National Fuel) will provide the volume to be leased to Tennessee.[2] The estimated cost of the proposed facilities is $10.3 million.

Any questions regarding the application should be directed to Sean R. Sleigh, Certificates Manager, Dominion Transmission, Inc., 445 West Main Street, Clarksburg, West Virginia 26301 at 304–627–3462 or by E-mail at *sean_r_sleigh@dom.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 January 17, 2002, 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

[1] The lease is the subject of Docket No. CP02–47–000.

[2] The expansion of the joint facilities owned by Dominion and National Fuel is the subject of Docket No. CP02–53–000.

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. 02–60 Filed 1–2–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP02–47–000]**

## Dominion Transmission, Inc. and Tennessee Gas Pipeline Company; Notice of Application

December 27, 2001.

Take notice that on December 7, 2001, Dominion Transmission, Inc. (Dominion), 445 West Main Street, Clarksburg, West Virginia 26301 and Tennessee Gas Pipeline Company (Tennessee), 9 E. Greenway Plaza, Houston, Texas 77048, filed a joint application pursuant to Section 7 of the Natural Gas Act and Part 157 of the Commission's Rules and Regulations for a certificate of public convenience and necessity authorizing a capacity lease between Dominion and Tennessee all as more fully set forth in the application 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).

Specifically, Dominion seeks to lease capacity of up to 150,000 Dth per day to Tennessee on a firm basis from Ellisburg, Pennsylvania to Leidy, Pennsylvania for a term of ten years commencing November 1, 2002. This leased capacity is part of Tennessee's Can-East Project (also known as the Leidy Extension) which is designed to provide firm transportation of gas from various points on Tennessee's system for delivery to Texas Eastern Transmission Company and Transcontinental Gas Pipe Line Corporation at Leidy.

Any questions regarding the application should be directed to Sean R. Sleigh, Certificates Manager, Dominion Transmission, Inc., 445 West Main Street, Clarksburg, West Virginia 26301 at 304–627–3462 or by E-mail at *sean_r_sleigh@dom.com* and Marguerite N. Woung-Chapman, General Counsel, Tennessee Gas Pipeline Company, 9 E. Greenway Plaza, Suite 340, Houston, Texas 77048 at 832–676–7329 or by E-mail at *marguerite.woung-chapman@elpaso.com.*

Any person desiring to be heard or to make any protest with reference to said application should file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All such motions to intervene or protests should be filed on or before January 17, 2002. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 02–62 Filed 1–2–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. ER02–22–000, ER02–23–000, ER02–24–000, and ER02–25–000]**

## Dresden Energy, LLC, S.W.E.C., LLC, Armstrong Energy Limited Partnership, LLLP and Troy Energy, LLC; Notice of Issuance of Order

December 27, 2001.

Dresden Energy, LLC, S.W.E.C., LLC, Armstrong Energy Limited Partnership, LLLP, and Troy Energy, LLC (collectively, Applicants) filed with the Commission, in the above-docketed

proceedings, applications for market-based rate authority, with accompanying tariffs (market-based rate tariffs). The proposed market-based rate tariffs provide for sales of capacity, energy, and/or ancillary services and the resale of transmission rights. The Applicants also requested certain waivers and authorizations. In particular, the Applicants requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by the Applicants. On December 19, 2001, the Commission issued an order (Order) that accepted the Applicants' applications in these proceedings, subject to any tariff condition adopted by the Commission in Docket No. ER01–118–000.

The Commission's December 19, 2001 Order granted the Applicants' request for blanket approval under Part 34, subject to the conditions found in Appendix A in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by the Applicants 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.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, the Applicants are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the Applicants, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of the Applicants' issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 22, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the 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. 02–67 Filed 1–2–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. ER01–2688–000, ER01–2688–001, ER01–2688–002, ER01–2689–000, ER01–2689–001, and ER01–2689–002]**

## Gilroy Energy Center, LLC and King Center Energy Center, LLC; Notice of Issuance of Order

December 27, 2001.

Gilroy Energy Center, LLC and King City Energy, LLC (collectively, Applicants) filed with the Commission, in the above-docketed proceedings, an application requesting acceptance of initial rate schedules under which Applicants will make wholesale sales of electric energy, capacity, replacement reserves and certain ancillary services and will reassign transmission capacity and resell firm transmission rights. Applicants' application also requested certain waivers and authorizations. In particular, Applicants requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by Applicants. On December 20, 2001, the Commission issued an order (Order) that accepted Applicants application, subject to any tariff condition adopted by the Commission in Docket No. ER01–118–000.

The Commission's December 20, 2001 Order granted Applicants request for blanket approval under Part 34, subject to the conditions found in Appendix A in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Applicants 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.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, Applicants are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Applicants, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Applicants' issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 22, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the 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. 02–65 Filed 1–2–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER02–159–000]**

## GNE, LLC; Notice of Issuance of Order

December 27, 2001.

GNE, LLC (GNE) filed with the Commission, in the above-docketed proceeding, an application for market-based rate authority. GNE's rate schedule provides for the sale of capacity, energy, and/or ancillary services and the reassignment of transmission capacity. GNE also requested certain waivers and authorizations. In particular, GNE requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by GNE. On December 19, 2001, the Commission

issued an order that accepted the tariff for sales of capacity and energy at market-based rates (Order), subject to any tariff condition adopted by the Commission in Docket No. EL01–118–000.

The Commission's December 19, 2001 Order granted GNE's request for blanket approval under Part 34, subject to the conditions found in Appendix A in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by GNE 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.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, GNE is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of GNE, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of GNE's issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 22, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the 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. 02–69 Filed 1–2–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP02–48–000]**

## National Fuel Gas Supply Corporation and Tennessee Gas Pipeline Company; Notice of Application

December 27, 2001.

Take notice that on December 7, 2001, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203 and Tennessee Gas Pipeline Company (Tennessee), 9 E. Greenway Plaza, Houston, Texas 77048, filed a joint application pursuant to Section 7 of the Natural Gas Act and Part 157 of the Commission's Rules and Regulations for a certificate of public convenience and necessity authorizing a capacity lease between National Fuel and Tennessee and to abandon service currently provided by National Fuel to Tennessee all as more fully set forth in the application 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).

Specifically, National Fuel seeks to abandon the currently certificated transportation service it provides to Tennessee under Rate Schedule X–51 between Clarence, New York and Ellisburg, Pennsylvania. Further, National Fuel seeks authority to lease capacity to Tennessee on a firm basis for a term of ten years commencing November 1, 2002. The lease will include 90,000 Dth per day of capacity from Clarence to Ellisburg and 130,000 Dth per day from Ellisburg to Leidy, Pennsylvania. This leased capacity is part of Tennessee's Can-East Project (also known as the Leidy Extension) which is designed to provide firm transportation of gas from various points on Tennessee's system for delivery to Texas Eastern Transmission Company and Transcontinental Gas Pipe Line Corporation at Leidy.

Any questions regarding the application should be directed to National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, New York 14203 at 716–857–7949 or by E-mail at *reitzd@natfuel.com* and Marguerite N. Woung-Chapman, General Counsel, Tennessee Gas Pipeline Company, 9 E. Greenway Plaza, Suite 340, Houston, Texas 77048 at 832–676–7329 or by E-mail at *marguerite.woung-chapman@elpaso.com.*

Any person desiring to be heard or to make any protest with reference to said application should file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All such motions to intervene or protests should be filed on or before January 17, 2002. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. 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. 02–63 Filed 1–2–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. ER01–2783–000 and ER01–2783–001]**

## ODEC Power Trading, Inc.; Notice of Issuance of Order

December 27, 2001.

ODEC Power Trading, Inc. (ODEC) filed with the Commission, in the above-docketed proceeding, an application for authority to sell electric energy and capacity at market-based rates. ODEC also requested certain waivers and authorizations. In particular, ODEC requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by ODEC. On December 19, 2001, the Commission issued an order that accepted ODEC's application for sales of capacity and energy at market-based rates (Order), subject to any tariff condition adopted by the Commission in Docket No. EL01–118–000.

The Commission's December 19, 2001 Order granted ODEC's request for

blanket approval under Part 34, subject to the conditions found in Appendix A in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by ODEC 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.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, ODEC is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of ODEC, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of ODEC's issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 22, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the 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. 02–66 Filed 1–2–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EL02–43–000]**

## Southern California Water Company, Complainant, v. Mirant Americas Energy Marketing, L.P., Respondent; Notice of Complaint

December 27, 2001.

Take notice that on December 21, 2001, Southern California Water Company (SCWC) filed a Complaint against Mirant Americas Energy Marketing, L.P. (MAEM). SCWC requests that the Commission issue an order finding that a firm power purchase contract between SCWC and MAEM was not the product of a competitive wholesale power market and the rate charged by MAEM under this contract is unjust and unreasonable.

Any person desiring to be heard or to protest this 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 must be filed on or before January 10, 2002. 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. Answers to the complaint shall also be due on or before January 10, 2002. 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. 02–64 Filed 1–2–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP02–46–000]**

## Tennessee Gas Pipeline Company, Notice of Application

December 27, 2001.

Take notice that on December 10, 2001, Tennessee Gas Pipeline Company (Tennessee), 9 E. Greenway Plaza, Houston, Texas 77048, filed an application pursuant to Section 7 of the Natural Gas Act and Part 157 of the Commission's Rules and Regulations for a certificate of public convenience and necessity to construct and operate a new compressor station and to authorize incremental recourse rates for service through Tennessee's Leidy Extension all as more fully set forth in the application 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).

Specifically, Tennessee seeks to construct and operate a 4,730 horsepower compressor station and other appurtenant facilities in Potter County, Pennsylvania. The proposed facilities will allow Tennessee to make firm deliveries of up to 150,000 Dth per day directly to Dominion Transmission, Inc. (Dominion). The proposed compressor station is part of Tennessee's larger Can-East Project which will establish its Leidy Extension. Tennessee states that the Can-East Project will extend its existing mainline system to the Leidy Hub by utilizing 280,000 Dth per day of capacity that Tennessee intends to lease from Dominion and National Fuel Gas Supply Corporation (National Fuel).[1] The estimated cost of the proposed facilities is $9.7 million.

Tennessee also proposes to offer service over its Leidy Extension under its existing FERC Gas Tariff at incremental recourse rates under its Rate Schedules FT–A and IT. Tennessee states that its customers will also have the option of selecting negotiated rates. Tennessee has included pro forma tariff sheets reflecting the proposed changes to its tariff necessary to effect service on the Leidy Extension.

[1] The lease between Tennessee and Dominion is the subject of Docket No. CP02–47–000. The lease between Tennessee and National Fuel is the subject of Docket No. CP02–48–000.

Any questions regarding the application should be directed to Marguerite N. Woung-Chapman, General Counsel, Tennessee Gas Pipeline Company, 9 E. Greenway Plaza, Suite 340, Houston, Texas 77048 at 832–676–7329 or by E-mail at *marguerite.woung-chapman@elpaso.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 January 17, 2002, 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. 02–61 Filed 1–2–02; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7125–5]**

### Agency Information Collection Activities: Proposed Collection, Comment Request; Enforcement Policy Regarding the Sale and Use of Aftermarket Catalytic Converters

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Enforcement Policy Regarding the Sale and Use of Aftermarket Catalytic Converters; EPA ICR # 1292.05; OMB No. 2060–0135; expires May 31, 2002. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before March 4, 2002.

**ADDRESSES:** U.S. Environmental Protection Agency, Office of Enforcement and Compliance Assurance, Office of Regulatory Enforcement (2242A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Copies of the ICR can be obtained free of charge by contacting Jack McLaughlin as provided below.

**FOR FURTHER INFORMATION CONTACT:** Jack McLaughlin, Telephone: (303) 236–9513; Facsimile number: (303) 236–9514; e-mail: *mclaughlin.jack.@epamail.epa.gov.*

**SUPPLEMENTARY INFORMATION:**

*Affected entities:* Entities potentially affected by this action are manufacturers and installers of aftermarket automobile catalytic converters.

*Title:* Enforcement Policy Regarding the Sale and Use of Aftermarket Catalytic Converters (OMB Control number 2060–0135; EPA ICR # 1292.05.) expiring 5/31/2002.

*Abstract:* Section 203(a)(3) of the Clean Air Act (Act) prohibits removing or rendering inoperative automobile emission control devices or elements of design. But for the adoption of the aftermarket catalytic converter enforcement policy (51 FR 28114–28119, 28133 (Aug. 5, 1986); 52 FR 42144 (Nov. 3, 1987)), the manufacture, sale or installation of aftermarket catalytic converters (catalysts) not equivalent to new original equipment (OE) catalysts would constitute a violation of the Act. However, because replacement OE catalysts are expensive, many consumers had elected to not replace catalysts that malfunctioned subsequent to the expiration of the emissions warranty on their vehicles.

The Agency believes that allowing the installation of aftermarket catalysts on older vehicles can be environmentally beneficial if the Agency can be assured that the aftermarket catalysts meet certain standards and if installers are accountable to select the proper aftermarket catalyst for each vehicle application. Manufacturers of new aftermarket catalysts are required, on a

one-time basis, for each catalyst line manufactured, to identify the catalyst physical specifications and summarize pre-production testing of the prototype. In addition, the manufacturer must submit semi-annual reports to EPA of the number of each type of catalyst manufactured and a summary of warranty card information (or copies of warranty cards, at the manufacturer's option). Companies that recondition used catalysts must, on a one-time basis, identify the company and provide information regarding procedures to be used to test used catalysts. All used catalysts must be individually bench-tested, and the company must submit semi-annual reports to EPA of the identity of persons who distribute the reconditioned catalysts and the number of reconditioned catalysts of each type that are sold to each distributor. Companies that install aftermarket catalysts have no reporting requirements but for 6 months must keep copies of installation invoices and records that show the reason an aftermarket catalyst installation was appropriate. Removed catalysts must be tagged with identifying information and be kept for 15 days. EPA allows the use of pre-printed documents or computer-generated documents. All the recordkeeping under the policy is authorized by section 114 of the Act, 42 U.S.C. 7414 and section 208 of the Act, 42 U.S.C. 7542. Parties who comply with these policies are allowed to install aftermarket catalysts instead of OE catalysts.

Confidentiality provisions are found at 40 CFR part 2. These requirements have been in effect for over 10 years. Startup costs have been completed. The proposed ICR utilizes assumptions that are the same as the previous ICR. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

In addition to this information, you may obtain a copy of the draft ICR supporting statement as provided above. The EPA would like to solicit comments to:

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

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Burden Statement:* For new catalyst manufacturers the average hourly burden per year per respondent is about 5 hours for the reporting required by the policy and the associated recordkeeping. The reporting is mandatory. The frequency of response is estimated to be 1 report per year for a new product line and 2 reports per year on manufacturing and warranty card information. There are 6 entities in the country covered by the requirements. Total burden for all new catalyst manufacturers is about 60 hours per year. There are annual operating and maintenance costs of about $60 per manufacturer. There are annualized purchased service costs of $35,700 per respondent. There are no annualized capital costs. Startup costs have been completed.

For parties who recondition used catalysts, the average annual hourly reporting burden is 631 hours per respondent. The reporting is mandatory. The frequency of response is 2 reports per year based on about 8,900 tests of used catalysts per respondent. Total burden for all 8 respondents is about 5,048 hours. There are annual operation and maintenance costs of about $200 per respondent. There are annualized capital costs of about $38,244 per respondent.

For parties who install aftermarket catalysts there is no reporting burden. The average annual recordkeeping burden is about 3.5 hours per respondent. There are no annualized operation and maintenance costs or annualized capital costs. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: December 28, 2001.

**Barry N. Breen,**

*Acting Assistant Administrator, Office of Enforcement and Compliance Assurance.*

[FR Doc. 02–108 Filed 1–2–02; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7124–5]**

## Agency Information Collection Activities: Proposed Collection; Comment Request; Modification of Secondary Treatment Requirements for Discharges Into Marine Waters

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB):

Modification of Secondary Treatment Requirements for Discharges into Marine Waters, EPA ICR Number 0138.07, OMB Control Number 2040–0088, expiring July 31, 2002. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before March 4, 2002.

**ADDRESSES:** U.S. EPA; Office of Wetlands, Oceans and Watersheds; Oceans and Coastal Protection Division (4504F); 1200 Pennsylvania Avenue, SW; Washington, DC 20460. Interested persons may obtain a copy of the ICR without charge by contacting the person identified below.

**FOR FURTHER INFORMATION CONTACT:** Virginia Fox-Norse, 202–260–8448 (phone), 202–260–9920 (facsimile), fox-norse.virginia@epa.gov (electronically).

**SUPPLEMENTARY INFORMATION:** *Affected entities:* Entities potentially affected by this action are those municipalities that currently have section 301(h) waivers from secondary treatment, have applied for a renewal of a section 301(h) waiver, or those with a pending section 301(h) waiver application, and the states within which these municipalities are located.

*Title:* Modification of Secondary Treatment Requirements for Discharges

into Marine Waters (OMB Control Number 2040–0088; EPA ICR Number 0138.07), expiring July 31, 2002.

*Abstract:* Regulations implementing section 301(h) of the Clean Water Act (CWA) are found at 40 CFR part 125, subpart G. The section 301(h) program involves collecting information from two sources: (1) The municipal wastewater treatment facility, commonly called a publicly owned treatment works (POTW), and (2) the state in which the POTW is located. Municipalities had the opportunity to apply for a waiver from secondary treatment requirements, but that opportunity closed in December, 1982. A POTW seeking to obtain a section 301(h) waiver, holding a current waiver or reapplying for a waiver, provides application, monitoring, and toxic control program information. The state provides information on its determination whether the discharge under the proposed conditions of the waiver ensures the protection of water quality, biological habitats, and beneficial uses of receiving waters and whether the discharge will result in additional treatment, pollution control, or any other requirement for any other point or nonpoint sources. The state also provides information to certify that the discharge will meet all applicable state laws and that the state accepts all permit conditions.

There are 4 situations where information will be required under the section 301(h) program:

(1) A POTW continuing the application process for a section 301(h) waiver, or reapplying for a waiver. As the permits with section 301(h) waivers reach their expiration dates, EPA must have updated information on the discharge to determine whether the section 301(h) criteria are still being met and whether the section 301(h) waiver should be reissued. Under 40 CFR 125.59(f), each section 301(h) permittee is required to submit an application for a new section 301(h) modified permit within 180 days of the existing permit's expiration date. 40 CFR 125.59(c) lists the information required for a modified permit. The information that EPA needs to determine whether the POTW's reapplication meets the section 301(h) criteria is outlined in the questionnaire attached to 40 CFR part 125, subpart G.

(2) Monitoring and toxic control program information: Once a waiver has been granted, EPA must continue to assess whether the discharge is meeting section 301(h) criteria, and that the receiving water quality, biological habitats, and beneficial uses of the receiving waters are protected. To do this, EPA needs monitoring information furnished by the permittee. According to 40 CFR 125.68(d), any permit issued with a section 301(h) waiver must contain the monitoring requirements of 40 CFR 125.63(b), (c), and (d) for biomonitoring, water quality criteria and standards monitoring, and effluent monitoring, respectively. Section 125.68(d) also requires reporting at the frequency specified in the monitoring program. In addition to monitoring information, EPA needs information on the toxics control program required by § 125.66 to ensure that the permittee is effectively minimizing industrial and nonindustrial toxic pollutant and pesticide discharges into the treatment works.

(3) Application revision information: Section 125.59(d) of 40 CFR allows a POTW to revise its application one time only, following a tentative decision by EPA to deny the waiver request. In its application revision, the POTW usually corrects deficiencies and changes proposed treatment levels as well as outfall and diffuser locations. The application revision is a voluntary submission for the applicant, and a letter of intent to revise the application must be submitted within 45 days of EPA's tentative decision (40 CFR 125.59(f)). EPA needs this information to evaluate revised applications to determine whether the modified discharge will ensure protection of water quality, biological habitats, and beneficial uses of receiving waters.

(4) State determination and state certification information: For revised or renewal applications for section 301(h) waivers, EPA needs a state determination. The state determines whether all state laws (including water quality standards) are satisfied. This helps ensure that water quality, biological habitats, and beneficial uses of receiving waters are protected. Additionally, the state must determine if the applicant's discharge will result in additional treatment, pollution control, or any other requirement for any other point or nonpoint sources. This process allows the state's views to be taken into account when EPA reviews the section 301(h) application and develops permit conditions. For revised and renewed section 301(h) waiver applications, EPA also needs the CWA section 401(a)(1) certification information to ensure that all state water quality laws are met by any permit it issues with a section 301(h) modification, and the state accepts all the permit conditions. This information is the means by which the state can exercise its authority to concur with or deny a section 301(h) decision made by the EPA Regional Office.

The EPA would like to solicit comments to:

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

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Burden Statement:* The estimated annual average burden for the 51 respondents totals 65,037 hours for this information collection. The average annual reporting burden varies depending on the size of the respondent and the category of the information collection. The frequency of response varies from once every five years, to case-by-case, depending on the category. 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.

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 displayed in 40 CFR part 9 and 48 CFR chapter 15.

Please send comments regarding these matters, or any other aspect of information collection, including suggestions for reducing the burden, to the address listed above.

Dated: December 20, 2001.

**Robert H. Wayland III,**

*Director, Office of Wetlands, Oceans and Watersheds.*

[FR Doc. 02–111 Filed 1–2–02; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7124–6]**

## Agency Information Collection Activities; Submission to OMB; Comment Request; EPA ICR No. 1759.03/OMB Control No. 2070–0148; Agricultural Worker Protection Standard Training and Notification

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (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: Worker Protection Standard Training and Notification; EPA ICR No. 1759.03; OMB Control No. 2070–0148. The ICR, which is abstracted below, describes the nature of the information collection activity and its estimated burden and costs. The **Federal Register** document required under 5 CFR 1320.8(d) that solicited comments on this collection of information published on January 31, 2001 (66 FR 8397). EPA received no comments on this ICR during the 60-day comment period that was provided.

**DATES:** Additional comments may be submitted on or before February 4, 2002.

**ADDRESSES:** Send your comments, referencing the proper ICR numbers to: Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave, NW., Washington, DC 20460; and send a copy of your comments 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:** Sandy Farmer at EPA by phone on 202–260–2740, by E-mail: *farmer.sandy@epa.gov* or access the ICR at *http://www.epa.gov/icr/icr.htm* and refer to EPA ICR No. 1759.03; OMB Control No. 2070–0148.

**SUPPLEMENTARY INFORMATION:**

*ICR Title:* Worker Protection Standard Training and Notification (EPA ICR 1759.03, OMB Control No. 2070–0148).

*ICR Status:* This is a request for extension of an existing approved collection that is currently scheduled to expire on December 31, 2001. EPA is asking OMB to approve this ICR for three years. Under 5 CFR 1320.10(e)(2), the Agency may continue to conduct or sponsor the collection of information while the submission is pending at OMB.

*Abstract:* The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 U.S.C. 136) requires the Agency (EPA) to register pesticides prior to distribution and sale within the United States. The Agency is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The Worker Protection Standard (WPS) for agricultural pesticides, 40 CFR part 170, includes requirements for protection of agricultural workers and pesticide handlers from hazards of pesticides used on farms, on forests, in nurseries and in greenhouses. The WPS is designed to reduce or eliminate exposure to pesticides and establish procedures for responding to exposure-related emergencies. The WPS requirements include prohibitions against applying pesticides in a way that would cause exposure to workers and others; a waiting period before workers can return to areas treated with pesticides; basic safety training and distribution and posting of information about pesticide hazards, as well as pesticide application information; arrangements for the supply of soap, water, and towels in case of pesticide exposure; and provisions for emergency assistance. The information collection activity involves the training of agricultural workers and information exchanges (third party notifications) between agricultural employers and employees at farm, forest, nursery and greenhouse establishments to ensure worker safety. No information is collected by the Agency under this ICR.

*Burden Statement:* The total annual respondent burden for providing the notifications associated with the Pesticides Worker Protection Standards as a whole is estimated to be 2,294,625 hours, with incremental activity burdens ranging from 2 minutes per respondent to provide initial basic safety information and 45 minutes per respondent for handler training. According to the PRA, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. 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. The Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that is subject to approval under the PRA, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

The ICR provides a detailed explanation of the information collection activity and the corresponding burden estimate, which is only briefly summarized here.

*Respondents/affected entities:* 4,476,250.

*Estimated total number of potential respondents:* 4,476,250.

*Frequency of response:* As needed.

*Estimated total/average number of responses for each respondent:* 3.

*Estimated total annual burden hours:* 2,294,625.

*Estimated total annual burden costs:* $94,883,757.

*Changes in the ICR Since the Last Approval:* The total annual burden associated with this ICR has increased by 52,183 hours, from 2,242,442 hours in the previous ICR to 2,294,625 hours for this renewal ICR. The change is primarily related to information EPA obtained through the consultation process required by the PRA that led the Agency to increase its training burden estimate, and is described in detail in the ICR.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this notice, as described above.

Dated: December 19, 2001.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 02–112 Filed 1–2–02; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7125–2]**

### Clean Air Scientific Advisory Committee, Subcommittee on Particle Monitoring; Notification of Public Advisory Committee Meeting

*Summary*—Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Clean Air Scientific Advisory Committee (CASAC) Subcommittee on Particle Monitoring will meet on Monday, January 28, 2002 from 8:30 am to 4 p.m. Eastern Time. The meeting will be held in Classroom 1 (ground floor near the visitor entrance) of the US EPA Environmental Research Center, Route 54 and T.W. Alexander Drive, Research Triangle Park, NC. The meeting is open to the public, however, due to limited space, seating will be on a first-come basis.

*Background*—The CASAC Subcommittee on Particle Monitoring (formerly the CASAC Technical Subcommittee for Fine Particle Monitoring) was established in 1996 to provide advice and comment to EPA (through CASAC) on appropriate methods and network strategies for monitoring fine particles in the context of implementing the revised national ambient air quality standards (NAAQS) for particulate matter.

*Purpose of the Meeting*—During this meeting, the Subcommittee will develop advice on implementation of EPA's continuous PM monitoring program. The discussion will be based on the draft document *Continuous Monitoring Implementation Plan* prepared by EPA's Office of Air Quality Planning and Standards (OAQPS). EPA will provide an overview briefing of that document to the subcommittee during the meeting to clarify areas of confusion, stimulate further discussion and receive verbal input from subcommittee members. Following the meeting, the Subcommittee will develop a report advising EPA on the implementation plan addressing: (a) program strengths; (b) areas of concern; and (c) any recommendations that might optimize implementation of the PM continuous mass program. Once completed by the Subcommittee, the report will be reviewed by the Clean Air Scientific Advisory Committee during a public teleconference to be announced in a subsequent **Federal Register** notice.

*Availability of Review Materials*—A copy of the review document, and referenced enclosures, are available from EPA on their website (see *www.epa.gov/ttn/amtic/pmcont.html*).

*For Further Information*—Members of the public wishing an Agenda or a roster of the Subcommittee should contact Ms. Rhonda Fortson, Management Assistant, Clean Air Scientific Advisory Committee, EPA Science Advisory Board (1400A), Suite 6450, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail at (202) 564–4563; fax at (202) 501–0582; or via e-mail at *fortson.rhonda@epa.gov.* Those desiring additional information about the meeting, should contact Mr. Robert Flaak, Designated Federal Officer, Clean Air Scientific Advisory Committee, EPA Science Advisory Board (1400A), Suite 6450, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail at (202) 564–4546; fax at (202) 501–0582; or via e-mail at *flaak.robert@epa.gov.* A copy of the draft agenda will be posted on the SAB Website (*www.epa.gov/sab*) (under the AGENDAS subheading) approximately 2 weeks before the meeting. The Agenda may also be obtained from Ms. Fortson at the same time.

Members of the public who wish to make a brief oral presentation must contact Mr. Flaak in writing (by letter or by fax—see previously stated information) no later than 12 noon Eastern Time, Wednesday, January 23, 2002 in order to be included on the Agenda. Public comments will be limited to ten minutes per speaker or organization, with a total time of ninety minutes overall for all speakers. Written comments must be received no later than the day prior to the meeting, preferably in electronic format (see below for details).

**Providing Oral or Written Comments at SAB Meetings**

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

*Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes. For conference call meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total, unless otherwise stated. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting.

*Written Comments:* Although the SAB accepts written comments until two days following the date of the meeting (unless otherwise stated above), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file formats: WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

*General Information*—Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on our Website (*http://www.epa.gov/sab*) and in The FY2000 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

*Meeting Access*—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Mr. Flaak or Ms. Fortson at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: December 21, 2001.

**John R. Fowle, III,**

*Acting Staff Director, EPA Science Advisory Board.*

[FR Doc. 02–107 Filed 1–2–02; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[PF–1010; FRL–6773–6]**

### Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

**DATES:** Comments, identified by docket control number PF–1010, must be received on or before February 4, 2002.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1010 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Carol E. Frazer, Ph.D., Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8810; e-mail address: frazer.carol@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does This Action Apply to Me?*

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

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111<br>112<br>311<br><br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>Pesticide manufacturing |

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

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

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–1010. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

### *C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1010 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–1010. Electronic comments may also be filed online at many Federal Depository Libraries.

### *D. How Should I Handle CBI That I Want To Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

### *E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**II. What Action is the Agency Taking?**

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

**List of Subjects**

Environmental protection, Agricultural commodities, Biopesticides, Feed additives, Food additives, Pesticides and pests, Pollution prevention, Reporting and recordkeeping requirements.

Dated: December 20, 2001.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

**Summary of Petition**

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioners and represents the view of the petitioners. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

EPA has received a pesticide petition 1F6244 from Nutra-Park Inc., 8383 Greenway Blvd., Suite 520, Middleton, WI 53562, proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the biochemical pesticide Lysophosphatidylethanolamine (LPE) in or on all food commodities.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Nutra-Park Inc. has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Nutra-Park Inc. and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

**I. Nutra-Park Inc.**

*PP 1F6244*

*A. Product Name and Proposed Use Practices*

The commercial name for the end use product containing Lysophosphatidylethanolamine (LPE) is LPE E94; 10% Aqueous, EPA File Symbol 70515-R. Presently, the product is being registered for use as a pre-harvest and post-harvest ripening and shelf life enhancer for fruits and vegetables. As a pre-harvest spray, 100 400 parts per million (ppm) of the active ingredient is sprayed on the raw agricultural commodities until run-off. As a post-harvest treatment, the raw agricultural commodities are dipped into or sprayed with a solution containing 25 100 ppm and air dried prior to storage.

*B. Product Identity/Chemistry*

1. *Identity of the pesticide and corresponding residues.* The active ingredient LPE is a phospholipid derived from phosphatidylethanolamine (PE) by the enzymatic removal of one fatty acid. The residues in or on raw agricultural commodities are likely to be primarily the LPE. Small amounts of free fatty acid, phosphate and ethanolamine may be present. However, none of the residues would be distinguishable from the naturally occurring moieties.

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* The current analytical methodology cannot distinguish between naturally occurring residues and those residues resulting from the application of LPE. LPE is found in large quantities in egg yolk and meat. LPE is naturally present in small amounts in plant tissues and other biological matrices and can account for up to 10% of the phospholipid content of cell membranes. The additional amount of LPE as a result of its use as a ripening agent and shelf life enhancer will not significantly add to the amount of naturally occurring residues.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* As stated above, the current analytical methodology cannot distinguish between naturally occurring residues present in or on the raw agricultural commodities and the residues resulting from application of the product. Based on the natural occurrence of the chemical, its favorable toxicological profile and inconsequential exposure resulting from label-directed uses, measuring of the residues is not warranted.

*C. Mammalian Toxicological Profile*

Based on the available acute toxicity data, LPE technical and its 20% formulation, do not pose any acute toxicity risks. The acute toxicity studies place LPE technical in acute toxicity category IV for acute oral ($LD_{50}$ >5,000 milligrams/kilograms (mg/kg) male and female), inhalation ($LC_{50}$ >2.5mg/L male and female), skin irritation (dermal irritation index is 0.0), and eye irritation (no irritation at 72 hours) and toxicity category III for acute dermal ($LD_{50}$ >2,000 mg/kg male and female). The acute toxicity studies place the LPE 10% formulation in acute toxicity category IV for acute oral ($LD_{50}$ >5,000 mg/kg male and female), eye irritation (no irritation at 72 hours), skin irritation (dermal irritation index is 0.0), and inhalation ($LC_{50}$ >4.63 mg/L male and female) and toxicity category III for acute dermal ($LD_{50}$ >2,000 mg/kg male and female). Both LPE technical and its 10% formulation cause skin sensitization in the guinea pig.

Information on the chronic effects of LPE is obtained from the open literature. LPE and related phospholipids, such as phosphatidylcholine, phosphatidylethanolamine, phosphatidylserine, phosphatidylinositol, phosphatidic acid, phosphatidylglycerol, lysophosphatidylcholine, and lysophosphatidylserine, are synthesized by microorganisms, plants and animals. These important biomolecules are ubiquitous in nature and have multifunctional properties in living cells. Lysophospholipids are continuously generated in microbial, plant and animal systems and are readily utilized in various cell functions or used in synthesizing new phospholipids. All phospholipids have specific roles in executing certain cellular functions and maintaining the integrity of cellular membranes. Furthermore, these biomolecules are of immense importance to various food and non-food industries as safe multifunctional natural additives/

ingredients. Presence of hydrolytic enzymes, known as lipases, phospholipases and lysophospholipases, in microbial (including soil microorganisms), plant and animal (including humans) systems ensures the biodegradation of phospholipids and their lyso counterparts into harmless metabolites/by-products.

*D. Aggregate Exposure*

1. *Dietary exposure*—i. *Food*. LPE is a member of the phospholipids. Phospholipids are a heterogeneous group of compounds that are classed together partially on the basis of solubility and partially on the basis of the ester phosphorus present in the compounds. Phospholipids are found in all cellular organisms as part of the structure of the cellular membrane.

The framework of membranes surrounding the cell and intracellular organelles is composed of a bilayer of lipid. The basic unit of the bilayer is a composite of phospholipids (phosphatidylcholine, sphingomyelin, phosphatidylethanolamine, phosphatidylserine, phosphatidylinositol). LPE is a phospholipid derived from phosphatidylethanolamine by the enzymatic removal of one fatty acid. Residues of LPE naturally occur in raw agricultural commodities and are consumed daily. The level of residues of LPE in raw agricultural commodities through the use of this product will not be significantly increased over the level naturally occurring.

ii. *Drinking water*. Because of the benign nature of the compound and because it is composed of moieties that are consumed by all organisms, dissipation of LPE in the environment will, in all likelihood, be through microbial mediated degradation. There is little or no possibility of LPE leaching into the ground water. LPE may get into surface water during a run-off event. However, microbial degradation will rapidly remove the residues. The levels of residues that might get into ground or surface water used for drinking water will not be significant compared to the exposure from naturally occurring residues of LPE.

2. *Non-dietary exposure*. The potential for non-dietary exposure to the general population, including infants and children, is unlikely as the potential use sites are commercial, agricultural, and horticultural settings. However, non-dietary exposure would not be expected to pose any quantifiable risk due to a lack of residues or a level of residues present that are of no toxicological concern.

*E. Cumulative Exposure*

Based on its abundance in nature and long history of use by humans without deleterious effects, there is reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to residues of LPE. This includes all anticipated dietary exposures and all other exposures for which there are reliable information. The exposure to LPE as a result of its label directed use on raw agricultural food or feed commodities will not result in a significant increase in the cumulative exposure over the present exposure, daily consumption by the human population from both naturally occurring sources and from processed foods.

*F. Safety Determination*

1. *U.S. population*. LPE is naturally present in small amounts in plant tissues and other biological matrices and can account for up to 10% of the phospholipid content of cell membranes. LPE is found in many food or feed commodities such as human breast milk, cow milk, corn grain and starch, oats and wheat. Large quantities are present in egg yolk and meat. Based on its abundance in nature and long historical use of the ingredient by the human population without deleterious effects, there is reasonable certainty that no harm will result from aggregate exposure to the U.S. population.

2. *Infants and children*. LPE is found in mother's milk and in cow milk. It is also present in egg yolk and meat and corn, oats, and wheat. These commodities do constitute a significant percentage of infant and children diets. Based on its long consumption by infants and children without deleterious effects, there is reasonable certainty that no harm will result from this additional inconsequential exposure to infants and children.

*G. Effects on the Immune and Endocrine Systems*

LPE is a naturally occurring residue in raw agricultural food and feed commodities and in processed food. To date, there is no evidence to suggest that LPE affects the immune system, functions in a manner similar to any known hormone, or that it acts as an endocrine disruptor.

*H. Existing Tolerances*

LPE is a constituent naturally found in eggs and various animal tissue derived products (e.g., fish meal, fish oil, lard, meat meal) already exempted from regulation under section 25(b)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act. There is a temporary exemption from the requirement of a tolerance established specific to LPE (40 CFR 180.1199).

*I. International Tolerances*

Nutra-Park Inc. is not aware of any tolerance, exemption from tolerance, or maximum residue level issued for LPE.

[FR Doc. 02–113 Filed 1–2–02; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7124–4]**

## Pemaco Superfund Site; Notice of Proposed Administrative Settlement

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), 42 U.S.C. 9600 *et seq*., notice is hereby given that a proposed Agreement and Covenant Not to Sue (Prospective Purchaser Agreement) associated with the Pemaco National Priorities List Superfund Site was executed by the United States Environmental Protection Agency (EPA) on December 7, 2001. The proposed Prospective Purchaser Agreement would resolve certain potential claims of the United States under sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), and section 7003 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6973, against The Trust for Public Lands, a nonprofit corporation, and The City of Maywood, California, (the Purchasers). The Trust for Public Lands plans to acquire the 5-acre parcel constituting the Superfund Site, located in Los Angeles County at 5050 Slauson Avenue, Maywood, California (the Property). The Trust for Public Land plans to transfer the Property to the City for use as a public park. The park will be part of the Los Angeles River Greenway, a system of public parks and paths along a 51-mile stretch of the Los Angeles River.

In exchange for the settlement, the Purchasers have agreed to pay EPA a one-time payment of $10,000 in cash that will be placed in a special account for use at the Site.

For thirty (30) calendar days following the date of publication of this notice, EPA will receive written

comments relating to the proposed settlement. If requested prior to the expiration of this public comment period, EPA will provide an opportunity for a public meeting in the affected area. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

**DATES:** Comments must be submitted on or before February 4, 2002.

**ADDRESSES:** The proposed Prospective Purchaser Agreement and additional background documents relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. A copy of the proposed settlement may be obtained from William Keener, Assistant Regional Counsel (ORC–1), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Comments should reference ''The Trust for Public Lands PPA, Pemaco Superfund Site'' and ''Docket No. 2002–03'' and should be addressed to William Keener at the above address.

**FOR FURTHER INFORMATION CONTACT:** William Keener, Assistant Regional Counsel (ORC–1), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; phone: (415) 972–3940; fax (415) 947–3570; e-mail: *keener.bill@epa.gov*.

Dated: December 12, 2001.

**Jane Diamond,**

*Acting Director, Superfund Division, Region IX.*

[FR Doc. 02–110 Filed 1–2–02; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL HOUSING FINANCE BOARD

**[No. 2001–N–13]**

### Notice of Annual Adjustment of the Limit in Average Total Assets For Community Financial Institutions and Notice of Annual Adjustment of the Limits on Annual Compensation for Federal Home Loan Bank Directors

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Federal Housing Finance Board (Finance Board) has adjusted the limit in average total assets that defines a ''Community Financial Institution'' (CFI) based on the annual percentage increase in the Consumer Price Index for all urban consumers (CPI–U), as published by the Department of Labor (DOL), pursuant to the requirements of Section 2(13)(B) of the Federal Home Loan Bank Act (Bank Act) and the Finance Board's regulations. Notice is hereby given that the Finance Board also has adjusted the limits on annual compensation for the Federal Home Loan Bank (Bank) directors, based on the CPI–U, as published by the DOL, pursuant to the requirements of Section 7(i)(2)(B) of the Bank Act and the Finance Board's regulations concerning statutory limits on Bank Directors' compensation.

**FOR FURTHER INFORMATION CONTACT:** James L. Bothwell, Managing Director and Chief Economist, (202) 408–2821; Scott L. Smith, Acting Director, Office of Policy, Research and Analysis, (202) 408–2991; or Kirsten L. Landeryou, Office of Policy, Research and Analysis, (202) 408–2552. Staff also can be reached by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

**SUPPLEMENTARY INFORMATION:** The Bank Act (12 U.S.C. 1422(13)(B)), as amended by the Gramm-Leach-Bliley Act (GLB Act) (Pub. L. No. 106–102, 133 Stat. 1338 (November 12, 1999)) and § 900.1 of the Finance Board's regulations (12 CFR 900.1) require the Finance Board to adjust annually the limit in average total assets (CFI Asset Cap) set forth in section 2(13)(A)(ii) of the Bank Act (12 U.S.C. 1422(13)(A)(ii)) and § 900.1 of the Finance Board's regulations that defines a CFI, based on the annual percentage increase, if any, in the CPI–U, as published by the Department of Labor (DOL). Section 7(i)(2)(B) of the Bank Act (12 U.S.C. 1427(i)(2)(B)), as amended by the GLB Act, and § 918.3(a)(1) of the Finance Board's regulations (12 CFR 913.3(a)(1)), require the Finance Board, beginning January 1, 2001, to make a similar annual adjustment to the compensation limits set forth in section 7(i)(2)(A) of the Bank Act (12 U.S.C. 1427(i)(2)(A)) and § 918.3(a)(1) of the Finance Board's regulations, for members of the boards of directors of the Banks based on the annual percentage increase, if any, in the CPI–U, as published by the DOL.

Pursuant to the Finance Board's regulations, for purposes of the CFI Asset Cap, the Finance Board is required to publish notice by **Federal Register** of the CPI–U-adjusted cap. For purposes of the Banks' board of directors annual compensation adjustments, the Finance Board is required to publish notice, by **Federal Register**, distribution of a memorandum or otherwise, of the CPI–U-adjusted limits on annual compensation. The annual adjustment of the existing CFI Asset Cap and annual Bank director compensation limits, effective January 1 of a particular calendar year, reflects the percentage by which the CPI–U published for November of the preceding calendar year exceeds the CPI–U published for November of the year before the preceding calendar year (if at all). For example, the adjustment of the limits effective January 1, 2002 are based on the percentage increase in the CPI–U from November 2000 to November 2001. The Finance Board has determined that it is appropriate to use data from November rather than waiting for the December data to become available so that the Banks can be notified of the revised asset limit and compensation limits as close to the effective date as possible. Other Federal agencies do not rely on December data, which is published in mid-January, when calculating annual inflation adjustments and, as a result, are able to announce the adjustments prior to the effective date of January 1.

The DOL encourages the use of CPI–U data that has not been seasonally adjusted in ''escalation agreements'' because seasonal factors are updated annually and seasonally adjusted data are subject to revision for up to five years following the original release; unadjusted data are not routinely subject to revision, and previously published unadjusted data are only corrected when significant calculation errors are discovered. Accordingly, the Finance Board is using data that had not been seasonally adjusted to calculate the new CFI Asset Cap and annul Bank director compensation limits.

The unadjusted CPI–U increased 1.9 percent between November of 2000 and November of 2001. Based on this data, the Finance Board adjusted the CFI Asset Cap for 2001 from $517 million to $527 million, beginning January 1, 2002.

The Finance Board also adjusted, based on the 1.9 percent increase in the CPI–U, the annual compensation for the listed members of the boards of directors of the Banks as follows, beginning January 1, 2002: for a Chairperson—$26,341; for a Vice-Chairperson—$21,073; for any other member of a Bank's board of directors—$15,805.

Dated: December 27, 2001.

By the Federal Housing Finance Board.

**John T. Korsmo,**

*Chairman.*

[FR Doc. 02–49 Filed 1–2–02; 8:45 am]

**BILLING CODE 6725–01–P**

## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

**SUMMARY: Background**

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is nd supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

**FOR FURTHER INFORMATION CONTACT:**

Federal Reserve Board Clearance Officer–Mary M. West–Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829); OMB Desk Officer–Alexander T. Hunt–Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7860).

**SUPPLEMENTARY INFORMATION:**

**Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Reports:**

*1. Report title:* Annual Salary Survey, ad hoc surveys, and Compensation Trend Survey.
*Agency form number:* FR 29a, b, c.
*OMB Control number:* 7100–0290.
*Frequency: FR 29a, once each year; FR 29b, on occasion; FR 29c, once each year.*
*Reporters:* Employers considered competitors for Federal Reserve employees.
*Annual reporting hours:* FR 29a, 270 hours; FR 29b, 30 hours; FR 29c, 1,300 hours.
*Estimated average hours per response:* FR 29a, 6 hours; FR 29b, 1 hour; FR 29c, 2 hours.
*Number of respondents:* FR 29a, 45; FR 29b, 10; FR 29c, 650.
Small businesses are affected.
*General description of report:* This information collection is voluntary (sections 10(4) and 11(1) of the Federal Reserve Act (12 U.S.C. 244 and 248(1)) and is given confidential treatment (5 U.S.C §§ 552 (b)(4) and (b)(6)).
*Abstract:* The surveys collect information on salaries, employee compensation policies, and other employee programs from employers that are considered competitors for Federal Reserve employees. The data from the surveys primarily are used to determine the appropriate salary structure and salary adjustments for Federal Reserve employees.
*2. Report title:* Recordkeeping and Disclosure Requirements Associated with Securities Transactions Pursuant to Regulation H.
*Agency form number:* Reg H–3.
*OMB Control number:* 7100–0196.
*Frequency:* Development of policy statement, one–time; Trust company report, quarterly; Transactions recordkeeping, on occasion; and Disclosure, on occasion.
*Reporters:* State member banks and trust companies.
*Annual reporting hours:* 158,423 hours.
*Estimated average hours per response:* Development of policy statement, 30 minutes; Trust company report, 15 minutes; Transaction recordkeeping, 3 minutes; and Disclosure, 3 minutes.
*Number of respondents:* 1,324.
Small businesses are affected.
*General description of report:* This information collection is mandatory (12 U.S.C. 325). If the records maintained by state member banks come into the possession of the Federal Reserve, they are given confidential treatment (5 U.S.C. 552(b)(4), (b)(6), and (b)(8)).
*Abstract:* State–chartered member banks and trust companies effecting securities transactions for customers must establish and maintain a system of records, furnish confirmations to customers, and establish written policies and procedures relating to securities trading. They are required to maintain records for three years following the transaction. These requirements are necessary for customer protection, to avoid or settle customer disputes, and to protect the bank against potential liability arising under the anti–fraud and insider trading provisions of the Securities Exchange Act of 1934.

**Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Report:**

*1. Report title:* Application for Employment with the Board of Governors of the Federal Reserve System.
*Agency form number:* FR 28.
*OMB Control number:* 7100–0181.
*Frequency:* On occasion.
*Reporters:* Employment applicants.
*Annual reporting hours:* 8,625 hours.
*Estimated average hours per response:* 1 hour.
*Number of respondents:* 8,500.
Small businesses are not affected.
*General description of report:* This information collection is required to obtain a benefit (sections 10(4) and 11(1) of the Federal Reserve Act (12 U.S.C. 244 and 248(1)). The Board is required to treat the information collected on the Application as confidential pursuant to the requirements of the Privacy Act (5 U.S.C. 552a). Individual respondent data are regarded as confidential under the Freedom of Information Act (5 U.S.C. 552(b)(2) and (b)(6)).
*Abstract:* The Application collects information to determine the qualifications, suitability, and availability of applicants for employment with the Board. The Application asks about education, training, employment, and other information covering the period since the applicant left high school.
*Current actions:* The Federal Reserve will add two short supplemental forms to the Application. One form will be given to all applicants and collects information about the gender and race of the applicant. The information from this form will be used to assist the Board with federal equal opportunity record keeping, reporting, and other legal requirements. The second form will be filled out by applicants for Research Assistant positions in the divisions of Monetary Affairs, International Finance, and Research and Statistics. The survey will serve to streamline the recruiting process by attempting to determine an applicant's interest in the policy and research topics that are germane to individual research sections.

**Final Approval Under OMB Delegated Authority to the Implement the Following Report:**

*1. Report title:* Survey of Board Publications.
*Agency form number:* FR 1373a and b.
*OMB Control number:* 7100–0301.
*Frequency:* FR 1373a, 1.5; FR 1373b small–panel, 8; and FR 1373b large–panel,
*2. Reporters:* FR 1373a, educators who have previously requested materials from the Board; FR 1373b, current subscribers of Board publications.
*Annual reporting hours:* 762 hours.
*Estimated average hours per response:* FR 1373a, 30 minutes; FR 1373b, 15 minutes.

*Number of respondents:* FR 1373a, 400; FR 1373b small–panel, 131; FR 1373b large–panel, 400.
Small businesses are affected.
*General description of report:* This information collection is voluntary. The FR 1373a survey is authorized pursuant to the Federal Trade Commission Improvement Act (15 U.S.C. 57(a)); the FR 1373b survey is authorized pursuant to 12 U.S.C. 248(i). The specific information collected is not considered confidential.
*Abstract:* Data from the FR 1373a survey will help the Board staff to 1) conduct periodic reviews and evaluations of the consumer education resources available to consumers and consumer educators, and to 2) evaluate consumer education resources under consideration for distribution. Data from the FR 1373b survey will help the Board staff to evaluate Board publications that are available to the public. The staff will use the FR 1373b data to help determine if the Board should continue to issue certain publications and, if so, whether the public would like to see changes in the method of information delivery, issuance frequency, content, or format/appearance.

Board of Governors of the Federal Reserve System, December 28, 2001.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 02–123 Filed 1–2–02; 8:45 am]

**BILLING CODE 6210–01–S**

## 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 January 17, 2002.

**A. Federal Reserve Bank of Boston** (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

*1. Joseph R. Doherty and the Joseph R. Doherty Family Limited Partnership, L.P.*, Somerville, Massachusetts; to acquire voting shares of Central Bancorp, Inc., Somerville, Massachusetts, and thereby indirectly acquire voting shares of Central Co-operative Bank, Somerville, Massachusetts.

**B. Federal Reserve Bank of Chicago** (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

*1. Brian and Elizabeth Riddell as general partners of Riddell Family Limited Partnership*, Dakota Dunes, South Dakota, and William and Linda Biles, Tie Siding, Wyoming; to acquire additional voting shares of First Heartland Bancorp., Sioux Center, Iowa; and thereby indirectly acquire additional voting shares of First National Bank of Sioux Center, Sioux Center, Iowa, and Pender State Bank, Pender, Nebraska.

Board of Governors of the Federal Reserve System, December 27, 2001.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 02–34 Filed 1–2–02; 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 January 28, 2002.

**A. Federal Reserve Bank of New York** (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

*1. Trustco Bank Corp NY*, Glenville, New York; to acquire 9.9 percent of the common stock of Troy Financial Corporation, and thereby indirectly acquire The Troy Commercial Bank, and the Troy Savings Bank, all of Troy, New York.

Board of Governors of the Federal Reserve System, December 27, 2001.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 02–35 Filed 1–2–02; 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 January 28, 2002.

**A. Federal Reserve Bank of New York** (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

*1. United National Bancorp and UnitedTrust Bank*, both of Bridgewater, New Jersey; to acquire and merge with Vista Bancorp, Inc., Phillipsburg, New Jersey, and thereby indirectly acquire Vista Bank, N.A., Phillipsburg, New Jersey.

**B. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

*1. First Service Financial Company*, Crestwood, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of FirstService Bank, Crestwood, Missouri (in organization).

Board of Governors of the Federal Reserve System, December 28, 2001.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 02–124 Filed 1–2–02; 8:45 am]

**BILLING CODE 6210–01–S**

## GENERAL SERVICES ADMINISTRATION

**[OMB Control No. 3090–0023]**

### Proposed Collection; Comment Request Entitled Surplus Personal Property Mailing List Application

**AGENCY:** Property Management Division (FBP), GSA.

**ACTION:** Notice of request for public comments regarding extension of a currently approved OMB clearance (3090–0023).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy will be submitting to the Office of Acquisition Policy will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved collection concerning Surplus Personal Property Mailing List Application.

*Public comments are particularly invited on:* Whether this collection of information is necessary for the proper performance of functions of the GSA, mainly on the Surplus Mailing List, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Comments may be submitted on or before March 4, 2002.

**FOR FURTHER INFORMATION CONTACT:** Victor Arnold-Bik, Property Management Division, GSA (703) 305–5809.

**ADDRESSES:** Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to Stephanie Morris, General Services Administration (MVP), 1800 F Street, NW., Washington, DC 20405.

**SUPPLEMENTARY INFORMATION:**

### A. Purpose

The General Services Administration is requesting the Office of Management and Budget (OMB) to extend a currently approved information collection, 3090–0023, concerning Surplus Personal Property Mailing List Application. This GSA Form 2170 is completed by persons who wish to have their names placed on the Surplus Personal Property Mailing List maintained by GSA Regional Sales Offices. Mailing labels are produced based on the type of property and geographical area indicated by the prospective bidder on the mailing list application.

### B. Annual Reporting Burden

*Respondents:* 12,000.

*Annual responses:* 12,000.

*Burden hours:* 996.

*Obtaining Copies of Proposals:* A copy of this proposal may be obtained from the General Services Administration, Acquisition Policy Division (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, or be telephoning (202) 501–4744, or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0023, Surplus Personal Property Mailing List Application, in all correspondence.

Dated: December 21, 2001.

**Michael Carleton,**

*Chief Information Officer.*

[FR Doc. 02–119 Filed 1–2–02; 8:45 am]

**BILLING CODE 6820–61–M**

## GENERAL SERVICES ADMINISTRATION

**[OMB Control No. 3090–0006]**

### Submission for OMB Review and Extension GSAR Clause, 552.237–71, Qualifications of Employees

**AGENCY:** General Services Administration (GSA).

**ACTION:** Notice of emergency reinstatement and request for public comments of the reinstated collection 3090–0006.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration requested in August 2001 that the Office of Management and Budget (OMB) reinstate an information collection that pertains to GSAR Clause, Qualifications of Employees. OMB reinstated the collection November 2001. Information collected under this authority is required by regulation. This notice indicates GSA's intent to request an extension by 3 years of OMB's emergency reinstatement of this collection and to request public review and comment on the collection.

*Public comments are particularly invited on:* Whether this information collection generated by the GSAR Clause, Qualifications of Employees, is necessary for security reasons, to properly determine if an employee is suitable to work under a GSA service contract for guards, child care, cleaning, and maintenance contract; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Comments may be submitted on or before March 4, 2002.

**FOR FURTHER INFORMATION CONTACT:** Julia Wise, Acquisition Policy Division, GSA (202) 208–1168.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Stephanie Morris, General Services Administration (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

The General Services Administration has various mission responsibilities related to the acquisition and provision of service contracts. These mission responsibilities generate requirements that are realized through the solicitation and award of service contracts for guards, childcare, cleaning, and maintenance. Individual solicitations and resulting contracts may impose unique information collection/reporting requirements on contractors, not required by regulation, but necessary to evaluate particular program accomplishments and measure success in meeting program objectives.

**B. Annual Reporting Burden**

*Respondents:* 15,496.
*Responses Per Respondent:* 1.
*Total Responses:* 15,496.
*Hours Per Response:* 1.
*Total Burden Hours:* 15,496.
*Obtaining Copies of Proposals:* A copy of this proposal may be obtained from the General Services Administration, Acquisition Policy Division (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, or by telephoning (202) 501–4744, or by faxing your request to (202) 501–4067. Plese cite OMB Control No. 3090–0006, Qualifications of Employees, in all correspondence.

Dated: December 21, 2001.

**Michael Carleton,**

*Chief Information Officer.*

[FR Doc. 02–120 Filed 1–3–02; 8:45 am]

**BILLING CODE 6820–61–M**

## GENERAL SERVICES ADMINISTRATION

**[OMB Control No. 3090–0014]**

### Submission for OMB Review; Comment Request Entitled Transfer Order-Surplus Personal Property and Continuation Sheet

**AGENCY:** Federal Supply Service, GSA.

**ACTION:** Notice of a request for an extension to an existing OMB clearance (3090–0014).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration (GSA) has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Transfer Order-Surplus Personal Property and Continuation Sheet. A request for public comments was published at 66 FR 43871, August 21, 2001. No comments were received.

**DATES:** Comments may be submitted on or before February 4, 2002.

**FOR FURTHER INFORMATION CONTACT:** Denise Thomas, Federal Supply Services, GSA (703) 308–0742.

**ADDRESSES:** Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Stephanie Morris, General Services Administration (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

The General Services Administration is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0014, concerning Transfer Order-Surplus Personal Property and Continuation Sheet. This form is used by public agencies, nonprofit educational or public health activities, programs for the elderly, service education activities, programs for the elderly, service educational activities, and public airports to apply for donation of Federal surplus personal property. The SF 123 serves as the transfer instrument and includes item descriptions, transportation instructions, nondiscrimination assurances, and approval signatures.

**B. Annual Reporting Burden**

*Respondents: 63,000.*

*Annual Responses: 63,000.*

*Burden Hours: 18,900.*

*Obtaining Copies of Proposals:* A copy of this proposal may be obtained from the General Services Administration, Acquisition Policy Division (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, or by telephoning (202) 501–4744, or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0014, Transfer Order-Surplus Personal Property and Continuation Sheet, in all correspondence.

Dated: December 21, 2001.

**Michael Carleton,**

*Chief Information Officer.*

[FR Doc. 02–118 Filed 1–2–02; 8:45 am]

**BILLING CODE 6820–61–M**

## GENERAL SERVICES ADMINISTRATION

**[OMB Control No. 3090–0112]**

### Submission for OMB Review; Comment Request Entitled State Agency Monthly Donation Report of Surplus Property

**AGENCY:** Federal Supply Service, GSA.

**ACTION:** Notice of request for public comments regarding an extension of a currently approved OMB Clearance (3090–0112).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning GSA Form 3040, State Agency Monthly Donation Report of Surplus Personal Property.

*Public comments are particularly invited on:* Whether this collection of information is necessary for the proper performance of functions of the GSA, to conduct a report assessing the distribution of surplus property, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before: March 4, 2002.

**FOR FURTHER INFORMATION CONTACT:** Denise Thomas, Federal Supply Services (703) 308–0742.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Stephanie Morris, General Services Administration (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

The General Services Administration will be requesting the Office of Management and Budget (OMB) to renew information collection, 3090–0112, concerning GSA Form 3040, State Agency Monthly Donation Report of Surplus Personal Property. This report

complies with Public Law 94–519, which requires annual reports of donations of personal property to public agencies for use in carrying out such purposes as conservation, economic development, education, parks and recreation, public health, and public safety.

**B. Annual Reporting Burden**

*Respondents:* 55.
*Annual responses:* 220.
*Burden hours:* 330.

*Copy of Proposal.* A copy of this proposal may be obtained from the General Services Administration, Acquisition Policy Division (MVP), Room 4035, 1800 F Street NW., Washington, DC 20405, or by telephoning (202) 501–4744 or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0112, State Agency Monthly Donation Report of Surplus Property, in all correspondence.

Dated: December 21, 2001.

**Michael Carleton,**

*Chief Information Officer.*

[FR Doc. 02–121 Filed 1–2–02; 8:45 am]

**BILLING CODE 6820–61–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Findings of Scientific Misconduct

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

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

*Shaan F. Munjee, M.S., Wake Forest University School of Medicine:* Based on the report of an investigation conducted by the Wake Forest University School of Medicine (WFUSM) and additional analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) found that Shaan F. Munjee, M.S., former research fellow, Department of Cancer Biology at WFUSM, engaged in scientific misconduct by falsifying and fabricating data in research supported by National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), National Institutes of Health (NIH), grants 5 R29 DK52623–03 and 5 R29 DK52623–04, ''PTHRP and prostate growth.''

Specifically, PHS found that Ms. Munjee falsified data relating to the signaling of protein kinase in prostate cancer cell lines. From March 2000 through October 2000, Ms. Munjee falsified and fabricated data in her notebook from experiments to misrepresent her productivity and the significance of her findings. Ms. Munjee reported the falsified and fabricated data in: (1) Laboratory group meetings, a journal club, and a Cancer Biology retreat within WFUSM; (2) NIH grant application 5 R29 DK52623–04, ''PTHRP and prostate growth''; and (3) an abstract submitted to the American Association for Cancer Research. Given the extensive nature of Ms. Munjee's data falsification and fabrication, none of her research can be considered reliable. Her actions adversely and materially affected the laboratory's ongoing research in prostate cancer by causing an unproductive avenue of research to be pursued and by preventing the principal investigator from submitting a competitive renewal application for a NIH grant. No publications required correction or retraction.

Ms. Munjee has entered into a Voluntary Exclusion Agreement in which she has voluntarily agreed for a period of three (3) years, beginning on December 17, 2001:

(1) To exclude herself from any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in, nonprocurement transactions (*e.g.*, grants and cooperative agreements) of the United States Government as defined in 45 CFR Part 76 (Debarment Regulations); and

(2) to exclude herself from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

**FOR FURTHER INFORMATION CONTACT:** Director, Division of Investigative Oversight, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

**Chris B. Pascal,**

*Director, Office of Research Integrity.*

[FR Doc. 02–25 Filed 1–2–02; 8:45 am]

**BILLING CODE 4150–31–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Advisory Committees; Tentative Schedule of Meetings for 2002

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing a tentative schedule of forthcoming meetings of its public advisory committees for 2002. During 1991, at the request of the Commissioner of Food and Drugs (the Commissioner), the Institute of Medicine (the IOM) conducted a study of the use of FDA's advisory committees. In its final report, one of the IOM's recommendations was for the agency to publish an annual tentative schedule of its meetings in the **Federal Register**. This publication implements the IOM's recommendation.

**FOR FURTHER INFORMATION CONTACT:** Linda Ann Sherman, Advisory Committee Oversight and Management Staff (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1220.

**SUPPLEMENTARY INFORMATION:** The IOM, at the request of the Commissioner, undertook a study of the use of FDA's advisory committees. In its final report in 1992, one of the IOM's recommendations was for FDA to adopt a policy of publishing an advance yearly schedule of its upcoming public advisory committee meetings in the **Federal Register**; FDA has implemented this recommendation. The annual publication of tentatively scheduled advisory committee meetings will provide both advisory committee members and the public with the opportunity, in advance, to schedule attendance at FDA's upcoming advisory committee meetings. Because the schedule is tentative, amendments to this notice will not be published in the **Federal Register**. However, changes to the schedule will be posted on the FDA advisory committees' Web site located at http://www.fda.gov/oc/advisory/default.htm. FDA will continue to publish a **Federal Register** notice 15 days in advance of each upcoming advisory committee meeting to announce the meeting (21 CFR 14.20).

The following list announces FDA's tentatively scheduled advisory committee meetings for 2002. You may also obtain up-to-date meeting information by calling the Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area):

| Committee Name | Dates of Meetings | Advisory Committee 5-Digit Information Line Code |
|---|---|---|
| **OFFICE OF THE COMMISSIONER** | | |
| Science Board to the Food and Drug Administration | April 16, November 12 | 12603 |
| **CENTER FOR BIOLOGICS EVALUATION AND RESEARCH** | | |
| Allergenic Products Advisory Committee | March 15, November 4 | 12388 |
| Biological Response Modifiers Advisory Committee | February 28–March 1 (Alternate: January 30–31), July 18–19 (Alternate: May 9–10), November 7–8 (Alternate: October 10–11). | 12389 |
| Blood Products Advisory Committee | March 14–15, June 13–14, September 12–13, December 12–13. | 19516 |
| Transmissible Spongiform Encephalopathies Advisory Committee. | January 16–17, June 26–27, October 17–18 | 12932 |
| Vaccines and Related Biological Products Advisory Committee | January 30–31, March 6–7, May 21–22, July 10–11, September 10–11, November 18–19. | 12391 |
| **CENTER FOR DRUG EVALUATION AND RESEARCH** | | |
| Advisory Committee for Pharmaceutical Science | February 25–26, May 7–9, October 23–25 | 12539 |
| Advisory Committee for Reproductive Health Drugs | September 13 | 12537 |
| Anesthetic and Life Support Drugs Advisory Committee | January 30–31, April 11–12 | 12529 |
| Anti-Infective Drugs Advisory Committee | February 19–20 | 12530 |
| Antiviral Drugs Advisory Committee | January 24, March 19, June 24–25, October 16–17. | 12531 |
| Arthritis Advisory Committee | February 19–20, May 14–15, July 29–30, September 12–13, December 10–11. | 12532 |
| Cardiovascular and Renal Drugs Advisory Committee | January 17–18, April 11–12, July 18–19, October 10–11. | 12533 |
| Dermatologic and Ophthalmic Drugs Advisory Committee | September 20 | 12534 |
| Drug Abuse Advisory Committee | No meetings planned | 12535 |
| Endocrinologic and Metabolic Drugs Advisory Committee | March 14–15, May 23–24, July 22–23, September 26–27, December 5–6. | 12536 |
| Gastrointestinal Drugs Advisory Committee | September 27 | 12538 |
| Medical Imaging Drugs Advisory Committee | April 18, August 15 | 12540 |
| Nonprescription Drugs Advisory Committee | April 22–23 | 12541 |
| Oncologic Drugs Advisory Committee | January 31, February 27–28, June 6–7 | 12542 |
| Peripheral and Central Nervous System Drugs Advisory Committee. | February 15 | 12543 |
| Pharmacy Compounding Advisory Committee | September 27 | 12440 |
| Psychopharmacologic Drugs Advisory Committee | September 13 | 12544 |
| Pulmonary-Allergy Drugs Advisory Committee | January 17–18, May 16–17 | 12545 |
| **CENTER FOR FOOD SAFETY AND APPLIED NUTRITION** | | |
| Food Advisory Committee | June 4–5, September 24–25 | 10564 |
| **CENTER FOR DEVICES AND RADIOLOGICAL HEALTH** | | |
| Device Good Manufacturing Practice Advisory Committee | No meetings planned | 12398 |
| Medical Devices Advisory Committee: | | |

| Committee Name | Dates of Meetings | Advisory Committee 5-Digit Information Line Code |
|---|---|---|
| Anesthesiology and Respiratory Therapy Devices Panel | March 18, May 13, September 23, October 28 | 12624 |
| Circulatory System Devices Panel | March 4–5, June 3–4, September 9–10, November 4–5, December 2–3. | 12625 |
| Clinical Chemistry and Clinical Toxicology Devices Panel | February 11–12, May 23–24, August 19–20, November 8. | 12514 |
| Dental Products Panel | May 9–10, August 22–23, October 29–30 | 12518 |
| Ear, Nose, and Throat Devices Panel | February 21–22, April 25–26, June 20–21, August 15–16, October 17–18, December 12–13. | 12522 |
| Gastroenterology and Urology Devices Panel | February 1, May 17, August 9, November 7 | 12523 |
| General and Plastic Surgery Devices Panel | February 7–8, April 9–10, July 8–9, October 1–2 | 12519 |
| General Hospital and Personal Use Devices Panel | March 11–12, June 10–11, September 9–10, December 5–6. | 12520 |
| Hematology and Pathology Devices Panel | April 15–16, June 17–18, September 26–27 | 12515 |
| Immunology Devices Panel | March 15, June 14, September 13, December 6 | 12516 |
| Medical Devices Dispute Resolution Panel | As needed | 10232 |
| Microbiology Devices Panel | February 21–22, May 9–10, September 19–20, October 28–29. | 12517 |
| Molecular and Clinical Genetics Panel | April 19, July 26, November 1 | 10231 |
| Neurological Devices Panel | February 25–26, May 9–10, August 1–2, November 21–22. | 12513 |
| Obstetrics and Gynecology Devices Panel | April 22–23, July 22–23, October 21–22 | 12524 |
| Ophthalmic Devices Panel | January 17–18, March 14–15, May 16–17, July 18–19, September 12–13, November 14–15. | 12396 |
| Orthopaedic and Rehabilitation Devices Panel | January 10, April 11–12, July 11–12, October 17–18. | 12521 |
| Radiological Devices Panel | February 4, May 20, August 12, November 18 | 12526 |
| National Mammography Quality Assurance Advisory Committee | May 6, September 23 | 12397 |
| Technical Electronic Product Radiation Safety Standards Committee. | May 15 | 12399 |
| **CENTER FOR VETERINARY MEDICINE** | | |
| Veterinary Medicine Advisory Committee | January 22–24, September 16 | 12548 |
| **NATIONAL CENTER FOR TOXICOLOGICAL RESEARCH** | | |
| Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants. | March 13–14, September 24–25 | 12560 |
| Science Advisory Board to the National Center for Toxicological Research. | June 11–12 | 12559 |

Dated: December 26, 2001.

**Linda A. Suydam,**

*Senior Associate Commissioner.*

[FR Doc. 02–26 Filed 1–2–02; 8:45 am]

**BILLING CODE 4160–02–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Joint Meeting of the Transmissible Spongiform Encephalopathies Advisory Committee and the Blood Products Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming joint meeting of two public advisory committees of the Food and Drug Administration (FDA). At least one portion of the joint meeting will be closed to the public.

*Name of Committees*: Transmissible Spongiform Encephalopathies Advisory Committee and the Blood Products Advisory Committee.

*General Function of the Committees*: To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time*: The meeting will be held on January 16, 2002, from 1 p.m. to 4:30 p.m.; and on January 17, 2002, from 8 a.m. to 5:15 p.m.

*Location*: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

*Contact*: William Freas or Sheila D. Langford, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12392. Please call the Information Line for up-to-date information on this meeting.

*Agenda*: On January 17, 2002, the committees will listen to updates on the ''Revised FDA Guidance on Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and Variant Creutzfeldt-Jakob Disease (vCJD) by Blood and Blood Products'' document, and other related topics. For the purpose of further evaluating the adequacy of our present blood deferral recommendations, the committee will then discuss the effectiveness of measures taken to protect humans from foodborne exposure to the bovine spongiform encephalopathy (BSE) agent in countries with BSE.

*Procedure*: On January 17, 2002, from 8 a.m. to 4 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 11, 2002. Oral presentations from the public will be scheduled between approximately 1:20 p.m. and 2:20 p.m. on January 17, 2002. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 11, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

*Closed Committee Deliberations*: On January 16, 2002, from 1 p.m. to 4 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). This portion of the meeting will be closed to permit discussion of this material.

FDA regrets that it was unable to publish this notice 15 days prior to the January 16 and 17, 2002, Joint Meeting of the Transmissible Spongiform Encephalopathies Advisory Committee and the Blood Products Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Joint Meeting of the Transmissible Spongiform Encephalopathies Advisory Committee and the Blood Products Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 26, 2001.

**Linda A. Suydam,**

*Senior Associate Commissioner.*

[FR Doc. 02–45 Filed 1–2–02; 8:45 am]

**BILLING CODE 4160–02–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, DHHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

**XAGE–1, A Gene Expressed in Multiple Cancers and Uses Thereof**

Drs. Ira H. Pastan (NCI), Xiu F. Liu (NCI), Byungkook Lee (NCI) and Lee J. Helman (NCI)

DHHS Ref. No. E–161–00/0 (Provisional Application) filed September 1, 2000 and E–161–00/1 (PCT Application) filed August 31, 2001

*Licensing Contact:* Richard Rodriguez; 301/496–7056 ext. 287; e-mail: *rodrigur@od.nih.gov*.

The XAGE–1 gene is a human X-linked gene that is strongly expressed in breast cancer, lung cancer and several other cancers as well as normal testes. The largest open reading frame of the XAGE–1 transcript encodes a putative protein of 16.3 kD (p16) with a potential transmembrane domain at the amino terminus. In addition, the XAGE–1 transcript contains a second ATG in the reading frame corresponding to residue 66, which would encode a 9 kD protein (p9). *In vitro* transfection experiments using 293 T cells have revealed a 9 kD protein. However, the size of the endogenously expressed protein is not yet known. XAGE–1 shares homology with GAGE/PAGE proteins in the C-terminal end.

The invention relates to the fact that the XAGE–1 gene is expressed in a number of human cancers, specifically: breast, lung, prostate, pancreatic, and ovarian cancers. The proteins p9 and p16, immunogenic fragments thereof, analogs of these proteins, and nucleic acids encoding these proteins, fragments, or analogs, can be administered to persons with XAGE–1 expressing cancers to raise or augment an immune response to the cancer. The invention further provides nucleic acid sequences encoding the protein, as well as expression vectors, host cells, and antibodies to the proteins. Further, the invention provides immunoconjugates that comprise an antibody to p16 or to p9, and an effector molecule, such as a label, a radioisotope, or a toxin. The invention also provides methods of inhibiting the growth of XAGE–1 expressing cells by contacting them with immunoconjugates of an anti-p9 or p16 antibody and a toxic moiety. The invention also provides kits for the detection of p9 or p16 proteins in a sample. The XAGE–1 gene and encoded protein could be of value in the development of a cancer diagnostic and/or a cancer immunotherapy.

The above mentioned invention is available for licensing on an exclusive or non-exclusive basis.

**Histone Deacetylase Inhibitors in Diagnosis and Treatment of Thyroid Neoplasms**

Tito A. Fojo and Susan Bates (NCI)
DHHS Reference No. E–286–00/0 filed 10 Jan 2001

*Licensing Contact:* Matthew Kiser; 301/496–7056 ext. 224; e-mail: *kiserm@od.nih.gov*.

The invention disclosed are novel approaches to thyroid cancer therapy. These approaches include methods to enhance thyroid specific gene expression, for example methods to enhance expression of thyroglobulin and/or the Na/I symporter in thyroid cancer cells. Enhanced expression of thyroid-specific genes promotes cellular differentiation and reduces biologically aggressive behavior such as invasion and metastasis. In addition, enhanced expression of thyroglobulin and/or the Na/I symporter increases the ability of thyroid cancer cells to concentrate iodine, thereby making the cells more susceptible to radioactive iodine therapy. Also disclosed are methods for detecting thyroid neoplasms in a subject, by administering a therapeutically effective amount of a histone deacetylase inhibitor, administering a detectable agent whose uptake or concentration in thyroid cells is increased by administration of the histone deacetylase inhibitor, and detecting the detectable agent.

Dated: December 20, 2001.

**Jack Spiegel,**

*Director, Division of Technology, Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 02–11 Filed 1–2–02; 8:45 am]

**BILLING CODE 4140–01–P**

## 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; Small Animal Imaging Resources Program.

*Date:* January 16, 2002.

*Time:* 10:15 a.m. to 2:15 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* 6116 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

*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, 301–946–7576.

(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: December 21, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–20 Filed 1–2–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Research Resources; 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 Center for Research Resources Special Emphasis Panel, Science Education Partnership Award.

*Date:* February 7–8, 2002.

*Time:* February 7, 2002, 8 AM to Adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

*Contact Person:* Sybil A. Wellstood, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, One Rockledge Centre, Room 6018, 6705 Rockledge Drive, MSC 7965, Bethesda, MD 20892–7965, (301) 435–0814, *wellstoods@ncrr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: December 27, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–131 Filed 1–2–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Research Resources; Notice of 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 open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend the need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the 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 Center for Research Resources Initial Review Group, Comparative Medicine Review Committee.

*Date:* February 7–8, 2002.

*Closed:* February 7, 2002, 8 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Four Points by Sheraton, 8400 Wisconsin Avenue, Bethesda, MD 20814.

*Open:* February 8, 2002, 8 am to 9 am.

*Agenda:* To discuss program planning and other issues.

*Place:* Four Points by Sheraton, 8400 Wisconsin Avenue, Bethesda, MD 20814.

*Closed:* February 8, 2002, 9 a.m. to Adjournment.

*Agenda:* To review and evaluate grant applications.

*Contact Person:* D.G. Patel, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, 6705 Rockledge Drive, Room 6018, Bethesda, MD 20892–7965, (301) 435–0824, *dgpatel@ncrr.nih.gov.*

*Name of Committee:* National Center for Research Resources Initial Review Group, Comparative Medicine Review Committee.

*Date:* February 7–8, 2002.

*Closed:* February 7, 2002, 8 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Four Points by Sheraton, 8400 Wisconsin Avenue, Bethesda, MD 20814.

*Open:* February 8, 2002, 8 a.m. to 9 a.m.

*Agenda:* To discuss program planning and other issues.

*Place:* Four Points by Sheraton, 8400 Wisconsin Avenue, Bethesda, MD 20814.

*Closed:* February 8, 2002, 8 a.m. to Adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* Four Points by Sheraton, 8400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Camille M. King, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, One Rockledge Centre, MSC 7965, 6705 Rockledge Drive, Suite 6018, Bethesda, MD 20892–7965, (301) 435–0815, *kingc@ncrr.nih.gov.*

*Name of Committee:* National Center for Research Resources Initial Review Group, General Clinical Research Centers Review Committee.

*Date:* February 12–14, 2002.

*Open:* February 12, 2002, 8 a.m to 9 a.m.

*Agenda:* To discuss program planning and other issues.

*Place:* Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Closed:* February 12, 2002, 9 a.m. to Adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* John L. Meyer, PhD, Deputy Director, Office of Review, National Center for Research Resources, National Institutes of Health, 6705 Rockledge Drive, MSC 7965, One Rockledge Centre, Room 6018, Bethesda, MD 20892–7965, 301–435–0806, meyerj@ncrr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: December 27, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–136 Filed 1–2–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Research Resources; 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 Center for Research Resources Special Emphasis Panel, Biomedical Research Technology.

*Date:* February 26–27, 2002.

*Time:* February 26, 2002, 8 a.m. to Adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

*Contact Person:* Mohan Viswanathan, PHD, Scientific Review Administrator, National Center for Research Resources, National Institutes of Health, Office of Review, 6705 Rockledge Drive, MSC 7965, One Rockledge Centre, Room 6018, Bethesda, MD 20892, (301) 435–0829, *viswanathanm@ncrr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: December 27, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–137 Filed 1–2–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of 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, Severe Asthma Research Program.

*Date:* December 27, 2001.

*Time:* 9:00 AM to 10:30 AM.

*Agenda:* To review and evaluate grant applications.

*Place:* 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Anne P Clark, PhD, NIH, NHLBI, DEA, Review Branch, Rockledge II, 6701 Rockledge Drive, Room 7202, Bethesda, MD 20892–7924, 301/435–0310.

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, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: December 21, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–21 Filed 1–2–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Human Genome Research Institute; Notice of 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 open to the public as indicated below, 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.

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 Inherited Disease Research Access Committee.

*Date:* January 9–10, 2002.

*Open:* January 9, 2002, 7:00 PM to 10:00 PM.

*Agenda:* To discuss matters of program relevance.

*Place:* The Westin Grand Hotel, 2350 M Street, NW, Washington, DC 20037.

*Closed:* January 10, 2002, 8:30 AM to 3:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* The Westin Grand Hotel, 2350 M Street, NW, Washington, DC 20037.

*Contact Person:* Jerry Roberts, PhD, Scientific Review Administrator, Office of Scientific Review, National Institutes of Health, Building 38A, Bethesda, MD 20892, 301–402–0838.

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 Inherited Disease Research Access Committee.

*Date:* January 10, 2002.

*Time:* 3:00 PM to 4:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* The Westin Grand Hotel, 2350 M Street, NW., Washington, DC 20037.

*Contact Person:* Rudy O. Pozzatti, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301–402–0838.

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 No. 93.172, Human Genome Researach, National Institutes of Health, HHS)

Dated: December 21, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–22 Filed 1–2–02; 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 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 Allergy and Infectious Diseases Special Emphasis Panel.

*Date:* February 25, 2002.

*Time:* 8:30 am to 12 pm.

*Agenda:* To review and evaluate contract proposals.

*Place:* 6700–B Rockledge Drive, Room 2220, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Vassil S. Georgiev, 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.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

*Date:* February 25, 2002.

*Time:* 1 pm to 5 pm.

*Agenda:* To review and evaluate contract proposals.

*Place:* 6700–B Rockledge Drive, Room 2223, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Vassil S. Georgiev, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drice, MSC–7610, Bethesda, MD 20892–7610, 301–496–2550.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

*Date:* February 26, 2002.

*Time:* 8:30 am to 12 pm.

*Agenda:* To review and evaluate contract proposals.

*Place:* 6700–B Rockledge Drive, Room 2223, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Vassil S. Georgiev, 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, 310–496–2550.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

*Date:* February 27, 2002.

*Time:* 1 pm to 5 pm.

*Agenda:* To review and evaluate contract proposals.

*Place:* Holiday Inn—Gaithersburg, 2 Montgomery Village Avenue, Gaithersburg, MD 20879, (Telephone Conference Call).

*Contact Person:* Vassil S. Georgiev, 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, 310–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 21, 2001.

**LaVerne Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–13 Filed 1–2–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of 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 National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plant to attend the need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed in the public in accordance with the provisions set forth in sections 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or 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 grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Council of Aging.

*Date:* January 29–30, 2002.

*Closed:* January 29, 2002, 3 PM to 6 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

*Open:* January 30, 2002, 8 AM to 1:30 PM.

*Agenda:* Call to Order; report on Task force on Minority Aging; reports on Clinical Investigators Working Group and Working Group on Program; report on Intramural Research Program; and Program Highlights

*Place:* 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

*Agenda:* To review and evaluate intramural Research Program.

*Place:* 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

*Contact Person:* Miriam F. Kelty, PhD, Director, Office of Extramural Affairs, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, 301–496–9322.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: www.nih.gov/nia/naca/, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 21, 2001.

**LaVerne Y. Stringfield,**

*Director, Officer of Federal Advisory Committee Policy.*

[FR Doc. 02–14 Filed 1–2–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Arthritis and Musculoskeletal and Skin 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 Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

*Date:* January 4, 2002.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Richard J. Bartlett, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Bldg./Bldg. 45, MSC 6500/Room 5AS–37B, Bethesda, MD 20892, (301) 594–4952.

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. 93,846, Arthritis and Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: December 26, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–15 Filed 1–2–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Arthritis and Musculoskeletal and Skin 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 Institutes of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

*Date:* January 9, 2002.

*Time:* 1 pm to 2 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Tracy A. Shahan, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Building, MSC 6500, 45 Center Drive, 5AS–25H, Bethesda, MD 20892, (301) 594–4952.

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. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: December 26, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–16 Filed 1–2–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Arthritis and Musculoskeletal and Skin 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 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 Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

*Date:* January 15, 2002.

*Time:* 8:30 AM to 1 PM.

*Agenda:* To review and evaluate contract proposals.

*Place:* Holiday Inn, 8120 Wisconsin Ave, Bethesda, MD 20814.

*Contact Person:* Aftab A. Ansari, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Building, MSC 6500, 45 Center Drive, 5AS–25S, Bethesda, MD 20892, (301) 594–4952.

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 No. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS).

Dated: December 26, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–17 Filed 1–2–02; 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 Special Emphasis Panel.

*Date:* January 2, 2002.

*Time:* 11 a.m. to 11:45 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

*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 jrichters@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: December 21, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–18 Filed 1–2–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Arthritis and Musculoskeletal and Skin 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 Arthritis and Musculoskeletal and Skin Diseases Special Emphasis, Panel.

*Date:* January 4, 2002.

*Time:* 11 a.m. to 12:59 p.m.

*Agenda:* 45 Center Drive, Natcher Bldg., Conf. Rms., A & D, Bethesda, MD 20892.

*Contact Person:* Tommy L. Broadwater, PhD, Grants Review Branch, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25U, Bethesda, MD 20892, 301–594–4952.

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. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: December 27, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–133 Filed 1–2–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel.

*Date:* January 23, 2002.

*Time:* 2 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470, *dsommers@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, 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: December 27, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–134 Filed 1–2–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

*Date:* January 17, 2002.

*Time:* 12 p.m. to 1:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* 600 Executive Boulevard, Suite 409, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Ronald Suddendorf, PhD., Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2926.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: December 27, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–135 Filed 1–2–02; 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:* December 26, 2001.

*Time:* 2:00 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:* Jeanne N. Ketley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, (301) 435–1789.

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:* January 7, 2002.

*Time:* 2:00 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:* Mary Ann Guadagno, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1104, MSC 7770, Bethesda, MD 20892, (301) 451–8011.

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.

*Names of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* January 7, 2002.

*Time:* 3:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Paul K Strudler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435–1716.

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:* January 8, 2002.

*Time:* 11:00 a.m. to 12:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Michael Micklin, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, micklinm@csr.nih.gov.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* January 11, 2002.

*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:* Michael Micklin, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, micklinm@csr.nih.gov.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* January 11, 2002.

*Time:* 4:30 p.m. to 6:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Philip Perkins, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435–1718.

*Name of Committee:* Oncological Sciences Integrated Review Group, Pathology B Study Section.

*Date:* January 28–30, 2002.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Keystone Resort, Keystone, CO 80222.

*Contact Person:* Martin L. Padarathsingh, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7804, Bethesda, MD 20892, (301) 435–1717.

(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: December 21, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–19 Filed 1–2–02; 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:* January 4, 2002

*Time:* 4 p.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Cheryl M. Corsaro, PhD, Scientific Review Administrator, Genome Study Section, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, *corsaroc@csr.nih.gov*.

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:* January 31, 2002.

*Time:* 11 a.m.. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*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*.

(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: December 27, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–132 Filed 1–2–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Prospective Grant of Co-Exclusive License: ''cDNA for Human and Pig Dihydropyrimidine Dehydrogenase'

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an co-exclusive license to practice the inventions embodied in U.S. Patents 5,856,454 and 6,015,673, entitled ''cDNA for Human and Pig Dihydropyrimidine Dehydrogenase'' to Variagenics, Inc. of Cambridge, MA.

The prospective co-exclusive license territory will be worldwide and the field of use may be limited to *in vitro* diagnostics.

**DATES:** Only written comments and/or license applications which are received by the National Institutes of Health on or before March 4, 2002 will be considered.

**ADDRESSES:** Requests for copies of the patents, inquiries, comments, and other materials relating to the contemplated co-exclusive license should be directed to: Matthew B. Kiser, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 496–7056 x224; Facsimile (301) 402–0220; E-mail kiserm@od.nih.gov.

**SUPPLEMENTARY INFORMATION:** The technology relates to the DPD gene. Cancer patients having a DPD deficiency are at risk of a severe toxic reaction to the commonly used anticancer agent 5-fluorouracil (5–FU). Claimed are DPD genes from human and pig, methods for detecting the level of nucleic acids that encode DPD in patient, and nucleic acids that are useful as probes for this purpose.

The prospective co-exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective co-exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated co-exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: December 20, 2001.

**Jack Spiegel,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer.*

[FR Doc. 02–12 Filed 1–2–02; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NV–050–1430–ES; N–41565–30]**

### Notice of Realty Action: Lease/Conveyance for Recreation or Public Purposes

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Partial assignment of 30.0 acres and change of use for recreation or public purposes lease amendment.

**SUMMARY:** The Clark County School District (CCSD) proposes an amendment to Recreation or Public Purposes (R&PP) Lease N–41565–30 to add 30.0 acres to an existing lease of 12.5 acres and to change the use of the lease from a maintenance facility to a high school. CCSD would acquire the additional 30.0 acres through partial assignment from Clark County's R&PP Lease N–51437 which will be a change of use from a park to a high school. The land has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*).

T. 21 S., R. 60 E., M.D.M.,
Sec. 15, W½NE¼NW¼SW¼,
NW¼NW¼SW¼, SW¼NW¼SW¼,
W½SE¼NW¼SW¼,
W½NE¼SW¼SW¼,
E½NW¼SW¼SW¼,
NW¼NW¼SW¼SW¼.

Containing 42.5 acres, more or less, located at the corner of Buffalo Drive and Twain Avenue.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations

of the Secretary of the Interior and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

1. Easements in accordance with the Clark County Transportation Plan.

2. Those rights for water line purposes which have been granted to the Las Vegas Valley Water District by Permit No. N–24659 under the Act of October 21, 1976 (43 U.S.C. 1761).

3. Those rights for power and telephone line purposes which have been granted to Nevada Power Company and Sprint Central by Permit N–24663 under the Act of October 21, 1976 (43 U.S.C. 1761).

4. Those rights for power and telephone line purposes which have been granted to Nevada Power Company and Sprint Central by Permit N–58098 under the Act of October 21, 1976 (43 U.S.C. 1761).

5. Those rights for power line purposes which have been granted to the Nevada Power Company by Permit No. N–59318 under the Act of October 21, 1976 (43 U.S.C. 1761).

6. Those rights for roadway purposes which have been granted to Clark County by Permit N–59691 under the Act of October 21, 1976 (43 U.S.C. 1761).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada or by calling (702) 647–5088.

**Application Comments**

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for a high school to the Las Vegas Field Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108. Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor directly related to the suitability of the land for a high school. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, these realty actions will become the final determination of the Department of the Interior.

Dated: December 14, 2001.

**Rex Wells,**

*Assistant Field Manager, Division of Lands, Las Vegas, NV.*

[FR Doc. 02–83 Filed 1–2–02; 8:45 am]

BILLING CODE 4310–HC–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Water Exchange Agreements With Mendota Pool Group, 2003–2013, CA

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of intent to prepare an environmental impact statement (EIS).

**SUMMARY:** The Department of the Interior, Bureau of Reclamation (Reclamation), will prepare an EIS, pursuant to the National Environmental Policy Act (NEPA), to evaluate the proposed exchange of up to 25,000 acre-feet of water per year over a 10-year period with the Mendota Pool Group. Alternatives will be identified and evaluated on the basis of criteria adopted to maintain environmental quality and provide for continued agricultural production. The purpose of the proposed project is to provide water to irrigable lands on Mendota Pool Group properties in Westlands Water District and San Luis Water District to offset substantial reductions in contract water supplies attributable to the Central Valley Project Improvement Act (CVPIA), the Endangered Species Act listings and regulations, and new Delta water quality rules. Providing this water would enable the Mendota Pool Group farmers to maintain production on historically irrigated lands. The project is not intended to increase the amount of water for farming activities, but would replace some of the contract water lost because of increased environmental regulations that restrict water deliveries south of the export pumps at Tracy, California.

Through initial scoping meetings, Reclamation will seek public input on the scope of the project and potential alternatives, or combination of alternatives, for consideration in the EIS.

There are no known Indian Trust Assets or environmental justice issues associated with the proposed action.

**DATES:** One scoping meeting will be held to solicit comments from interested parties to assist in determining the scope of the environmental analysis and to identify the significant issues related to this proposed action. The meeting is scheduled for Monday, January 14, 2002, 6 to 8 p.m., in Mendota, California.

Submit written comments on the proposed project scope on or before January 28, 2002.

**ADDRESSES:** The scoping meeting will be held at the City Council Chambers, Mendota City Hall, 643 Quince St., Mendota, CA 93640; telephone: (559) 655–3291.

Written comments on the scope of the alternatives and impacts to be considered should be sent to Mrs. Judi Tapia, Bureau of Reclamation, South-Central California Area Office, 1243 N Street, Fresno CA 93721–1813; by telephone at (559) 487–5179 (TDD 559–487–5933); by E-mail at *jtapia@mp.usbr.gov;* or faxed to (559) 487–5397.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Tapia, Environmental Specialist, at the above address or by telephone at (559) 487–5179 (TDD 559–487–5933).

**SUPPLEMENTARY INFORMATION:** The Delta export service area of the Central Valley Project (CVP) has total contractual obligations and delivery losses of approximately 3.45 million acre-feet per year. The theoretical maximum pumping capability of CVP facilities serving this area is approximately 3.09 million acre-feet per year. Available supplies are apportioned under a hierarchy of allocation in which agricultural water service contracts, totaling about 1.85 million acre-feet per year, are provided water only after all other obligations are met. Implementation of the CVPIA provided water only after all other obligations are met. Implementation of the CVPIA (1992), Endangered Species Act (1993–1995), and revised Bay-Delta water quality standards has further reduced pumping capabilities and water supplies available to agricultural contractors. Currently these parties can expect to receive a long-term average supply of about 50 to 55 percent of contract water as compared to a pre-1992 average of 88 to 92 percent.

The project proponents propose to pump an average of 27,000 acre-feet of groundwater per year over the 10-year period from non-CVP wells located adjacent to the Mendota Pool into the Mendota Pool to make up for a portion of the annual shortfall in the contract water to be delivered via the CVP. The actual quantity of water to be pumped would depend on whether the year is classified as wet (0 acre-feet per year),

normal (31,600 acre-feet per year), or dry (40,000 acre-feet per year). Of the total quantity pumped, a maximum of 25,000 acre-feet per year would be exchanged with Reclamation. This water would be made available to Reclamation in the Mendota Pool to offset their existing water contract obligations. In exchange, Reclamation would make an equivalent amount of CVP water available to the members of the Mendota Pool Group for irrigation purposes at Check 13 of the Delta-Mendota Canal. Any quantity of water pumped beyond the 25,000 acre-feet exchanged would be delivered directly to other lands that are presently under irrigation around the Pool. As part of this program, a maximum of 12,000 acre-feet per year of groundwater would be pumped from deep wells (i.e., screened interval greater than 130 feet deep), with the remainder coming from shallow wells (i.e., screened interval less than 130 feet deep). The proposed project will comply with the terms specified in the Settlement Agreement for Mendota Pool Transfer Pumping Program, effective January 1, 2001.

The primary environmental resource issues that have been identified, and that will be evaluated in the EIS, include groundwater levels, groundwater quality, subsidence, surface water quality, and biological resources.

The environmental review will be conducted pursuant to NEPA, the Endangered Species Act, and other applicable laws, to analyze the potential environmental impacts of implementing each of the feasible alternatives. All reasonable alternatives as required by NEPA and its implementing regulations will be examined. The final Environmental Impact Report, certified by Westlands Water District in 1998, will provide a useful beginning, as will subsequent environmental reports and ongoing sampling activities, thus allowing Reclamation to expedite completion of the analysis. Alternatives, with their related designs and cost estimates identified in the earlier document, will be re-evaluated and updated to reflect current conditions. Public input on additional alternatives, or combinations of alternatives, that should be considered will be sought through the initial scoping meeting. In addition, public input will be sought on the criteria that should be used to carry forward alternatives, or combination of alternatives, for further consideration.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment letter. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public disclosure in their entirety.

Dated: December 3, 2001.

**Frank Michny,**

*Regional Environmental Officer.*

[FR Doc. 02–33 Filed 1–2–02; 8:45 am]

**BILLING CODE 4310–MN–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Glen Canyon Dam Adaptive Management Work Group (AMWG), Notice of Meeting

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMP provides an organization and process to ensure the use of scientific information in decision making concerning Glen Canyon Dam operations and protection of the affected resources consistent with the Grand Canyon Protection Act. The AMP has been organized and includes a federal advisory committee (the AMWG), a technical work group (the TWG), a monitoring and research center, and independent review panels. The TWG is a subcommittee of the AMWG and provides technical advice and information for the AMWG to act upon.

**DATES AND LOCATION:** The Glen Canyon Dam Adaptive Management Work Group will conduct the following public meeting.

Phoenix, Arizona—January 17–18, 2002. The meeting will begin at 9:30 a.m. and conclude at 5 p.m. on the first day and will 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 approve the Strategic Plan, and discuss the following: FY 2003 budget, basin hydrology, Protocol Evaluation Panel (PEP) recommendations, 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 Web site 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 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 members at the meeting.

**FOR FURTHER INFORMATION CONTACT:** Randall Peterson, telephone (801) 524–3758; faxogram (801) 524–3858; *rpeterson@uc.usbr.gov.*

Dated: November 30, 2001.

**Rick L. Gold,**

*Regional Director.*

[FR Doc. 02–32 Filed 1–2–02; 8:45 am]

**BILLING CODE 4310–MN–M**

## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 731–TA–910–912 (Final)]**

### Low Enriched Uranium From Germnay, the Netherlands, and the United Kingdom

**AGENCY:** United States International Trade Commission.

**ACTION:** Termination of investigations.

**SUMMARY:** On December 21, 2001, the Department of Commerce published notice in the **Federal Register** of negative final determinations of sales at less than fair value in connection with the subject investigations (66 FR 65886, December 21, 2001). Accordingly, pursuant to section 207.40(a) of the Commission's Rules of Practice and

Procedure (19 CFR 207.40(a)), the antidumping investigations concerning low enriched uranium from Germany, the Netherlands, and the United Kingdom (investigations Nos. 731–TA–910–912 (Final)) are terminated.

**EFFECTIVE DATE:** December 21, 2001.

**FOR FURTHER INFORMATION CONTACT:** Bonnie Noreen (202–205–3167), 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 these investigations may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public*.

**Authority:** These investigations are 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).

By order of the Commission.

Issued: December 28, 2001.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 02–138 Filed 1–2–02; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–762]**

### Static Random Access Memory Semiconductors From Taiwan; Notice of Final Decision Affirming Remand Determination

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice of a final court decision affirming its final negative determination, made pursuant to court remand, in the antidumping duty investigation of static random access memory semiconductors (SRAMs) from Taiwan.

**FOR FURTHER INFORMATION CONTACT:** Michael Diehl, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3095. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

**SUPPLEMENTARY INFORMATION:** In April of 1998, the Commission published its determination that an industry in the United States was materially injured by reason of imports of SRAMs from Taiwan found by the Department of Commerce (Commerce) to be sold at less than fair value. The Commission also found that the domestic industry was not materially injured or threatened with material injury by reason of subject imports of SRAMs from the Republic of Korea. Static Random Access Memory Semiconductors from the Republic of Korea and Taiwan, Investigation Nos. 731–TA–761–762 (Final), USITC Pub. 3098 (April 1998). See 63 FR 18443 (April 15, 1998).

The Taiwan Semiconductor Industry Association and others sought review of the affirmative determination in the United States Court of International Trade (CIT). On June 30, 1999, the CIT remanded the determination to the Commission with instructions to provide further explanation regarding the Commission's volume and price effects determinations. Taiwan Semiconductor Industry Ass'n v. United States, 59 F.Supp.2d 1324 (CIT 1999) (Taiwan I).

After an additional remand from the CIT on April 11, 2000, Taiwan Semiconductor Industry Ass'n v. United States, 105 F.Supp.2d 1363 (2000) (Taiwan II), the Commission determined that a domestic industry in the United States was not materially injured or threatened with material injury by reason of subject imports of SRAMs from Taiwan. Static Random Access Memory Semiconductors from Taiwan (Views on Remand), Investigation No. 731–TA–762 (Second Remand), USITC Pub. 3319 (June 2000). On August 29, 2000, the CIT affirmed the Commission's negative remand determination. Taiwan Semiconductor Industry Ass'n v. United States, 118 F.Supp.2d 1250 (CIT 2000) (Taiwan III).

On September 28, 2000, Commerce published notice of the CIT decision, pursuant to 19 U.S.C. 1516a(c). 65 F.R. 58263. In accordance with Timken Co. v. United States, 893 F.2d 337 (Fed. Cir. 1990), Commerce stated that it would continue to order the suspension of liquidation of the subject merchandise. Commerce also indicated that, if the CIT decision was affirmed on appeal, it would revoke the antidumping duty order.

Petitioner Micron Technology, a domestic producer of SRAMs, appealed the CIT's decisions in Taiwan I and Taiwan III. On September 21, 2001, the United States Court of Appeals for the Federal Circuit (CAFC) affirmed the CIT's decision to remand for further explanation in Taiwan I, and affirmed the Commission's negative remand determination. Taiwan Semiconductor Industry Ass'n v. United States, 266 F.3d 1339 (2001). The CAFC issued its mandate on December 11, 2001.

The judicial proceedings having ended and the final court decision having been issued, the Commission, pursuant to 19 U.S.C. 1516a(e), publishes notice of the final court decision affirming its negative remand determination.

Issued: December 28, 2001.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 02–139 Filed 1–2–02; 8:45 am]

**BILLING CODE 7020–02–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on November 7, 2001, a proposed Consent Decree in the *United States* v. *Aristech Chemical Corporation*, Civil Action No. C–1–01–772, was lodged with the United States District Court for the Southern District of Ohio, Western Division.

In this action the United States seeks civil penalties and injunctive relief against Aristech Chemical Corporation (''Aristech'') pursuant to Section 113(b) of the Clean Air Act (''CAA''), 42 U.S.C. 7413(b) (1983), *amended by*, 42 U.S.C. 7413(b) (Supp. 1991), for alleged violations at Aristech's Ironton, Ohio facility. Under the settlement, Aristech will pay a civil penalty of $450,000, and apply for and obtain a permit for the Phenol Expansion Project, under the CAA's Prevention of Significant Deterioration (''PSD'') program, from the State of Ohio, the permitting authority.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to *United States* v. *Aristech Chemical Corporation*, D.J. Ref. 90–5–2–1–06701/1.

The Consent Decree may be examined at the Office of the United States Attorney for the Southern District of Ohio, Western Division, Potter Stuart Federal Courthouse, 5th and Walnut Streets, Room 220, Cincinnati, Ohio 45202, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604. A copy of the 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. In requesting a copy, please enclose a check in the amount of $7.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

**William D. Brighton,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 01–91 Filed 1–2–02; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Request for Resubmission of Comments on Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, the Department of Justice published a notice on October 4, 2001 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.), had been lodged with the United States District Court for the District of Puerto Rico, and provided a public comment period that ended on November 6, 2001. The notice provided an address to which comments should be mailed.

The Department of Justice has experienced disruptions in mail delivery in October and November. To date, the Department has received no comments on the proposed consent decree in this case.

In recognition of the possibility that comments were mailed but did not reach the Department due to the mail disruptions, the Department is requesting that any persons who sent comments on the proposed consent decree during the period resubmit a copy of those comments to the Department. To be clear, the Department is *not* reopening the comment period or accepting new comments. The Department will only consider comments that were previously mailed during the comment period that ended on November 6, 2001.

Any person who submitted comments to the Department during the comment period and wishes to have those comments considered must resubmit their comments within 10 days of the date of publication of this notice. Resubmitted comments should be sent either (1) by telecopy to Scott J. Jordan at 202–514–8865 or (2) by mail to Camille Vélez-Rivé, Assistant United States Attorney, US Attorney's Office, Room 452, Federal Office Building, Carlos Chardon Street, Hato Rey, Puerto Rico 00918.

**Mary F. Edgar,**

*Assistant Chief, Environmental Defense Section, Environment & Natural Resources Division.*

[FR Doc. 02–39 Filed 1–2–02; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed partial consent decree in *United States* v. *The Ed Krewatch Partnership, Antonio* v. *Nero, Gardner Asphalt Corporation, Emulsion Products Company, and Raymond T. Hyer, Jr.,* Civil Action No. 01:659, was lodged with the United States Court for the District of Delaware on September 28, 2001.

The proposed partial consent decree pertains to the Krewatch Farm Superfund Site (''Site''), located near Seaford, Delaware. The United States has sued a number of defendants pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607, to recover past response costs incurred at the Site. Two defendants, Antonio V. Nero and The Ed Krewatch Partnership (''Settling Defendants''), have agreed to a settlement memorialized in the partial consent decree. In the settlement, defendant Antonio V. Nero agrees to pay $10,000 for reimbursement of costs expended in the cleanup by the Environmental Protection Agency. Defendant The Ed Krewatch Partnership agrees to pay $152,000 in cash and 40% of the proceeds of the sale of the farm on which the Site is located. In addition, The Ed Krewatch Partnership agrees to reimburse $22,667.25 to the state environmental agency Delaware Department of Natural Resources and Environmental Control (''DNREC'').

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *The Ed Krewatch Partnership, et al.,* DOJ Ref. # 90–11–3–07224.

The proposed consent decree may be examined at the office of the United States Attorney, District of Delaware, 1201 N. Market Street, Wilmington, DE and at the Region III Office of the Environmental Protection Agency, 1650 Arch St., Philadelphia, PA 19103. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy please refer to the referenced case and enclose a check in the amount of $9.75 ($.25 per page reproduction cost), payable to the Consent Decree Library.

**Robert D. Brook,**

*Assistant Section Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.*

[FR Doc. 02–95 Filed 1–2–02; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'')

Consistent with Departmental policy, 28 CFR 50.7 and 38 FR 19029, notice is hereby given that on November 13, 2001, a proposed Consent Decree in *United States* v. *Frederick Gendron, et al.,* Civil Action No. 01–422–JD, was lodged with the United States District Court for the District of New Hampshire. The proposed Consent Decree will resolve the United States' claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9607, as amended (''CERCLA''), on behalf of the U.S. Environmental Protection Agency (''EPA'') against the defendant relating to the Gendron Junkyard Site located at 11–13 Hobbs Road in Pelham, New Hampshire (the ''Site''). The Complaint alleges that the defendants are liable under Section 107 of CERCLA, 42 U.S.C. 9607, for recovery of response costs incurred at or in connection with the release or threatened release of hazardous substances at the Site.

The Consent Decree requires the Settling Defendants to pay to the U.S. EPA Hazardous Substance Superfund $650,000 in reimbursement of past

response costs, and includes a covenant not to sue by the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Any comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611, and should refer to *United States* v. *Gendron, et al.,* Civil Action No. 01–422–JD, Ref. 90–11–3–07116.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of New Hampshire U.S. Department of Justice, 55 Pleasant Street, Room 352, Concord, New Hampshire 03301–3904, and at U.S. EPA New England (Region 1), One Congress Street, Suite 1100, Boston, Massachusetts 02114–2023. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611. In requesting a copy, please enclose a check (there is a 25 cent per page reproduction cost) in the amount of $6.00 payable to the Consent Decree Library.

**Ronald Gluck,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.*

[FR Doc. 02–90 Filed 1–2–02; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601 et seq.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a third proposed consent decree in *United State* v. *Viacom, Inc. and Schindler Elevator Corporation*, Civil Action No. 1:01–CV–123, was lodged on November 1, 2001, with the United States District Court for the Middle District of Pennsylvania.

The proposed Consent Decree concerns the Westinghouse Elevator Plant Superfund Site (''Site''), which is located on approximately 90 acres, and has its southern boundary adjacent to part of the Gettysburg Battlefield National Park. The Site is located about 1.5 miles north of downtown Gettysburg in Cumberland Township, Adams County, Pennsylvania. Pursuant to the proposed consent decree and section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9607(a), the defendants will pay the United States for unreimbursed past costs at the Site, in the amount of $569,000 plus certain interest in connection with the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Viacom, Inc. and Schindler Elevator Corporation*, DOJ Ref. #90–11–3–1004/1.

The proposed consent decree may be examined at the office of the United States Attorney, 228 Walnut Street, Suite 220 Harrisburg, Pennsylvania 17108 and the Region 3 Office of the U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103–2029. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. (202) 624–0892. In requesting a copy please refer to the referenced case and enclose a check (25 cents per page reproduction costs) in the amount of $5.25 for the consent decree (21 pages), payable to the Consent Decree Library.

**Robert Brook,**

*Assistant Chief,*

*Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 02–92 Filed 1–02–02; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

**[AAG/A Order No. 254–2001]**

### Privacy Act of 1974; System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the Immigration and Naturalization Service (INS), Department of Justice, proposes to modify the following system of records—previously published March 7, 1997, (62 FR 10580):

The Immigration and Naturalization Service, Office of Internal Audit Investigations (OIA) Index and Records, JUSTICE/INS–002.

INS proposes to republish the notice to: (1) Include new information in the Categories of Records section, (2) add two new routine uses (J and K), and (3) modify the ''Retention and Disposal'' section as described in the attached **Federal Register** notice.

Routine use J will allow contractors working for INS to have access to the information in this system of records. Routine use K allows disclosure to former employees when the Department of Justice requires information and/or consultation assistance from the former employee that is necessary for personnel-related or other official purposes regarding a matter within that person's former area of responsibility. Also, INS is making a modification to the Retention and Disposal section of the notice. The National Archives and Records Administration (NARA) has oversight responsibility for retention and disposal schedules. NARA withdrew the entire General Records Schedule (GRS) 22, Inspector General Records, and the disposal authority formerly provided under this schedule. GRS 22 covered the records in this system. Therefore, INS is modifying this notice to include a new Retention and Disposal Schedule for OIA records. Also, other minor corrections and edits have been made to reflect the current status of this system of records.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which the comment on new routine use disclosures and system modifications. The Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires a 40-day period in which to conclude its review of this revised system notice. Therefore, please submit any comments by February 4, 2002. OMB, the Congress, and the public are invited to send written comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress.

Dated: December 20, 2001.

**Janis A. Sposato,**

*Acting Assistant Attorney General for Administration.*

**JUSTICE/INS–002**

**SYSTEM NAME:**

Office of Internal Audit Investigations Index and Records

**SYSTEM LOCATION:**

Headquarters office, Immigration and Naturalization Service (INS), 425 I Street, NW., Washington, DC. In addition, field offices of the INS have access only to hardcopy files during an

investigation. A complete address list of the principal offices of INS is detailed in JUSTICE/INS–999, last published in the **Federal Register** on April 13, 1999 (64 FR 18052).

* * * * *

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Information relating to investigations, including:

a. Letters, memoranda, and other documents citing complaints of alleged criminal, civil, or administrative misconduct (i.e., program subject files and internal review case files).

b. Investigative files (i.e., selected and non-selected cases) which include: reports of investigations to resolve allegations of misconduct or violations of law with related exhibits, statements, affidavits or records obtained during investigations; prior criminal or non-criminal records of individuals as they relate to the investigations; reports from or to other law enforcement bodies; information obtained from informants and identifying data with respect to such informants; nature of allegations made against suspects and identifying data concerning such subjects; public source materials; and employee identifying data (e.g., full name, social security number, address, duty station, grade, job series, entrance on duty [EOD] date, and date of birth) obtained from the National Finance Center [NFC] payroll system.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

* * * * *

B. To General Service Administration and National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

* * * * *

J. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

K. Pursuant to subsection (b)(3) of the Privacy Act, the Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

* * * * *

**RETENTION AND DISPOSAL:**

Program subject files are destroyed when 10 years old. Internal review case files are maintained until the end of the fiscal year in which the case was closed. One year after these records are closed, they are transferred to the National Records Center and kept for 10 years and then are destroyed. General internal review files will be destroyed when superseded, obsolete, or no longer needed for reference. Investigative case files concerning selected cases are maintained permanently. Ten years after the case is closed, it is transferred to NARA. Non-selected investigatory files are destroyed 10 years after the case is closed. Electronic versions of records created by the electronic mail and word processing applications are deleted when a file copy is generated or when no longer needed for reference or updating.

* * * * *

**SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

The Attorney General has exempted this system from subsections (c)(3) and (4); (d); (e) (1), (2), (3), (5), and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d), and (e)(1) pursuant to 5 U.S.C. 552a(k)(2). INS has published implementing regulations in accordance with the requirements of 5 U.S.C. 553 (b), (c), and (e) and these were published in the **Federal Register** of June 25, 1997 (62 FR 34169) and can be found at 28 CFR 16.99 (g) and (h).

[FR Doc. 02–37 Filed 1–2–02; 8:45 am]

**BILLING CODE 4410–10–M**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### United States v. Waste Management, Inc. et al.

On October 23, 2001, a Joint Motion to Modify the Final Judgment was filed with the United States District Court for the Eastern District of New York, in a civil antitrust case, *United States et al.* v. *Waste Management, Inc. et al.,* Civil No 98 CV 7168. On December 5, 2001, the United States published a notice in the **Federal Register** seeking public comments on the proposed modification to the Final Judgment during a 60 day period. The comment period will expire on February 4, 2002. Given recent mail delivery interruptions in Washington, DC., and current uncertainties involving the resumption of timely mail service, the Department of Justice strongly encourages that comments be submitted via e-mail or fax to J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530 (facsimile: (202) 307–5802; e-mail *comments.lit2@usdoj.gov;* telephone: (202) 307–0924).

**Constance K. Robinson,**

*Director of Operations & Merger Enforcement.*

[FR Doc. 02–40 Filed 1–2–02; 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—Advanced Technology Institute: National Shipbuilding Research Program (''NSRP'')

Notice is hereby given that, on October 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''), Advanced Technology Institute has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the membership of the National Shipbuilding Research Program (''NSRP''). 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, Bender Shipbuilding and Repair Company, Mobile, AL has been added as a party 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 Advanced Technology Institute intends to file additional written notification disclosing all changes in membership.

On March 13, 1998, Advanced Technology Institute 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 January 29, 1999 (64 FR 4708).

The last notification was filed with the Department on April 11, 2000. A

notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 26, 2000 (65 FR 39428).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 02–99 Filed 1–2–02; 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—DVD Copy Control Association (''DVD CCA'')

Notice is hereby given that, on October 12, 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''), DVD Copy Control Association (''DVD CCA'') 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, A&R Cambridge Limited, Cambridge, Cambridgeshire, UNITED KINGDOM; AD Device Corporation, Tokyo, JAPAN; ANAM Electronics Co., Ltd., Ansan-City, Kyungki-Do, REPUBLIC OF KOREA; Applied Research Corporation, Taipei Hsien, TAIWAN; Aplus Technics Co., Ltd., Taipei, TAIWAN; Apollo Electronics Group Limited, Kowloon Bay, Kowloon, HONG KONG—CHINA; Argus Electronics Co., Ltd., Taipei, TAIWAN; Arts Electronics Co. Ltd., Hong Kong, HONG KONG—CHINA; Behavior Tech Computer Corp., Taipei, TAIWAN; Beijing Durban Yu Chang Electronics Co. Ltd., Kowloon, HONG KONG—CHINA; CNERC–OD, Shanghai, PEOPLE'S REPUBLIC OF CHINA; Coach Master International dba CMI Worldwide, Inc., Seattle, WA; Comjet Information Systems Corp., Taipei, TAIWAN; Concord Disc Manufacturing Corp., Anaheim, CA; Cyrus Electronics Ltd., Huntingdon, Cambridgeshire, UNITED KINGDOM; D.M. Technology Co., Ltd., Anyang City, Kyunggi-Do, REPUBLIC OF KOREA; Diskware Co., Ltd., Koutou-Ku, Tokyo, JAPAN; Diversion Technologies, Inc., Castro Valley, CA; Dragon DVD Technology Sdn Bhd, Kuala Lumpur, MALAYSIA; Duplico 2000, S.L., Barcelona, SPAIN; Eltech Electronics Technology (M) Sdn Bhd, Senai, Johore, MALAYSIA; Enlight Corporation, Taipei, TAIWAN; Fujitsu Ten Limited, Hyogoku, Kobe, JAPAN; GBM Advanced Technology Corp., Taipei, TAIWAN; Gigastorage Corporation Taiwan, Hsinchu, TAIWAN; Gradiente Electronica S.A., Sao Paulo, SP, BRAZIL; Hanpin Electron Co., Ltd., Tainan Hsien, TAIWAN; Kanematsu Corporation, Tokyo, JAPAN; Koninklijke Philips Electronics N.V., Eindhoven, THE NETHERLANDS; Lection Technology Co., Ltd., Nei-Hu, Taipei, TAIWAN; Microsoft Corporation, Redmond, WA; MRT Technology, City of Industry, CA; Nokia Corporation, Espoo, FINLAND; nReady Netware Ltd., Quarry Bay, HONG KONG—CHINA; Nvidia Corporation, Santa Clara, CA; Optical Experts Manufacturing, Inc., Charlotte, NC; OptoMedia Electronics Corp., Taipei Hsien, TAIWAN; Paramount Pictures Corporation, Los Angeles, CA; Planet Optical Disc Limited FZE, Dubai, UNITED ARAB EMIRATES; Princo Corporation, Hsin-Chu, TAIWAN; Proside Corporaton, Chiba, JAPAN; Pro-Tech Industries Corp., Kowloon, HONG KONG—CHINA; Provac Disc Media Inc., Toronto, Ontario, CANADA; Raymedia Co., LTD., Kyungki-do, REPUBLIC OF KOREA; Regency Recordings, Braeside, Victoria, AUSTRALIA; Shenzhen E-Boda Technology Co., Ltd., Shenzhen, PEOPLE'S REPUBLIC OF CHINA; Shenzhen Hongyu Industrial Co. Ltd., Shenzhen, PEOPLE'S REPUBLIC OF CHINA; Shunde Xiongfeng Electric Industrial Company, Shunde City, Guangdong, PEOPLE'S REPUBLIC OF CHINA; Silicon Integrated Systems Corporation, Sunnyvale, CA; SM Summit Holdings Limited, Singapore, SINGAPORE; Soft4D Co., Ltd., Songnam-Si, Kyungki-Do, REPUBLIC OF KOREA; Sony Pictures Entertainment Inc., Culver City, CA; STMicroelectronics, Inc., Carrollton, TX; The Walt Disney Company, Burbank, CA; Trident Microsystems, Inc., Santa Clara, CA; TVIA, Inc., Santa Clara, CA; Videon Central Inc., State College, PA; ViXS Systems Inc., Toronto, Ontario, CANADA; Welton Electronics Ltd., Chai Wan, HONG KONG—CHINA; Zenix Electronics Limited, Tsimshatsui, Kowloon,HONG KONG—CHINA; and Zomax Incorporated, Plymouth, MN have been added as parties to this venture. Also, Shiba Tech Co., Ltd., Kowloon, HONG KONG—CHINA; and Vision Tech International Holdings, Limited, Wan Chai, HONG KONG—CHINA have been dropped as parties to this venture. The following members have changed their names: Changzhou Shinco Digital Technology to Jiangsu Shinco Electronic Group Co., Ltd., Changzhou Jiangsu, PEOPLE'S REPUBLIC OF CHINA; Advanced Media Corporation to AMC Co., Ltd., Tokushima, JAPAN; and BMG Storage Media to Arvato Storage Media, Gutersloh, GERMANY.

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 DVD Copy Control Association (''DVD CCA'') intends to file additional written notification disclosing all changes in membership.

On April 11, 2001, DVD Copy Control Association (''DVD CCA'') 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 August 3, 2001 (66 FR 40727).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 02–101 Filed 1–2–02; 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—IAP Research, Inc.

Notice is hereby given that, on October 22, 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''), IAP Research, 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, Litton Systems Inc., Poly-Scientific Division, a subsidiary of Northrop Grumman Corporation, Blacksburg, VA; Rea Magnet Wire Co., Inc., Lafayette, IN; and Quebec Metal Powders Limited, Sorel-Tracy, Quebec, CANADA 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 IAP Research, Inc. intends to file additional written notification disclosing all changes in membership.

On July 21, 1999, IAP Research, 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 of December 14, 1999 (64 FR 69799).

The last notification was filed with the Department on June 19, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on July 27, 2001 (66 FR 39203).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 02–97 Filed 1–2–02; 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—Open SystemC Initiative (''OSCI'')

Notice is hereby given that, on October 9, 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''), Open SystemC Initiative (''OSCI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are ARM Ltd., Cambridge, UNITED KINGDOM; Cadence Design Systems, Inc., San Jose, CA; CoWare, Inc., Santa Clara, CA; Fujitsu Limited, Tokyo, JAPAN; Mentor Graphics Corporation, Wilsonville, OR; Motorola, Inc., Schaumburg, IL; NEC Electronics Inc., Santa Clara, CA; and Synopsys, Inc., Mountain View, CA.

The nature and objectives of the venture are research and development of a rich computer language and reference implementation, based on C++ class libraries, called ''SystemC'', to form a freely available, open source, and interoperable platform for system-level design and intellectual property modeling.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 02–100 Filed 12–26–01; 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—Origen Therapeutics, Inc./Embrex, Inc.

Notice is hereby given that, on October 23, 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''), Origen Therapeutics, Inc./Embrex, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identifies of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identifies of the parties are Origen Therapeutics, Inc., Burlingame, CA; and Embrex, Inc., Research Triangle Park, NC. The nature and objectives of the venture are to conduct research on the use of avian embryonic stem cell technology, coupled with automated egg injection technology to form highly chimeric poultry. The activities of this joint venture will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, Department of Commerce.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 02–98 Filed 1–2–02; 8:45 am]

**BILLING CODE 4410–11–M**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

December 26, 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 each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Ms. Marlene Howze (202) 693–4158) or by e-mail to *Howze-Marlene@dol.gov.*

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–4718), 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.

*Type of Review:* Extension of a currently approved collection.

*Agency:* Employment Standards Administration.

*Title:* Worker Information—Terms and Conditions of Employment.

*OMB Number:* 1215–0187.

*Frquency:* On occasion.

*Affected Public:* Businesses or other for-profit; Individuals or households; Farms.

*Number of Respondents:* 137,000.

*Estimated Time Per respondents:* 32 minutes.

*Total Burden Hours:* 73,067.

*Total Annualized capital/startup costs:* $0.

*Total annual costs (operating/maintaining systems or purchasing services):* $29,160.

*Description:* The Migrant and Seasonal Agricultural Worker Protection Act requires farm labor contractors, agricultural employer and agricultural associations who recruit migrant and seasonal agricultural workers to disclose in writing the terms and conditions of employment and to provide, upon request, a written statement of such terms.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 02–47 Filed 1–2–02; 8:45 am]

**BILLING CODE 4510–27–M**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

December 21, 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 on (202) 693–4129 or *e-mail: King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer MSHA, 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.

*Type of Review:* Extension of a currently approved collection.

*Agency:* Mine Safety and Health Administration (MSHA).

*Title:* Respirator Program Records—30 CFR 56.5005 and 57.5005.

*OMB Number:* 1219–0048.

*Affected Public:* Business or other for-profit.

*Frequency:* On occasion, Annually, and Monthly.

*Type of Reporting:* Recordkeeping.

*Number of Respondents:* 310.

| Requirement | Annual responses | Average response time (hours) | Estimated annual burden (hours) |
|---|---|---|---|
| Develop a respirator program | 310 | 5 | 1,550 |
| Fit-testing records | 1,500 | .25 | 375 |
| Respirator inspection records | 3,720 | .83 | 310 |
| Total | 5,530 | ..... | 2,235 |

*Total Annualized Capital/Startup Costs:* $0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* $156,350.

*Description:* Where protective equipment or respirators are required because of exposure to harmful substances, 30 CFR 56.5005 and 57.5005 require a written respirator program that addresses such issues as selection, fitting, use, and maintenance of respirators to ensure that workers are properly and effectively using the equipment, and that such equipment offers adequate protection for workers. Records of fit-testing are essential for determining that the worker is wearing the proper respirator. Certain records are also required to be kept in connection with respirators, including records of the date of issuance of the respirator, and fit-test results. The fit-testing records are essential for determining that the worker is wearing the proper respirator.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 02–48 Filed 1–2–02; 8:45 am]

**BILLING CODE 4510–43–M**

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

**[Application No. D–10886, et al.]**

### Proposed Exemptions; Morgan Stanley & Co. Incorporated (MS&Co)

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

**Written Comments and Hearing Requests**

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration (PWBA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. ___, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to PWBA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *''moffittb@pwba.dol.gov''*, or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513,

200 Constitution Avenue, N.W., Washington, DC 20210.

**Notice to Interested Persons**

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

**Morgan Stanley & Co. Incorporated (MS&Co) Located in New York, New York**

[Exemption Application No. D–10886]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the September 16, 1998 acquisition (the Acquisition), on behalf of the Central States, Southeast and Southwest Areas Pension Fund (the Fund), of certain Argentine bonds (the Bonds) from MS&Co, a party in interest with respect to the Fund, by the Capital Asset Trust (the Trust) at the direction of Alliance Capital Management L.P. (Alliance), an investment manager for the Fund, provided the following conditions are satisfied:

(a) The Acquisition was a one-time transaction for cash;

(b) The Fund paid no more than the current fair market value of the Bonds as of the date of the Acquisition;

(c) The Fund paid no commissions or expenses with respect to the Acquisition;

(d) The Acquisition and subsequent sale of the Bonds (the Sale) resulted in the Fund's receipt of a one-day profit totaling $147,250.01;

(e) Upon identifying the Acquisition as a ''prohibited transaction'', MS&Co and Alliance acted promptly to comply with the relevant provisions of ERISA and the Code;

(f) Alliance and MS&Co took whatever actions were necessary to ensure that the Fund was adequately protected with respect to the Acquisition;

(g) Subsequent to the Acquisition, Alliance implemented an internal computer system designed to prevent transactions between client plans and named fiduciaries with respect to such plans; and

(h) The transaction was not part of an agreement, arrangement or understanding designed to benefit a party in interest.

EFFECTIVE DATE OF EXEMPTION: The effective date of this proposed exemption, if granted, is September 16, 1998.

*Summary of Facts and Representations*

1. The Fund is a jointly managed Taft-Hartley Plan established in 1955. As of September 30, 1998, the Fund had approximately 375,604 participants and beneficiaries and an approximate fair market value of $17 billion.

2. At the time of the Acquisition, the named fiduciary for the Fund was Morgan Stanley Dean Witter & Co. (MSDW). MSDW is a worldwide financial services firm that provides services, either directly or through its subsidiaries, to corporations, governments, and individual investors. MSDW became the Fund's named fiduciary as a result of a court order issued pursuant to a consent decree (the Consent Decree) that, among other things, prohibited the Fund's investment managers from engaging in transactions with ''parties in interest'' such as MS&Co.[1]

MS&Co is a wholly-owned subsidiary of MSDW having business offices in New York and other cities worldwide. MS&Co is, among other things, a registered broker-dealer, a member of the National Association of Securities Dealers, and a member of most major United States and foreign commodity exchanges.

3. Pursuant to an agreement dated May 2, 1994 (the Agreement), MSDW (through its predecessor-in-interest, the Morgan Stanley Group, Inc.) appointed Alliance as an investment manager with respect to a portion of the assets in the Fund. In this regard, at the time of the Acquisition, Alliance acted as a ''qualified professional asset manager'' [2] with respect to certain Fund assets invested in the Trust, a Massachusetts trust in which the Fund was a participant.[3] Specifically, Alliance was hired to manage a particular type of asset class, International Fixed Income-Emerging Markets Debt. The applicant represents that Alliance, an investment adviser registered with the Securities and Exchange Commission, is entirely independent of MSDW and its affiliates and does not have any management or ownership relationship with such entities.

Relevant sections of the Agreement provided that Alliance would: (a) invest Fund assets held in the Trust in accordance with investment objectives specified in writing by MSDW; (b) act in accordance with the Consent Decree and ERISA and not engage in any unexempted ''prohibited transaction''; and (c) comply with all federal or state law requirements that are imposed with respect to transactions involving the assets of the Fund.

In addition, the applicant represents that MSDW delivered to Alliance, on a regular basis, a ''prohibited transaction'' notice. According to the applicant, such notice specifically advised that Alliance should not, among other things, execute trades through MS&Co. Furthermore, the applicant represents that Alliance's ''Current Investment Guidelines'' for the Trust, dated October 31, 1997, provided that Alliance: would not effect a prohibited transaction; and would not deal with any MSDW entity.

4. The applicant represents that, on September 16, 1998, Alliance learned through news reports that the

[1] The Consent Decree was issued pursuant to *Raymond J. Donovan, Secretary of Labor,* v. *Frank Fitzsimmons, et al.,* Civil Action No. 78 C 342.

[2] As such term is defined in Section V(a) of the Department's Prohibited Transaction Class Exemption 84–14 (49 FR 9494 (1984)).

[3] The applicant represents that the beneficial interests of the Trust were held by two employee benefit plans subject to ERISA and thus the Trust itself was an entity the assets of which were subject to ERISA. At the time of the Acquisition, the Fund owned approximately 98.1% of the beneficial interests in the Trust, and the Marsh & McLennan US Retirement Plan owned approximately 1.9% of such interests.

International Monetary Fund and certain banks were preparing a package of loans worth $4.5 billion for Argentina. The applicant states that Alliance believed the news would have a positive effect on Argentine fixed income securities. As a result, Alliance contacted MS&Co and asked for an ''offering'' on the Bonds in contravention of the safeguards described above. The applicant represents that the Bonds are $9,500,000 Face Amount Argentina Floating Rate Bonds due March 31, 2005.

According to the applicant, as a result of inadvertent errors made by personnel involved in the Acquisition, MS&Co agreed to fill the order. Alliance's purchase of the Bonds was made for settlement on September 21, 1998 for $7,566,947.91 (the Acquisition Price). Of this amount, $7,262,750.00 consisted of principal and $304,197.91 consisted of accrued interest.

5. At the time of the Acquisition, MS&Co was a market maker in the Bonds. The applicant represents, however, that the Bonds were not in MS&Co's inventory at the time of the Acquisition. In this regard, the applicant states that a market maker will, from time to time, go into the market to replenish a particular security which the market maker has sold out of its inventory. Similarly, in this instance, MS&Co made a business decision to sell the Bonds at the Acquisition Price to Alliance even though it did not contemporaneously hold the Bonds. The applicant states that MS&Co committed itself to the Acquisition Price based on the belief that it could go into the market and obtain the Bonds at a discount relative to such price.

However, in meeting its obligations with respect to the Acquisition, MS&Co was ultimately required to purchase the Bonds at a price higher than the Acquisition Price. In this regard, despite its commitment to sell the Bonds to Alliance for $7,566,947.91, market conditions were such that MS&Co was forced to acquire the Bonds in two separate trades for a total cost of approximately $7,714,000. In so doing, the applicant represents, MS&Co lost approximately $147,000.

6. The applicant represents that the Acquisition Price represented the Bonds' fair market value at the time of the Acquisition. In this regard, it is represented that in providing the Acquisition price to Alliance, the MS&Co trader responsible for the emerging markets fixed income desk used pricing mechanisms commonly employed in the over-the-counter fixed income markets such that the purchase price was fair and reasonable. Specifically, the Acquisition Price was determined in consideration of: Bid and ask prices for the Bonds available on interdealer computer screens; [4] news events relating to Argentina's receipt of potential economic relief; prior bid and ask data historically furnished by interdealer brokers; certain volume requirements; and other objective criteria.

The applicant states that at the time the Acquisition occurred, the Bonds traded in relatively high volumes and were well known and well followed. As a result, the market for the Bonds was extremely ''transparent'' at the time of the Acquisition with only a nominal spread between relevant bid and ask prices. In consideration of these and other factors such as Alliance's status as a valued MS&Co client, the MS&Co trader offered to sell the Bonds to Alliance at the Acquisition Price.

7. Shortly after the Acquisition, Alliance decided to sell the Bonds. In this regard, during the course of the September 16, 1998 trading day, Alliance observed significant fluctuations in the price of the Bonds. The applicant states that when relevant bond prices rose to the extent that Alliance believed selling the Bonds would be in the best interest of the Fund, Alliance sold the Bonds. In this regard, Alliance sold the Bonds to Goldman, Sachs & Co. (Goldman, Sachs) for $7,714,197.92 (the Sale). The applicant notes that the Fund, through the Trust, made a profit of $147,250.01 on the Acquisition and Sale.[5]

8. In certifying its compliance with the Agreement to MSDW, Alliance noted that the Acquisition may have constituted a ''prohibited transaction''. Upon being so alerted, the applicant represents that MS&Co filed a Form 5330 with the Internal Revenue Service on June 30, 1999, and paid an excise tax of $1,135,042.19 (15% of $7,566,947.91). The applicant notes that the Acquisition was fully disclosed in the Fund's audited financial statements and was corrected within the meaning of section 4975(f)(5) of the Code.[6]

9. The applicant states that neither Alliance nor MS&Co intended to engage in a ''prohibited transaction'' when consummating the Acquisition. In this regard, various mechanisms were in place to prevent Alliance from inadvertently violating the ''prohibited transaction'' provisions of ERISA, all of which failed, the applicant represents, in an unforeseeable and improbable manner.[7] Subsequent to the Acquisition, Alliance has devised an internal computer system in an effort to ensure that future ''prohibited transactions'' do not similarly occur. Such system identifies situations when a specific trade is placed between a client plan and a party in interest who is a named fiduciary. The system flags the trade and alerts Alliance's compliance department.

10. The applicant represents that the proposed exemption is administratively feasible in that the Bonds were sold on the same day they were acquired. In addition, the applicant states that the transaction was in the interests of the Fund's participants and beneficiaries since the Acquisition and Sale resulted in the Fund's receipt of a one-day profit totaling $147,250.01. Finally, the applicant represents that the Acquisition was fair to the Fund since the Fund paid no more than the current fair market value for the Bonds at the time of the Acquisition.

11. In summary, the applicant represents that the requested retroactive individual exemption will satisfy the criteria of section 408(a) of the Act for the following reasons:

(a) The Acquisition was a one-time transaction for cash;

(b) The Fund paid no more than the current fair market value of the Bonds as of the date of the Acquisition;

(c) The Fund paid no commissions or expenses with respect to the Acquisition;

(d) The Acquisition and the Sale resulted in the Fund's receipt of a one-day profit totaling $147.250.01;

[4] The applicant states that interdealer brokers, who are independent of the approximately 30–40 securities dealers that comprise the major market makers, collect and post dealer quotes (and execute trades between dealers). Information concerning dealer quotes is updated via computer monitors available to each of the primary securities dealers.

[5] The applicant states that although there was one other participant in the Trust, the Trust implemented separate accounting such that all of the profit attributable to the Acquisition and Sale went solely to the Fund. In this regard, the Department is not providing relief to any other participant in the Trust, nor is it expressing any opinion as to representations made by the applicant concerning the composition and operations of the Trust.

[6] The Department is expressing no opinion as to whether the Acquisition was corrected in accordance with relevant provisions of the Code.

[7] In addition to the safeguards discussed above, the applicant states that Morgan Stanley Dean Witter Investment Management Inc., a wholly owned subsidiary of MSDW, had provided materials to Alliance at the outset of its appointment as an investment manager for the Fund which noted the restrictions on trading with MS&Co. In addition, prior to the Transaction, Mellon Bank, N.A., the Fund's custodian, had created and implemented a prohibited transaction surveillance system designed to reject attempted trades on behalf of the Fund and the Trust with parties with whom the Fund or the Trust were prohibited from dealing, including MSDW and its affiliates.

(e) Upon identifying the Acquisition as a ''prohibited transaction'', MS&Co and Alliance, an investment manager for the Fund, acted promptly to comply with the relevant provisions of ERISA and the Code;

(f) Alliance and MS&Co took whatever actions were necessary to ensure that the Fund was adequately protected with respect to the Acquisition;

(g) Subsequent to the Acquisition, Alliance implemented an internal computer system designed to prevent transactions between client plans and named fiduciaries with respect to such plans; and

(h) The transaction was not part of an agreement, arrangement or understanding designed to benefit a party in interest.

**FOR FURTHER INFORMATION CONTACT:** Christopher J. Motta of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

**Union Bank of California (UBOC), Located in San Francisco, California**

[Application No. D–10976]

*Proposed Exemption*

Section I—Retroactive and Prospective Exemption for In-Kind Redemption of Assets

If the proposed exemption is granted, the restrictions of section 406(a) and 406(b) of ERISA and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (F) of the Code, shall not apply, as of June 15, 2001, to certain in-kind redemptions (the Redemptions) by the Union Bank of California Retirement Plan or any other employee benefit plan sponsored by UBOC or an affiliate of UBOC (an In-house Plan) of shares (the Shares) of proprietary mutual funds (the Portfolios) offered by the HighMark Funds or other investment companies (the Funds) for which HighMark Capital Management, Inc. or an affiliate thereof (the Adviser) provides investment advisory and other services, provided that the following conditions are met:

(A) The In-house Plan pays no sales commissions, redemption fees, or other similar fees in connection with the Redemptions (other than customary transfer charges paid to parties other than UBOC and affiliates of UBOC (UBOC Affiliates));

(B) The assets transferred to the In-house Plan pursuant to the Redemptions consist entirely of cash and Transferable Securities. Notwithstanding the foregoing, Transferable Securities which are odd lot securities, fractional shares and accruals on such securities may be distributed in cash;

(C) With certain exceptions defined below, the In-house Plan receives a pro rata portion of the securities of the Portfolio upon a Redemption that is equal in value to the number of Shares redeemed for such securities, as determined in a single valuation performed in the same manner and as of the close of business on the same day in accordance with the procedures established by the Funds pursuant to Rule 2a–4 under the Investment Company Act of 1940, as amended from time to time (the 1940 Act), (using sources independent of UBOC and UBOC Affiliates);

(D) UBOC, the Adviser, or any affiliate thereof, does not receive any fees, including any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with any redemption of the Shares;

(E) Prior to a Redemption, UBOC provides in writing to an independent fiduciary, as such term is defined in Section II (an Independent Fiduciary), a full and detailed written disclosure of information regarding the Redemption;

(F) Prior to a Redemption, the Independent Fiduciary provides written approval for such Redemption to UBOC, such approval being terminable at any time prior to the date of the Redemption without penalty to the In-house Plan, and such termination being effectuated by the close of business following the date of receipt by UBOC of written or electronic notice regarding such termination (unless circumstances beyond the control of UBOC delay termination for no more than one additional business day);

(G) Before approving a Redemption, based on the disclosures provided by the Portfolios to the Independent Fiduciary and discussions with appropriate operational personnel of the In-house Plan, UBOC, and the Adviser as necessary to form a basis for making the following determinations, the Independent Fiduciary determines that the terms of the Redemption are fair to the participants of the In-house Plan and comparable to and no less favorable than terms obtainable at arms-length between unaffiliated parties;

(H) Not later than thirty (30) business days after the completion of a Redemption, UBOC or the relevant Fund provides to the Independent Fiduciary a written confirmation regarding such Redemption containing:

(i) The number of Shares held by the In-house Plan immediately before the Redemption (and the related per Share net asset value and the total dollar value of the Shares held),

(ii) The identity (and related aggregate dollar value) of each security provided to the In-house Plan pursuant to the Redemption, including any security valued in accordance with the Funds' procedures for obtaining current prices from independent market-makers,

(iii) The current market price of each security received by the In-house Plan pursuant to the Redemption, and

(iv) The identity of each pricing service or market-maker consulted in determining the value of such securities;

(I) The value of the securities received by the In-house Plan for each redeemed Share equals the net asset value of such Share at the time of the transaction, and such value equals the value that would have been received by any other investor for shares of the same class of the Portfolio at that time;

(J) Subsequent to a Redemption, the Independent Fiduciary performs a post-transaction review which will include, among other things, testing a sampling of material aspects of the Redemption deemed in its judgment to be representative, including pricing. For Redemptions occurring on June 15, 2001,the Independent Fiduciary's review included testing a limited sampling of certain material aspects of the Redemption deemed in its judgment to be representative; [8]

(K) Each of the In-house Plan's dealings with: the Funds, the Adviser, the principal underwriter for the Funds, or any affiliated person thereof, are on a basis no less favorable to the In-house Plan than dealings between the Funds and other shareholders holding shares of the same class as the Shares;

(L) UBOC maintains, or causes to be maintained, for a period of six years from the date of any covered transaction such records as are necessary to enable the persons described in paragraph (M) below to determine whether the conditions of this exemption have been met, except that (i) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of UBOC, the records are lost or destroyed prior to the end of the six-year period, (ii) no party in interest with respect to the In-house Plan other than UBOC shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if such records are not maintained or are not available for examination as required by paragraph (M) below.

[8] The reason for this difference is to conform to the language used in the initial independent fiduciary agreement that U.S. Trust and UBOC entered into with respect to the June 15, 2001 transactions.

(M)(1) Except as provided in subparagraph (2) of this paragraph (M), and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (L) above are unconditionally available at their customary locations for examination during normal business hours by (i) any duly authorized employee or representative of the Department of Labor, the Internal Revenue Service, or the Securities and Exchange Commission, (ii) any fiduciary of the In-house Plan or any duly authorized representative of such fiduciary, (iii) any participant or beneficiary of the In-house Plan or duly authorized representative of such participant or beneficiary, (iv) any employer with respect to the In-house Plan, and (v) any employee organization whose members are covered by such In-house Plan.

(2) None of the persons described in paragraphs (M)(1)(ii) through (v) shall be authorized to examine trade secrets of UBOC, the Funds, or the Adviser, or commercial or financial information which is privileged or confidential.

(3) Should UBOC, the Funds, or the Adviser refuse to disclose information on the basis that such information is exempt from disclosure pursuant to paragraph (M)(2) above, UBOC, the Funds, or the Adviser shall, by the close of the 30th day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Section II—Definitions

For purposes of this proposed exemption,

(A) The term ''affiliate'' means:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(B) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(C) The term ''net asset value'' means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in the Portfolio's prospectus and statement of additional information, and other assets belonging to the Portfolio, less the liabilities charged to each such Portfolio, by the number of outstanding shares.

(D) The term ''Independent Fiduciary'' means a fiduciary who is: (i) Independent of and unrelated to UBOC and its affiliates, and (ii) appointed to act on behalf of the In-house Plan with respect to the in-kind transfer of assets from one or more Portfolios to or for the benefit of the In-house Plan. For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to UBOC if: (i) such fiduciary directly or indirectly controls, is controlled by or is under common control with UBOC; (ii) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption; (except that an Independent Fiduciary may receive compensation from UBOC in connection with the transactions contemplated herein if the amount or payment of such compensation is not contingent upon or in any way affected by the Independent Fiduciary's ultimate decision); and (iii) more than 1 percent (1%) of such fiduciary's gross income, for federal income tax purposes, in its prior tax year, will be paid by UBOC and its affiliates in the fiduciary's current tax year.

(E) The term ''Transferable Securities'' shall mean securities (1) for which market quotations are readily available as determined pursuant to procedures established by the Funds under Rule 2a–4 of the 1940 Act; and (2) which are not: (i) securities which may not be publicly offered or sold without registration under the Securities Act of 1933; (ii) securities issued by entities in countries which (a) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Funds, or (b) permit transfers of ownership of securities to be effected only by transactions conducted on a local stock exchange; (iii) certain portfolio positions (such as forward foreign currency contracts, futures and options contracts, swap transactions, certificates of deposit and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities or can only be traded with the counter-party to the transaction to effect a change in beneficial ownership; (iv) cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements; and (v) other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable).

(F) The term ''relative'' means a ''relative'' as that term is defined in section 3(15) of ERISA (or a ''member of the family,'' as that term is defined in section 4975(e)(6) of the Code), or a brother, sister, or a spouse of a brother or a sister.

*Summary of Facts and Representations*

1. UnionBanCal Corporation (UNBC) is a bank holding company headquartered in San Francisco, California, the majority of the shares of which are owned by The Bank of Tokyo—Mitsubishi, Ltd., which in turn is wholly owned by Mitsubishi Tokyo Financial Group, Inc. UBOC, a federally chartered bank also headquartered in San Francisco, is a wholly owned subsidiary of UNBC. As of December 31, 2000, UNBC had approximately $35.2 billion in total assets.

2. UBOC is the trustee of the Union Bank of California Retirement Plan (the Retirement Plan). The Retirement Plan is an In-house defined benefit Plan maintained by UBOC for certain current and former employees of UBOC and UBOC Affilates. As of January, 2001, the Retirement Plan had approximately 13,895 participants. As of May 31, 2001 the Retirement Plan had approximately $616 million in assets.

3. According to the applicant, UBOC's Employee Deferred Compensation and Benefit Plans Administrative Committee (the Committee) determined previously that the Retirement Plan would benefit from the investment of its assets in certain Portfolios of the HighMark Funds [9] (the HighMark Portfolios). The HighMark Portfolios are mutual fund portfolios organized within the HighMark Funds. The HighMark Funds and any other Funds to which the exemption may apply are open-end investment companies registered under the 1940 Act with respect to which HighMark Capital Management, Inc. or an affiliate (the Adviser) acts as an investment adviser.

At the time, the Committee considered the HighMark Portfolios to be an appropriate vehicle for diversifying the Retirement Plan's assets. In addition, the Committee determined that investment in the HighMark Portfolios by the Retirement Plan would allow the Retirement Plan to continue to use in-house investment managers that had provided investment services to the Plan. As a result, the Committee decided to invest Retirement Plan assets in the HighMark Portfolios in accordance with Prohibited

[9] The HighMark Funds formerly were known as The HighMark Group.

Transaction Exemption 77–3 (PTE 77–3, 42 FR 18734 (1977)).[10]

4. The applicant states that the Committee decided recently to reallocate the management of Retirement Plan assets among the affiliated and unaffiliated investment managers who would manage such assets on a separate account basis.[11] The allocation of assets among the managers was based on a revised, comprehensive asset allocation strategy and policy developed by the Committee with the assistance of an independent consulting firm. The applicant notes such management avoids mutual fund fees and regulatory costs associated with investment in SEC-registered mutual fund portfolios.

5. HighMark Capital Management, Inc., a wholly-owned subsidiary of UNBC (HCM), serves as investment adviser to each of the Portfolios of the HighMark Funds. HCM is registered under the Investment Advisers Act of 1940 (the Advisers Act). The applicant describes the HighMark Funds and Portfolios as follows:

HighMark Funds, a Massachusetts business trust, is an open-end management investment company registered under the 1940 Act. HighMark Funds currently is comprised of thirteen portfolios, including the following three Portfolios:

(i) HighMark Value Momentum Fund
(ii) HighMark Growth Fund
(iii) HighMark Small Cap Value Fund

As previously noted, HCM serves as investment adviser to each of the HighMark Portfolios listed above. The applicant represents that, in addition, HCM, UBOC, and UBOC Affiliates may provide other services to the HighMark Funds and the HighMark Portfolios, including accounting, administration, and shareholder services.

6. The applicant also represents that, as of June 15, 2001:

(i) A total of approximately $63.2 million in Retirement Plan assets was invested in the HighMark Value Momentum Fund (representing a 10.51% ownership in such Portfolio);

(ii) A total of approximately $46.1 million in Retirement Plan assets was invested in the HighMark Growth Fund (representing a 12.40% ownership interest in such Portfolio); and

(iii) A total of approximately $61.7 million in Retirement Plan assets was invested in the HighMark Small Cap Value Fund (representing a 43.94% ownership interest in such Portfolio).[12]

7. The applicant represents that, on June 15, 2001, the Retirement Plan redeemed all of its Shares in the HighMark Value Momentum Fund and the HighMark Growth Fund and approximately $40 million of its Shares of the HighMark Small Cap Value Fund (the June 15, 2001 Redemptions). The applicant further represents that the June 15, 2001 Redemptions were an appropriate means of effectuating this diversification of investment managers and the shift to separate account management for the Retirement Plan. In this regard, the applicant represents that the HighMark Funds, under the supervision of the HighMark Funds' board of trustees (none of whom are directors, officers or employees of UBOC, HCM, or their affiliates), had the option to determine whether to effect the June 15, 2001 Redemptions in cash or in kind, and determined to effect such Redemptions in kind.[13]

8. The applicant represents that it is possible that the Committee or other fiduciaries of the Retirement Plan or other In-house Plans[14] may at a later date determine that it is in the best interest of the Retirement Plan or other In-house Plan and its participants and beneficiaries to redeem such Plan's interest in HighMark Portfolios or other Funds, other than those described in Paragraphs 5 and 6 above, for which UBOC or a UBOC Affiliate provides investment advisory services. Consequently, in the event that this proposed exemption is granted, and to the extent that all of the terms and conditions of the exemption, as granted, are met, the relief requested herein shall apply to any such future redemption that is effected in-kind.

9. The applicant states that the June 15, 2001 Redemptions involved ministerial transactions performed in accordance with pre-established, objective procedures. As a result, the applicant represents that the transactions did not permit UBOC or a UBOC Affiliate to use its influence or control to purchase particular securities from the HighMark Portfolios. In addition, the applicant states that all Shares are offered and sold exclusively through the use of prospectuses and materials provided pursuant to the requirements of the Securities Act of 1933 and the 1940 Act and the rules and regulations thereunder.

10. The applicant states that, to the extent possible, the Retirement Plan transferred Shares in return for a proportionate share of the securities

[10] The applicant has not requested exemptive relief with respect to any investment in the HighMark Portfolios by the Retirement Plan. The applicant notes that the Retirement Plan may acquire or redeem shares in the HighMark Portfolios or any other Funds pursuant to Prohibited Transaction Exemption (PTE) 77–3. In this regard, PTE 77–3 permits the acquisition or sale of shares of a registered, open-end investment company be an employee benefit plan covering only employees of such investment company, employees of the investment adviser or principal underwriter for such investment company, or employees of any affiliated person (as defined therein) of such investment adviser or principal underwriter, provided certain conditions are met. The Department is expressing no opinion in this proposed exemption regarding whether any transactions with the Funds by the Retirement Plan or any other In-house Plan is covered by PTE 77–3.

[11] The affiliated managers would include HighMark Capital Management, Inc. The applicant states that HighMark Capital Management, Inc. manages any separate account holding In-house Plan assets outside the Funds without compensation from the In-house Plan, other than reimbursement of direct expenses as permitted by ERISA.

[12] As previously noted, the Department is expressing no opinion regarding the applicability of PTE 77–3 to the acquisition of the Shares by the Retirement Plan. In addition, the Department is expressing no opinion as to the applicability of section 404 of ERISA to the acquisition of the Shares by the Retirement Plan. In this regard, the Department directs the applicant's attention to an advisory opinion issued to Federated Investors [Advisory Opinion 98–06A (July 30, 1998)], in which the Department noted that if the decision by a plan fiduciary to enter into a transaction is not ''solely in the interest'' of the plan's participants and beneficiaries, e.g., if the decision is motivated by the intent to generate seed money that facilitates the marketing of the mutual fund, then the plan fiduciary would be liable for any loss resulting from such breach of fiduciary responsibility, even if the acquisition of mutual fund shares was exempt by reason of PTE 77–3.

[13] The applicant represents that the HighMark Funds' board of trustees in 2000 adopted a resolution establishing objective procedures for in-kind redemptions intended to conform with the requirements set forth in a no-action letter issued by the staff of the Securities and Exchange Commission re *Signature Financial Group, Inc.* (1999 SEC No-Act.LEXIS 981, avail. 12/28/99)) (''the Signature Financial letter'') governing in-kind redemptions of shares held by ''affiliated shareholders'' of the HighMark Funds. The procedures require, among other things, that the redemption be effected on a pro rata basis, based on the relevant HighMark Portfolios' current net assets at the time of redemption, and that the board of trustees verify that an in-kind redemption is effected in accordance with the procedures.

[14] The applicant informed the Department that on November 26, 2001, an in-kind distribution was made of the Retirement Plan's entire investment in the HighMark International Fund. U.S. Trust served as the independent fiduciary for this transaction. The applicant represents that UBOC also sponsors a 401(k) Plan which permits participants to direct the investment of their plan accounts among various investment options, including several HighMark Funds. According to the applicant, the 401(k) plan intends to redeem all of its shares in the Highmark Growth Fund and the HighMark Large Cap Value Fund (formally known as the Income Equity Fund) in connection with a change of investment options. The applicant has been informed by the Funds that it will effect the requested redemptions in-kind. According to the applicant, the securities will be distributed to mutual funds that replace the Highmark Growth Fund and the Highmark Large Cap Value Fund as investment options under the 401(k) Plan. UBOC anticipates that these redemptions would occur on or about December 14, 2001, subject to completion of the independent fiduciaries review and approval of the transactions.

held by each HighMark Portfolio in the June 15, 2001 Redemptions. According to the applicant, the Retirement Plan received only cash and Transferable Securities pursuant to the June 15, 2001 Redemptions. In this regard, each Transferable Security subject to a Redemption was transferred in-kind to the Retirement Plan. However odd lot securities, fractional shares and accruals on such securities were transferred in cash.[15] The applicant states that the June 15, 2001 Redemptions were carried out, to the extent possible, on a pro rata basis as to the number and kind of securities transferred to the Retirement Plan.[16]

11. The applicant represents that, for purposes of the June 15, 2001 Redemptions, the values of the HighMark Portfolio securities were determined based on the current market price of such securities as of the close of business on June 15, 2001 (the Valuation Date). As required by the no action letter re Signature Financial Group, Inc. issued by the staff of the Securities and Exchange Commission, the value of the securities in each Portfolio were determined by using the valuation procedures established by the HighMark Funds in accordance with Rule 2a–4 under the 1940 Act.[17] In this regard, responsibility for valuations rests with the HighMark Funds' administrator (the Administrator), which is unrelated to UBOC. The Administrator has contracted with independent, third-party pricing agents approved by the HighMark Funds' board of trustees to provide security quotations.[18]

12. The applicant represents that, in connection with the June 15, 2001 Redemptions, U.S. Trust Company, N.A. (U.S. Trust), a federally chartered bank, confirmed its independence from UBOC and is qualified to serve as an Independent Fiduciary, as that term is defined in Section II of the proposed exemption. U.S. Trust, in turn, represented that it understood and accepted the duties, responsibilities and liabilities in acting as a fiduciary under ERISA for the Retirement Plan.

U.S. Trust represents that it was responsible for (i) determining whether the terms of each Redemption of Shares of the HighMark Portfolios was fair to the participants of the Retirement Plan and comparable to and no less favorable than terms that would be reached at arms' length between unaffiliated parties, and (ii) opining as to the fairness and reasonableness of each such Redemption, as compared to a redemption for cash and subsequent reinvestment of such cash. This determination and opinion was set forth in a written report (the Report) dated June 8, 2001. Specifically, in the Report, U.S. Trust stated that:

(a) the Redemptions would not involve certain transaction costs otherwise incurred in a cash redemption;[19]

(b) the Shares and cash associated with the Redemptions would be valued in accordance with procedures established by the HighMark Funds and applicable law, and that the same procedures are used to determine the net asset value of the HighMark Portfolios; and

(c) U.S. Trust reviewed a written document detailing the procedures for in-kind redemptions for affiliated parties, and concluded that it matched its understanding of procedures for in-kind redemptions.

[15] According to the report submitted by the Independent Fiduciary, none of the HighMark Portfolios held securities which were not Transferable Securities at the time of the June 15, 2001 Redemptions, and, therefore, there was no cash adjustment to reflect the value of such securities. The applicant states, however, that such cash adjustments may be made with respect to future Redemptions to the extent relevant Fund holds such excluded securities.

[16] According to the applicant, the securities transferred from each HighMark Portfolio in the June 15, 2001 Redemptions were selected under a ''first in, first out'' (FIFO) procedure. Under this procedure, ''tax lots'' of securities to be distributed in kind in satisfaction of the in-kind redemption were selected on the basis of when the securities were acquired for the Portfolio, with the securities held longest by the Portfolio being distributed first, until distribution of the Plan's pro rata share of such security was completed. The applicant represents that the FIFO procedure is the one normally used by the High Mark Funds equity and fixed income funds for selecting securities to be sold or distributed in kind. The applicant further represents that with respect future in-kind redemptions pursuant to this exemption, securities will also be selected on a ''first in, first out'' basis or similar objective, ministerial procedure.

[17] In the no action letter to Signature Financial Group, Inc. discussed above, the Division of Investment Management of the SEC states that it will not recommend enforcement action pursuant to Section 17(a) of the Investment Company Act of 1940 for certain in-kind distributions of portfolio securities to an affiliate of a mutual fund. Funds seeking to use this ''safe harbor'' must value the securities to be distributed to an affiliate in an in-kind distribution ''in the same manner as they are valued for purposes of computing the distributing fund's net asset value.'' The applicant represented that, having adopted the Signature Financial Letter procedures for use in its affiliate transactions, it must use those procedures for transactions with its in-house plans, as these in-house plans are affiliates of the mutual fund. The Department agreed to the use of the Signature Financial Letter procedures for determining the value of the securities in this in-kind transaction, with certain limitations.

The Signature Financial Letter requires pro rata distribution of the securities. The letter does not address the marketability of such securities. The range of securities distributed pursuant to this ''safe harbor'' may therefore be broader than range of securities covered by SEC Rule 17a–7, 17 CFR Sec. 270.17a–7. In granting past exemptive relief with respect to in-kind transactions involving mutual funds, the Department has required that the securities being distributed in-kind fall within Rule 17a–7. One of the requirements of Rule 17a–7 is that the securities are those for which ''market quotations are readily availabale.'' SEC Rule 17a–7(a). The Department has determined, and the applicant agrees, that exemptive relief in this case will also be limited to in-kind distribution of securities for which market quotations are readily available. The value of any other securities will be paid to the plan in cash.

[18] Under the exemption requested by UBOC, the Plan will receive only securities for which market quotations are readily available (as determined pursuant to the Funds' procedures described above) or cash.

[19] The Report states that, with respect to the Redemptions involving Shares of the HighMark Value Momentum Fund and the HighMark Growth Fund, if the Retirement Plan were to receive cash rather than securities pursuant to the transaction, substantially all (in the case of the HighMark Value Momentum Fund) or the majority (in the case of the HighMark Growth Fund) of that cash would be reinvested in securities which would result in brokerage commissions and a buy-sell spread, the costs of which would be incurred by the Retirement Plan. The Report states further that depending on the form and timing of the Redemptions, part of the Portfolios' selling costs might be absorbed by the Retirement Plan as a shareholder in the Portfolios. Therefore, according to U.S. Trust, to the extent that the Redemption of the Retirement Plan's Shares of the HighMark Value Momentum Fund and the HighMark Growth Fund were effected in-kind, those costs would be avoided.

U.S. Trust notes, however, that the Retirement Plan would sell substantially all of the securities received in redemption of its Shares of the HighMark Small Cap Value Fund shortly after the Redemption. In this regard, the applicant represents that the unaffiliated investment manager appointed to manage the ''small capitalization stock'' portion of the Retirement Plan's assets on a separate account basis after the June 15, 2001 Redemptions pursues an investment strategy that is different from that pursued by the HighMark Small Cap Value Fund. Accordingly, the Retirement Plan, at the request of the new manager, sold substantially all of the securities it received from the HighMark Small Cap Value Fund in connection with the June 15, 2001 Redemptions. However, UBOC contributed a cash payment to the Retirement Plan in an amount estimated by U.S. Trust to be equal to the difference between the transaction costs associated with the Retirement Plan's in-kind redemption of Shares of the HighMark Small Cap Value Fund and the transaction costs associated with a hypothetical cash redemption of such Shares. In calculating the transaction costs of a hypothetical cash redemption, U.S. Trust assumed that, prior to the cash redemption, the Fund would raise cash by selling the securities that were, in fact, distributed in kind. Under this scenario, those selling costs would be allocated proportionately across all shareholders in the Fund (including the Retirement Plan) before the Retirement Plan received its cash distribution. U.S. Trust concluded that UBOC's cash payment to the Retirement Plan made the Retirement Plan whole for redeeming its HighMark Small Cap Value Fund Shares in kind rather than in cash and, consequently, the redemption of such shares was fair to Retirement Plan participants.

In connection with the November 26, 2001 in-kind distribution from the HighMark International Fund, the same issue arose, i.e., the new investment manager choose not to retain most of the securities distributed in kind. As in the earlier Small Cap Value Fund transaction, UBOC has agreed to make a cash payment sufficient to make the Retirement Plan whole.

In the Report, U.S. Trust stated that, based upon its review of the methodology of the Redemptions of Shares of each of the HighMark Portfolios and an analysis of the costs associated with the Redemptions versus a cash redemption for the Retirement Plan's assets held by the HighMark Portfolios (and, with respect to the HighMark Small Cap Value Fund, the cash payment to the Retirement Plan noted above), the Redemptions would be fair to the participants of the Retirement Plan. The Report also stated that the methodology used to conduct the Redemptions would be comparable to and no less favorable than a similar in kind redemption reached at arms' length between unaffiliated parties. Therefore, U.S. Trust approved the Redemptions from the HighMark Portfolios, provided the Redemptions were conducted in accordance with the information provided to it by UBOC and the HighMark Funds.

The Report also states that, if the Redemptions were thereafter undertaken, U.S. Trust would confirm in writing whether each such Redemption was effectuated consistent with the required criteria and procedures set forth in the Report, based on representations requested from UBOC and testing a limited sampling of certain material aspects of the Redemptions, deemed in U.S. Trust's judgment to be representative. Accordingly, subsequent to the June 15, 2001 Redemptions, U.S. Trust conducted the post-transaction review described above and concluded, based on information provided to it, that the Retirement Plan received its pro rata portion of each Transferable Security (rounded to the nearest round lot) held by the HighMark Portfolios and its pro rata portion of cash that the HighMark Portfolios held based on the Plan's ownership percentage of each such Portfolio (or, in the case of the Small Cap Fund, the percentage of the Small Cap Fund that the Redemption amount represented), and that the June 15, 2001 Redemptions were effectuated in a manner consistent with the required criteria and procedures set forth in the Report.

13. In summary, it is represented that the June 15, 2001 and November 26, 2001 Redemptions satisfied, and any Redemptions to occur in the future will satisfy, the statutory criteria for an exemption under section 408(a) of ERISA for the following reasons:

(A) The In-house Plan pays no sales commissions, redemption fees, or other similar fees in connection with the Redemptions (other than customary transfer charges paid to parties other than UBOC and UBOC Affiliates);

(B) The assets transferred to the In-house Plan pursuant to the Redemptions consist entirely of cash and Transferable Securities. Notwithstanding the foregoing, odd lot securities, fractional shares and accruals on such securities may be distributed in cash;

(C) With certain exceptions defined below, the In-house Plan receives a pro rata portion of the securities of the Portfolio upon a Redemption that is equal in value to the number of Shares redeemed for such securities, as determined in a single valuation performed in the same manner and as of the close of business on the same day in accordance with the procedures established by the Funds pursuant to Rule 2a-4 under the 1940 Act (using sources independent of UBOC and UBOC Affiliates);

(D) UBOC, or any UBOC affiliate, does not receive any fees, including any fees payable pursuant to Rule 12b-1 under the 1940 Act, in connection with any Redemption of the Shares;

(E) Prior to a Redemption, UBOC provides in writing to the Independent Fiduciary a full and detailed written disclosure of information regarding the Redemption;

(F) Prior to a Redemption, the Independent Fiduciary provides written approval of such Redemption to UBOC, such approval being terminable at any time prior to the date of the Redemption without penalty to the In-house Plan, and such termination being effectuated by the close of business following the date of receipt by UBOC of written or electronic notice regarding such termination (unless circumstances beyond the control of UBOC delay termination for no more than one additional business day);

(G) Before approving a Redemption, based on the disclosures provided by the Portfolios to the Independent Fiduciary and discussions with appropriate operational personnel of the In-house Plan, UBOC, and the Adviser as necessary to form a basis for making the following determinations, the Independent Fiduciary determines that the terms of the Redemption are fair to the participants of the In-house Plan and comparable to and no less favorable than terms obtainable at arms-length between unaffiliated parties;

(H) Not later than thirty (30) business days after the completion of a Redemption, the relevant Fund provides to the Independent Fiduciary a written confirmation regarding such Redemption containing:

(i) the number of Shares held by the In-house Plan immediately before the Redemption (and the related per Share net asset value and the total dollar value of the Shares held),

(ii) the identity (and related aggregate dollar value) of each security provided to the In-house Plan pursuant to the Redemption, including any security valued in accordance with the Funds' procedures for obtaining current prices from independent market-makers,

(iii) the current market price of each security received by the In-house Plan pursuant to the Redemption, and

(iv) the identity of each pricing service or market-maker consulted in determining the value of such securities;

(I) The value of the securities received by the In-house Plan for each redeemed Share equals the net asset value of such Share at the time of the transaction, and such value equals the value that would have been received by any other investor for shares of the same class of the Portfolio at that time;

(J) Subsequent to a Redemption, the Independent Fiduciary performs a post-transaction review which will include, among other things, testing a sampling of material aspects of the Redemption deemed in its judgment to be representative, including pricing; and

(K) Each of the In-house Plan's dealings with the Funds, the Investment Adviser, the principal underwriter for the Funds, or any affiliated person thereof, are on a basis no less favorable to the In-house Plan than dealings between the Funds and other shareholders holding shares of the same class as the Shares.

*Notice to Interested Persons*

The applicant will provide notice of the proposed exemption within 30 days after publication thereof in the **Federal Register** (i) to active participants in the Retirement Plan by electronic communication through applicant's on-line employee intranet service and by posting at major job sites, and (ii) to retiree participants in pay status in the Retirement Plan by first class mail. Notices posted at major job sites will include a copy of the proposed exemption as published in the **Federal Register**. The notices will inform interested persons of their right to comment and/or request a hearing. Comments and requests for a hearing must be received by the Department not later than 60 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Ms. Andrea W. Selvaggio of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

**Cargill, Incorporated and Associated Companies Salaried Employees' Pension Plan, et al (the Original Plans) Located in Minneapolis, Minnesota**

[Application Nos. D–11017 through D–11023]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the proposed exemption is granted, effective October 18, 1996, the restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act, and the sanctions resulting from section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) the acquisition (the Stock Acquisition) and holding of certain shares of Cargill, Incorporated common stock (the Common Stock) by the Cargill, Incorporated and Associated Companies Master Pension Trust (the Master Trust); and (2) the acquisition, holding and, where relevant, exercise by the Master Trust of a certain irrevocable put option associated with the Common Stock (the Put Option); provided that the following conditions are satisfied:

(A) Prior to the Stock Acquisition, a qualified, independent fiduciary acting on behalf of the Master Trust (the Independent Fiduciary) determined that the Stock Acquisition was appropriate for, and in the best interests of, the Original Plans and the Master Trust.

(B) The $178.75 per share purchase price the Master Trust paid for each share of Common Stock pursuant to the Stock Acquisition equaled the August 31, 1996 fair market value of each such share as determined by a qualified, independent appraiser selected by the Independent Fiduciary.

(C) Subsequent to the Stock Acquisition, the Independent Fiduciary represented the interests of the Master Trust with respect to the Master Trust's holding of the Common Stock and the Master Trust's holding of the Put Option, and will continue to represent such interests as long as the Master Trust holds such stock and Put Option.

(D) Subsequent to the Stock Acquisition, the Independent Fiduciary took and will take whatever action is necessary to protect the rights of the Master Trust with respect to the Master Trust's holding of the Common Stock and the Master Trust's holding of the Put Option.

(E) Upon request by the Independent Fiduciary, Cargill, Incorporated (Cargill) purchased, or will purchase, all or a portion of the Common Stock held by the Trust, in accordance with the terms of the Put Option, for the greater of: (1) the price of the Common Stock as of the date of the Stock Acquisition; or (2) the fair market value of the Common Stock as of the date the Put Option is exercised.

(F) Subsequent to the Stock Acquisition, the Common Stock did not, at any time, represent more than ten percent (10%) of the total fair market value of the assets held by: (1) any Original Plan; or (2) after the Original Plans were merged into each other on January 1, 1997, any remaining Original Plan that continued to have an undivided interest in the assets of the Master Trust (a Remaining Plan).

(G) For purposes of securing its obligations with respect to the Put Option, Cargill established, and will continue to maintain, an escrow account containing cash and/or U.S. government securities amounting to at least 25 percent (25%) of the total current fair market value of the Common Stock held by the Master Trust.

(H) All transactions between Cargill and the Master Trust, or between Cargill and any Original Plan or Remaining Plan (collectively, the Plans), arising in connection with the Stock Acquisition, were no less favorable to the Master Trust or Plan than arm's-length transactions involving unrelated parties.

(I) Cargill reimbursed the Master Trust, with interest (the Reimbursement), for the Master Trust's payment of certain legal expenses associated with the Master Trust's holding of the Common Stock (the Legal Fees).

(J) Cargill paid, and will continue to pay, the fees of the Independent Fiduciary and its financial advisor to the extent such fees relate to either the Stock Acquisition or the continued holding of the Common Stock and the Put Option by the Master Trust.

(K) At no time subsequent to the Stock Acquisition has the Master Trust held more than 25% of the aggregate amount of Common Stock issued and outstanding.

(L) Cargill adopts written procedures which require that a Remaining Plan fiduciary: (1) review all expenses submitted for payment by the Master Trust; and (2) approve the payment of only those expenses that are reasonable and necessary for the administration of a Remaining Plan.

(M) Cargill adopts written procedures which require that independent legal counsel provide Cargill with a written opinion regarding the payment by the Master Trust or a Remaining Plan of expenses associated with a transaction between Cargill and a Remaining Plan.

(N) In the event this proposed exemption is granted, Cargill, within 60 days of the date of such grant, files Form 5330 with the Internal Revenue Service and pays the applicable excise taxes with respect to the Master Trust's payment of the Legal Fees.

**EFFECTIVE DATE:** The effective date of this proposed exemption, if granted, is October 18, 1996.

*Summary of Facts and Representations*

1. Cargill is a Delaware corporation established in 1865 by William W. Cargill (Mr. Cargill). Cargill is engaged in, among other things, the wholesaling of agricultural and other bulk commodities. As of February 28, 2001, Cargill had approximately 85,000 employees and annual revenues in excess of $47 billion.

2. By October of 1993, Cargill had established certain tax qualified defined benefit plans (the Original Plans). At that time, the Original Plans were comprised as follows:

a. Cargill, Incorporated and Associated Companies Salaried Employees' Pension Plan (the Salaried Employees' Pension Plan);

b. Cargill, Incorporated Pension Plan for Seaboard Grain Miller Represented Employees (the Seaboard Grain Miller Employees' Pension Plan);

c. Cargill, Incorporated and Associated Companies Pension Plan for Grain Miller Represented Employees (the Grain Miller Employees' Pension Plan);

d. Cargill, Incorporated and Associated Companies Pension Plan for Union Represented Hourly Wage Employees (the Hourly Wage Employees' Pension Plan);

e. Cargill, Incorporated and Associated Companies Pension Plan for Production Employees (the Production Employees' Pension Plan);

f. Cargill, Incorporated and Associated Companies Pension Plan for Poultry Products Employees (the Poultry Products Employees' Pension Plan); and

g. Cargill, Incorporated and Associated Companies Pension Plan for Union Represented Poultry Products Employees (the Union Poultry Products Employees' Pension Plan);

3. The Common Stock is one of five classes of stock authorized by Cargill. Each share of Common Stock, and, generally, each share of Cargill's other classes of stock, is entitled to one vote. In addition, holders of the Common Stock are entitled to receive dividends on their shares in an amount decided annually by Cargill's Board of Directors.

4. Prior to October 18, 1996, the Common Stock was held solely by the lineal descendants of Mr. Cargill and their spouses and ex-spouses (the Cargill Common Stock Holders), either directly or indirectly through corporations and trusts of which they are beneficiaries.[20] On October 18, 1996, the Original Plans obtained a portion of the Common Stock through the Stock Acquisition.[21] In this regard, on that date, the Master Trust acquired 167,832 shares of the Common Stock pursuant to the Stock Acquisition, for a purchase price of $178.75 per Share. The applicant represents that the Original Plans paid cash for the Common Stock, the aggregate value of which was $29,999,970 as of the date of the Stock Acquisition. According to the applicant, immediately after the Stock Acquisition, the Common Stock represented less than 10% of the assets in the Master Trust.[22]

5. The applicant represents that State Street Bank and Trust Company (State Street) acted as Independent Fiduciary for purposes of the Stock Acquisition. State Street represents that it is independent of Cargill and receives less than 1% of its aggregate annual gross revenue from Cargill. In addition, State Street represents that it is qualified to act as Independent Fiduciary on behalf of the Master Trust due to its status as one of the country's largest trust companies and its extensive experience in managing retirement plan assets. The applicant represents that, subsequent to the Stock Acquisition, State Street has acted as Independent Fiduciary with respect to the Plans' continued holding of the Common Stock and the Put Option.

6. The applicant represents that, for purposes of the Stock Acquisition, the Cargill Common Stock Holders proposed a price of $178.75 per share. The applicant states that the Independent Fiduciary retained a qualified, independent advisor for the purpose of determining whether: (1) the proposed $178.75 per share sale price exceeded the fair market value of such shares; and (2) the terms of the proposed Stock Acquisition were fair and reasonable to the Master Trust from a financial point of view. In this regard, the applicant states that the Independent Fiduciary selected Duff & Phelps Financial Consulting Co. (Duff & Phelps) to make such determinations.

In a letter dated October 18, 1996, Duff and Phelps stated that, in its capacity as financial advisor to the Independent Fiduciary for purposes of the Stock Acquisition, it reviewed, among other things: audited financial statements of Cargill; unaudited interim financial statements of Cargill for the three months ended August, 31, 1996; and certain internal documents and analyses provided by Cargill management. In carrying out its duties, Duff and Phelps stated that it additionally reviewed relevant financial and operating information for specific publicly traded companies which it deemed comparable in whole or in part to Cargill.

Upon this review, Duff and Phelps compared Cargill's historical results and future prospects against several sets of publicly traded companies. Duff and Phelps stated that the fair market value of the Common Stock was thereafter determined upon reviewing the relative performance and pricing multiples of such companies and discounting the derived common stock value to reflect the illiquidity of the Common Stock. In the October 18, 1996 letter, Duff and Phelps concluded that: (a) the price of $178.75 per share to be paid by the Master Trust was not in excess of fair market value within the meaning of ERISA; and (b) the terms of the proposed Stock Acquisition were fair and reasonable to the Master Trust from a financial point of view.

The applicant represents that, upon the Independent Fiduciary's review of the information provided by Duff and Phelps, the Independent Fiduciary determined that, as of October 18, 1996, the Stock Acquisition was appropriate for, and in the best interests of, the Original Plans and the Master Trust. The applicant states that, in consideration of this, on that date, the Independent Fiduciary directed that the Master Trust acquire the Common Stock pursuant to the Stock Acquisition.

7. The applicant represents that at no time subsequent to the Stock Acquisition did the Common Stock represent more than 10% of the fair market value of any Original Plan or, after the merging of the Original Plans (see paragraph 9), any Remaining Plan. The applicant additionally represents that the Master Trust has never held, and will never hold, more than 25% of the aggregate amount of Cargill's issued and outstanding Common Stock.

8. In addition to receiving the Common Stock pursuant to the Stock Acquisition, the Trust received the Put Option. In this regard, the Trust received an option which requires that Cargill, at the direction of the Independent Fiduciary, purchase from the Master Trust any or all of the Common Stock held by the Master Trust. According to the terms of the Put Option, the price of any share sold pursuant to a Put Option shall be the greater of: (1) the price at which the Master Trust acquired the Common Stock; or (2) the fair market value of the Common Stock as of the date the Put Option is exercised. The applicant represents that the Put Option has remained in effect since the Stock Acquisition and will continue to remain in effect to the extent the Master Trust continues to hold any of the Common Stock.

9. After the Stock Acquisition, Cargill decided to merge certain of the Original Plans. In this regard, on January 1, 1997, the Seaboard Grain Miller Employees' Pension Plan, the Grain Miller Employees' Pension Plan, and the Union Poultry Products Employees' Pension Plan were merged into the Salaried Employees' Pension Plan. In addition, at the same time, the Poultry Products Employees' Plan was merged into the Production Employees' Pension Plan. Thus, after the mergers, the following plans remained: the Salaried Employees' Pension Plan having 22,726 participants and $652,213,466 in total assets as of December 31, 1999; the Production Employees' Pension Plan having 6,564 participants and $48,773,333 in total assets as of December 31, 1999; and the Hourly Wage Employees' Pension Plan having 8,449 participants and $147,72,972 in total assets as of December 31, 1999.

10. Subsequent to the Stock Acquisition, State Street retained responsibility for monitoring the Master Trust's continued ownership of the Common Stock. Thus, for as long as the Master Trust held the Common Stock, State Street, as Independent Fiduciary, was required to determine whether it would be in the interests of the Master Trust for the Master Trust to exercise

[20] As a result, the Common Stock did not satisfy the definition of ''qualifying employer security''. In this regard, with respect to defined benefit plans, 407(d)(5)(A) of the Act defines a ''qualifying employer security'' as, among other things, ''stock'' which satisfies the requirements of section 407(f)(1) of the Act. Section 407(f)(1)(b) of the Act states that ''stock'' meets the requirements of that section to the extent that at least 50 percent of the aggregate amount of stock of the same class issued and outstanding at the time of acquisition is held by persons independent of the issuer.

[21] Since the Common Stock was not a ''qualifying employer security'', the Stock Acquisition violated section 407(a)(1)(A) of the Act which provides that a plan may not acquire or hold any employer security which is not a qualifying employer security. In violating section 407(a) of the Act, the Stock Acquisition also violated section 406(a)(1)(E) of the Act which provides that a fiduciary with respect to a plan shall not cause the plan to engage in a transaction involving the acquisition, on behalf of the plan, of any employer security in violation of section 407(a) of the Act.

[22] The applicant states that, as of November 30, 2000, the Common Stock represented approximately 4% of the total assets held by the Master Trust.

the Put Option. State Street was, therefore, responsible for monitoring the financial status of Cargill at regular intervals to determine whether the Common Stock continued to be a stable and prudent investment for the Plans and the Master Trust.

State Street was also given full investment discretion with respect to the Common Stock. As a result, State Street had the authority to: (1) Direct the trustee of the Master Trust with respect to the exercise of voting rights, conversion rights or tender offers; (2) join in or oppose voting trusts, mergers, consolidations, foreclosures, reorganizations, recapitalizations and liquidations and (3) exercise any and all rights relating to the Common Stock. The applicant represents that State Street will continue to have each of these responsibilities for as long as the Master Trust and the Plans hold the Common Stock.

11. Cargill established, and continues to maintain, an escrow account (the Escrow Account) to secure Cargill's obligations under the Put Option. The applicant represents that the Escrow Account will remain in effect for the duration of the Trust's ownership of any of the Common Stock and will be maintained at an independent banking institution approved by State Street. The purpose of the Escrow Account, the applicant states, is to ensure that the Master Trust will receive a price for the Common Stock that is in accordance with the terms of the Put Option. Specifically, pursuant to any exercise of the Put Option by the Master Trust, State Street is entitled, as Independent Fiduciary, to draw upon the Escrow Account to satisfy Cargill's obligations under the terms of the Put Option in the event Cargill fails to purchase the Common Stock at the price required by such option. According to the applicant, the Escrow Account contains only cash and/or United States government securities amounting to at least 25% of the total fair market value of the Common Stock held by the Master Trust. Subsequent to the Stock Acquisition, the Master Trust has at all times had, the applicant states, a lien against the assets in the Escrow Account that gives the Master Trust priority over all creditors of Cargill with respect to the assets in the Escrow Account. The applicant represents that this lien will remain in place to the extent the Master Trust continues to hold any of the Common Stock.

12. Cargill previously received temporary exemptive relief, pursuant to Prohibited Transaction Exemption (PTE) 94–23 (59 FR 10830 (March 8, 1994)), for the purchase and holding of Common Stock by the Master Trust.[23] Subsequent to the publication of the proposed exemption in the **Federal Register** (58 FR 58194 (October 29, 1993), the Department received a written comment objecting to the Master Trust's payment of the fees of State Street and Duff and Phelps. In response, as noted in PTE 94–23, Cargill agreed to pay such fees in order to avoid the depletion of the assets of the Master Trust.

Cargill failed to meet this requirement when it inadvertently caused the Master Trust to pay the Legal Fees. In this regard, subsequent to the Stock Acquisition, Cargill directed that the Master Trust pay certain of the Independent Fiduciary's legal fees, the amount of which totaled $80,791. The applicant represents that such payment was due, in part, to certain personnel changes occurring within Cargill. Since Cargill failed to act in accordance with the representations it made in response to a commentator under PTE 94–23, the relief provided by the exemption ceased to be available. As a result, the applicant is seeking retroactive relief for the Stock Acquisition, as well as the Plans' subsequent holding of the Common Stock, and the acquisition, holding and potential exercise of the Put Option, by means of this proposed exemption.

13. The applicant states that Cargill has taken the appropriate steps to reimburse the Master Trust for its payment of the Legal Fees. In this regard, the applicant represents that the Master Trust was reimbursed $80,791 for the Legal Fees. The applicant states that, in addition, Cargill paid certain interest to the Master Trust. According to the applicant, the amount of such interest, $36,696, represented the Master Trust's overall rate of return on its entire portfolio of investments from the date the Legal Fees were paid by the Master Trust to the date the Legal Fees were refunded to the Master Trust.

The applicant represents that Cargill will undertake certain steps to prevent future inappropriate payments of expenses by the Master Trust. In this regard, the applicant represents that, if this proposed exemption is granted, Cargill will designate a fiduciary, as such term is defined by the Act, to review all expenses submitted for payment by the Master Trust. The applicant represents that, only upon such fiduciary's determination that an expense is reasonable and necessary for the administration of a Remaining Plan will the fiduciary approve, in writing, the payment of the expense. In addition, the applicant represents that no expense associated with any transactions between Cartill and a Remaining Plan will be paid by such Remaining Plan unless Cargill obtains a written opinion from independent legal counsel.

14. In summary, that applicant represents that the proposed exemption is protective of, and in the best interests of, the Remaining Plans and the Master Trust since:

(A) Prior to the Stock Acquisition, the Independent Fiduciary determined that the Stock Acquisition was appropriate for, and in the best interests of, the Original Plans and the Master Trust.

(B) The $178.75 per share purchase price the Master Trust paid for each share of Common Stock pursuant to the Stock Acquisition equaled the August 31, 1996 fair market value of each such share as determined by a qualified, independent appraiser selected by the Independent Fiduciary.

(C) Subsequent to the Stock Acquisition, the Independent Fiduciary represented the interests of the Master Trust with respect to the Master Trust's holding of the Common Stock and the Master Trust's holding of the Put Option, and continues to represent such interests as long as the Master Trust holds such stock and Put Option.

(D) Subsequent to the Stock Acquisition, the Independent Fiduciary protected the rights of the Master Trust with respect to the Master Trust's holding of the Common Stock and the Master Trust's holding of the Put Option, and will continue to protect such rights as long as the Master Trust holds such stock and Put Option.

(E) Upon request by the Independent Fiduciary, Cargill purchased, or will purchase, all or a portion of the Common Stock held by the Trust, in accordance with the terms of the Put Option, for the greater of: (1) The price of the Common Stock as of the date of the Stock Acquisition; or (2) the fair market value of the Common Stock as of the date any Put Option is exercised.

(F) Subsequent to the Stock Acquisition, the Common Stock did not, at any time, represent more than ten percent (10%) of the total fair market value of the assets held by any Original Plan or any Remaining Plan.

(G) For purposes of securing its obligations with respect to the Put Option, Cargill established, and will continue to maintain, an escrow account containing cash and/or U.S. government securities amounting to at least 25% of the total current fair market value of the

[23] In this regard, the relief provided by PTE 94–23 expired on March 8, 1999 with respect to the acquisition of Common Stock by the Master Trust. As noted in the granted exemption, however, the Master Trust was allowed to hold the Common Stock subsequent to the end of the five year period.

Common Stock held by the Master Trust.

(H) All transactions between Cargill and the Master Trust; or between Cargill and a Plan, arising in connection with the Stock Acquisition, were no less favorable to the Master Trust or Plan than arm's-length transactions involving unrelated parties.

(I) Cargill reimbursed the Master Trust, with interest (i.e., the Reimbursement), for the Legal Fees.

(J) Cargill paid, and will continue to pay, the fees of the Independent Fiduciary and its financial advisor to the extent such fees relate to either the Stock Acquisition or the continued holding of the Common Stock and the Put Option by the Master Trust.

(K) At no time subsequent to the Stock Acquisition has the Master Trust held more than 25% of the aggregate amount of Common Stock issued and outstanding.

(L) Cargill adopts written procedures requiring that a plan fiduciary: (1) review all expenses submitted for payment by the Master Trust; and (2) approve the payment of only those expenses that are reasonable and necessary for the administration of a Remaining Plan.

(M) Cargill adopts written procedures requiring that independent legal counsel provide Cargill with a written opinion regarding the payment by the Master Trust or a Remaining Plan of expenses associated with a transaction between Cargill and a Remaining Plan.

(N) In the event this proposed exemption is granted, Cargill, within 60 days of the date of such grant, files Form 5330 with the Internal Revenue Service and pays the applicable excise taxes with respect to the Master Trust's payment of the Legal Fees.

*Notice to Interested Persons:* The applicant represents that notice to interested persons will be made within twenty (20) business days following publication of this notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than sixty (60) days from the date of publication of this notice of proposed exemption in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Christopher Motta of the Department, telephone (202) 693–8544. (This is not a toll-free number.)

**Blue Cross and Blue Shield of Kansas, (the Company) and Anthem Insurance Companies, Inc. (Anthem), Located in Topeka, KS and Indianapolis, IN, Respectively**

[Application No. D–11030]

*Proposed Exemption*

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[24]

Section I. Covered Transactions

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the receipt of cash (Cash), including without limitation, Cash held in an escrow fund (the Escrow Fund), by any eligible policyholder (the Eligible Policyholder) of the Company and Anthem, the Company's future parent,[25] which is an employee benefit plan (the Plan), as well as the Blue Cross and Blue Shield of Kansas, Inc. Health Benefit Plan (the Company Health Plan), which is sponsored by the Company, in exchange for the termination of such Plan's membership interest in the Company, in accordance with the terms of a plan of conversion (the Plan of Conversion) adopted by the Company and implemented pursuant to Article 40, Chapter 40 of the Kansas Statutes Annotated (the K.S.A.)

The proposed exemption is subject to the general conditions set forth below in Section II.

Section II. General Conditions

(a) The Plan of Conversion is implemented in accordance with procedural and substantive safeguards that are imposed under Kansas Insurance Law for a ''sponsored demutualization'' and is subject to review and approval by the Kansas Insurance Commissioner (the Commissioner).

(b) The Commissioner reviews the terms of the options that are provided to Eligible Policyholders of the Company as part of such Commissioner's review of the Plan of Conversion, and only approves the Plan following a determination that —

(1) Such Plan is (i) fair and equitable to policyholders, (ii) complies with the requirements of Kansas law, and

(iii) does not unjustly enrich any officer, director, agent or employee of the company; and

(2) The new stock insurer meets the minimum requirements to obtain a certificate of authority to transact business in Kansas and its operation is not hazardous to existing or future policyholders or the public.

(c) Each Eligible Policyholder has an opportunity to vote at a special meeting to approve the Plan of Conversion after receiving full written disclosure from the Company.

(d) With the exception of the Company Health Plan, one or more independent fiduciaries of a Plan that is an Eligible Policyholder elects to receive Cash pursuant to the terms of the Plan of Conversion and neither the Company nor any of its affiliates exercises any discretion or provides ''investment advice,'' within the meaning of 29 CFR 2510.3–21(c) with respect to such acquisition.

(e) In the case of the Company Health Plan, a committee (the Company Health Plan Committee), comprised of management-level employees of the Company, determines whether to vote for or against the implementation of the Plan of Conversion, but does not otherwise exercise investment discretion over the Company Health Plan's assets.

(f) All Eligible Policyholders that are Plans participate in the demutualization on the same terms and conditions as other Eligible Policyholders that are not Plans.

(g) One-third of the total Cash consideration is distributed to an Eligible Policyholder on a *pro rata* basis as the ''fixed component'' and the remaining two-thirds Cash consideration is allocated among each Eligible Policyholder as the ''variable component'' in accordance with a fair and objective standard, based upon actuarial formulas which take into account a policy's past and future contributions to the Company's surplus.

(h) No Eligible Policyholder pays any brokerage commissions or fees in connection with the receipt of the demutualization consideration.

(i) All of the Company's policyholder obligations remain in force and are not affected by the Plan of Conversion.

(j) The terms of the transactions are at least as favorable to the Plans as an

[24] For purposes of this proposed exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

[25] For purposes of this proposed exemption, references to the Company will generally include references to Anthem, unless noted, or unless the context requires otherwise.

arm's length transaction with an unrelated party.

Section III. Definitions

For purposes of this proposed exemption,

(a) The term ''Blue Cross and Blue Shield of Kansas, Inc.'' means the Company and its future parent, Anthem, unless otherwise noted, or unless the context requires otherwise.

(b) An ''affiliate'' of the Company includes —

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the Company (For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.); and

(2) Any officer, director or partner in such person.

(c) The term ''Eligible Policyholders'' means persons who, according to the Company's records, are the holders of certain in force group and non-group insurance policies of the Company on the date on which the Company's Board of Directors approves and adopts the Plan of Conversion.

*Summary of Facts and Representations*

Description of the Parties

1. The Company, which is located in Topeka, Kansas, is a mutual insurance company organized in 1992 under Kansas law. Through its operating divisions and subsidiaries, the Company is engaged in a variety of activities including providing accident and health coverage to subscribers, substantially all of whom are residents of the State of Kansas. The Company also performs administrative services and claims processing for other Blue Cross and Blue Shield plans' subscribers and for programs such as Medicare, Medicaid and the Federal Employee Health Benefits Program. As of December 31, 2000, the Company had total assets of approximately $731 million. As of February 9, 2001, the Company's most recent financial strength rating from A.M. Best Company, Inc. was ''A–'' or ''Excellent.''

As a mutual insurance company, the Company does not have capital stock but instead has members (Members) who are owners of policies and contracts issued by the Company. A policyholder's membership interest in the Company includes the right to vote, and to participate in the distribution of the Company's surplus in the event of the Company's voluntary dissolution or liquidation. Each Member has one vote.

Pursuant to Article 40, Chapter 40 of the Kansas Statutes Annotated (i.e., the K.S.A.), the Company may be converted to a stock company under a process called ''demutualization.'' In the event of such a demutualization, Eligible Policyholders of the Company may receive Cash consideration (some or all of which may be held in an escrow fund, as described below) in exchange for their mutual membership interests in the Company. The Company's demutualization will not affect the rights of policyholders under their insurance contracts. In addition, only the Company's policyholders, and not policyholders of an affiliate of the Company, may vote and receive Cash consideration in connection with the demutualization.

2. The Company provides a variety of insurance products to both non-group and group policyholders. As of October 25, 2001, the Company had 171,403 Eligible Policyholders. The non-group policyholders include 124,347 Medicare Supplement policyholders and 36,317 policyholders holding non-group major medical policies or specialty policies such as ''cancer only'' indemnity policies. The remaining 10,739 are group policyholders. Of the group policyholders, approximately 6,000 are ERISA-covered welfare plans.

3. Anthem, which will become the ultimate parent of the Company pursuant to the Plan of Conversion, maintains its principal place of business in Indianapolis, Indiana. Anthem is currently organized as a stock insurance company under the laws of the State of Indiana. Together with its subsidiaries, Anthem is one of the nation's largest health benefits companies. As an independent licensee of the Blue Cross Blue Shield Association (BCBSA), Anthem and its affiliates offer BCBSA-branded products throughout Indiana, Ohio, Kentucky, Connecticut, Colorado, Nevada, New Hampshire and Maine. In addition, Anthem and its affiliates provide health care coverage or services to over 7 million people in these states. As of December 31, 2000, Anthem had approximately $5.7 billion in assets, $3.8 billion in liabilities and surplus of $1.9 billion.

4. The Company sponsors the Company Health Plan, a welfare plan which is expected to be an Eligible Policyholder entitled to receive consideration in connection with the implementation of the Plan of Conversion discussed herein. The Company Health Plan provides health insurance benefits to approximately 2,200 employee and retiree participants (and their respective dependents) through three separate benefit programs based on the participants' location within Kansas: (a) a health maintenance organization program with a self-referral benefit; (b) a preferred provider program; and (c) a traditional major medical program. Each program includes coverage for medical care, hospitalization, prescription drugs, and dental care, subject to the terms and conditions of the program. Thus, the Company Health Plan's assets consist solely of insurance and premiums withheld from employees which are remitted to the insurers and there is no valuation of the assets of such Plan.

Active employees do not have an option among these three programs. Instead, those living in the service area of the health maintenance organization are enrolled in that coverage, and those outside the service area are enrolled in the preferred provider program. Retirees in the health maintenance organization service area can choose between that coverage and the traditional major medical program. Retirees living outside that service area are enrolled in the preferred provider program. The Company pays 75 percent of the cost of coverage of employees, retirees and their respective dependents. Under the Plan of Conversion, the Company may receive approximately $1,178,000 in the distribution if the total distribution is $321 million. The Company intends to use the entire amount of the distribution in respect of the Company Health Plan to defray employee and retiree costs of coverage within a year of the distribution.

The Company Restructuring

5. On May 24, 2001, the Company's Board of Directors (the Board) authorized management to develop a plan of demutualization (i.e., the Plan of Conversion) pursuant to which the Company would be converted from a mutual insurance company to a stock insurance company. The Plan of Conversion, which was adopted by the Board on October 25, 2001, provides for the conversion (the Conversion) of the Company into a stock insurance company and the sale by the Company, pursuant to an Alliance Agreement, dated as of May 30, 2001 (the Alliance Agreement), of certain newly-issued shares of common stock to Anthem, Anthem West, Inc., an Indiana company and a wholly-owned subsidiary of Anthem, or to Anthem, Inc., a newly-formed public holding company and the parent of Anthem, to hold all of the shares of its common stock.[26] In the

[26] Anthem has separately applied to the Department for an administrative exemption in

Continued

Conversion, all policyholders' membership interests in the Company will be extinguished in exchange for a special distribution (the Special Distribution), to the extent declared by the Board, plus an additional amount of Cash that will be deposited into the Escrow Fund (described in Representation 9 of the proposal) and distributed, after resolution of a potential contingent litigation matter (the Contingent Litigation Matter) of the Company, to the Eligible Policyholders as provided in the Plan of Conversion.

The Board believes that the Company's Conversion into a stock corporation and the sale of the Company to Anthem, which makes possible the distribution of the value of the Company to Eligible Policyholders, is in the best interests of the Company's policyholders. If the Company is to continue to provide high quality insurance services at reasonable costs to its policyholders in a health insurance market that has become national in scope, it must spread its costs over a sufficiently large policyholder base. The Company, however, holds a certificate of authority to sell insurance only in Kansas.

Even if it were to seek to sell coverage in other states, it could not use the Blue Cross and Blue Shield names and service marks to do so, for those names and service marks are controlled by the BCBSA, whose licensees are provided exclusive areas within which they may use those names and service marks.

In addition to being unable to expand geographically, the Company finds that its potential customer base within the state shrinks every year, as national corporations purchase or supplant local businesses. The Company is also unable to diversify its risks geographically. An adverse local illness, or adverse local legislation, or a natural disaster could have substantial impact on its financial soundness. The Conversion, wherein the Company will become a part of a substantially larger, multi-state insurer, will benefit the Company and its policyholders in several ways:

- The Conversion will provide the Company with sufficient capital to compete with national commercial companies as well as access to a larger total capital pool with which to acquire other health plans or related businesses.
- The Conversion will enable the Company to take advantage of economies of scale by eliminating duplicative resources and streamlining its compliance efforts in an increasingly complex regulatory environment.
- By virtue of the Company's becoming part of the diversified geographical base of Anthem that results from the demutualization, the Company will have increased flexibility in responding to localized adverse risk events, avoiding the twin perils of decreased financial stability or excessive increases in rates to avoid financial instability. By having such a diversified base, the Company will have the ability to participate better in insurance offerings to multi-state accounts.
- The Conversion will result in the Company being able to offer a greater variety of career paths to its employees and the potential for greater and more varied challenges, which in turn should permit it to continue to attract and retain the kinds of employees needed to provide its policyholders with quality service.
- The Conversion will allow the Company to take advantage of best practices in health insurance from Anthem and its health insurance affiliates.
- The Conversion will allow the Company to maintain a significant level of local employment.
- The Conversion will provide for sustained local input into medical policy.
- The Conversion will provide Eligible Policyholders with an opportunity to receive Cash in exchange for their otherwise illiquid membership interests, which will be extinguished. Thus, Eligible Policyholders will realize economic value from their membership interests that is not currently available to them so long as the organization remains a mutual company.

6. Accordingly, the Company requests an administrative exemption from the Department which, if granted, will permit the receipt of Cash (including, without limitation, the Cash consideration to be held in the Escrow Fund described herein) by an Eligible Policyholder that is a Plan, including the Company Health Plan, in exchange for such Eligible Policyholder's membership interest in the Company, in accordance with the Plan of Conversion adopted by the Company and implemented pursuant to Kansas Insurance Law.

The Company represents that the receipt of Cash by a Plan, in exchange for such Eligible Policyholders' mutual membership interest in the Company, may be viewed as a prohibited sale or exchange of property between the Plan and the Company in violation of section 406(a)(1)(A) of the Act. Moreover, the Company states that the transaction may also be construed as a transfer of plan assets to, or a use of plan assets by or for the benefit of, a party in interest in violation of section 406(a)(1)(D) of the Act.

The proposed exemption is conditioned upon a number of substantive safeguards. Among the safeguards is the requirement that distributions to Plans pursuant to the exemption must be on terms that are no less favorable to the Plans than Eligible Policyholders that are not Plans. In this regard, Plans that are Eligible Policyholders must participate in the demutualization transaction on the same terms and conditions as Eligible Policyholders that are not Plans. Further, the demutualization will not, in any way, change premiums or reduce policy benefits, guarantees or other policy obligations of the Company to its policyholders and contractholders.

Procedural Requirements under Kansas Insurance Law for Restructuring

7. Kansas Insurance Law provides a regulatory framework for the conversion of a mutual insurance company into a stock company, including a ''sponsored demutualization,'' whereby all of the stock of an insurer is acquired by another company in return for cash. It is represented that the Company's proposed Conversion will be in the nature of a ''sponsored demutualization.''

K.S.A. 40–4002 requires the demutualizing insurer's board of directors to adopt, by a two-thirds majority, a resolution stating the reasons a conversion to a stock insurance company would be in the best interests of the policyholders of the mutual insurance company. Following adoption of the resolution, a detailed plan of conversion will be developed and approved by a two-thirds majority of the board. The plan of conversion must also be submitted to the Kansas Insurance Commissioner for approval, subject to certain hearing requirements.

Additionally, such plan must be approved by two-thirds of the policyholders of the mutual insurer (or by a simple majority, if a majority of policyholders vote) at a meeting called for the purpose of considering the plan of conversion.[27] Policyholders may vote in person or by proxy. A copy of the plan of conversion and any information the Commissioner deems necessary to

connection with its contemplated demutualization. On November 6, 2001, the Department issued a final exemption (Prohibited Transaction Exemption 2001–44) to Anthem at 66 FR 56133.

[27] It is represented that neither the Company nor any of its affiliates will exercise investment discretion or provide ''investment advice,'' within the meaning of 29 CFR 2510.3–21(c), with respect to any election made by an Eligible Policyholder that is a Plan.

policyholder understanding, including a summary of the plan of conversion, must be furnished to policyholders.

K.S.A. 40–4003a sets forth alternative structures which may be used for a conversion, including a plan in which policyholders exchange their membership interests for cash or other consideration, and requires the insurer to file a plan of conversion complying with the terms and conditions set forth for such structure. Existing policyholders of a converting insurer have their rights protected under K.S.A. 40–4003c, which provides for policies in force on the effective date of conversion remaining in force, with only voting rights, assessment provisions, and rights to share in surplus being extinguished.

The Commissioner is required to hold a hearing regarding the plan of conversion, giving not less than 20 days' notice to the insurer and the policyholders of the insurer of the hearing. The Commissioner must approve the plan if she finds it is fair and equitable to policyholders, complies with the requirements of the law, does not unjustly enrich any director, officer, agent or employee of the company, and the new stock insurer would meet the minimum requirements to obtain a certificate of authority to transact business in Kansas and its operation would not be hazardous to existing or future policyholders or the public. The amount of consideration provided to policyholders is deemed to be fair and equitable if it is at least equal to the amount of statutory surplus contributed by policyholders. If the Commissioner approves the plan of conversion, he or she will issue a new certificate of authority to the converted insurer and the date of such issuance is deemed to be the conversion date.

In addition to the provisions governing conversion to a stock company, because this transaction involves Anthem's acquisition of the Company's stock, it will also be subject to review under K.S.A. 40–3304. This provision of the statute regulates the acquisition of a domestic insurer and requires Commissioner review and public hearings.

As far as timing is concerned, between November 19 and November 27, 2001, the Company sent notices to policyholders regarding a January 11, 2002 policyholder meeting to consider the Plan of Conversion. The Company anticipates that the Commissioner will hold a hearing on the Plan of Conversion between January 7 and January 9, 2002 and that the Commissioner will approve such Plan during the first quarter of 2002.

Distributions to Eligible Policyholders

8. Under the proposed transaction, Eligible Policyholders of the Company will be entitled to receive total Cash consideration, currently estimated at $321 million, in exchange for their mutual membership interests in the Company.[28] The Cash consideration will consist of two components. In this regard, one-third of the Cash consideration will be distributed to Eligible Policyholders, *pro rata,* as the ''fixed component'' while the remaining two-thirds will be allocated among Eligible Policyholders as the ''variable component.'' Such latter allocation will be made in accordance with a fair and objective standard, based upon actuarial formulas which will take into account a policy's past and estimated future contributions to the Company's surplus.

On the effective date of the Conversion (the Conversion Date), Eligible Policyholders will be entitled to receive $190 million in exchange for their mutual membership interests in the Company. Of this amount, Anthem will pay $48 million in Cash to the Escrow Fund. In addition, at or prior to the closing, the Company will declare the Special Distribution, which will be payable after the closing to the Eligible Policyholders, in an amount equal to the excess of the Company's consolidated closing book value over $155 million, subject to certain rounding considerations.[29]

The amount of this excess is currently estimated to be approximately $131 million. The Special Distribution, together with 7 percent interest from the Conversion Date, will be paid directly to the Eligible Policyholders as soon as is reasonably practicable following the resolution of the closing balance sheet used to calculate the amount of the Special Distribution.

As stated above, of the $190 million purchase price, $48 million will be held in the Escrow Fund pending the resolution of the Contingent Litigation Matter, involving a subpoena dated February 28, 2001 received by the Company from the Office of the Inspector General, U.S. Department of Health and Human Services. The subpoena seeks documents related to an investigation of possible improper claims against Medicare. The amounts held in the Escrow Fund will be used to pay all costs, expenses and liabilities related to the Contingent Litigation Matter, to pay related taxes which might become payable, and to pay all costs and expenses of the escrow, with any remaining amounts to be distributed to Eligible Policyholders following the final resolution of such matter.[30] At present, the Company has been responding to the subpoena which underlies the Contingent Litigation Matter through the production of documents, which production is nearly complete, except for certain issues with respect to which the Company is awaiting clarification from the U.S. Department of Justice.

Both the Special Distribution and any amounts remaining in escrow will be distributed to Eligible Policyholders in accordance with the distribution principles set forth in the Plan of Conversion. The Board has received an opinion from Dresdner Kleinwort

[28] The proceeds of the demutualization will belong to the Plan if they would be deemed to be owned by the Plan under ordinary notions of property rights. See ERISA Advisory Opinion 92–02A, January 17, 1992 (assets of plan generally are to be identified on the basis of ordinary notions of property rights under non-ERISA law). It is the view of the Department that, in the case of an employee welfare benefit plan with respect to which participants pay a portion of the premiums, the appropriate plan fiduciary must treat as plan assets the portion of the demutualization proceeds attributable to participant contributions. In determining what portion of the proceeds are attributable to participant contributions, the plan fiduciary should give appropriate consideration to those facts and circumstances that the fiduciary knows or should know are relevant to the determination, including the documents and instruments governing the plan and the proportion of total participant contributions to the total premiums paid over an appropriate time period. In the case of an employee pension benefit plan, or where any type of plan or trust is the policyholder, or where the policy is paid for out of trust assets, it is the view of the Department that all of the proceeds received by the policyholder in connection with a demutualization would constitute plan assets.'' See ERISA Advisory Opinion 2001–02A, February 15, 2001.

[29] The Alliance Agreement formerly provided that in the event the Special Distribution equal to the entire excess of the closing book value over $155 million was not paid, the purchase price would be increased by 30 percent of the excess of the undistributed closing book value over $155 million. Under the Alliance Agreement, as amended, and pursuant to a resolution adopted by the Company on October 25, 2001, the Special Distribution is currently equal to the excess of the closing book value over $155 million.

The parties expect that the full amount of the Special Distribution will be paid. It is represented that it is a condition to the company's obligation to close that the Commissioner must grant ''any required approval to the payment of the Special Distribution'' or the Company will be required to obtain an opinion from its financial advisor confirming the fairness, from a financial point of view, of the purchase price to the Eligible Policyholders in the absence of the Special Distribution.

[30] Even if the entire Escrow Fund were applied to costs related to the Contingent Litigation Matter, it is represented that Eligible Policyholders would still receive $142 million plus the Special Distribution amount (currently estimated at $131 million) within 90 to 120 days after the Conversion Date. Thus, the Company asserts that there is no possibility that Eligible Policyholders will receive nothing in return for their mutual membership interests.

Wasserstein, independent financial advisors to the Company, that the purchase price payable to the Eligible Policyholders and into the Escrow Fund for the benefit of the Eligible Policyholders pursuant to the Alliance Agreement is ''fair'' to the Eligible Policyholders, from a financial point of view.

The Escrow Fund

9. The Alliance Agreement provides that $48 million of the $190 million purchase price to be received by the Company from Anthem will be deposited by the Company (or Anthem or its specified affiliate on the Company's behalf) into the Escrow Fund. The Escrow Fund will be a separately-designated, interest-bearing deposit account established on or prior to the Conversion Date, under the terms of an escrow agreement (the Escrow Agreement) which will be entered into by and among the Company, Anthem and an escrow agent (the Escrow Agent).[31] The Escrow Agent will be an unrelated New York bank with trust powers that is selected by the Company, and accepted by Anthem, to act as Escrow Agent under the Escrow Agreement.

The Company will deposit, into the Escrow Fund, amounts recovered from insurers with respect to the Contingent Litigation Matter, net of any reasonable out-of-pocket costs and expenses incurred in effecting such recovery. The Escrow Fund will also provide funding for the payment of (a) the net after-tax amount of costs and expenses attributable solely to the Contingent Litigation Matter and (b) such other amounts as may be specified in the Escrow Agreement or in the Alliance Agreement. Following the satisfaction of all such costs and expenses, the Escrow Agreement will provide for the payment of Cash consideration by the Company to Eligible Policyholders. Tax benefits related to the costs and expenses will be determined once they are finally realized by the Company. However, the Company may withdraw amounts, from time to time, to cover such costs and expenses.

The Escrow Fund will continue until the Contingent Litigation Matter has been finally disposed of by binding settlement or court order, all tax amounts have been finally determined, all amounts that are reasonably recoverable from any insurer in respect of the Contingent Litigation Matter are recovered, and all amounts in the Escrow Fund have been paid or distributed by the Escrow Agent in accordance with the Escrow Agreement and the Alliance Agreement. Upon delivery by the Company and the Policyholder Committee of a certificate certifying that all such amounts have been paid, the Escrow Fund will terminate and all remaining amounts held in the Escrow Fund will be distributed to Eligible Policyholders in accordance with the Plan of Conversion. No amounts need be distributed if the Policyholder Committee determines that it would be impractical to do so, taking into account the costs of distribution in relation to the amounts to be distributed. Any amounts that are not so distributed will instead be distributed to a charitable foundation selected by the Policyholder Committee.

Amounts held in the Escrow Fund will be invested by the Escrow Agent solely in obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States of America or an agency or instrumentality thereof with a maturity date of one year or less from the date of investment. All costs and expenses of maintaining the Escrow Fund, including the fees and expenses of the Escrow Agent, the costs and expenses of making distributions out of the Escrow Fund and the fees and expenses of the Policyholder Committee, will be borne by the Escrow Fund. The rights of Eligible Policyholders to amounts held in the Escrow Fund will not be represented by any form of certificate or instrument and will not be transferable or assignable except by will, the laws of intestacy or by other operation of law.

A committee comprised of five individuals who were members of the Board of Directors of the Company prior to the Conversion Date and are acceptable to Anthem (the Policyholder Committee) will oversee the conduct of the Contingent Litigation Matter.[32] The Policyholder Committee will also certify amounts payable to the Company out of the Escrow Fund for the indemnification of costs incurred by the Company related to the Contingent Litigation Matter. The Policyholder Committee may then dispute the amounts claimed by the Company. However, once the dispute is settled pursuant to provisions in the Alliance Agreement, the Policyholder Committee will certify the indemnification amounts payable to the Company.

In addition, the Commissioner will retain regulatory oversight over the investment and distribution of the assets held in the Escrow Fund to ensure that the interests of Eligible Policyholders are protected.

The Company expects that less than 25 percent of the interests in the Escrow Fund will be held by ''benefit plan investors'' within the meaning of the Department's Plan Asset Regulations, 29 CFR 2510.3–101(f), and, accordingly, the assets of the Escrow Fund should not constitute ''plan assets'' subject to the Act. If the Company determines that 25 percent threshold has been exceeded by Plan investors, it will inform the Department of this determination.

Company Health Plan Oversight

10. The Company has arranged for the retention of a committee, comprised of three management-level employees, to act as a fiduciary for the Company Health Plan in connection with the implementation of the Plan of Conversion. The Company Health Plan Committee will determine whether to vote for or against the implementation of the Plan of Conversion. The Company Health Plan Committee's vote on behalf of the Company Health Plan will represent one vote out of the approximately 171,403 votes which may be cast by Eligible Policyholders. The Company does not believe that the Company Health Plan Committee will exercise any investment discretion with respect to the type of consideration to be distributed in the demutualization, since the compensation will consist solely of Cash.

11. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Plan of Conversion will be implemented in accordance with procedural and substantive safeguards that are imposed under Kansas law and will be subject to review and supervision of the Commissioner.

(b) The Commissioner will review the terms and options that are provided to Eligible Policyholders, including Plans, as part of such Commissioner's review of the Plan of Conversion and the Commissioner will approve the Plan of Conversion following a determination that, among other things, the Plan of Conversion is fair and equitable to policyholders.

(c) The Plan of Conversion will provide the Company with access to new sources of capital that should help

[31] It is represented that the Escrow Fund was required due to the difficulty in estimating the potential costs related to the Contingent Litigation Matter and to assure Eligible Policyholders that the acquisition offers received by the Company did not reflect any discount to the value of the Company due to the Contingent Litigation Matter. Thus, the Escrow Fund is intended to facilitate the Anthem transaction without diminishing potential returns to policyholders.

[32] It is represented that no members of the Policyholder Committee will serve on the Company Health Plan Committee that is described in Representation 10.

sustain the Company's financial strength, increase its ability to conduct its business efficiently and improve the Company's competitive position in the insurance industry.

(d) With the exception of the Company Health Plan, one or more independent Plan fiduciaries will determine whether to vote for or against the implementation of the Plan of Conversion, following the receipt of full written disclosure from the Company.

(e) In the case of the Company Health Plan, the Company Health Plan Committee will determine whether to vote for or against the implementation of the Plan of Conversion, but it will not otherwise exercise investment discretion over the Company Health Plan's assets.

(f) Each Eligible Policyholder will have an opportunity to comment on the Plan of Conversion and will be solely responsible for any decisions that may permitted under the Plan of Conversion regarding the Cash consideration to be received in the demutualization.

(g) The proposed exemption will allow Eligible Policyholders that are Plans to receive Cash in exchange for their membership interests in the Company, which will be extinguished, and neither the Company nor any of its affiliates will exercise investment discretion or provide ''investment advice,'' within the meaning of 29 CFR 2510.3–21(c), with respect to such decisions.

(h) All Plans that are Eligible Policyholders will participate in the transactions and on the same basis as Eligible Policyholders that are not Plans.

(i) The demutualization will not, in any way, change premiums or reduce policy benefits, guarantees or other policy obligations of the Company to its policyholders and contractholders.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady of the Department, telephone (202) 693–8556. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 27th day of December, 2001.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 02–24 Filed 1–2–02; 8:45 am]

BILLING CODE 4510–29–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–237 and 50–249]**

## Exelon Generation Company, LLC; Notice of Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 191 to Facility Operating License No. DPR–19 and Amendment No. 185 to Facility Operating License No. DPR–25, issued to Exelon Generation Company, LLC (the licensee), which revised the Operating License (OL) and Technical Specifications (TS) for operation of the Dresden Nuclear Power Station, Units 2 and 3 (DNPS) located in Grundy County, Illinois. The amendment is effective as of the date of issuance.

The amendment modified the OL and TS to allow an increase of the authorized operating power level from 2527 megawatts thermal (MWt) to 2957 MWt at DNPS. The change represents an increase of approximately 17 percent above the current rated thermal power and is considered an extended power uprate.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing in connection with this action was published in the **Federal Register** on November 20, 2001 (66 FR 58183). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment (66 FR 65752).

Further details with respect to the action may be found in (1) The application for amendment dated December 27, 2000, as supplemented by letters dated February 12; April 6 and 13; May 3, 18, and 29; June 5, 7, and 15; July 6 and 23; August 7, 8, 9, 13 (two letters), 14 (two letters), 29, and 31 (two letters); September 5 (two letters), 14, 19, 25, 26, and 27 (two letters); October 17; November 2, 16, and 30; and December 10, 17 and 18, 2001, (2) Amendment Nos. 191 and 185 to License Nos. DPR–19 and DPR–25, respectively, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. 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.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 21st day of December, 2001.

For the Nuclear Regulatory Commission.

**Lawrence W. Rossbach,**

*Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 02–73 Filed 1–2–02; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–254 and 50–265]**

### Exelon Generation Company, LLC; Notice of Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 202 to Facility Operating License No. DPR–29 and Amendment No. 198 to Facility Operating License No. DPR–30, issued to Exelon Generation Company, LLC (the licensee), which revised the Operating License (OL) and Technical Specifications (TS) for operation of the Quad Cities Nuclear Power Station, Units 1 and 2 (QCNPS) located in Rock Island County, Illinois. The amendment is effective as of the date of issuance.

The amendment modified the OL and TS to allow an increase of the authorized operating power level from 2511 megawatts thermal (MWt) to 2957 MWt at QCNPS. The change represents an increase of approximately 17.8 percent above the current rated thermal power and is considered an extended power uprate.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing in connection with this action was published in the **Federal Register** on November 19, 2001 (66 FR 57990). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment (66 FR 65759).

Further details with respect to the action may be found in (1) the application for amendment dated December 27, 2000, as supplemented by letters dated February 12, March 20, April 6 and 13, May 3, 18, and 29, June 5, 7, and 15, July 6 and 23, August 7, 8, 9, 13 (two letters), 14 (two letters), 29, and 31 (two letters), September 5, 19, 25, and 27 (two letters), October 17, November 2 (two letters), 16, and 30, and December 10 and 17, 2001, (2) Amendment Nos. 202 and 198 to License Nos. DPR–29 and DPR–30, respectively, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. 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.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 21st day of December, 2001.

For the Nuclear Regulatory Commission.

**Stewart N. Bailey,**

*Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management Office of Nuclear Reactor Regulation.*

[FR Doc. 02–74 Filed 1–2–02; 8:45 am]

**BILLING CODE 7590–01–P**

## OFFICE OF MANAGEMENT AND BUDGET

### Public Availability of Year 2001 Agency Inventories Under the Federal Activities Inventory Reform Act of 1998 (Public Law 105–270) (''FAIR Act'')

**AGENCY:** Office of Management and Budget, Executive Office of the President.

**ACTION:** Notice of Public Availability of Agency Inventories of Activities That Are Not Inherently Governmental.

**SUMMARY:** Agency Inventories of Activities that are not Inherently Governmental are now available to the public from the agencies listed below, in accordance with the ''Federal Activities Inventory Reform Act of 1998'' (Public Law 105–270) (''FAIR Act''). This is the third release of the 2001 FAIR Act inventories. In addition, the Office of Federal Procurement Policy has prepared and has made available a summary FAIR Act User's Guide through its Internet site: *http://www.whitehouse.gov/OMB/procurement/index.html.* This User's Guide will help interested parties review 2001 FAIR Act inventories, and will also include the web-site addresses to access agency inventories.

The FAIR Act requires that OMB publish an announcement of public availability of agency Inventories of Activities that are not Inherently Governmental upon completion of OMB's review and consultation process concerning the content of the agencies' inventory submissions. OMB has now completed this process for the year 2001.

The attached Inventories of Activities that are not Inherently Governmental are now available.

**Mitchell E. Daniels, Jr.,**

*Director.*

Attachment.

ATTACHMENT

| Agency | Contact |
|---|---|
| Agriculture | Joseph Marshall, 202–720–8345 Website: www.usda.gov/ocfo. |
| Agriculture (OIG) | Delmas Thornsbury, 202–720–4474 Website: www.usda.gov/oig. |
| Commodity Futures Trading Commission | Emory Bevill, 202–418–5187 Website: www.cftc.gov/. |

ATTACHMENT—Continued

| Agency | Contact |
|---|---|
| Central Intelligence Agency | CIA Office of Public Affairs, 703–482–0623. No Website available. |
| Federal Financial Institutions Examinations Council Appraisal Subcommittee. | Marc Weinberg, 202–872–7520 Website: www.asc.gov. |
| General Services Administration | Tom Fitzpatrick, 202–501–0324 Website: www.cfo.gsa.gov. |
| Housing and Urban Development | Janice Blake-Green, 202–708–0638 Website: www.hud.gov/cfo/cforept.html. |
| Justice | Larry Silvis, 202–616–3754 Website: www.usdoj.gov. |
| Labor | Kathy Alejandro, 202–693–4026 Website: www.dol.gov. |
| National Capital Planning Commission | Connie Harshaw, 202–482–7200 Website: www.ncpc.gov. |
| National Labor Relations Board (OIG) | Emil George, 202–273–1960 Website: www.nlrb.gov/active.html. |
| Social Security Administration | Phil Kelly, 410–965–4656 Website: www.ssa.gov/budget. |
| Smithsonian Institution | Bruce Dauer, 202–357–2917 Website: www.si.edu. |
| Transportation | Bill Moga, 202–366–9666 Website: www.dot.gov. |
| Treasury | Kevin Whitfield, 202–622–0248 Website: www.treas.gov/fair. |
| U.S. Commission on Civil Rights | George Harbison, 202–376–8356 Website: www.usccr.gov. |
| Woodrow Wilson Center | Ronnie Dempsey, 202–691–4216 Website: www.wilsoncenter.org. |

[FR Doc. 02–43 Filed 1–2–02; 8:45 am]
BILLING CODE 3110–01–P

## OFFICE OF MANAGEMENT AND BUDGET

### Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies

**AGENCY:** Office of Management and Budget, Executive Office of the President.

**ACTION:** Final guidelines.

**SUMMARY:** These final guidelines implement section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106–554; H.R. 5658). Section 515 directs the Office of Management and Budget (OMB) to issue government-wide guidelines that ''provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies.'' By October 1, 2002, agencies must issue their own implementing guidelines that include ''administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency'' that does not comply with the OMB guidelines. These final guidelines also reflect the changes OMB made to the guidelines issued September 28, 2001, as a result of receiving additional comment on the ''capable of being substantially reproduced'' standard (paragraphs V.3.B, V.9, and V.10), which OMB previously issued on September 28, 2001, on an interim final basis.

**DATES:** *Effective Date:* January 3, 2002.

**FOR FURTHER INFORMATION CONTACT:** Brooke J. Dickson, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Telephone (202) 395–3785 or by e-mail to informationquality@omb.eop.gov.

**SUPPLEMENTARY INFORMATION:** In section 515(a) of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106–554; H.R. 5658), Congress directed the Office of Management (OMB) to issue, by September 30, 2001, government-wide guidelines that ''provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies * * *'' Section 515(b) goes on to state that the OMB guidelines shall:

''(1) apply to the sharing by Federal agencies of, and access to, information disseminated by Federal agencies; and

''(2) require that each Federal agency to which the guidelines apply—

''(A) issue guidelines ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by the agency, by not later than 1 year after the date of issuance of the guidelines under subsection (a);

''(B) establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the guidelines issued under subsection (a); and

''(C) report periodically to the Director—

''(i) the number and nature of complaints received by the agency regarding the accuracy of information disseminated by the agency and

''(ii) how such complaints were handled by the agency.''

Proposed guidelines were published in the **Federal Register** on June 28, 2001 (66 FR 34489). Final guidelines were published in the **Federal Register** on September 28, 2001 (66 FR 49718). The Supplementary Information to the final guidelines published in September 20001 provides background, the underlying principles OMB followed in issuing the final guidelines, and statements of intent concerning detailed provisions in the final guidelines.

In the final guidelilnes published in September 2001, OMB also requested additional comment on the ''capable of being substantially reproduced'' standard and the related definition of ''influential scientific or statistical information'' (paragraphs V.3.B, V.9, and V.10), which were issued on an interim final basis. The final guidelines published today discuss the public comments OMB received, the OMB response, and amendments to the final guidelines published in September 2001.

In developing agency-specific guidelines, agencies should refer both to the Supplementary Information to the final guidelines published in the **Federal Register** on September 28, 2001 (66 FR 49718), and also to the Supplementary Information published today. We stress that the three ''Underlying Principles'' that OMB followed in drafting the guidelines that we published on September 28, 2001 (66 FR 49719), are also applicable to the amended guidelines that we publish today.

In accordance with section 515, OMB has designed the guidelines to help agencies ensure and maximize the quality, utility, objectivity and integrity of the information that they disseminate (meaning to share with, or give access

to, the public). It is crucial that information Federal agencies disseminate meets these guidelines. In this respect, the fact that the Internet enables agencies to communicate information quickly and easily to a wide audience not only offers great benefits to society, but also increases the potential harm that can result from the dissemination of information that does not meet basic information quality guidelines. Recognizing the wide variety of information Federal agencies disseminate and the wide variety of dissemination practices that agencies have, OMB developed the guidelines with several principles in mind.

First, OMB designed the guidelines to apply to a wide variety of government information dissemination activities that may range in importance and scope. OMB also designed the guidelines to be generic enough to fit all media, be they printed, electronic, or in other form. OMB sought to avoid the problems that would be inherent in developing detailed, prescriptive, ''one-size-fits-all'' government-wide guidelines that would artificially require different types of dissemination activities to be treated in the same manner. Through this flexibility, each agency will be able to incorporate the requirements of these OMB guidelines into the agency's own information resource management and administrative practices.

Second, OMB designed the guidelines so that agencies will meet basic information quality standards. Given the administrative mechanisms required by section 515 as well as the standards set forth in the Paperwork Reduction Act, it is clear that agencies should not disseminate substantive information that does not meet a basic level of quality. We recognize that some government information may need to meet higher or more specific information quality standards than those that would apply to other types of government information. The more important the information, the higher the quality standards to which it should be held, for example, in those situations involving ''influential scientific, financial, or statistical information'' (a phrase defined in these guidelines). The guidelines recognize, however, that information quality comes at a cost. Accordingly, the agencies should weigh the costs (for example, including costs attributable to agency processing effort, respondent burden, maintenance of needed privacy, and assurances of suitable confidentiality) and the benefits of higher information quality in the development of information, and the level of quality to which the information disseminated will be held.

Third, OMB designed the guidelines so that agencies can apply them in a common-sense and workable manner. It is important that these guidelines do not impose unnecessary administrative burdens that would inhibit agencies from continuing to take advantage of the Internet and other technologies to disseminate information that can be of great benefit and value to the public. In this regard, OMB encourages agencies to incorporate the standards and procedures required these guidelines into their existing information resources management and administrative practices rather than create new and potentially duplicative or contradictory processes. The primary example of this is that the guidelines recognize that, in accordance with OMB Circular A–130, agencies already have in place well-established information quality standards and administrative mechanisms that allow persons to seek and obtain correction of information that is maintained and disseminated by the agency. Under the OMB guidelines, agencies need only ensure that their own guidelines are consistent with these OMB guidelines, and then ensure that their administrative are consistent with these OMB guidelines, and then ensure that their administrative mechanisms satisfy the standards and procedural requirements in the new agency guidelines. Similarly, agencies may rely on their implementation of the Federal Government's computer security laws (formerly, the Computer Security Act, and now the computer security provisions of the Paperwork Reduction Act) to establish appropriate security safeguards for ensuring the ''integrity'' of the information that the agencies disseminate.

In addition, in response to concerns expressed by some of the agencies, we want to emphasize that OMB recognizes that Federal agencies provide a wide variety of data and information. Accordingly, OMB understands that the guidelines discussed below cannot be implemented in the same way by each agency. In some cases, for example, the data disseminated by an agency are not collected by that agency; rather, the information the agency must provide in a timely manner is compiled from a variety of sources that are constantly updated and revised and may be confidential. In such cases, while agencies' implementation of the guidelines may differ, the essence of the guidelines will apply. That is, these agencies must make their methods transparent by providing documentation, ensure quality by reviewing the underlying methods used in developing the data and consulting (as appropriate) with experts and users, and keep users informed about corrections and revisions.

**Summary of OMB Guidelines**

These guidelines apply to Federal agencies subject to the Paperwork Reduction Act (44 U.S.C. chapter 35). Agencies are directed to develop information resources management procedures for reviewing and substantiating (by documentation or other means selected by the agency) the quality (including the objectivity, utility, and integrity) of information before it is disseminated. In addition, agencies are to establish administrative mechanisms allowing affected persons to seek and obtain, where appropriate, correction of information disseminated by the agency that does not comply with the OMB or agency guidelines. Consistent with the underlying principles described above, these guidelines stress the importance of having agencies apply these standards and develop their administrative mechanisms so they can be implemented in a common sense and workable manner. Moreover, agencies must apply these standards flexibly, and in a manner appropriate to the nature and timeliness of the information to be disseminated, and incorporate them into existing agency information resources management and administrative practices.

Section 515 denotes four substantive terms regarding information disseminated by Federal agencies: quality, utility, objectivity, and integrity. It is not always clear how each substantive term relates—or how the four terms in aggregate relate—to the widely divergent types of information that agencies disseminate. The guidelines provide definitions that attempt to establish a clear meaning so that both the agency and the public can readily judge whether a particular type of information to be disseminated does or does not meet these attributes.

In the guidelines, OMB defines ''quality'' as the encompassing term, of which ''utility,'' ''objectivity,'' and ''integrity'' are the constituents. ''Utility'' refers to the usefulness of the information to the intended users. ''Objectivity'' focuses on whether the disseminated information is being presented in an accurate, clear, complete, and unbiased manner, and as a matter of substance, is accurate, reliable, and unbiased. ''Integrity'' refers to security—the protection of information from unauthorized access or revision, to ensure that the information is not compromised

through corruption or falsification. OMB modeled the definitions of ''information,'' ''government information,'' ''information dissemination product,'' and ''dissemination'' on the longstanding definitions of those terms in OMB Circular A–130, but tailored them to fit into the context of these guidelines.

In addition, Section 515 imposes two reporting requirements on the agencies. The first report, to be promulgated no later than October 1, 2002, must provide the agency's information quality guidelines that describe administrative mechanisms allowing affected persons to seek and obtain, where appropriate, correction of disseminated information that does not comply with the OMB and agency guidelines. The second report is an annual fiscal report to OMB (to be first submitted on January 1, 2004) providing information (both quantitative and qualitative, where appropriate) on the number, nature, and resolution of complaints received by the agency regarding its perceived or confirmed failure to comply with these OMB and agency guidelines.

**Public Comments and OMB Response**

*Applicability of Guidelines.* Some comments raised concerns about the applicability of these guidelines, particularly in the context of scientific research conducted by Federally employed scientists or Federal grantees who publish and communicate their research findings in the same manner as their academic colleagues. OMB believes that information generated and disseminated in these contexts is not covered by these guidelines unless the agency represents the information as, or uses the information in support of, an official position of the agency.

As a general matter, these guidelines apply to ''information'' that is ''disseminated'' by agencies subject to the Paperwork Reduction Act (44 U.S.C. 3502(1)). See paragraphs II, V.5 and V.8. The definitions of ''information'' and ''dissemination'' establish the scope of the applicability of these guidelines. ''Information'' means ''any communication or representation of knowledge such as facts or data * * *'' This definition of information in paragraph V.5 does ''not include opinions, where the agency's presentation makes it clear that what is being offered is someone's opinion rather than fact or the agency's views.''

''Dissemination'' is defined to mean ''agency initiated or sponsored distribution of information to the public.'' As used in paragraph V.8, ''agency INITIATED * * * distribution of information to the public'' refers to information that the agency disseminates, e.g., a risk assessment prepared by the agency to inform the agency's formulation of possible regulatory or other action. In addition, if an agency, as an institution, disseminates information prepared by an outside party in a manner that reasonably suggests that the agency agrees with the information, this appearance of having the information represent agency views makes agency dissemination of the information subject to these guidelines. By contrast, an agency does not ''initiate'' the dissemination of information when a Federally employed scientist or Federal grantee or contractor publishes and communicates his or her research findings in the same manner as his or her academic colleagues, even if the Federal agency retains ownership or other intellectual property rights because the Federal government paid for the research. To avoid confusion regarding whether the agency agrees with the information (and is therefore disseminating it through the employee or grantee), the researcher should include an appropriate disclaimer in the publication or speech to the effect that the ''views are mine, and do not necessarily reflect the view'' of the agency.

Similarly, as used in paragraph V.8., ''agency * * * SPONSORED distribution of information to the public'' refers to situations where an agency has directed a third-party to disseminate information, or where the agency has the authority to review and approve the information before release. Therefore, for example, if an agency through a procurement contract or a grant provides for a person to conduct research, and then the agency directs the person to disseminate the results (or the agency reviews and approves the results before they may be disseminated), then the agency has ''sponsored'' the dissemination of this information. By contrast, if the agency simply provides funding to support research, and it the researcher (not the agency) who decides whether to disseminate the results and—if the results are to be released—who determines the content and presentation of the dissemination, then the agency has not ''sponsored'' the dissemination even though it has funded the research and even if the Federal agency retains ownership or other intellectual property rights because the Federal government paid for the research. To avoid confusion regarding whether the agency is sponsoring the dissemination, the researcher should include an appropriate disclaimer in the publication or speech to the effect that the ''views are mine, and do not necessarily reflect the view'' of the agency. On the other hand, subsequent agency dissemination of such information requires that the information adhere to the agency's information quality guidelines. In sum, these guidelines govern an agency's dissemination of information, but generally do not govern a third-party's dissemination of information (the exception being where the agency is essentially using the third-party to disseminate information on the agency's behalf). Agencies, particularly those that fund scientific research, are encouraged to clarify the applicability of these guidelines to the various types of information they and their employees and grantees disseminate.

Paragraph V.8 also states that the definition of ''dissemination'' does not include ''* * * distribution limited to correspondence with individuals or persons, press releases, archival records, public filings, subpoenas or adjudicative processes.'' The exemption from the definition of ''dissemination'' for ''adjudicative processes'' is intended to exclude, from the scope of these guidelines, the findings and determinations that an agency makes in the course of adjudications involving specific parties. There are well-established procedural safeguards and rights to address the quality of adjudicatory decisions and to provide persons with an opportunity to contest decisions. These guidelines do not impose any additional requirements on agencies during adjudicative proceedings and do not provide parties to such adjudicative proceedings any additional rights of challenge or appeal.

*The Presumption Favoring Peer-Reviewed Information.* As a general matter, in the scientific and research context, we regard technical information that has been subjected to formal, independent, external peer review as presumptively objective. As the guidelines state in paragraph V.3.b.i: ''If data and analytic results have been subjected to formal, independent, external peer review, the information may generally be presumed to be of acceptable objectivity.'' An example of a formal, independent, external peer review is the review process used by scientific journals.

Most comments approved of the prominent role that peer review plays in the OMB guidelines. Some comments contended that peer review was not accepted as a universal standard that incorporates an established, practiced, and sufficient level of objectively. Other

comments stated that the guidelines would be better clarified by making peer review one of several factors that an agency should consider in assessing the objectivity (and quality in general) of original research. In addition, several comments noted that peer review does not establish whether analytic results are capable of being substantially reproduced. In light of the comments, the final guidelines in new paragraph V.3.b.i qualify the presumption in favor of peer-reviewed information as follows: ''However, this presumption is rebuttable based on a persuasive showing by the petitioner in a particular instance.''

We believe that transparency is important for peer review, and these guidelines set minimum standards for the transparency of agency-sponsored peer review. As we state in new paragraph V.3.b.i: ''If data and analytic results have been subjected to formal, independent, external peer review, the information may generally be presumed to be of acceptable objectivity. However, this presumption is rebuttable based on a persuasive showing by the petitioner in particular instance. If agency-sponsored peer review is employed to help satisfy the objectively standard, the review process employed shall meet the general criteria for competent and credible peer review recommended by OMB–OIRA to the President's Management Council (9/20/01) (http://www.whitehouse.gov/omb/inforeg/oira_review-process.html), namely, 'that (a) peer reviewers be selected primarily on the basis of necessary technical expertise, (b) peer reviewers be expected to disclosed to agencies prior technical/policy positions they may have taken on the issues at hand, (c) peer reviewers be expected to disclose to agencies their sources of personal and institutional funding (private or public sector), and (d) peer reviews be conducted in an open and rigorous manner.' ''

The importance of these general criteria for competent and credible peer review has been supported by a number of expert bodies. For example. ''the work of fully competent peer-review panels can be undermined by allegations of conflict of interest and bias. Therefore, the best interests of the Board are served by effective policies and procedures regarding potential conflicts of interest, impartiality, and panel balance.'' (*EPA's Science Advisory Board Panels: Improved Policies and Procedures Needed to Ensure Independence and Balance,* GAO–01–536, General Accounting Office, Washington, DC, June 2001, page 19.) As another example, ''risk analyses should be peer-reviewed and accessible—both physically and intellectually—so that decision-makers at all levels will be able to respond critically to risk characterizations. The intensity of the peer reviews should be commensurate with the significance of the risk or its management implications.'' (*Setting Priorities, Getting Results: A New Direction for EPA,* Summary Report, National Academy of Public Administration, Washington, DC, April 1995, page 23.)

These criteria for peer reviewers are generally consistent with the practices now followed by the National Research Council of the National Academy of Sciences. In considering these criteria for peer reviewers, we note that there are many types of peer reviews and that agency guidelines concerning the use of peer review should tailor the rigor of peer review to the importance of the information involved. More generally, agencies should define their peer-review standards in appropriate ways, given the nature and importance of the information they disseminate.

*Is Journal Peer Review Always Sufficient?* Some comments argued that journal peer review should be adequate to demonstrate quality, even for influential information that can be expected to have major effects or public policy. OMB believes that this position overstates the effectiveness of journal peer review as a quality-control mechanism.

Although journal peer review is clearly valuable, there are cases where flawed science has been published in respected journals. For example, the NIH Office of Research Integrity recently reported the following case regarding environmental health research:

> ''Based on the report of an investigation conducted by [XX] University, dated July 16, 1999, and additional analysis conducted by ORI in its oversight review, the US Public Health Service found that Dr. [X] engaged in scientific misconduct. Dr. [X] committed scientific misconduct by intentionally falsifying the research results published in the journal SCIENCE and by providing falsified and fabricated materials to investigating officials at [XX] University in response to a request for original data to support the research results and conclusions report in the SCIENCE paper. In addition, PHS finds that there is no original data or other corroborating evidence to support the research results and conclusions reported in the SCIENCE paper as whole.'' (66 FR 52137, October 12, 2001).

Although such cases of falsification are presumably rare, there is a significance scholarly literature documenting quality problems with articles published in peer-reviewed research. ''In a [peer-reviewed] meta-analysis that surprised many—and some doubt—researchers found little evidence that peer review actually improves the quality of research papers.'' (*See, e.g., Science,* Vol. 293, page 2187 (September 21, 2001.)) In part for this reason, many agencies have already adopted peer review and science advisory practices that go beyond journal peer review. *See, e.g.,* Sheila Jasanoff, *The Fifth Branch: Science Advisers as Policy Makers,* Cambridge, MA, Harvard University Press, 1990; Mark R. Powell, *Science at EPA: Information in the Regulatory Process.* Resources for the Future, Washington, DC., 1999, pages 138–139; 151–153; *Implementation of the Environmental Protection Agency's Peer Review Program: An SAB Evaluation of Three Reviews,* EPA–SAB–RSAC–01–009, A Review of the Research Strategies Advisory Committee (RSAC) of the EPA Science Advisory Board (SAB), Washington, DC., September 26, 2001. For information likely to have an important public policy or private sector impact, OMB believes that additional quality checks beyond peer review are appropriate.

*Definition of ''Influential''.* OMB guidelines apply stricter quality standards to the dissemination of information that is considered ''influential.'' Comments noted that the breadth of the definition of ''influential'' in interim final paragraph V.9 requires much speculation on the part of agencies.

We believe that this criticism has merit and have therefore narrowed the definition. In this narrower definition, ''influential'', when used in the phrase ''influential scientific, financial, or statistical information'', is amended to mean that ''the agency can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important public policies or important private sector decisions.'' The intent of the new phrase ''clear and substantial'' is to reduce the need for speculation on the part of agencies. We added the present tense—''or does have''—to this narrower definition because on occasion, an information dissemination may occur simultaneously with a particular policy change. In response to a public comment, we added an explicit reference to ''financial'' information as consistent with our original intent.

Given the differences in the many Federal agencies covered by these guidelines, and the differences in the nature of the information they disseminate, we also believe it will be helpful if agencies elaborate on this definition of ''influential'' in the context of their missions and duties, with due consideration of the nature of the

information they disseminate. As we state in amended paragraph V.9, ''Each agency is authorized to define 'influential' in ways appropriate for it given the nature and multiplicity of issues for which the agency is responsible.''

*Reproducibility.* As we state in new paragraph V.3.b.ii: ''If an agency is responsible for disseminating influential scientific, financial, or statistical information, agency guidelines shall include a high degree of transparency about data and methods to facilitate the reproducibility of such information by qualified third parties.'' OMB believes that a reproducibility standard is practical and appropriate for information that is considered ''influential'', as defined in paragraph V.9—that ''will have or does have a clear and substantial impact on important public policies or important private sector decisions.'' The reproducibility standard applicable to influential scientific, financial, or statistical information is intended to ensure that information disseminated by agencies is sufficiently transparent in terms of data and methods of analysis that it would be feasible for a replication to be conducted. The fact that the use of original and supporting data and analytic results have been deemed ''defensible'' by peer-review procedures does not necessarily imply that the results are transparent and replicable.

*Reproducibility of Original and Supporting Data.* Several of the comments objected to the exclusion of original and supporting data from the reproducibility requirements. Comments instead suggested that OMB should apply the reproducibility standard to original data, and that OMB should provide flexibility to the agencies in determining what constitutes ''original and supporting'' data. OMB agrees and asks that agencies consider, in developing their own guidelines, which categories of original and supporting data should be subject to the reproducibility standard and which should not. To help in resolving this issue, we also ask agencies to consult directly with relevant scientific and technical communities on the feasibility of having the selected categories of original and supporting data subject to the reproducibility standard. Agencies are encouraged to address ethical, feasibility, and confidentiality issues with care. As we state in new paragraph V.3.b.ii.A, ''Agencies may identify, in consultation with the relevant scientific and technical communities, those particular types of data that can practicably be subjected to a reproducibility requirement, given ethical, feasibility, or confidentiality constraints.'' Further, as we state in our expanded definition of ''reproducibility'' in paragraph V.10, ''If agencies apply the reproducibility test to specific types of original or supporting data, the associated guidelines shall provide relevant definitions of reproducibility (*e.g.* standards for replication of laboratory data).'' OMB urges caution in the treatment of original and supporting data because it may often be impractical or even impermissible or unethical to apply the reproducibility standard to such data. For example, it may not be ethical to repeat a ''negative'' (ineffective) clinical (therapeutic) experiment and it may not be feasible to replicate the radiation exposures studied after the Chernobyl accident. When agencies submit their draft agency guidelines for OMB review, agencies should include a description of the extent to which the reproducibility standard is applicable and reflect consultations with relevant scientific and technical communities that were used in developing guidelines related to applicability of the reproducibility standard to original and supporting data.

It is also important to emphasize that the reproducibility standard does not apply to all original and supporting data disseminated by agencies. As we state in new paragraph V.3.b.ii.A, ''With regard to original and supporting data related [to influential scientific, financial, or statistical information], agency guidelines shall not require that all disseminated data be subjected to a reproducibility requirement.'' In addition, we encourage agencies to address how greater transparency can be achieved regarding original and supporting data. As we also state in new paragraph V.3.b.ii.A, ''It is understood that reproducibility of data is an indication of transparency about research design and methods and thus a replication exercise (*i.e.,* a new experiment, test, or sample) shall not be required prior to each dissemination.'' Agency guidelines need to achieve a high degree of transparency about data even when reproducibility is not required.

*Reproducibility of Analytic Results.* Many public comments were critical of the reproducibility standard and expressed concern that agencies would be required to reproduce each analytical result before it is disseminated. While several comments commended OMB for establishing an appropriate balance in the ''capable of being substantially reproduced'' standard, others considered this standard to be inherently subjective. There were also comments that suggested the standard would cause more burden for agencies.

It is no OMB's intent that each agency must reproduce each analytic result before it is disseminated. The purpose of the reproducibility standard is to cultivate a consistent agency commitment to transparency about how analytic results are generated: the specific data used, the various assumptions employed, the specific analytical methods applied, and the statistical procedures employed. If sufficient transparency is achieved on each of these matters, then an analytic result should meet the ''capable of being substantially reproduced'' standard.

While there is much variation in types of analytic results, OMB believes that reproducibility is a practical standard to apply to most types of analytic results. As we state in new paragraph V.3.b.ii.B, ''With regard to analytic results related [to influential scientific, financial, or statistical information], agency guidelines shall generally require sufficient transparency about data and methods that an independent reanalysis could be undertaken by a qualified member of the public. These transparency standards apply to agency analysis of data from a single study as well as to analyses that combine information from multiple studies.'' We elaborate upon this principle in our expanded definition of ''reproducibility'' in paragraph V.10: ''With respect to analytic results, 'capable of being substantially reproduced' means that independent analysis of the original or supporting data using identical methods would generate similar analytic results, subject to an acceptable degree of imprecision or error.''

Even in a situation where the original and supporting data are protected by confidentiality concerns, or the analytic computer models or other research methods may be kept confidential to protect intellectual property, it may still be feasible to have the analytic results subject to the reproducibility standard. For example, a qualified party, operating under the same confidentiality protections as the original analysts, may be asked to use the same data, computer model or statistical methods to replicate the analytic results reported in the original study. *See, e.g.,* ''Reanalysis of the Harvard Six Cities Study and the American Cancer Society Study of Particulate Air Pollution and Mortality,'' A Special Report of the Health Effects Institute's Particle Epidemiology Reanalysis Project, Cambridge, MA, 2000.

The primary benefit of public transparency is not necessarily that errors in analytic results will be detected, although error correction is clearly valuable. The more important benefit of transparency is that the public will be able to assess how much an agency's analytic result hinges on the specific analytic choices made by the agency. Concreteness about analytic choices allows, for example, the implications of alternative technical choices to be readily assessed. This type of sensitivity analysis is widely regarded as an essential feature of high-quality analysis, yet sensitivity analysis cannot be undertaken by outside parties unless a high degree of transparency is achieved. The OMB guidelines do not compel such sensitivity analysis as a necessary dimension of quality, but the transparency achieved by reproducibility will allow the public to undertake sensitivity studies of interest.

We acknowledge that confidentiality concerns will sometimes preclude public access as an approach to reproducibility. In response to public comment, we have clarified that such concerns do include interests in ''intellectual property.'' To ensure that the OMB guidelines have sufficient flexibility with regard to analytic transparency, OMB has, in new paragraph V.3.b.ii.B.i, provided agencies an alternative approach for classes or types of analytic results that cannot practically be subject to the reproducibility standard. ''[In those situations involving influential scientific, financial, or statistical information * * *] making the data and methods publicly available will assist in determining whether analytic results are reproducible. However, the objectivity standard does not override other compelling interests such as privacy, trade secrets, intellectual property, and other confidentiality protections. '' Specifically, in cases where reproducibility will not occur due to other compelling interests, we expect agencies (1) to perform robustness checks appropriate to the importance of the information involved, e.g., determining whether a specific statistic is sensitive to the choice of analytic method, and, accompanying the information disseminated, to document their efforts to assure the needed robustness in information quality, and (2) address in their guidelines the degree to which they anticipate the opportunity for reproducibility to be limited by the confidentiality of underlying data. As we state in new paragraph V.3.b.ii.B.ii, ''In situations where public access to date and methods will not occur due to other compelling interests, agencies shall apply especially rigorous robustness checks to analytic results and document what checks were undertaken. Agency guidelines shall, however, in all cases, require a disclosure of the specific data sources that have been used and the specific quantitative methods and assumptions that have been employed.''

Given the differences in the many Federal agencies covered by these guidelines, and the differences in robustness checks and the level of detail for documentation thereof that might be appropriate for different agencies, we also believe it will helpful if agencies elaborate on these matters in the context of their missions and duties, with due consideration of the nature of the information they disseminate. As we state in new paragraph V.3.b.ii.B.ii, ''Each agency is authorized to define the type of robustness checks, and the level of detail for documentation thereof, in ways appropriate for it given the nature and multiplicity of issues for which the agency is responsible.''

We leave the determination of the appropriate degree of rigor to the discretion of agencies and the relevant scientific and technical communities that work with the agencies. We do, however, establish a general standard for the appropriate degree of rigor in our expanded definition of ''reproducibility'' in paragraph V.10: '' 'Reproducibility' means that the information is capable of being substantially reproduced, subject to an acceptable degree of imprecision. For information judged to have more (less) important impacts, the degree of imprecision that is tolerated is reduced (increased).'' OMB will review each agency's treatment of this issue when reviewing the agency guidelines as a whole.

Commercial also expressed concerns regarding interim final paragraph V.3.B.iii, ''making the data and models publicly available will assist in determining whether analytic results are capable of being substantially reproduced,'' and whether it could be interpreted to constitute public dissemination of these materials, rendering moot the reproducibility test. (For the equivalent provision, see new paragraph V.3.b.ii.B.i.) The OMB guidelines do not require agencies to reproduce each disseminated analytic result by independent reanalysis. Thus, public dissemination of data and models per se does not mean that the analytic result has been reproduced. It means only that the result should be CAPABLE of being reproduced. The transparency associated with this capability of reproduction is what the OMB guidelines are designed to achieve.

We also want to build on a general observation that we made in our final guidelines published in September 2001. In those guidelines we stated: ''... in those situations involving influential scientific[, financial,] or statistical information, the substantial reproducibility standard is added as a quality standard above and beyond some peer review quality standards'' (66 FR 49722 (September 28, 2001)). A hypothetical example may serve to illustrate this point. Assume that two Federal agencies initiated or sponsored the dissemination of five scientific studies after October 1, 2002 (see paragraph III.4) that were, before dissemination, subjected to formal, independent, external peer review, i.e., that met the presumptive standard for ''objectivity'' under paragraph V.3.b.i. Further assume, at the time of dissemination, that neither agency reasonably expected that the dissemination of any of these studies would have ''a clear and substantial impact'' on important public policies, *i.e.,* that these studies were not considered ''influential'' under paragraph V.9, and thus not subject to the reproducibility standards in paragraphs V.3.b.ii.A or B. Then assume, two years later, in 2005, that one of the agencies decides to issue an important and far-reaching regulation based clearly and substantially on the agency's evaluation of the analytic results set forth in these five studies and that such agency reliance on these five studies as published in the agency's notice of proposed rulemaking would constitute dissemination of these five studies. These guidelines would require the rulemaking agency, prior to publishing the notice of proposed rulemaking, to evaluate these five studies to determine if the analytic results stated therein would meet the ''capable of being substantially reproduced'' standards in paragraph V.3.b.ii.B and, if necessary, related standards governing original and supporting data in paragraph V.3.b.ii.A. If the agency were to decide that any of the five studies would not meet the reproducibility standard, the agency may still rely on them but only if they satisfy the transparency standard and—as applicable—the disclosure of robustness checks required by these guidelines. Otherwise, the agency should not disseminate any of the studies that did not meet the applicable standards in the guidelines at the time

it publishes the notice of proposed rulemaking.

Some comments suggested that OMB consider replacing the reproducibility standard with a standard concerning ''confirmation'' of results for influential scientific and statistical information. Although we encourage agencies to consider ''confirmation'' as a relevant standard—at least in some cases—for assessing the objectivity of original and supporting data, we believe that ''confirmation'' is too stringent a standard to apply to analytic results. Often the regulatory impact analysis prepared by an agency for a major rule, for example, will be the only formal analysis of an important subject. It would be unlikely that the results of the regulatory impact analysis had already been confirmed by other analyses. The ''capable of being substantially reproduced'' standard is less stringent than a ''confirmation'' standard because it simply requires that an agency's analysis be sufficiently transparent that another qualified party could replicate it through reanalysis.

*Health, Safety, and Environmental Information.* We note, in the scientific context, that in 1996 the Congress, for health decisions under the Safe Drinking Water Act, adopted a basic standard of quality for the use of science in agency decisionmaking. Under 42 U.S.C. 300g–1(b)(3)(A), an agency is directed, ''to the degree that an Agency action is based on science,'' to use ''(i) the best available, peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices; and (ii) data collected by accepted methods or best available methods (if the reliability of the method and the nature of the decision justifies use of the data).''

We further note that in the 1996 amendments to the Safe Drinking Water Act, Congress adopted a basic quality standard for the dissemination of public information about risks of adverse health effects. Under 42 U.S.C. 300g–1(b)(3)(B), the agency is directed, ''to ensure that the presentation of information [risk] effects is comprehensive, informative, and understandable.'' The agency is further directed, ''in a document made available to the public in support of a regulation [to] specify, to the extent practicable—(i) each population addressed by any estimate [of applicable risk effects]; (ii) the expected risk or central estimate of risk for the specific populations [affected]; (iii) each appropriate upper-bound or lower-bound estimate of risk; (iv) each significant uncertainty identified in the process of the assessment of [risk] effects and the studies that would assist in resolving the uncertainty; and (v) peer-reviewed studies known to the [agency] that support, are directly relevant to, or fail to support any estimate of [risk] effects and the methodology used to reconcile inconsistencies in the scientific data.''

As suggested in several comments, we have included these congressional standards directly in new paragraph V.3.b.ii.C, and made them applicable to the information disseminated by all the agencies subject to these guidelines: ''With regard to analysis of risks to human health, safety and the environment maintained or disseminated by the agencies, agencies shall either adopt or adapt the quality principles applied by Congress to risk information used and disseminated pursuant to the Safe Drinking Water Act Amendments of 1996 (42 U.S.C. 300g–1(b)(3)(A) & (B)).'' The word ''adapt'' is intended to provide agencies flexibility in applying these principles to various types of risk assessment.

Comments also argued that the continued flow of vital information from agencies responsible for disseminating health and medical information to medical providers, patients, and the public may be disrupted due to these peer review and reproducibility standards. OMB responded by adding to new paragraph V.3.ii.C: ''Agencies responsible for dissemination of vital health and medical information shall interpret the reproducibility and peer-review standards in a manner appropriate to assuring the timely flow of vital information from agencies to medical providers, patients, health agencies, and the public. Information quality standards may be waived temporarily by agencies under urgent situations (*e.g.,* imminent threats to public health or homeland security) in accordance with the latitude specified in agency-specific guidelines.''

*Administrative Correction Mechanisms.* In addition to commenting on the substantive standards in these guidelines, many of the comments noted that the OMB guidelines on the administrative correction of information do not specify a time period in which the agency investigation and response must be made. OMB has added the following new paragraph III.3.i to direct agencies to specify appropriate time periods in which the investigation and response need to be made. ''Agencies shall specify appropriate time periods for agency decisions on whether and how to correct the information, and agencies shall notify the affected persons of the corrections made.''

Several comments stated that the OMB guidelines needed to direct agencies to consider incorporating an administrative appeal process into their administrative mechanisms for the correction of information. OMB agreed, and added the following new paragraph III.3.ii: ''If the person who requested the correction does not agree with the agency's decision (including the corrective action, if any), the person may file for reconsideration within the agency. The agency shall establish an administrative appeal process to review the agency's initial decision, and specify appropriate time limits in which to resolve such requests for reconsideration.'' Recognizing that many agencies already have a process in place to respond to public concerns, it is not necessarily OMB's intent to require these agencies to establish a new or different process. Rather, our intent is to ensure that agency guidelines specify an objective administrative appeal process that, upon further complaint by the affected person, reviews an agency's decision to disagree with the correction request. An objective process will ensure that the office that originally disseminates the information does not have responsibility for both the initial response and resolution of a disagreement. In addition, the agency guidelines should specify that if the agency believes other agencies may have an interest in the resolution of any administrative appeal, the agency should consult with those other agencies about their possible interest.

Overall, OMB does not envision administrative mechanisms that would burden agencies with frivolous claims. Instead, the correction process should serve to address the genuine and valid needs of the agency and its constituents without disrupting agency processes. Agencies, in making their determination of whether or not to correct information, may reject claims made in bad faith or without justification, and are required to undertake only the degree of correction that they conclude is appropriate for the nature and timeliness of the information involved, and explain such practices in their annual fiscal year reports to OMB.

OMS's issuance of these final guidelines is the beginning of an evolutionary process that will include draft agency guidelines, public comment, final agency guidelines, development of experience with OMB and agency guidelines, and continued refinement of both OMB and agency guidelines. Just as OMB requested public comment before issuing these final guidelines, OMB will refine these guidelines as experience develops and further public comment is obtained.

Dated: December 21, 2001.

**John D. Graham,**

*Administrator, Office of Information and Regulatory Affairs.*

**Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies**

*I. OMB Responsibilities*

Section 515 of the Treasury and General Government Appropriations Act for FY2001 (Public Law 106–554) directs the Office of Management and Budget to issue government-wide guidelines that provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information, including statistical information, disseminated by Federal agencies.

*II. Agency Responsibilities*

Section 515 directs agencies subject to the Paperwork Reduction Act (44 U.S.C. 3502(1)) to—

1. Issue their own information quality guidelines ensuring and maximizing the quality, objectivity, utility, and integrity of information, including statistical information, disseminated by the agency no later than one year after the date of issuance of the OMB guidelines;

2. Establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with these OMB guidelines; and

3. Report to the Director of OMB the number and nature of complaints received by the agency regarding agency compliance with these OMB guidelines concerning the quality, objectivity, utility, and integrity of information and how such complaints were resolved.

*III. Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies*

1. Overall, agencies shall adopt a basic standard of quality (including objectivity, utility, and integrity) as a performance goal and should take appropriate steps to incorporate information quality criteria into agency information dissemination practices. Quality is to be ensured and established at levels appropriate to the nature and timeliness of the information to be disseminated. Agencies shall adopt specific standards of quality that are appropriate for the various categories of information they disseminate.

2. As a matter of good and effective agency information resources management, agencies shall develop a process for reviewing the quality (including the objectivity, utility, and integrity) of information before it is disseminated. Agencies shall treat information quality as integral to every step of an agency's development of information, including creation, collection, maintenance, and dissemination. This process shall enable the agency to substantiate the quality of the information it has disseminated through documentation or other means appropriate to the information.

3. To facilitate public review, agencies shall establish administrative mechanisms allowing affected persons to seek and obtain, where appropriate, timely correction of information maintained and disseminated by the agency that does not comply with OMB or agency guidelines. These administrative mechanisms shall be flexible, appropriate to the nature and timeliness of the disseminated information, and incorporated into agency information resources management and administrative practices.

i. Agencies shall specify appropriate time periods for agency decisions on whether and how to correct the information, and agencies shall notify the affected persons of the corrections made.

ii. If the person who requested the correction does not agree with the agency's decision (including the corrective action, if any), the person may filed for reconsideration within the agency. The agency shall establish an administrative appeal process to review the agency's initial decision, and specify appropriate time limits in which to resolve such requests for reconsideration.

4. The Agency's pre-dissemination review, under paragraph III.2, shall apply to information that the agency first disseminates on or after October 1, 2002. The agency's administrative's mechanisms, under paragraph III.3., shall apply to information that the agency disseminates on or after October 1, 2001, regardless of when the agency first disseminated the information.

*IV. Agency Reporting Requirements*

1. Agencies must designate the Chief Information Officer or another official to be responsible for agency compliance with these guidelines.

2. The agency shall respond to complaints in a manner appropriate to the nature and extent of the complaint. Examples of appropriate responses include personal contacts via letter or telephone, form letters, press releases or mass mailings that correct a widely disseminated error or address or frequently raised complaint.

3. Each agency must prepare a draft report, no later than April 1, 2002, providing the agency's information quality guidelines and explaining how such guidelines will ensure and maximize the quality, objectivity, utility, and integrity of information, including statistical information, disseminated by the agency. This report must also detail the administrative mechanisms developed by that agency to allow affected persons to seek and obtain appropriate correction of information maintained and disseminated by the agency that does not comply with the OMB or the agency guidelines.

4. The agency must publish a notice of availability of this draft report in the **Federal Register**, and post this report on the agency's website, to provide an opportunity for public comment.

5. Upon consideration of public comment and after appropriate revision, the agency must submit this draft report to the OMB for review regarding consistency with these OMB guidelines no later than July 1, 2001. Upon completion of that OMB review and completion of this report, agencies must publish notice of the availability of this report in its final form in the **Federal Register**, and post this report on the agency's web site no later than October 1, 2002.

6. On an annual fiscal-year basis, each agency must submit a report to the Director of OMB providing information (both quantitative and qualitative, where appropriate) on the number and nature of complaints received by the agency regarding agency compliance with these OMB guidelines and how such complaints were resolved. Agencies must submit these reports no later than January 1 of each following year, with the first report due January 1, 2004.

*V. Definitions*

1. ''Quality'' is an encompassing term comprising utility, objectivity, and integrity. Therefore, the guidelines sometimes refer to these four statutory terms, collectively, as ''quality.''

2. ''Utility'' refers to the usefulness of the information to its intended users, including the public. In assessing the usefulness of information that the agency disseminates to the public, the agency needs to reconsider the uses of the information not only from perspective of the agency but also from the perspective of the public. As a result, when transparency of information is relevant for assessing the information's usefulness from the

public's perspective, the agency must take care to ensure that transparency has been addressed in its review of the information.

3. ''Objectivity'' involves two distinct elements, presentations and substance.

a. ''Objectivity'' includes whether disseminated information is being presented in an accurate, clear, complete, and unbiased manner. This involves whether the information is presented within a proper context. Sometimes, in disseminating certain types of information to the public, other information must also be disseminated in order to ensure an accurate, clear, complete, and unbiased presentation. Also, the agency needs to identify the sources of the disseminated information (to the extent possible, consistent with confidentiality protections) and, in a specific, financial, or statistical context, the supporting data and models, so that the public can assess for itself whether there may be some reason to question the objectivity of the sources. Where appropriate, data should have full, accurate, transparent documentation, and error sources affecting data quality should be identified and disclosed to users.

b. In addition, ''objectivity'' involves a focus on ensuring accurate, reliable, and unbiased information. In a scientific, financial, or statistical context, the original and supporting data shall be generated, and the analytic results shall be developed, using sound statistical and research methods.

i. If data and analytic results have been subjected to formal, independent, external peer review, the information may generally be presumed to be of acceptable objectivity. However, this presumption is rebuttable based on a persuasive showing by the petitioner in a particular instance. If agency-sponsored peer review is employed to help satisfy the objectivity standard, the review process employed shall meet the general criteria for competent and credible peer review recommended by OMB–OIRA to the President's Management Council (9/20/01) (http://www.whitehouse.gov/omb/inforeg/oira_review-process.html), namely, ''that (a) peer reviewers be selected primarily on the basis of necessary technical expertise, (b) peer reviewers be expected to disclose to agencies prior technical/policy positions they may have taken on the issues at hand, (c) peer reviewers be expected to disclose to agencies their sources of personal and institutional funding (private or public sector), and (d) peer reviews be conducted in an open and vigorous manner.''

ii. If an agency is response for disseminating influential scientific, financial, or statistical information, agency guidelines shall include a high degree of transparency about data and methods to facilitate the reproducibility of such information by qualified third parties.

A. With regard to original and supporting data related thereto, agency guidelines shall not require that all disseminated data be subjected to a reproducibility requirement. Agencies may identify, in consultation with the relevant scientific and technical communities, those particular types of data that can practicable be subjected to a reproducibility requirement, given ethical, feasibility, or confidentiality constraints. It is understood that reproducibility of data is an indication of transparency about research design and methods and thus a replication exercise (i.e., a new experiment, test, or sample) shall not be required prior to each dissemination.

B. With regard to analytic results related thereto, agency guidelines shall generally require sufficient transparency about data and methods that an independent reanalysis could be undertaken by a qualified member of the public. These transparency standards apply to agency analysis of data from a single study as well as to analyses that combine information from multiple studies.

*i.* Making the data and methods publicly available will assist in determining whether analytic results are reproducible. However, the objectivity standard does not override other compelling interests such as privacy, trade secrets, intellectual property, and other confidentiality protections.

*ii.* In situations where public access to data and methods will not occur due to other compelling interests, agencies shall apply especially rigorous robustness checks to analytic results and document what checks were undertaken. Agency guidelines shall, however, in all cases, require a disclosure of the specific data sources that have been used and the specific quantitative methods and assumptions that have been employed. Each agency is authorized to define the type of robustness checks, and the level of detail for documentation thereof, in ways appropriate for it given the nature and multiplicity of issues for such the agency is responsible.

C. With regard to analysis of risks to human health, safety and the environment maintained or disseminated by the agencies, agencies shall either adopt or adapt the equality principles applied by Congress to risk information used and disseminated pursuant to the Safe Drinking Water Act Amendments of 1996 (42 U.S.C. 300g–1(b)(3)(A) & (B)). Agencies responsible for dissemination of vital health and medical information shall interpret the reproducibility and peer-review standards in a manner appropriate to assuring the timely flow of vital information from agencies to medical providers, patients, health agencies, and the public. Information quality standards may be waived temporarily by agencies under urgent situations (*e.g.,* imminent threats to public health or homeland security) in accordance with the latitude specified in agency-specific guidelines.

4. ''Integrity'' refers to the security of information—protection of the information from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification.

5. ''Information'' means any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms. This definition includes information that an agency disseminates from a web page, but does not include the provision of hyperlinks to information that others disseminate. This definition does not include opinions, where the agency's presentation makes it clear that what is being offered is someone's opinion rather than fact or the agency's views.

6. ''Government information'' means information created, collected, processed, disseminated, or disposed of by or for the Federal Government.

7. ''Information dissemination product'' means any books, paper, map, machine-readable material, audiovisual production, or other documentary material, regardless of physical form or characteristic, an agency disseminates to the public. This definition includes any electronic document, CD–ROM, or web page.

8. ''Dissemination'' means agency initiated or sponsored distribution of information to the public (see 5 CFR 1320.3(d) (definition of ''Conduct or Sponsor'')). Dissemination does not include distribution limited to government employees or agency contractors or grantees; intra- or inter-agency use or sharing of government information; and responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or other similar law. This definition also does not include distribution limited to correspondence with individuals or persons, press releases, archival records,

public filings, subpoenas or adjudicative processes.

9. ''Influential'', when used in the phrase ''influential scientific, financial, or statistical information'', means that the agency can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important public policies or important private sector decisions. Each agency is authorized to define ''influential'' in ways appropriate for it given the nature and multiplicity of issues for which the agency is responsible.

10. ''Reproducibility'' means that the information is capable of being substantially reproduced, subject to an acceptable degree of imprecision. For information judged to have more (less) important impacts, the degree of imprecision that is tolerate is reduced (increased). If agencies apply the reproducibility test to specific types of original or supporting data, the associated guidelines shall provide relevant definitions of reproducibility (*e.g.,* standards for replication of laboratory data). With respect to analytic results, ''capable of being substantially reproduced'' means that independent analysis of the original or supporting data using identical methods would generate similar analytic results, subject to an acceptable degree of imprecision or error.

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No 34–45191; File No. SR–CBOE–2001–59]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated Relating to the Amendment of CBOE Disciplinary Rules 17.9 and 17.10 and the Addition of CBOE Disciplinary Rule 17.15

December 26, 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 December 6, 2001, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the CBOE. The CBOE filed Amendment No. 1 on December 17, 2001.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend several provisions of its disciplinary rules and add a new disciplinary rule.

Below is the text of the proposed rule change, as amended. Proposed new language is *italicized* and proposed deletions are in brackets.

* * * * *

**Chicago Board Options Exchange, Incorporated Rules**

*Chapter XVII—Discipline*

Rule 17.9. Decision

Following a hearing conducted pursuant to Rule 17.6 of this Chapter, the Panel shall issue a decision in writing, based solely on the record, determining whether the Respondent has committed a violation and imposing the sanction, if any, therefor. Where the Panel is not composed of at least a majority of the members of the Business Conduct Committee, its determination shall be automatically reviewed by a majority of the Committee, which may affirm, reverse or modify in whole or in part or may remand the matter for additional findings or supplemental proceedings. Such modification may include an increase or decrease of the sanction. The decision shall include a statement of findings and conclusions, with the reasons therefor, upon all material issues presented on the record. Where a sanction is imposed, the decision shall include a statement specifying the acts or practices in which the Respondent has been found to have engaged and setting forth the specific provision of the Securities Exchange Act of 1934, as amended, rules and regulations promulgated thereunder, constitutional provisions, by-laws, rules, interpretations or resolutions of the Exchange of which the acts are deemed to be in violation. The Respondents *and the Office of Enforcement* shall be promptly sent a copy of the decision. After Board review pursuant to Rule 17.10, or the time for such review has expired, the decision will be considered final, and the Exchange shall publish a summary of the decision in the Exchange Bulletin.

Rule 17.10. Review

(a)(1) Petition. *Both t[T]he Respondent and the Office of Enforcement* shall have 15 days after service of notice of *any*[a] decision made pursant to Rule 17.9 of this Chapter to petition for review of the decision by filing a copy of the petition with the Secretary of the Exchange (''Secretary'') and *with all other parties to the hearing* [the Exchange's Office of Enforcement]. Such petition shall be in writing and shall specify the findings and conclusions to which exceptions are taken together with reasons for such exceptions. Any objections to a decision not specified by written exception shall be considered to have been abandoned.

(2) Written Submissions. Within 15 days after a [Respondent's]petition for review has been filed with the Secretary of the Exchange pursuant to paragraph (a)(1) of this Rule, *the other parties to the hearing*[Exchange staff] may *each* submit to the Secretary a written response to the petition. A copy of the response must be served upon the *petitioner*[Respondent]. *The petitioner*[A Respondent] has 15 days from the service of the response to file a reply with the Secretary and the *other parties* [Office of Enforcement].

(b) Conduct of Review. The review shall be conducted by the Board or a committee of the Board composed of at least three Directors whose decision must be ratified by the Board. Any Director who participated in a matter before the Business Conduct or other Committee may not participate in any review of that matter by the Board. Unless the Board shall decide to open the record for the introduction of evidence or to hear argument, such review shall be based solely upon the record and the written exceptions filed by the parties. New issues may be raised by the Board; *the parties to the hearing*[Respondents] shall be given notice of and any opportunity to address any such new issues. The Board may affirm, reverse or modify, in whole or in part, the decision of the Business Conduct Committee. Such modification may include an increase or decrease of the sanction. The decision of the Board shall be in writing, shall be promptly served on the Respondent *and the Office of Enforcement,* and shall be final.

(c) Review on Motion of Board. The Board may on its own initiative order review of a decision made pursuant to Rule 17.7 or 17.9 of this Chapter within 30 days after notice of the decision has

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Christopher R. Hill, Attorney II, Office of Enforcement, Legal Division, CBOE, to Sapna Patel, Attorney, Division of Market Regulation, Commission, dated December 13, 2001 (''Amendment No. 1''). In Amendment No. 1, the CBOE made some technical corrections to the proposed rule text.

been served on the Respondent *and the Office of Enforcement.* Such review shall be conducted in accordance with the procedure set forth in paragraph (b) of this Rule.

(d) No change.

*Rule 17.15. Ex Parte Communications*

*Members and persons associated with members shall not make or knowingly cause to be made an ex parte communications with any member of the Board with the intent to influence the outcome of any pending investigation or disciplinary proceeding. Members of the Board shall not make a knowingly cause to be made an ex parte communication with any members or persons associated with members with the intent to influence the outcome of any pending investigation or disciplinary proceeding. No violation of this Rule shall be deemed to occur if the ex parte communication deals solely with procedural matters rather than the merits of the investigation or proceeding.*

*Interpretations and Policies:*

*.01 ''Ex parte communication'' means an oral or written communication made without notice to all parties, that is, regulatory staff and Subjects of investigations or Respondents in proceedings. A written communication is ex parte unless a copy has been previously or simultaneously delivered to all interested parties. An oral communication is ex parte unless it is made in the presence of all interested parties except those who, on adequate prior notice, declined to be present.*

* * * * *

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE 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

a. *Ex Parte Communications With Board of Director (''Board'') Members Prohibited*

Currently, Exchange Rule 17.4(d) prohibits members or persons associated with members from making or causing ex parte communications with any member of the Business Conduct Committee (''BBC'') concerning the merits of any matter pending under the disciplinary rules of the Exchange. This prohibition is to eliminate the potential that such communications might somehow influence the outcome of an investigation or enforcement matter. The Exchange believes that Exchange disciplinary rules should also forbid ex parte communications with members of the Exchange Board. Such communications are already prohibited by other self-regulatory organizations.[4] Therefore, the exchange proposes to add a new Exchange Rule 17.15, ''Ex Parte Communications,'' which would prohibit ex parte communications with members of the Board that are made with the intent to influence the outcome of any pending investigation or disciplinary proceeding. The Exchange represents that proposed Exchange Rule 17.15 would expressly create a safe harbor for communication dealing solely with procedural matters rather than the merits of the investigation or proceeding. The text of the current Interpretation and Policy .01 to Exchange Rule 17.4(d) defining ''Ex Parte Communications'' will be duplicated as Interpretation and Policy .01 of proposed Exchange Rule 17.15.

b. *Exchange Right to Appeal*

Exchange Rule 17.10(a) permits a Respondent in a disciplinary matter to appeal a decision of the BCC to the Board, but does not grant the Exchange's Office of Enforcement (''OOE'') a similar right of appeal. Again, the Exchange believes that its OOE should have such a right, both to appeal factual findings that the OOE thinks may have been in error, as well as to appeal disciplinary sanctions that the OOE deems insufficient. Such appeals are already authorized at other exchanges.[5] Therefore, the Exchange proposes to amend Exchange Rules 17.9 and 17.10 to give the OOE and the Respondent equivalent rights in the appellate process.

2. Statutory Basis

The Exchange believes that the proposed rule change described above is consistent with the provisions of section 6(b)[6] of the Act, in general, and specifically furthers the objectives of sections 6(b)(1),[7] 6(b)(6),[8] and 6(b)(7)[9] of the Act, in particular, in that it will enhance the ability of the Exchange to enforce compliance by its members and persons associated with its members with provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. It will help ensure that members and persons associated with members are appropriately disciplined when they violate those provisions.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, in 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

[4] *See* American Stock Exchange LLC Exchange Disciplinary Proceedings Rule 11(a); National Association of Securities Dealers, Inc. (''NASD'') Rule 9143(a); and Pacific Exchange, Inc. Rule 10.3(a).

[5] *See* New York Stock Exchange, Inc. Rule 476(f); NASD Rule 9311; and Securities Exchange Act Release No. 43554 (November 14, 2001), 65 FR 69975 (November 21, 2001) (File No. SR–Amex–00–22).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(1).

[8] 15 U.S.C. 78f(b)(6).

[9] 15 U.S.C. 78f(b)(7).

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 CBOE. All submissions should refer to File No. SR–CBOE–2001–59 and should be submitted by January 24, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–76 Filed 1–2–02; 8:45 am]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45193; File No. SR–Phlx–2001–118)**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Implementation of a Fee with Respect to Certain Individuals Who Work on the Exchange's Trading Floor

December 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 December 19, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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

The Exchange proposes to amend its schedule of dues, fees, and charges to adopt a fee of $25 per month to be imposed on member/participant organizations for individuals employed by such member/participant organizations who work on the Exchange's trading floor, but who are not registered as Exchange members or foreign currency options (''FCO'') participants.[3] The Exchange intends to charge member/participant organizations a $25 fee per month for such individuals registered as of the first trading day of the month. The Exchange states that it intends to implement this fee beginning on January 1, 2002.[4]

The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(1) Purpose

The Exchange states that the purpose of the proposed rule change is to impose a fee on Exchange member/participant organizations for their employees who are registered to be on the Exchange's trading floor, but are not registered as members or FCO participants. The Exchange states that this fee is intended to help it offset the costs it incurs in registering these individuals.[5]

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(4),[7] in particular, in that it is an equitable allocation of reasonable fees among the Exchange's members because the member/participant organizations who pay the additional, minimal amount for registering their employees incur the benefit of having these employees on the Exchange's trading floor.

*B Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to Section 19(b)(A)(ii) of the Act[8] and Rule 19b–4(f)(2) hereunder.[9] 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 purpose of the Act. The Exchange has stated that it intends to implement this fee beginning on January 1, 2002.

### 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

[10] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] According to the Exchange, individuals registered to be on the Exchange's trading floor, but who are not registered as members or FCO participants, include trading floor personnel such as clerks, interns, stock execution clerks, and other associated persons of member/participant organizations. These individuals are required to be registered with the Exchange Pursuant to Exchange Rule 620(b).

[4] The Exchange states that this fee will be eligible for the monthly credit of up to $1,000 to be applied against certain fees, dues and charges and other amounts owed to the Exchange by certain members. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR–Phlx–2001–49).

[5] According to the Exchange, individuals who are registered as inactive nominees pursuant to Exchange By-Law Article XII, Section 12–10 and Exchange Rule 21 will not be subject to the proposed fee.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

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 Section. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–2001–118 and should be submitted by January 24, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–75 Filed 1–2–02; 8:45 am]

**BILLING CODE 8010–01–M**

## SOCIAL SECURITY ADMINISTRATION

### Rate for Attorney Fee Assessment Beginning in 2002

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Notice.

**SUMMARY:** The Social Security Administration is announcing that the attorney-fee assessment rate under section 206(d) of the Social Security Act, 42 U.S.C. 406(d), is 6.3 percent for 2002.

**FOR FURTHER INFORMATION CONTACT:** John B. Watson, Social Security Administration, Office of the General Counsel, Phone: (410) 965–3137, email: *John.Watson@ssa.qov.*

**SUPPLEMENTARY INFORMATION:** Section 406 of Public Law No. 106–170, the Ticket to Work and Work Incentives Improvement Act of 1999, established an assessment for the services required to determine and certify payments to attorneys from the benefits due claimants under Title II of the Act. This provision is codified in section 206 of the Act (42 U.S.C. 406). The legislation set the assessment for the calendar year 2000 at 6.3 percent of the amount that would be required to be certified for direct payment to the attorney under either section 206(a)(4) or 206(b)(1) before the application of the assessment. For subsequent years, the legislation requires the Commissioner of Social Security to determine the percentage rate necessary to achieve full recovery of the costs of determining and certifying fees to attorneys, but not in excess of 6.3 percent. For 2001, the Commissioner of Social Security determined that the assessment rate under section 206(d) of the Act would be 6.3 percent. (See 66 FR 5521, January 19, 2001).

The Commissioner of Social Security has determined, based on the best available data, that the current rate of 6.3 percent will continue for 2002. This assessment rate was based on information compiled by a private contractor, KPMG Consulting, who were tasked by the Social Security Administration to determine the costs we incur to determine and certify fees to attorneys. We will continue to review our costs on a yearly basis.

**Thomas G. Stapleton,**

*Acting Deputy Commissioner for Finance, Assessment and Management.*

[FR Doc. 02–27 Filed 1–2–02; 8:45 am]

**BILLING CODE 4191–02–U**

[10] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF STATE

### Office of Visa Services

**[Public Notice 3837]**

### 30-Day Notice of Proposed Information Collection: Form DS–3035, J–1 Visa Waiver Review Application

**ACTION:** Notice.

**SUMMARY:** The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

*Type of Request:* New Collection.

*Originating Office:* Bureau of Consular Affairs, Office of Visa Services (CA/VO).

*Title of Information Collection:* J–1 Visa Waiver Review Application.

*Frequency:* Once.

*Form Number:* DS–3035.

*Respondents:* All J–1 visa waiver applicants.

*Estimated Number of Respondents:* 10,000.

*Average Hours Per Response:* 2 hours.

*Total Estimated Burden:* 20,000 hours.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection 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, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

**FOR ADDITIONAL INFORMATION:** Copies of the proposed information collection and supporting documents may be obtained from Marcia Pryce, 2401 E St NW., U.S. Department of State, Washington, DC 20520, (202) 663–2866. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, (202) 395–5871.

Dated: October 9, 2001.

**Wayne E. Griffith,**

*Deputy Assistant, Secretary of State for Visa Services, Bureau of Consular Affairs, U.S. Department of State.*

[FR Doc. 02–114 Filed 1–2–02; 8:45 am]

**BILLING CODE 4710–06–P**

## DEPARTMENT OF STATE

**[Public Notice 3871]**

### Culturally Significant Objects Imported for Exhibition; Determinations: ''Russian Pictorialism''

**DEPARTMENT:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Russian Pictorialism,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Williams Tower Gallery, Houston, TX, and FotoFest Gallery at Vine Street Studios, Houston, TX, from on or about March 1, 2002, to on or about April 1, 2002, is in the national

interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 21, 2001.

**Patricia S. Harrison,**

*Assistant Secretary for Educational and Cultural Affairs, United States Department of State.*

[FR Doc. 02–116 Filed 1–2–02; 8:45 am]

**BILLING CODE 4710–08–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Request To Release Airport Land at the Laughlin/Bullhead International Airport, Bullhead City, Arizona From Airport Improvement Program Grant Obligations and Assurances

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Intent to Rule on Request to Release Airport Land from certain Airport Improvement Program Grant Obligations and Assurances.

**SUMMARY:** The FAA proposes to rule and invites public comment on the release of approximately 83 acres of land at the Laughlin/Bullhead International Airport, Bullhead City, Arizona, from certain Airport Improvement Program grant obligations and assurances. The purpose of the grant release is to permit the use of approximately 83 acres of airport property to be developed for non-aeronautical purposes.

**DATES:** Comments must be received on or before February 4, 2002.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, P.O. Box 92007, Los Angeles, CA 90009. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Norman Hicks, Executive Director/C.E.O., Mohave County, Airport Authority, Inc., 2550 Laughlin View Drive, Suite 117, Bullhead City, AZ 86429.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kevin Flynn, Supervisor, Arizona Standards Section, Airports Division, AWP–623, P.O. Box 92007, Los Angeles, CA 90009, Telephone: (310) 725–3632. Arrangements may be made with Mr. Flynn to review the request to release the subject airport property from certain grant obligations in person at the FAA Western-Pacific Regional office, 15000 Aviation Blvd., Hawthorne, CA 90250.

**SUPPLEMENTARY INFORMATION:** On April 5, 2000, new authorizing legislation became effective. That bill, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 10–181 (Apr. 5, 2000; 114 Stat. 61), requires that a 30-day public notice must be provided before the Secretary may waive any condition imposed on an interest is surplus property.

The following is a brief overview of the request:

On February 18, 1987, the State of Arizona, granted patent No. 7213 to Mohave County, Arizona, for 433.37 acres to be developed as a public use airport. Since 1987, the Mohave County Airport Authority, Inc. has received Airport Improvement Program (AIP) grants, which contain certain grant obligations and assurances that the airport land be dedicated for aeronautical purposes. The Mohave County Airport Authority, Inc. has requested the release of approximately 83 acres of dedicated airport land from certain AIP grant obligations and assurances at the Laughlin/Bullhead International Airport located in Bullhead City Arizona. The purpose of the release is to permit the use of dedicated airport property for non-aeronautical purposes. Net proceeds from the leasing and development of the subject land will be utilized by the Authority for capital improvements, operation, and maintenance at the Laughlin/Bullhead International Airport.

Issued in Hawthorne, California, on December 19, 2001.

**Herman C. Bliss,**

*Manager, Airports Division, Western-Pacific Region.*

[FR Doc. 02–56 Filed 1–2–02; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application 02–07–C–00–MFR To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Rogue Valley International-Medford Airport, Submitted by Jackson County, Rogue Valley International-Medford Airport, Medford, Oregon

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Intent to Rule on Application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Rogue Valley International-Medford Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR 158).

**DATES:** Comments must be received on or before February 4, 2002.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bern E. Case, Airport Director, at the following address: 3650 Biddle Road, Medford, OR 97504.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Rogue Valley International-Medford Airport, under section 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Ms. Suzanne Lee-Pang, (425) 227–2654, Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, Washington 98055–4056. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application (02–07–C–00–MFR) to impose and use PFC revenue at Rogue Valley International-Medford Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 20, 2001, the FAA determined that the application to impose and use the revenue from a PFC submitted by Jackson County, Rogue

Valley International-Medford Airport, Medford, Oregon, was substantially complete with requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 27, 2002.

The following is a brief overview of the application.

*Level of the proposed PFC:* $4.50.

*Proposed charge effective date:* June 1, 2003.

*Proposed charge expiration date:* May 1, 2004.

*Total requested for use approval:* $816,466.

*Brief description of proposed projects:* Realignment and Rehabilitation of Taxiway A; Terminal Area Plan (planning study).

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Operations by Air Taxi/Commercial Operators when enplaning revenue passengers in limited, irregular, special service air taxi/commercial operations such as air ambulance services, student instructions, non-stop sightseeing flights that begin and end at the airport and are concluded within a 25 mile radius of the airport.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue, SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Rouge Valley International-Medford Airport.

Issued in Renton, Washington on December 20, 2001.

**Carolyn T. Read,**

*Acting Manager, Planning, Programming, and Capacity Branch, Northwest Mountain Region.*

[FR Doc. 02–52 Filed 1–2–02; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Lawton-Ft. Sill Regional Airport, Lawton, OK

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Intent to Rule on Application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lawton-Ft. Sill Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comments must be received on or before February 4, 2002.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Barbara McNally, Manager of Lawton-Ft. Sill Regional Airport at the following address: Airport Manager, PO Box 351, Lawton-Ft. Sill Regional Airport, Lawton, OK 73502.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under section 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. G. Thomas Wade, Federal Aviation Adminsitration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610, (817) 222–5613.

The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lawton-Ft. Sill Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 19, 2001, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 12, 2002.

The following is a brief overview of the application.

*Level of the proposed PFC:* $4.50.

*Proposed charge effective date:* April 1, 2002.

*Proposed charge expiration date:* April 1, 2003.

*Total estimated PFC revenue:* $361,000.

*PFC application number:* 02–02–C–00–LAW.

*Brief description of proposed projects(s):*

**Projects to Impose and Use PFC'S**

1. Develop Pavement Management Program.
2. PFC Application and Administrative Fees.
3. Install Perimeter Security Fencing.
4. Construct Perimeter Service Road.
5. Upgrade Runway Markings.
6. Runway Safety Area Drainage Improvements.
7. Acquire Snow Removal Equipment.
8. Construct Apron.
9. Acquire 1.7 Acres for Development.

Proposed class or classes of air carriers to be exempted from collecting PFC's: FAR part 135 on demand air Taxi/Commercial Operator (ATCO) reporting on FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Lawton-Ft. Sill Regional Airport.

Issued in Fort Worth, Texas on December 19, 2001.

**Naomi L. Saunders,**

*Manager, Airports Division.*

[FR Doc. 02–53 Filed 1–2–02; 8:45 am]

**BILLING CODE 4410–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at San Francisco International Airport, San Francisco, CA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Intent to Rule on Application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use a PFC at San Francisco International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before February 4, 2002.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 150000 Aviation Blvd., Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. John L. Martin, Airport Director, San Francisco International Airport, at the following address: P.O. Box 8097, San Francisco, CA. 94128. Air carriers and foreign air carriers may submit copies of written comments previously provided to the San Francisco Airport Commission under section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Marlys Vandervelde, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2806. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at San Francisco International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 14, 2001, the FAA determined that the application to impose and use the revenue from a PFC submitted by the San Francisco Airport Commission was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 21, 2002.

The following is a brief overview of the impose and use application No. 02–02–C–00–SFO:

*Level of proposed PFC:* $4.50.

*Proposed charge effective date:* June 1, 2003.

*Proposed charge expiration date:* April 1, 2008.

*Total estimated PFC revenue:* $224,034,821.

Brief description of the proposed projects: Taxiway Improvements and Realignment, and Boarding Area ''A'' and ''G'' Apron Construction and Common Use Systems.

*Class or classes of air carriers which the public agency has requested not be required to collect PFCs:* Non-Scheduled On-Demand Air Carriers (formerly called Air Taxi/Commercial Operators).

Any persons may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the San Francisco Airport Commission.

Issued in Hawthorne, California, on December 14, 2001.

**Hermane C. Bliss,**

*Manager, Airports Division, Western-Pacific Region.*

[FR Doc. 02–55 Filed 1–2–02; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at San Jose International Airport, San Jose, CA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Intent to Rule on Application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at San Jose International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 258 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before February 4, 2002.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Ralph G. Tonseth, Director of Aviation, city of San Jose, Airport Department, at the following address: 1732 N. First Street, San Jose, CA 95112. Air carriers and foreign air carriers may submit copies of written comments previously provided to the city of San Jose under section 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Marlys Vandervelde, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2806. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at San Jose International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 14, 2001, the FAA determined that the application to impose and use a PFC submitted by the city of San Jose was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 20, 2002.

The following is a brief overview of the impose and use application No. 02–13–C–00–SJC:

*Level of proposed PFC:* $4.50.

*Proposed charge effective date:* September 1, 2008.

*Proposed charge expiration date:* May 1, 2010.

*Total estimated PFC revenue:* $142,846,000.

*Brief description of the proposed project:* Expanded Noise Attenuation within the 65 Community Noise Equivalent Level (CNEL) Noise Contour.

*Class or classes of air carriers which the public agency has requested not be required to collect PFCs:* Nonscheduled/On-Demand Air Carriers filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any

person may, upon request, inspect the application, notice and other documents germane to the application in person at the city of San Jose.

Issued in Hawthorne, California, on December 14, 2001.

**Herman C. Bliss,**

*Manager, Airports Division, Western-Pacific Region.*

[FR Doc. 02–54 Filed 1–2–02; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2001–9800]**

### Qualification of Drivers; Exemption Applications; Diabetes

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice; reopening of comment period.

**SUMMARY:** The FMCSA is reopening the comment period on its notice proposing to issue exemptions to certain insulin-using diabetic drivers of commercial motor vehicles (CMVs), from the diabetes mellitus prohibitions contained in the Federal Motor Carrier Safety Regulations (FMCSRs). This action allows the public to view relevant information added to the docket after the earlier October 1, 2001, deadline for comments.

**DATES:** Comments must be received on or before February 4, 2002.

**ADDRESSES:** You can mail or deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. You can also submit comments as well as see the submissions of other commenters at *http://dms.dot.gov.* Please include the docket number that appears in the heading of this document. You can examine and copy this document and all comments received at the same Internet address or at the Dockets Management Facility from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you want to know that we received your comments, please include a self-addressed, stamped postcard or include a copy of the acknowledgement page that appears after you submit comments electronically.

**FOR FURTHER INFORMATION CONTACT:** For further information about the proposed diabetes exemption program in this notice, Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987; for information about legal issues related to this notice, Mr. Joseph Solomey, Office of the Chief Counsel, (202) 366–1374, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

#### Background

On July 31, 2001, FMCSA published a notice requesting comments on its proposal to issue exemptions to certain insulin-treated diabetic drivers of commercial vehicles from the diabetes requirement at 49 CFR 391.41(b)(3) (66 FR 39548). The comment period closed on October 1, 2001. That notice referenced analytical results of crash risks for CMV operators with insulin-treated diabetes mellitus from an agency sponsored study (''A Preliminary Study of the Risk Associated with the Operation of Commercial Motor Vehicles by Drivers with Insulin-Treated Diabetes Mellitus,'' 1999). Although the final results of this study were available and presented at the time of the July 31st notice, the report presenting the study methodology and findings had not been finalized and approved by FMCSA, and was not available to the public.

Therefore, we are placing a copy of this final report entitled, ''A Study of the Risk Associated with the Operation of Commercial Motor Vehicles by Drivers with Insulin-Treated Diabetes Mellitus,'' 2001, in the docket and reopening the comment period.

Issued on: December 21, 2001.

**Joseph M. Clapp,**

*Administrator.*

[FR Doc. 02–57 Filed 1–2–02; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petitions for Waivers of Compliance

In accordance with Title 49 Code of Federal Regulations (CFR) § 211.41, and 49 U.S.C. 20103, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for wavier of compliance with certain requirements of the Federal railroad safety regulations. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being sought.

#### New York State Department of Transportation

[Docket Number FRA–2001–11233]

The New York State Department of Transportation (NYSDOT), with the cooperation and input of CSX Transportation, Inc. (CSX) and the National Railroad Passenger Corp. (Amtrak) seeks a permanent waiver of compliance from CFR Title 49 § 213.347—Automotive or railroad crossings at grade.

NYSDOT seeks approval to operate passenger trains at Class 7 speeds through highway rail grade crossings on the Empire State High Speed Corridor between New York City, New York and Schenectady, New York by implementing a Grade Crossing Risk Mitigation Plan. Specifically, CFR Title 49 § 213.347(b)(1) requires railroads to submit to FRA for approval a warning/barrier system. NYSDOT believes that present systems for prevent vehicles from entering the right of way are not yet reliable enough to prevent vehicles from entering the right of way to protect motorist and rail passenger safety. Accordingly, NYSDOT desires to address safety concerns at highway rail grade crossings by implementing a Five Year Hazard Mitigation Action Plan with highway railroad grade crossing improvement, elimination, and closing projects that will substantially reduce estimated risks.

Since FRA has not yet concluded its investigation of the ''Empire State High Speed Corridor Grade Crossing Mitigation Plan and Request for Waiver to Operate in Revenue Service at Speeds Over 100 MPH,'' the agency takes no position at this time on the merits of the stated justifications of the NYSDOT.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2001–11233) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza level) 400 Seventh Street, SW., Washington, DC 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is

taken. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

Issued in Washington, DC, December 28, 2001.

**Edward W. Pritchard,**

*Acting Director, Office of Safety Assurance and Compliance.*

[FR Doc. 02–58 Filed 1–2–02; 8:45 am]

**BILLING CODE 4910–06–M**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

### Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 24, 2001. No comments were received.

**DATES:** Comments must be submitted on or before February 4, 2002.

**FOR FURTHER INFORMATION CONTACT:** Evelyn Harley, Maritime Administration, MAR–580, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5867 or FAX 202–366–7901.

Copies of this collection can also be obtained from that office.

**SUPPLEMENTARY INFORMATION:** Maritime Administration (MARAD).

*Title:* Uniform Financial Reporting Requirements.

*OMB Control Number:* 2133–0005.

*Type of Request:* Extension of currently approved collection.

*Affected Public:* Vessel owners acquiring ships from MARAD on credit, companies chartering ships from MARAD, and companies having Title XI guarantee obligations.

*Form (S):* MA–172.

*Abstract:* The Uniform Financial Reporting Requirements are used as a basis for preparing and filing semi-annual and annual financial statements with the Maritime Administration (MARAD). Regulations requiring financial reports to MARAD are authorized by section 801, Merchant Marine Act, 1936, as amended.

*Annual Estimated Burden Hours:* 1881 hours.

*Addressee:* Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

*Comments are Invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, D.C. on December 27, 2001.

**Michael J. McMorrow,**

*Acting Secretary, Maritime Administration.*

[FR Doc. 02–38 Filed 1–2–02; 8:45 am]

**BILLING CODE 4910–81–P**

# Notices

**Federal Register**

Vol. 2, No. 67

Thursday, January 3, 2002

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.

## BROADCASTING BOARD OF GOVERNORS

### Sunshine Act Notice

*Date and Time:* January 8, 2002; 11:15 a.m.–5 p.m.

*Place:* Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

*Closed Meeting:* The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6))

**CONTACT PERSON FOR MORE INFORMATION:** Persons interested in obtaining more information should contact either Brenda Hardnett or William Ohlhausen at (202) 401–3736.

Dated: December 28, 2001.

**William Ohlhausen,**

*Acting General Counsel.*

[FR Doc. 01–32257 Filed 12–28–01; 4:28 pm]

**BILLING CODE 8230–01–M**

## COMMISSION ON CIVIL RIGHTS

### Sunshine Act Notice

**AGENCY:** U.S. Commission on Civil Rights.

**DATE AND TIME:** Friday, January 11, 2002, 8:30 a.m.

**PLACE:** Hilton Washington, 1919 Connecticut Avenue, NW., Monroe Room, Washington, DC 20425.

**STATUS:** Open to the public.

*Agenda*

I. Approval of Agenda
II. Approval of Minutes of December 7, 2001 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Committee Appointments of District of Columbia, Maryland, Virginia, and West Virginia
VI. Future Agenda Items

9:30 a.m. Document Production Hearing for the Education Accountability Project.
10:00 a.m. Environmental Justice Hearing.

**Debra Carr,**

*Deputy General Counsel.*

[FR Doc. 01–32258 Filed 12–28–01; 4:56 pm]

**BILLING CODE 6335–00–M**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–809]**

### Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Rescission of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Rescission of Antidumping Duty Administrative Review.

**SUMMARY:** In response to a November 30, 2001 request made by Shinho Steel Co., a producer/exporter from the Republic of Korea of circular welded non-alloy steel pipe, the Department of Commerce published the initiation of an administrative review of the antidumping duty order on circular welded non-alloy steel pipe from the Republic of Korea for Shinho Steel Co. (covering the period November 1, 2000 to October 31, 2001). *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 66 FR 65470 (December 19, 2001). This review has now been rescinded as a result of the withdrawal of the request for review by Shinho Steel Co.

**EFFECTIVE DATE:** January 3, 2002.

**FOR FURTHER INFORMATION CONTACT:** Suresh Maniam or Andrew McAllister, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0176 or (202) 482–1174, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the ''Act'') by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (''Department'') regulations refer to 19 CFR part 351 (2001).

#### Background

On November 30, 2001, Shinho Steel Co. (''Shinho''), a producer/exporter of circular welded non-alloy steel pipe in the Republic of Korea, requested an administrative review of the antidumping duty order on circular welded non-alloy steel pipe from the Republic of Korea covering the period November 1, 2000 to October 31, 2001. In accordance with 19 CFR 351.221(c)(1)(i), we published the initiation of the review on December 19, 2001. *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 66 FR 65470. On December 19, 2001, Shinho withdrew its request for review.

#### Rescission of Review

The Department's regulations provide that the Department will rescind an administrative review if a party that requested a review withdraws the request within ninety days of the date of publication of the notice of initiation of the requested review. 19 CFR 351.213(d)(1). Shinho's request for

review was withdrawn within the ninety-day deadline.

As a result of the withdrawal of the request for review and because the Department received no other request for review, the Department is rescinding this administrative review.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: December 26, 2001.

**Richard W. Moreland,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 02–128 Filed 1–2–02; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–489–805]**

### Certain Pasta From Turkey: Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke the Antidumping Duty Order in Part

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order in Part: Certain Pasta from Turkey.

**SUMMARY:** On June 28, 2001, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain pasta from Turkey. This review covers the following exporters/producers of subject merchandise: (1) Pastavilla Makarnacilik Sanayi ve Ticaret A.S. (Pastavilla); and (2) Filiz Gida Sanayi ve Ticaret A.S. (Filiz). The period of review (POR) is July 1, 1999, through June 30, 2000.

Based on our analysis of the comments received, these final results differ from the preliminary results. The final results are listed in the section *''Final Results of Review.''* For our final results, we have found that during the POR, Pastavilla sold subject merchandise at less than normal value (NV). In addition, we are not revoking the antidumping order with respect to Pastavilla, because it has not had three years of sales in commercial quantities at less than NV. See *''Determination Not to Revoke''* section of this notice. We have also found that during the POR, Filiz did not make sales of the subject merchandise at less than NV (*i.e.,* it had ''zero'' or *de minimis* dumping margins).

**EFFECTIVE DATE:** January 3, 2002.

**FOR FURTHER INFORMATION CONTACT:** James Terpstra or Lyman Armstrong, AD/CVD Enforcement, Office VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3965 or (202) 482–3601, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations codified at 19 CFR part 351 (2000).

#### Case History

On June 28, 2001, the Department published the preliminary results of its administrative review of the antidumping duty order on certain pasta from Turkey. *See Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta from Turkey,* 66 FR 34410 (June 28, 2001) (*Preliminary Results*). The review covers two manufacturers/exporters. The POR is July 1, 1999, through June 30, 2000. We invited parties to comment on our preliminary results of review. In response to the Department's invitation to comment on the preliminary results of this review, New World Pasta, a petitioner[1] in the case, filed a case brief on August 2, 2001, and the respondents filed case briefs on August 6, 2001. We received rebuttal briefs from New World Pasta and Pastavilla on August 13, 2001. A public hearing was not held with respect to this review because no party requested one. On September 26, 2001, respondents requested that the Department extend its final results in order to incorporate in our margin calculation programs the results from the most recently completed reviews of the countervailing duty order on pasta from Turkey. On November 1, 2001, the Department published a notice postponing the final results of this review until December 25, 2001 (66 FR 55160). The Department has conducted this administrative review in accordance with section 751(a) of the Act.

[1] The petitioners are Borden Inc., Hershey Foods Corp. (Hershey Pasta), Grocery Corp Inc., and Gooch Foods, Inc. (effective January 1, 1999, Hershey Pasta and Grocery Corp., Inc. became New World Pasta, Inc.).

#### Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States (HTSUS).* Although the *HTSUS* subheading is provided for convenience and Customs purposes, the written description of the merchandise subject to the order is dispositive.

#### Scope Rulings

The Department has issued the following scope ruling to date:

(1) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See Memorandum from John Brinkmann to Richard Moreland,* dated May 24, 1999, in the case file in the

Central Records Unit, main Commerce building, room B–099 (the CRU).

**Determination Not To Revoke**

Pastavilla has had zero or *de minimis* dumping margins for the previous two review periods. *See Notice of Final Results of Antidumping Duty Administrative Review: Certain Pasta from Turkey* 64 FR 69493 (December 13, 1999); *see also, Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review: Certain Pasta from Turkey* 63 FR 68429 (December 11, 1998). However, as shown in the final results of this review, Pastavilla's weight-averaged dumping margin is 2.78 percent, which is above the *de minimis* rate of 0.50 percent. *See* 19 CFR 351.106(c). Consequently, Pastavilla has not made sales of subject merchandise ''at not less than NV for a period of at least three consecutive years'' as required by the Department's regulations. Because one of the requirements to qualify for revocation has not been met, the Department has not addressed the issues of commercial quantities and whether the continued application of the antidumping duty order is necessary to offset dumping with regard to Pastavilla. Thus, we determine not to revoke this order with respect to Pastavilla.

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the *Issues and Decision Memorandum for the Fourth Antidumping Duty Administrative Review (Decision Memorandum)* from Bernard Carreau, Deputy Assistant Secretary for Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated concurrently with this notice, which is hereby adopted by this notice. A list of the issues which parties have raised, and to which we have responded 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 the CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at http://ia.ita.doc.gov. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

**Changes Since the Preliminary Results**

Based on our analysis of comments received, we have made certain changes in the margin calculations. We calculated the export price and normal value using the same methodology stated in the *Preliminary Results*, except as follows:

- For the countervailing duty field (*i.e.*, CVDU) reported by Filiz, in the preliminary results, the Department mistakenly divided Filiz's reported figure by one thousand, on the premise that the figure was reported in $/metric ton and therefore must be converted to $/kilogram. We have corrected this error by not converting this field for purposes of these final results. In addition, we have reevaluated the appropriate amount of countervailing duties applicable to the dumping calculations for Filiz and Pastavilla.
- The Department has deleted its re-indexing of Pastavilla's fixed overhead (FOH) field and, instead, accepted Pastavilla's indexing of its FOH reported in the cost database.
- The Department corrected a typographical error for the amount to be indexed for hyper-inflation for the month of August 1999 in its affiliated party program.

These changes are discussed in the relevant sections of the *Decision Memorandum.*

**Final Results of Review**

As a result of our review, we determine that the following weighted-average percentage margins exist for the period July 1, 1999, through June 30, 2000:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Filiz | 0.00 |
| Pastavilla | 2.78 |

**Assessment Rate**

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. Where the importer-specific assessment rate is above *de minimis*, we will instruct Customs to assess antidumping duties on that importer's entries of subject merchandise. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the order during the POR.

**Cash Deposit Requirements**

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of certain pasta from Turkey entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rates shown above, except where the margin is *de minimis* or zero we will instruct Customs not to collect cash deposits; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 51.49 percent, the ''All Others'' rate established in the LTFV investigation. *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey*, 61 FR 38545 (July 24, 1996). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 26, 2001.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

## Appendix

List of Comments and Issues in the Decision Memorandum

Filiz and Pastavilla

1. Calculation of the Countervailing Duty (CVD) Field

Pastavilla

2. Calculation of Warranty Expense
3. Application of Negative Interest Cost
4. Indexing Fixed Overhead Costs
5. Revocation of the Antidumping Duty Order with Respect to Pastavilla
6. Clerical Error in the Affiliated Party Program

[FR Doc. 02–126 Filed 1–2–02; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–475–818]**

### Notice of Final Results of Antidumping Duty Administrative Review, Partial Rescission of Antidumping Duty Administrative Review and Revocation of Antidumping Duty Order in Part: Certain Pasta From Italy

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review, partial rescission of antidumping duty administrative review and revocation of antidumping duty order in part.

**SUMMARY:** On June 28, 2001, the Department of Commerce (the ''Department'') published the preliminary results of the administrative review of the antidumping duty order on certain pasta from Italy. This review covers the following exporters/producers of subject merchandise: (1) Barilla G.e.R. F.lli S.p.A.. (''Barilla''), (2) CO.R.EX S.p.A. (''Corex''), (3) Delverde S.p.A. and its affiliate, Tamma Industrie Alimentari di Capitanata, S.r.L. (collectively,'Delverde''), (4) Pastificio Guido Ferrara S.r.l. (''Ferrara''), (5) Pastificio F.lli Pagani S.p.A.(''Pagani''), (6) Pastificio Antonio Pallante S.r.l. and its affiliate, Industrie Alimentari Molisane S.r.l. (collectively, ''Pallante''), (7) P.A.M., S.r.l. and its affiliate, Liguori (collectively, ''PAM''), (8) N. Puglisi & F. Industria Paste Alimentari S.p.A. (''Puglisi''), (9) Pastificio Riscossa F.lli Mastromauro S.r.l (''Riscossa''), and (10) Rummo S.p.A. Molino e Pastificio (''Rummo''). The period of review (''POR'') is July 1, 1999, through June 30, 2000.

Based on our analysis of the comments received, these final results differ from the preliminary results. The final results are listed in the section ''*Final Results of Review*.'' For our final results, we have found that during the POR, Barilla, Ferrara, Pallante, PAM, and Riscossa sold subject merchandise at less than normal value (''NV''). We have also found that during the POR, Corex, Pagani, Puglisi and Rummo did not make sales of the subject merchandise at less than NV (*i.e.*, they had ''zero'' or de minimis dumping margins). Based on a decision of the U.S. Court of Appeals for the Federal Circuit, we are rescinding the review with respect to Delverde. *See Determination to Rescind* section of this notice. In addition, we are revoking the antidumping order with respect to Corex and Puglisi, based on three years of sales in commercial quantities at not less than NV. *See Determination to Revoke* section of this notice.

**EFFECTIVE DATE:** January 3, 2002.

**FOR FURTHER INFORMATION CONTACT:** James Terpstra or Geoffrey Craig, AD/CVD Enforcement, Office VI, Group II, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3965, or (202) 482–4161, respectively.

**SUPPLEMENTARY INFORMATION:**

### The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2000).

### Background

On June 28, 2001, the Department published the preliminary results of administrative review of the antidumping duty order on certain pasta from Italy. *See Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Intent To Revoke Antidumping Duty Order in Part: Certain Pasta From Italy*, 66 FR 34414 (June 28, 2001) (''*Preliminary Results*''). The review covers ten manufacturers/exporters. The POR is July 1, 1999, through June 30, 2000. We invited parties to comment on our preliminary results of review. We received case briefs on August 6, 2001, from Ferrara, Pallante, and PAM. On August 6, 2001, Riscossa submitted a letter with one clerical error allegation. A public hearing was not held with respect to this review.[1] On November 1, 2001, the Department published a notice extending the final results until no later than December 25, 2001. *See Certain Pasta from Italy and Turkey: Extension of Final Results of Antidumping Duty Administrative Reviews,* 66 FR 55160 (November 1, 2001). We also received a letter from PAM dated December 5, 2001.[2] The Department has conducted this administrative review in accordance with section 751 of the Act.

### Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of

[1] On July 22, 2001, PAM requested a hearing. However, instead the Department and PAM held an *ex parte* meeting. *See* Memorandum from Melissa G. Skinner to the File, ''Ex Parte Meeting with Counsel for PAM S.r.l. in the Antidumping Duty Administrative Review of Certain Pasta from Italy,'' dated August 22, 2001, on file in the Central Records Unit, room B–099, of the Department's main building (the ''CRU'').

[2] This letter requests that the Department combine shape categories 5 (short cuts), 6 (specialty short cuts) and 7 (soupettes). PAM argues that the Department has acknowledged that it erred with respect to this issue in the judicial review of the third administrative review. In its brief to the Court of International Trade, the Department stated, ''We respectfully request that the Court remand this issue to Commerce for the limited purpose of reviewing the record with regard to shape categories.'' *See* United States' Memorandum in Opposition to Plaintiff's Motion for Judgment Pursuant to Rule 56.2,'' dated November 2, 2001. PAM has inferred from this statement that ''this is a clear and unequivocal statement in which the U.S. concedes that it erred in the original determination in the 98/99 administrative review.'' Therefore, PAM has requested that the Department modify the final results of the current review (*i.e.,* combine shape categories 5, 6, and 7) in light of the Department's request to the Court for a remand. To the contrary, we simply requested from the Court the opportunity ''to review the record with regard to shape categories.''

organic pasta from Italy that are accompanied by the appropriate certificate issued by the Istituto Mediterraneo Di Certificazione, by Bioagricoop Scrl, by QC&I International Services, by Ecocert Italia, by Consorzio per il Controllo dei Prodotti Biologici, by Associazione Italiana per l'Agricoltura Biologica, or by Codex S.R.L.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (''*HTSUS*''). Although the *HTSUS* subheading is provided for convenience and Customs purposes, the written description of the merchandise subject to the order is dispositive.

**Scope Rulings**

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders. *See* Memorandum from Edward Easton to Richard Moreland, dated August 25, 1997, in the case file in the CRU.

(2) On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the antidumping and countervailing duty orders. *See* Letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import Administration, to Barbara P. Sidari, Vice President, Joseph A. Sidari Company, Inc., dated July 30, 1998, which is available in the CRU.

(3) On October 23, 1997, the petitioners filed an application requesting that the Department initiate an anti-circumvention investigation of Barilla, an Italian producer and exporter of pasta. The Department initiated the investigation on December 8, 1997 (62 FR 65673). On October 5, 1998, the Department issued its final determination that Barilla's importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention, with respect to the antidumping duty order on pasta from Italy pursuant to section 781(a) of the Act. *See Anti-circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 63 FR 54672 (October 13, 1998).

(4) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See* Memorandum from John Brinkmann to Richard Moreland, dated May 24, 1999, which is available in the CRU.

The following scope ruling is pending:

(5) On April 27, 2000, the Department self-initiated an anti-circumvention inquiry to determine whether Pagani's importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention, with respect to the antidumping and countervailing duty orders on pasta from Italy pursuant to section 781(a) of the Act and 19 CFR 351.225(b). *See Certain Pasta from Italy: Notice of Initiation of Anti-circumvention Inquiry of the Antidumping and Countervailing Duty Orders*, 65 FR 26179 (May 5, 2000).

**Verification**

As provided in section 782(i) of the Act, we verified U.S. sales information provided by Puglisi's U.S. affiliate, Rienzi & Sons. We used standard verification procedures, including an examination of relevant sales and financial records. Our verification results are outlined in the Puglisi verification report placed in the case file in the CRU. We revised certain sales verification findings. *See* the Puglisi verification report and calculation memorandum.

**Determination To Rescind**

On March 12, 2001, the U.S. Court of Appeals for the Federal Circuit (''Federal Circuit'') reversed a ruling by the U.S. Court of International Trade (''CIT'') and issued an order remanding to the CIT the final determination of the antidumping duty less-than-fair-value (''LTFV'') investigation (covering the period from May 1, 1994 through April 31, 1995) on certain pasta from Italy. The CIT subsequently remanded the case to the Department. Delverde's LTFV margin is now *de minimis*. *See Notice of Amendment of Final Determination of Sales at Less Than Fair Value Pursuant to Court Decision and Revocation in Part: Certain Pasta From Italy*, 66 FR 65889 (December 21, 2001). Therefore, because Delverde's LTFV margin is de minimis, Delverde is not subject to suspension of liquidation and has been excluded from the antidumping duty order on Pasta from Italy. We are rescinding this review with respect to Delverde because it has been excluded from the antidumping duty order.

**Determination To Revoke**

On July 13, 2000, and July 31, 2000, Puglisi and Corex, respectively, submitted letters to the Department requesting, pursuant to 19 CFR 351.222(b) and (e), revocation of the antidumping duty order with respect to their sales of the subject merchandise. In accordance with 19 CFR 351.222(e), on July 31, 2000 and September 13, 2000, respectively, Puglisi and Corex submitted the required certifications and agreements that they had not sold the subject merchandise at less than NV for a period of three consecutive reviews, which included this review period, and that they sold the subject merchandise in commercial quantities to the United States during each of these three years. Puglisi and Corex also have stated that they would not sell the subject merchandise at less than NV to the United States in the future, and each agreed to the reinstatement of the antidumping order with respect to its merchandise, as long as any exporter or producer is subject to the order, if the Department concludes that either Puglisi or Corex sold the subject merchandise at less than NV. See 19 CFR 351.222(e)(1)(i)–(iii).

In our preliminary results, in accordance with 19 CFR 351.222(f)(2), we stated our intent to revoke, in part, the order for certain pasta from Italy as it pertains to Corex and Puglisi sales of the subject merchandise. *See Preliminary Results.* No parties submitted comments on either Puglisi's or Corex's requests for revocation.

Therefore, because Puglisi has made sales at not less than NV for three consecutive reviews in commercial quantities (*see* Memorandum from Geoffrey Craig to File, ''Shipments of Pasta to the United States by Puglisi,'' dated June 21, 2001) and because there is no evidence on the record to indicate the likelihood of resumption of sales at dumped prices, we are revoking the antidumping duty order, in part, with respect to subject merchandise produced or produced and sold by Puglisi. *See Certain Welded Stainless Steel Pipe From Taiwan: Final Results of Antidumping Duty Administrative Review and Determination To Revoke Order In Part*, 65 FR 39367 (June 26, 2000). Also, because Corex has made

sales at not less than NV for three consecutive reviews in commercial quantities (*see* Memorandum from Cindy Robinson to File, ''Shipments of Pasta to the United States by Corex,'' dated June 21, 2001) and because there is no evidence on the record to indicate continued application of the order is necessary to offset dumping, we are revoking the antidumping duty order, in part, with respect to subject merchandise produced or produced and sold by Corex. In accordance with 19 CFR 351.222(f)(3), we will terminate the suspension of liquidation for Puglisi's and Corex's merchandise entered, or withdrawn from warehouse, for consumption on or after July 1, 2000 (the first day after the period under review), and will instruct the U.S. Customs Service to release any bond and refund any cash deposit.

**Use of Facts Available**

In the *Preliminary Results*, we applied adverse facts available (''FA'') to determine Barilla's dumping margin. *See Preliminary Results*, at 66 FR 34116. We did not receive comments regarding this issue; therefore, pursuant to section 776(a)(2)(A) of the Act, we have continued to apply adverse FA to determine Barilla's dumping margin in the final results.

**Selection of Adverse FA**

Consistent with the *Preliminary Results*, in accordance with section 776(b) of the Act, we are assigning Barilla an adverse facts available rate of 45.59 percent. *See Id.* We did not receive comments with respect to the selection of this rate; therefore we have continued to apply the 45.59 percent rate for Barilla.

**Analysis of Comments Received**

All issues raised in the case briefs by parties to this administrative review are addressed in the ''*Issues and Decision Memorandum for the Fourth Antidumping Duty Administrative Review*'' (''*Decision Memorandum*'') from Bernard T. Carreau, Deputy Assistant Secretary for Import Administration, to Richard W. Moreland, Acting Assistant Secretary for Import Administration, dated concurrently with this notice, which is hereby adopted by this notice. A list of the issues which parties have raised, and to which we have responded 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 the CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov.* The paper copy and electronic version of the *Decision Memorandum* are identical in content.

**Final Results of Review**

As a result of our review, we determine that the following weighted-average percentage margins exist for the period July 1, 1999, through June 30, 2000:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Barilla | 45.59 |
| Corex | 0 |
| Ferrara | 2.03 |
| Pagani | 0 |
| Pallante | 1.78 |
| PAM | 4.10 |
| Puglisi | *0.09 |
| Riscossa | 1.03 |
| Rummo | *0.01 |

*De minimis.

**Assessment**

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. In situations in which the importer-specific assessment rate is above de miminis, we will instruct Customs to assess antidumping duties on that importer's entries of subject merchandise. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the order during the POR.

**Cash Deposit Requirements**

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of certain pasta from Italy entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rates shown above, except where the margin is *de minimis* or zero we will instruct Customs not to collect cash deposits; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.26 percent, the ''All Others'' rate established in the LTFV investigation. *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 38547 (July 24, 1996). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

**Notification**

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO are sanctionable violations.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 777(i)(1) of the Act.

Dated: December 26, 2001.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

**Appendix**

List of Comments and Issues in the Decision Memorandum

**Ferrara**

1. Billing adjustments
2. CONNUM construction

**Pallante**

3. Entered value calculation
4. Export subsidy rate
5. Mismatched CONNUM and shape product characteristic
6. Level of trade

**PAM**

7. Cost of production and constructed value data
8. Classification of certain sales as U.S. sales
9. Home market sales used in below-cost test
10. Entry-by-entry basis
11. ''Zeroing'' negative margins
12. Startup adjustment
13. Exchange rate conversions
14. De minimis amounts
15. Currency of transaction
16. Level of trade methodology
17. Level of trade adjustment
18. General shape methodology
19. Department's shape classification of certain cuts
20. Release of data
21. Inclusion of constructed export price language in the margin program
22. Miscellaneous
23. Accuracy of final results

**Riscossa**

24. Clerical error

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## DEPARTMENT OF COMMERCE

### International Trade Administartion

**[A–570–001]**

### Potassium Permanganate From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Preliminary Results of Antidumping Duty New Shipper Review of Potassium Permanganate from the People's Republic of China.

**SUMMARY:** The Department of Commerce (the Department) is conducting a new shipper review of the antidumping duty order on potassium permanganate from the People's Republic of China (PRC) in response to a request from Groupstars Chemical Co. Ltd. (Groupstars). The review covers the period January 1, 2000 through December 31, 2000. The Department has preliminarily determined that the sale of subject merchandise during the period of review (POR) was made below normal value (NV). If the preliminary results are adopted in our final results of review, we will instruct the U.S. Customs Service (Customs) to assess antidumping duties on the entry under review.

The Department invites interested parties to comment on the preliminary results.

**EFFECTIVE DATE:** January 3, 2002.

**FOR FURTHER INFORMATION CONTACT:** John Conniff or Chris Brady, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1009 and (202) 482–4406, respectively.

**SUPPLEMENTARY INFORMATION:**

#### The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended, (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (2000).

#### Background

On January 31, 1984, the Department published in the **Federal Register** (49 FR 3897) the antidumping duty order on potassium permanganate from the PRC. On January 30, 2001, in accordance with section 751(a)(2)(B) of the Act and section 351.214 of the Department's regulations, the Department received a timely request from Groupstars to conduct a new shipper review of the antidumping order on potassium permanganate from the PRC.

Section 351.214(b) of the Department's regulations requires that the exporter or producer requesting a new shipper review include the following in its request: (i) A statement from such exporter or producer that it did not export subject merchandise to the United States during the period of investigation (POI); (ii) certification that, since the investigation was initiated, such exporter or producer has never been affiliated with any exporter or producer who exported the subject merchandise to the United States during the POI; (iii) in an antidumping proceeding involving inputs from a non-market economy (NME) country, a certification that the export activities of such exporter or producer are not controlled by the central government; and (iv) documentation establishing: (a) The date on which the subject merchandise was first entered, or withdrawn from warehouse, for consumption, or, if this date cannot be established, the date on which the exporter or producer first shipped the subject merchandise for export to the United States; (b) the volume of that shipment and subsequent shipments; and (c) the date of the first sale to an unaffiliated customer in the United States. Groupstars' new shipper review request was accompanied by information and certifications establishing the date on which the company first shipped and entered potassium permanganate for consumption in the United States, the volume of the shipment, and the date of first sale to an unaffiliated customer in the United States. Also, Groupstars certified that it did not export potassium permanganate from the PRC during the POI and was not affiliated with any company which had exported during the POI. In addition, Groupstars certified that its export activities are not controlled by the PRC's central government.

On February 28, 2001, the Department initiated a new shipper review of Groupstars covering the period January 1, 2000, through December 31, 2000. *See Potassium Permanganate From the People's Republic of China: Initiation of Antidumping New Shipper Review,* 66 FR 13895 (March 8, 2001). On August 17, 2001, the Department published an extension of the deadline for completion of the preliminary results of this new shipper review until December 25, 2001. *See Potassium Permanganate From the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping New Shipper Review,* 66 FR 43183.

On March 28, 2001, the Department issued its antidumping questionnaire to Groupstars. Groupstars responded to the Department's questionnaire on May 11, 2001 and June 14, 2001. Additionally, Groupstars submitted responses to the Department's May, August and October, 2001 supplemental questionnaires during May, August and October 2001, respectively. On September 28, 2001, the Department provided all interested parties the opportunity to submit any information which they wanted the Department to consider when valuing factors of production (FOP) in this new shipper review. On October 14, 2001, Groupstars submitted publicly available information and comments for consideration in valuing the FOP used in our NV calculations. On October 15, 2001, petitioner also submitted publicly available information and comments for this purpose.

#### Scope of the Review

Imports covered by this review are shipments of potassium permanganate, an inorganic chemical produced in free-flowing, technical, and pharmaceutical grades. During the review period, potassium permanganate was classifiable under item 2841.60.0010 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and Customs purposes.

The written description remains dispositive.

**Verification**

As provided in section 782(i) of the Act, we conducted a verification of the responses of Groupstars. We used standard verification procedures, including on-site inspection of the manufacturer's facilities and examination of relevant sales and financial records. At verification, we found that the Groupstars-Jinan plant, one of the two plants that produced the merchandise which Groupstars sold during the POR, was not operating. Company officials explained that other than producing a portion of the sale under review in July 2000, and 20 metric tons of potassium permanganate in September 2001, one month before verification, the Groupstars-Jinan plant had not produced any potassium permanganate due to problems with machinery. During our tour of the plant, we did not observe any repairs being performed on plant machinery. Moreover, none of the personnel that we interviewed at the plant were able to recall when the plant had last produced potassium permanganate. However, company officials were able to provide documentation to substantiate the FOP reported for the Groupstars-Jinan plant. For the preliminary results, we have used these FOP, as well as the verified FOP for Groupstars' other supplier, to calculate the margin reported in this notice. Complete information regarding our verification results is in our verification reports, which are in the public file of the Central Records Unit (CRU) in room B099 of the main Commerce building.

**Affiliation**

In its June 18, 2001 submission to the Department, Carus Chemical Company, the petitioner in this proceeding, alleged that Mr. Eugene Ji (also known as Ji Yue Qin), Groupstars' owner during the POR, has had multiple close affiliations with producers and exporters of potassium permanganate covered by the investigation in this proceeding, and therefore, pursuant to section 751(a)(2)(B) of the Act, and section 351.214 of the Department's regulations, Groupstars cannot be considered a new shipper.[1] Specifically, the petitioner alleges that Groupstars is or has been affiliated with investigated producers and exporters from the PRC because in 1992, Mr. Ji formed Waterman Chemical Company Ltd. (Waterman), a U.S. company which attempted to build a potassium permanganate plant in Baton Rouge, Louisiana using PRC equipment and technology from Jinan Tailu, the PRC joint venture that in the mid-1980's took over the Jinan Huaiyin plant, one of the plants that supplied the exporter examined in the original investigation. In addition, the petitioner notes that Groupstars operated and produced potassium permanganate during the POR using the facilities of the former Jinan Huaiyin.

Based upon the questionnaire responses received from Groupstars, and our verification thereof, we preliminarily determine that Groupstars qualifies for a new shipper review. We have determined that Groupstars made its first sale or shipment of subject merchandise to the United States during the POR, and that it was not affiliated with any exporter or producer that previously shipped to the United States. For a complete discussion of this issue, see the memorandum *Whether Groupstars Chemical Co. Ltd. Qualifies as a New Shipper* from Holly A. Kuga to Bernard T. Carreau, dated December 26, 2001, which is in the CRU public file.

**Separate Rates Determination**

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in a NME country this single rate, unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Groupstars provided the separate rates information requested by the Department and reported that its export activities are not subject to government control.

We examined the separate rates information provided by Groupstars in order to determine whether the company is eligible for a separate rate. The Department's separate rates test which is used to determine whether an exporter is independent from government control does not consider, in general, macroeconomic/border-type controls, *e.g.*, export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value,* 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (Sparklers), as amplified by Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) (Silicon Carbide). In accordance with the separate rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and de facto governmental control over export activities.

*1. Absence of De Jure Control*

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers,* 56 FR at 20508 (May 6, 1991).

Groupstars reported that the subject merchandise was not restricted to any government list regarding export provisions or export licensing, and was not subject to export quotas during the POR. Groupstars submitted copies of its business license in its May 11, 2001 submission. See May 11, 2001 submission at attachment 3. We found no inconsistencies with Groupstars' statement regarding the absence of restrictive stipulations associated with its business license. Groupstars submitted copies of PRC legislation demonstrating the statutory authority for establishing the de jure absence of government control over the company. Thus, we believe that the evidence on the record supports a preliminary finding of de jure absence of governmental control based on: (1) an absence of restrictive stipulations associated with Groupstars' business

[1] As noted previously, these provisions require that an exporter or producer requesting a review under section 751 (a)(2)(B) of the Act (a new shipper review) must not have been affiliated, within the meaning of section 771(33) of the Act, with any exporter or producer who exported the subject merchandise during the POI.

license; and (2) the applicable legislative enactments decentralizing control of PRC companies.

*2. Absence of De Facto Control*

The Department typically considers four factors in evaluating whether a respondent is subject to de facto governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. See Silicon Carbide, 59 FR at 22586–87 (May 2, 1994); *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995).

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide,* 56 FR at 22587 (May 2, 1994). Therefore, the Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

Groupstars reported that it determines its prices for sales of the subject merchandise based on the cost of the merchandise, movement expenses, overhead, profit, and the market situation in the United States. Moreover, Groupstars stated that it negotiated the price directly with its customer. Also, Groupstars claimed that its prices are not subject to review or guidance from any governmental organization. In addition, the record indicates that Groupstars has the authority to negotiate and sign contracts and other agreements. Further, Groupstars claimed that its negotiations are not subject to review or guidance from any governmental organization. Finally, there is no evidence on the record to suggest that there is any governmental involvement in the negotiation of contracts.

Furthermore, Groupstars reported that it has autonomy in making decisions regarding the selection of management. Groupstars claimed that its selection of management is not subject to review or guidance from any governmental organization and there is no evidence on the record to suggest that there is any governmental involvement in the selection of Groupstars' management.

Finally, Groupstars reported that it retains the proceeds of its export sales, it uses profits according to its business needs, and its management determines how to allocate profits. There is no evidence on the record to suggest that there is any governmental involvement in decisions regarding disposition of profits or financing of losses. Therefore, we find that the evidence on the record supports a preliminary finding of de facto absence of governmental control based on record statements and supporting documentation showing that: (1) Groupstars sets its own export prices independent of the government and without the approval of a government authority; (2) Groupstars has the authority to negotiate and sign contracts and other agreements; (3) Groupstars has autonomy from the government regarding the selection of management; and (4) Groupstars retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses.

The evidence placed on the record of this investigation by Groupstars demonstrates an absence of government control, both in law and in fact, with respect to its exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide.* Therefore, for the purposes of this preliminary determination, we are granting a separate rate to Groupstars.

**Normal Value Comparisons**

To determine whether the respondent's sale of subject merchandise was made at less than normal value, we compared the constructed export price (CEP) to the NV, as described in the *Constructed Export Price* and *Normal Value* sections of this notice, below.

**Constructed Export Price**

For all sales made by Groupstars to the United States, we used CEP in accordance with section 772(b) of the Act. Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold in the United States before or after the date of importation, by or for the account of the producer or exporter of the merchandise, or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, as adjusted under sections 772(c) and (d) of the Act.

We calculated CEP based on the packed prices from Groupstars Chemical L.L.C. (Groupstars LLC) (Groupstars' affiliated U.S. reseller) to the first unaffiliated U.S. customer. We made deductions, where appropriate, from the starting price for foreign inland freight, foreign brokerage and handling, ocean freight, U.S. Customs charges, and U.S. brokerage. Foreign inland freight, foreign brokerage and handling, and ocean freight, were provided by NME vendors, and thus, we based the deductions for these movement charges on surrogate values as discussed below. In accordance with 772(d)(1) of the Act, we deducted from the starting price those selling expenses that related to economic activity in the United States. In accordance with section 772(d)(3) of the Act, we deducted from the starting price an amount for profit. For additional information regarding these adjustments, see the calculation memorandum from John Conniff to the File dated December 26, 2001 which is in the CRU public file.

We valued foreign brokerage and handling using the Indian values that were reported in the public version of the questionnaire response placed on the record in *Certain Stainless Steel Wire Rod from India; Final Results of Antidumping Duty Administrative and New Shipper Review,* 65 FR 31302 (May 17, 2000). We valued ocean freight using the international freight expense reported in the public version of the questionnaire response that the Viraj Group submitted in the stainless steel wire rod from India review covering the period December 1996 through November 1997. *See Certain Stainless Steel Wire Rod from India; Final Results of Antidumping Duty Administrative and New Shipper Reviews* 64 FR 856 (January 6, 1999). We identify the source used to value foreign inland freight in the *Normal Value* section of this notice, below. We accounted for inflation or deflation between the time period that the values for movement charges were in effect and the POR, as described below in the *Normal Value* section of this notice.

**Use of Facts Otherwise Available**

Section 776(a)(2) of the Act provides that if an interested party or any other person: ''(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 * * * or (D) provides such information but the information cannot be verified as provided in section 782(i), the [Department] * * * shall, subject to section 782(d), use the facts otherwise

available in reaching the applicable determination under this title.''

The Department was unable to verify the total amount of indirect selling expenses incurred by Groupstars LLC during the POR. At verification, the Department found that Mr. Ji paid for certain indirect selling expenses incurred on Groupstars LLC's behalf using both his personal funds and the funds of New Phoenix Ltd. (New Phoenix), a company which he wholly owns. See US Verification Report at 8. Thus, not all of Groupstars LLC's indirect selling expenses were reported in the company's financial statement. At verification, Mr. Ji identified certain expenses (*e.g.,* rent) that did not appear on the company's financial statement and provided documents to substantiate the amount of such expenses. In addition, Mr. Ji provided the Department with access to his personal records and the records of New Phoenix. However, the record keeping systems he employed did not allow Department officials to identify which expenses related to Groupstars LLC. Because Groupstars LLC failed to provide the information the Department requested in the form and manner requested, and because we could not verify the information as provided, we find that the use of facts otherwise available is appropriate. As facts available, we allocated a portion of New Phoenix's expenses to Groupstars LLC. For further discussion of this issue, see the calculation memorandum from John Conniff to the File dated December 26, 2001 which is in the CRU public file.

**Normal Value**

For exports from NME countries, section 773(c)(1) of the Act provides that the Department shall determine NV using a FOP methodology if: (1) the subject merchandise is exported from a NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value pursuant to section 773(a) of the Act. Section 351.408 of the Department's regulations sets forth the methodology used by the Department to calculate the NV of merchandise exported from NME countries. In every case conducted by the Department involving the PRC, the PRC has been treated as a NME. Because none of the parties to this proceeding contested such treatment, we calculated NV in accordance with section 773(c)(3) and (4) of the Act and section 351.408(c) of the Department's regulations.

In accordance with section 773(c)(3) of the Act, the FOP utilized in producing potassium permanganate include, but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs, including depreciation. In accordance with section 773(c)(4) of the Act, the Department valued the FOP, to the extent possible, using the costs of the FOP in a market economy that is (1) at a level of economic development comparable to the PRC, and (2) a significant producer of comparable merchandise. We determined that India is comparable to the PRC in terms of per capita gross national product and the national distribution of labor. Furthermore, India is a significant producer of comparable merchandise. See Memorandum *From Jeff May, Director, Office of Policy, to Holly Kuga, Senior Office Director, AD/CVD Enforcement,* dated July 31, 2001, which is in the CRU public file.

In accordance with section 773(c)(1) of the Act, for purposes of calculating NV, we attempted to value the FOP using surrogate values that were in effect during the POR. However, when we were unable to obtain surrogate values in effect during the POR, we adjusted the values, as appropriate, to account for inflation or deflation between the effective period and the POR. We calculated the inflation or deflation adjustments for all factor values, except labor, using the wholesale price indices (WPI) for India as published in the International Monetary Fund's (IMF) publication, *International Financial Statistics.* We valued the FOP as follows:

(1) We valued the direct materials, potassium hydroxide and manganese dioxide using the rupee per metric ton or rupee per kilogram value of imports that entered India during the months of January-February and April-December 2000, as published in the Monthly Statistics of the Foreign Trade of India, Volume II—Imports (*Indian Import Statistics*).[2]

(2) We valued salt using the rupee per kilogram value of imports that entered India during the months of January-February and April-December 2000, as published in Indian Import Statistics.

(3) We valued coal using the rupee per metric ton or rupee per kilogram value of imports that entered India during the months of January-February and April-December 2000, as published in *Indian Import Statistics.*

(4) We valued electricity using the 1997 Indian electricity prices for industrial use as reported by the International Energy Agency (IEA), as adjusted for inflation. This rate is available in the IEA publication *Energy, Prices and Taxes, 2nd Quarter 2000.*

(5) We valued labor using a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3). This rate is identified on the Import Administration's Web site. *See http://ia.ita.doc.gov/wages.*

(6) We derived ratios for factory overhead, selling, general and administrative (SG&A) expenses, and profit using information reported for 1992–1993 in the *Reserve Bank of India Bulletin* of January 1997. This is the most recent information that we were able to obtain. Using the information from the *Reserve Bank of India Bulletin,* we were able to calculate factory overhead as a percentage of direct materials, labor, and energy expenses; SG&A expenses as a percentage of the total cost of manufacturing; and profit as a percentage of the sum of the total cost of manufacturing and SG&A expenses.

(7) We valued packing materials, including pallets and steel drums using the rupee per piece or rupee per kilogram value of imports that entered India during the months of January-February and April-December 2000, as published in *Indian Import Statistics.*

(8) We used the following sources to value truck and rail freight services incurred to transport the finished product to the port and direct materials, packing materials, and coal from the suppliers of the inputs to Groupstars:

*Truck Freight*: We valued truck freight services using the 1999 rate quotes reported by Indian freight companies. *See Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China,* 65 FR 33805 (May 25, 2000).

*Rail Freight:* We valued rail freight services using the April 1995 rates published by the Indian Railway Conference Association, as adjusted for inflation.

(9) We used the following sources to value ocean freight and marine insurance services incurred to transport the finished product to the port and direct materials, packing materials, and coal from the suppliers of the inputs to Groupstars:

*Ocean Freight:* We valued ocean freight services using the 1997 rate quotes reported by the Viraj Group in *Certain Stainless Steel Wire Rod from India; Notice of Preliminary Results of the Administrative and New Shipper Review,* 63 FR 48184.

*Marine Insurance:* We valued marine insurance using the 1997 rate quotes reported by the Viraj Group in *Certain Stainless Steel Wire Rod from India;*

[2] For each of the FOP, we were unable to find Indian import statistics for March 2000.

*Notice of Preliminary Results of the Administrative and New Shipper Review,* 63 FR 48184. For further discussion of the surrogate values used in this review, see *Memorandum From Chris Brady to the File Regarding Surrogate Values Used for the Preliminary Results of the New Shipper Review of Potassium Permanganate from the People's Republic of China,* dated December 26, 2001, which is in the CRU public file.

**Preliminary Results of Review**

As a result of our review, we preliminarily determine that the following weighted-average percentage dumping margin exists for the period January 1, 2000 through December 31, 2000:

| Exporter/Manufacturer | Margin (percent) |
|---|---|
| Groupstars Chemical Co., Ltd.[3] | 262.90. |

The Department will disclose the calculations it performed in this review to the parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Any interested party may request a hearing within 30 days of publication of this notice in accordance with section 351.310(c) of the Department's regulations. Any hearing would normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing. Unless otherwise notified by the Department, interested parties may submit case briefs within 21 days of the date of publication of this notice in accordance with 351.309(c)(ii) of the Department's regulations. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

**Assessment**

The Department will issue the final results of this new shipper review, which will include the results of its analysis of issues raised in the briefs, within 90 days from the date of this preliminary result, unless the time limit is extended. Upon completion of this new shipper review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the U.S. Customs Service upon completion of this review. For assessment purposes, we calculated importer-specific assessment rates for potassium permanganate from the PRC. We divided the total dumping margin (calculated as the difference between NV and CEP) for the importer by the entered value of the reviewed sale. Where the importer-specific assessment rate is above de minimis, we will direct U.S. Customs to assess the resulting ad valorem rate against the entered value of the entry of the subject merchandise by that importer during the POR.

**Cash Deposit**

Furthermore, the following deposit rates will be effective upon publication of the final results of this review for all shipments of potassium permanganate from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the reviewed firm will be the rate established in the final results of this review; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period; (3) for all other PRC exporters, the rate will be the current PRC-wide rate, 128.94 percent; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

**Notification**

This notice also serves as a preliminary reminder to importers of their responsibility under Sec. 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper review and this notice are published in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: December 26, 2001.

**Richard W. Moreland,**

*Acting Assistant Secretary, for Import Administration.*

[FR Doc. 02–125 Filed 1–2–02; 8:45 am]

BILLING CODE 3510–DS–P

[3] Although the new shipper review was initiated on Groupstars Chemical Co., Ltd. (''Shandong'') (66 FR 13895, March 8, 2001), it was later clarified by respondent's counsel that the correct name should be Groupstars Chemical Co., Ltd.

## DEPARTMENT OF COMMERCE

### International Trade Administration

### United States-Egypt Presidents' Council: Membership

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Amendment to Notice of Membership Opportunity: Extension to deadline for applications.

**SUMMARY:** The International Trade Administration of the U.S. Department of Commerce established and monitors the activities of the U.S.-Egypt Presidents' Council. The purpose of the Council is to provide a forum through which American and Egyptian private sector representatives can provide advice and counsel to both governments. The **Federal Register** published a notice of membership opportunities for American business representatives on the U.S. side of the Council on November 19, 2001. The deadline was December 28, 2001. This notice hereby extends the deadline by which applications must be received.

**DATES:** In order to receive full consideration, requests must be received no later than: Friday, January 25, 2002.

**ADDRESSES:** Please send your requests for consideration to Maram R. Talaat, Egypt Desk Officer, Office of the Middle East, U.S. Department of Commerce by fax on 202–482–0878 and by mail to Room H–2029B, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

**FOR FURTHER INFORMATION, CONTACT:** Maram R. Talaat, Office of the Middle East, Room H–2029B, U.S. Department of Commerce, Washington, D.C. 20230, phone: 202–482–3752.

**SUPPLEMENTARY INFORMATION:** This amends the notice of membership opportunities on the U.S.-Egypt Presidents' Council published in the **Federal Register** on November 19, 2001 (66 FR 57937–57938).

Dated: December 27, 2001.

**Cherie A. Loustaunau,**

*Director, Office of the Middle East.*

[FR Doc. 02–82 Filed 1–2–02; 8:45 am]

**BILLING CODE 3510–DA–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 121401A]**

### Endangered Species; Permits

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

**ACTION:** Receipt of applications for two research permits (1355, 1356).

**SUMMARY:** Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research under the Endangered Species Act (ESA): NMFS has received an application for a scientific research permit from Mr. Eugene Greer, of Columbia Environmental Research Center (CERC) and NMFS has received an application for a scientific research permit from Mr. Michael J. Bresette, of Inwater Research Group Inc.

**DATES:** Comments or requests for a public hearing on any of the new applications must be received at the appropriate address or fax number no later than 5 p.m. eastern standard time on February 4, 2002.

**ADDRESSES:** Written comments on any of the new applications or modification requests should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application or modification request. Comments will not be accepted if submitted via e-mail or the Internet. The applications and related documents are available for review in the indicated office, by appointment:

Permits, Conservation and Education Division, F/PR1, 1315 East West Highway, Silver Spring, MD 20910 (phone: 301–713–2289, fax: 301–713–0376).

Documents may also be reviewed by appointment in the Office of Protected Resources, F/PR1, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (phone: 301–713–2289).

**FOR FURTHER INFORMATION CONTACT:** Lillian Becker, Silver Spring, MD (phone: 301-713-2319, fax: 301–713–0376, e-mail: Lillian.Becker@noaa.gov)

**SUPPLEMENTARY INFORMATION:**

#### Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Scientific research and/or enhancement permits are issued under section 10(a)(1)(A) of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222-226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

#### Species Covered in This Notice

The following species are covered in this notice:

*Sea turtles*

Threatened and endangered green turtle (*Chelonia mydas*)

Endangered hawksbill turtle (*Eretmochelys imbricata*)

Endangered Kemp's ridley turtle (*Lepidochelys kempii*)

Threatened loggerhead turtle (*Caretta caretta*)

*Fish*

Endangered shortnose sturgeon (Acipenser brevirostrum)

#### New Applications Received

*Application 1355*

The applicant proposes to test the effects of the ambient levels of discharged waste found in the waters of North Carolina on the growth and survival of shortnose sturgeon fry. Preliminary results of acute toxicity tests indicate these species are among the more sensitive fish relative to contaminant effects, indicating the importance of testing the hypothesis that water quality may be a limiting factor to the species recovery. Up to 3,000 fry will be placed into water shipped in from the rivers of North Carolina and observed for growth and survival.

*Application 1356*

The applicant proposes to investigate the demographic composition and genetic origin of sea turtles within the Key West National Wildlife Refuge. This will be done by the capturing of up to 100 green, 100 loggerhead, 50 Kemp's ridley, and 50 hawksbill turtles with nets and by hand. The turtles will be weighed, measured, blood sampled, PIT and flipper tagged, have stomach lavage and released back into the area where they were captured.

Dated: December 21, 2001.

**Ann Terbush,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 02–130 Filed 1–2–02; 8:45 am]

**BILLING CODE 3510–22–S**

## 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).

**DATES:** Consideration will be given to all comments received by February 4, 2002.

*Title, Form, and OMB Number:* United States Air Force Academy Application; USAFA Form 149; OMB Number 0701–0087.

*Type of Request:* Extension.

*Number of Respondents:* 9,850.

*Responses per Respondent:* 1.

*Annual Responses:* 9,850.

*Average Burden Per Response:* 24 minutes.

*Annual Burden Hours:* 3,940.

*Needs and Uses:* The information collection requirement is necessary to obtain data on candidates' background and aptitude in determining eligibility and selection to the Air Force Academy. The information collected on this form is required by 10 U.S.C. 9346. The respondents are students who are applying for admission to the United States Air Force Academy. Each student's background and aptitude is reviewed to determine eligibility.

*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: December 21, 2001.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 02–29 Filed 1–2–02; 8:45 am]

**BILLING CODE 5001–08–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Joint Advisory Committee on Nuclear Weapons Surety: Meeting

**AGENCY:** Department of Defense.

**ACTION:** Notice of Advisory Committee Meeting.

**SUMMARY:** The Joint Advisory Committee on Nuclear Weapons Surety will conduct a closed session on February 4 and 5, 2002 at Science Applications International Corporation, San Diego, California.

The Joint Advisory Committee is charged with advising the Secretaries of Defense and Energy, and the Joint Nuclear Weapons Council on nuclear weapons surety matters. At this meeting the Joint Advisory Committee will receive classified briefings on nuclear weapons systems safety and security.

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended, Title 5, U.S.C. App. II, (1988)), this meeting concerns matters sensitive to the interests of national security, listed in 5 U.S.C. Section 552b(c)(1) and accordingly this meeting will be closed to the public.

Dated: December 21, 2001.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 02–28 Filed 1–2–02; 8:45 am]

**BILLING CODE 5001–08–M**

## DEPARTMENT OF DEFENSE

### National Security Agency/Central Security Service; Privacy Act of 1974; System of Records

**AGENCY:** National Security Agency/ Central Security Service, DoD.

**ACTION:** Notice to alter a system of records.

**SUMMARY:** The National Security Agency/Central Security Service is proposing to alter a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This proposed action would be effective without further notice on February 4, 2002 unless comments are received which result in a contrary determination.

**ADDRESSES:** Send comments to the National Security Agency/Central Security Service, Office of Policy, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

**FOR FURTHER INFORMATION CONTACT:** Ms. Anne Hill at (301) 688–6527.

**SUPPLEMENTARY INFORMATION:** The National Security Agency's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 19, 2001, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: December 21, 2001.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**GNSA 18**

**SYSTEM NAME:**

NSA/CSS Operations Files (February 22, 1993, 58 FR 10531).

**CHANGES:**

* * * * *

**SYSTEM NAME:**

Delete 'NSA/CSS' from entry.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete entry and replace with 'Individuals identified in foreign intelligence, counterintelligence, or information system security reports, and supportive materials, including individuals involved in matters of foreign intelligence interest, information systems security interest, the compromise of classified information, or terrorism.'

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Add to entry 'information systems security analysis and reporting.'

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Add to entry 'National Security Directive 42.'

**PURPOSE(S):**

Add to entry 'and information systems security.'

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Add to second paragraph 'information systems security information.'

* * * * *

**RETRIEVABILITY:**

Delete entry and replace with 'Information is retrieved by individual's name, Social Security Number, or identification number.'

* * * * *

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Delete the first paragraph and replace with 'Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal

law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source. NOTE: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

Investigatory material complied solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.'

* * * * *

**GNSA 18**

**SYSTEM NAME:**

Operations Files.

**SYSTEM LOCATION:**

National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals identified in foreign intelligence, counterintelligence, or information system security reports and supportive materials, including individuals involved in matters of foreign intelligence interest, information systems security interest, the compromise of classified information, or terrorism.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records include administrative information; biographic information; intelligence requirements, analysis, and reporting; information systems security analysis and reporting; operational records; articles, public-source data, and other published information on individuals and events of interest to NSA/CSS; actual or purported compromises of classified intelligence; countermeasures in connection therewith; and identification of classified source documents and distribution thereof. Authority for maintenance of the system: National Security Act of 1947, as amended, 50 U.S.C. 403–3(d)(2); National Security Agency Act of 1959, Pub. L. 86–36, as amended, 50 U.S.C. 402 Note; E.O. 12333; E.O. 12958; E.O. 9397 (SSN); and National Security Directive 42.

**PURPOSE(S):**

To maintain records on foreign intelligence, counterintelligence, and information systems security matters relating to the mission of the National Security Agency.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To U.S. Government agencies, and in some instances foreign government agencies or their representatives, to provide foreign intelligence, counterintelligence, information systems security information, and other information.

To U.S. Government officials regarding compromises of classified information including the document(s) apparently compromised, implications of disclosure of intelligence sources and methods, investigative data on compromises, and statistical and substantive analysis of the data.

To any U.S. Government organization in order to facilitate any security, employment, detail, liaison, or contractual decision by any U.S. Government organization.

Records may further be disclosed to agencies involved in the protection of intelligence sources and methods to facilitate such protection and to support intelligence analysis and reporting.

The DoD 'Blanket Routine Uses' set forth at the beginning of the NSA/CSS' compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Magnetic tape, disk or other computer storage media, computer listings and databases, paper in file folders, audio recordings, microfilm or microfiche.

**RETRIEVABILITY:**

Information is retrieved by individual's name, Social Security Number, or identification number.

**SAFEGUARDS:**

For paper, computer printouts, audio recordings, and microfilm secure limited access facilities, within those facilities secure limited access rooms, and within those rooms lockable containers. Access to information is limited to those individuals specifically authorized and granted access by NSA/CSS regulations. For records on the computer system, access is controlled by passwords or physical protection and limited to authorized personnel only.

**RETENTION AND DISPOSAL:**

Records are reviewed for retention on a scheduled basis every 120 days to 5 years. Evidential, informational, and historical data are archived as permanent records. All other records are destroyed.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

**CONTESTING RECORD PROCEDURES:**

The NSA/CSS rules for contesting contents and appealing initial determinations are published at 32 CFR part 322 or may be obtained by written request addressed to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

**RECORD SOURCE CATEGORIES:**

Individuals themselves; U.S. agencies and organizations; media, including periodicals, newspapers, and broadcast transcripts; public and classified reporting, intelligence source documents, investigative reports, and correspondence. Exemptions claimed for the system:

Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be entitled, as a result of the maintenance

of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identify of a confidential source.

**Note:** When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated according to the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 322. For additional information contact the system manager.

[FR Doc. 02–31 Filed 1–2–02; 8:45 am]

BILLING CODE 5001–08–M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Release of the Notice of Availability (NOA) on the Final Environmental Impact Statement (FEIS) on the Disposal and Reuse of the Oakland Army Base, Oakland, California

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of Availability.

**SUMMARY:** The Army prepared this FEIS in compliance with the National Environmental Policy Act (NEPA) of 1969 and the President's Council on Environmental Quality. The closure of the Oakland Army Base (OARB), Oakland, California, was mandated in accordance with the recommendations of the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended (the ''BRAC law''). The July 27, 2001, edition of the **Federal Register** (66 FR 39153–54 and 39162) contained the NOA for the Army's OARB Supplemental Draft EIS.

**DATES:** The review period for the Final EIS will end 30 days after publication of the Notice of Availability in the **Federal Register** by the U.S. Environmental Protection Agency.

**ADDRESSES:** Direct questions and/or written comments regarding the Final EIS to, or a request for a copy of the document from: Mr. Chuck Hubbard, U.S. Army Corps of Engineers, Sacramento District (CESPK–PD) 1325 J Street, Sacramento, California 95814–2922.

**FOR FURTHER INFORMATION CONTACT:** Mr. Chuck Hubbard at (916) 557–6958; by facsimile at (916) 557–7850; or by e-mail at CHubbard@spk.usace.army.mil.

**SUPPLEMENTARY INFORMATION:** The FEIS analyzes three alternative courses of action with respect to the disposal and subsequent reuse of the 425 acres (371 land acres and 54 submerged land acres) comprising the OARB: (1) The no action disposal alternative, under which the property would be maintained in a caretaker status after closure; (2) the unencumbered disposal alternative, under which the Army would transfer the property without encumbrances, such as environmental restrictions, land use controls, and easements; and (3) the encumbered disposal alternative, under which the Army would transfer the property with various environmental restrictions, land use controls, and easements, limiting the future use of the property. The FEIS also analyzes the potential environmental and socioeconomic consequences of a range of community reuse alternatives: (1) Low intensity reuse alternative; (2) low-medium intensity reuse alternative, (3) medium intensity reuse alternative; (4) medium-high intensity reuse alternative (5) medium-high/high intensity reuse alternative; (6) high intensity reuse alternative; and (7) very-high intensity reuse alternative.

The FEIS concludes the no action alternative is not reasonable because the BRAC law mandates closure of the Oakland Army Base, and the Army has no requirement to retain the property. This FEIS also concludes that the unencumbered disposal alternative is not feasible given environmental conditions and legal requirements.

The Army's preferred alternative course of action is the encumbered disposal of excess property. Possible encumbrances include: covenants and restrictions pertaining to asbestos-containing material; lead-based paint; biological resources; historic properties; ground water usage; excavations; future remedial activities after transfer; infrastructure easements; and rights-of-way.

The FIES analyzes community reuse of the OARB property as a secondary action resulting from closure and disposal by the Army. While the Army does not control the community's reuse of the property, NEPA requires the Army to analyze the reasonable foreseeable impacts of its disposal action. The local community established the Oakland Base Reuse Authority (OBRA) to develop and implement a reuse plan for the installation. Approval and implementation of the reuse plan are within the discretion of the OBRA.

Comments on the FEIS, received during the 30-day public comment period, will be considered in preparing the Army's Record of Decision.

Copies the FEIS are available for review at the following libraries: the Oakland Public Library Main Branch, Science, Social Science and Documents Section, 125 Fourteenth Street, Oakland, California 94612; the West Oakland Branch Library, 1801 Adeline Street, Oakland, California 94607; and the Base Transition Office, 2475–D West 12th Street, Oakland, California 94607.

Dated: December 21 2001.

**Raymond J. Fatz,**

*Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA(I&E).*

[FR Doc. 02–77 Filed 1–2–02; 8:45 am]

BILLING CODE 3710–08–M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice to Amend a System of Records.

**SUMMARY:** The Department of the Army is amending a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on Febuary 4, 2002 unless comments are received which result in a contrary determination.

**ADDRESSES:** Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC-PDD-RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

**FOR FURTHER INFORMATION CONTACT:** Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

**SUPPLEMENTARY INFORMATION:** The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The

proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: December 21, 2001.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**A0351 DAPE**

**SYSTEM NAME:**

Army Training Requirements and Resources System (ATRRS) (March 29, 2000, 65 FR 16568).

**CHANGES:**

* * * * *

**RETENTION AND DISPOSAL:**

Delete entry and replace with ''The following ATRRS reports are permanent for the offices performing Army-wide responsibility only: Army Program for Individual Training (ARPRINT), the Mobilization Army Program for Individual Training (MOB ARPRINT), and the Military Manpower Training Report (MMTR).

For all other offices, the ARPRINT, MOB ARPRINT and MMTR reports and all other ATRRS reports are kept until no longer needed for conducting business, but not longer than 6 years, then destroyed.

Records not classified as reports are destroyed when no longer needed for current operations.''

* * * * *

**A0351 DAPE**

**SYSTEM NAME:**

Army Training Requirements and Resources System (ATRRS).

**SYSTEM LOCATION:**

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, 300 Army Pentagon, Washington, DC 20310–0300; U.S. Army Personnel Command; major commands; Army Reserve Personnel Center; National Guard Bureau; Schools and Army Training Centers worldwide. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Members of the Army, Navy, Air Force, Marine Corps, Reserve Officers' Training Corps students, Department of Defense (DoD) civilian employees and approved foreign military personnel attending a course of instruction conducted under the auspices of all Army schools and some DoD schools.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The system contains records pertaining to course administrative data, course scope and prerequisites, course training requirements, course equipment, personnel and facilities constraints, requirements for instructors, class schedules, class quotas, prioritized order of merit list for input into Noncommissioned Officers Education System (NCOES) training, by name reservations, limited individual personnel data, and course input and completion data by name/Social Security Number. Data related to an individual is as follows:

Training course completion data and reason codes for attrition are maintained for an individual, as well as training seat reservations.

Limited personnel data is maintained on an individual as long as the individual has a valid reservation for training or is currently in the training base.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013, Secretary of the Army and 4301; and E.O. 9397 (SSN).

**PURPOSE(S):**

The Army Training Requirements and Resources System is the system of records for the management of personnel input to training for the Army; is the repository for training requirements, training programs, selected training cost data, and training personnel data; contains detailed class information on all courses taught and taken by Army personnel; and produces reports and analyses and can display selected data pertinent to training-requirements, programs, inputs, graduates, loads and associated information.

Training managers use this information to schedule classes, fill training seats, and train soldiers.

The major subsystems of the Army Training Requirements and Resources System include:

(a) The Mobilization Planning System is used to plan individual training requirements and training programs for all courses upon mobilization. The product of Mobilization Planning System is the Mobilization Army Program for Individual Training.

(b) The Structure Manning Decision Review (SMDR) is the process for reviewing training requirements and modifying them into executable training programs based on available resources. The product of the SMDR is the Army Program for Individual Training which is the mission and resourcing document used by schools and training centers to establish class schedule. Additionally, the Training Resource Arbitration Panel is used to adjust training programs during the execution year.

(c) The Student Trainee Management System—Enlisted manages initial entry training seats and provides projected graduate information to PERSCOM.

(d) The Quota Management System is used to allocate training quotas by class and redistribute those seats among components in order to maximize the fill of training seats.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Electronic storage medium.

**RETRIEVABILITY:**

Retrieved by individual's name and Social Security Number.

**SAFEGUARDS:**

Visitor registration system is in effect. Hard copy printouts which contain data by Social Security Number are maintained with an 'Official Use Only' cover. Access to the Army Training Requirements and Resources System is limited to authorized personnel and as determined by the system manager.

**RETENTION AND DISPOSAL:**

The following ATRRS reports are permanent for the offices performing Army-wide responsibility only: Army Program for Individual Training (ARPRINT), the Mobilization Army Program for Individual Training (MOB ARPRINT), and the Military Manpower Training Report (MMTR).

For all other offices, the ARPRINT, MOB ARPRINT and MMTR reports and all other ATRRS reports are kept until no longer needed for conducting business, but not longer than 6 years, then destroyed.

Records not classified as reports are destroyed when no longer needed for current operations.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, 300 Army Pentagon, Washington, DC 20310–0300.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the local commander. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

Individual should provide the full name, Social Security Number, and military status or other information verifiable from the record itself.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves is contained in this system should address written inquiries to the local commander. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

Individual should provide the full name, Social Security Number, and military status or other information verifiable from the record itself.

CONTESTING RECORD PROCEDURES:

The Army rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is received from DoD staff, field installations, and automated systems.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–30 Filed 1–2–02; 8:45 am]

BILLING CODE 5001–08–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. ER02–300–001 and ER02–301–001]**

### Armstrong Energy Limited Partnership, LLLP and Troy Energy, LLC; Notice of Filing

December 27, 2001.

Take notice on December 14, 2001, Pleasants Energy, LLC (Pleasants Energy), Armstrong Energy limited Partnership, LLLP (Armstrong Energy) and Troy Energy LLC (Troy Energy) tendered for filing with the Federal Energy Regulatory Commission (Commission) a letter requesting the Commission to issue an order on the merits of their Purchase Power Agreements with Virginia Electric and Power Company.

Armstrong Energy and Troy Energy request that the Commission take action by February 18, 2002 since the units will commence test energy operations shortly after that date.

Copies of the filing were served upon the Ohio Public Utilities Commission, Pennsylvania Public utility Commission, Public Service Commission of West Virginia and Virginia State Corporation Commission.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's web site 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.

*Comment Date:* January 4, 2002.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 02–70 Filed 1–2–02; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. ER02–40–000 and ER02–40–001]**

### Attala Energy Company, LLC; Notice of Issuance of Order

December 27, 2001.

Attala Energy Company, LLC (Attala) filed with the Commission, in the above-docketed proceeding, an application for market-based rate authority with accompanying tariffs that provides for the sale of capacity, energy, and/or ancillary services, the resale of firm transmission rights and the reassignment of transmission capacity. Attala also requested certain waivers and authorizations. In particular, Attala requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by Attala. On December 19, 2001, the Commission issued an order (Order) that accepted Applicants application, subject to any tariff condition adopted by the Commission in Docket No. ER01–118–000.

The Commission's December 19, 2001 Order granted Attala's request for blanket approval under Part 34, subject to the conditions found in Appendix A in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Attala 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.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, Attala is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Attala, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Attala's issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 22, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the 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. 02–68 Filed 1–2–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. ER02–305–000, ER00–2998–001, ER00–2999–001, ER00–3000–001, and ER00–3001–001]**

## Condon Wind Power, LLC; Notice of Issuance of Order

December 27, 2001.

Condon Wind Power, LLC (Condon) filed with the Commission, in the above-docketed proceedings, an application requesting acceptance of initial rate schedule that provides for Condon to make wholesale sales of electric energy and capacity form new wind energy project at market-based rates. Condon's application also requested certain waivers and authorizations. In particular, Condon requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by Condon. On December 19, 2001, the Commission issued an order (Order) that accepted Condon's application, subject to any tariff condition adopted by the Commission in Docket No. ER01–118–000.

The Commission's December 19, 2001 Order granted the Condon's request for blanket approval under Part 34, subject to the conditions found in Appendix A in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Condon 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.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, Condon are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Condon, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Condon's issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 22, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the 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. 02–71 Filed 1–2–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP02–44–000]**

## Dominion Transmission, Inc.; Notice of Application

December 27, 2001.

Take notice that on December 7, 2001, Dominion Transmission, Inc. (Dominion), 445 West Main Street, Clarksburg, West Virginia 26301, filed an application pursuant to Section 7 of the Natural Gas Act and Part 157 of the Commission's Rules and Regulations for a certificate of public convenience and necessity to construct and operate pipeline facilities for the transportation of natural gas all as more fully set forth in the application 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).

Specifically, Dominion seeks to construct and operate 4,735 of additional horsepower at its existing Little Greenlick Compressor Station located in Potter County, Pennsylvania. Dominion, together with Tennessee Gas Pipeline Company (Tennessee), has also filed to lease 150,000 Dth per day of capacity to Tennessee from Ellisburg, Pennsylvania to Leidy, Pennsylvania.[1] The capacity created by this proposal, 130,000 Dth per day, and by a proposal to expand the facilities jointly owned by Dominion and National Fuel Gas Supply Corporation (National Fuel) will provide the volume to be leased to Tennessee.[2] The estimated cost of the proposed facilities is $10.3 million.

Any questions regarding the application should be directed to Sean R. Sleigh, Certificates Manager, Dominion Transmission, Inc., 445 West Main Street, Clarksburg, West Virginia 26301 at 304–627–3462 or by E-mail at *sean_r_sleigh@dom.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 January 17, 2002, 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

[1] The lease is the subject of Docket No. CP02–47–000.

[2] The expansion of the joint facilities owned by Dominion and National Fuel is the subject of Docket No. CP02–53–000.

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. 02–60 Filed 1–2–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP02–47–000]**

## Dominion Transmission, Inc. and Tennessee Gas Pipeline Company; Notice of Application

December 27, 2001.

Take notice that on December 7, 2001, Dominion Transmission, Inc. (Dominion), 445 West Main Street, Clarksburg, West Virginia 26301 and Tennessee Gas Pipeline Company (Tennessee), 9 E. Greenway Plaza, Houston, Texas 77048, filed a joint application pursuant to Section 7 of the Natural Gas Act and Part 157 of the Commission's Rules and Regulations for a certificate of public convenience and necessity authorizing a capacity lease between Dominion and Tennessee all as more fully set forth in the application 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).

Specifically, Dominion seeks to lease capacity of up to 150,000 Dth per day to Tennessee on a firm basis from Ellisburg, Pennsylvania to Leidy, Pennsylvania for a term of ten years commencing November 1, 2002. This leased capacity is part of Tennessee's Can-East Project (also known as the Leidy Extension) which is designed to provide firm transportation of gas from various points on Tennessee's system for delivery to Texas Eastern Transmission Company and Transcontinental Gas Pipe Line Corporation at Leidy.

Any questions regarding the application should be directed to Sean R. Sleigh, Certificates Manager, Dominion Transmission, Inc., 445 West Main Street, Clarksburg, West Virginia 26301 at 304–627–3462 or by E-mail at *sean_r_sleigh@dom.com* and Marguerite N. Woung-Chapman, General Counsel, Tennessee Gas Pipeline Company, 9 E. Greenway Plaza, Suite 340, Houston, Texas 77048 at 832–676–7329 or by E-mail at *marguerite.woung-chapman@elpaso.com.*

Any person desiring to be heard or to make any protest with reference to said application should file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All such motions to intervene or protests should be filed on or before January 17, 2002. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 02–62 Filed 1–2–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. ER02–22–000, ER02–23–000, ER02–24–000, and ER02–25–000]**

## Dresden Energy, LLC, S.W.E.C., LLC, Armstrong Energy Limited Partnership, LLLP and Troy Energy, LLC; Notice of Issuance of Order

December 27, 2001.

Dresden Energy, LLC, S.W.E.C., LLC, Armstrong Energy Limited Partnership, LLLP, and Troy Energy, LLC (collectively, Applicants) filed with the Commission, in the above-docketed

proceedings, applications for market-based rate authority, with accompanying tariffs (market-based rate tariffs). The proposed market-based rate tariffs provide for sales of capacity, energy, and/or ancillary services and the resale of transmission rights. The Applicants also requested certain waivers and authorizations. In particular, the Applicants requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by the Applicants. On December 19, 2001, the Commission issued an order (Order) that accepted the Applicants' applications in these proceedings, subject to any tariff condition adopted by the Commission in Docket No. ER01–118–000.

The Commission's December 19, 2001 Order granted the Applicants' request for blanket approval under Part 34, subject to the conditions found in Appendix A in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by the Applicants 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.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, the Applicants are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the Applicants, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of the Applicants' issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 22, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the 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. 02–67 Filed 1–2–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. ER01–2688–000, ER01–2688–001, ER01–2688–002, ER01–2689–000, ER01–2689–001, and ER01–2689–002]**

## Gilroy Energy Center, LLC and King Center Energy Center, LLC; Notice of Issuance of Order

December 27, 2001.

Gilroy Energy Center, LLC and King City Energy, LLC (collectively, Applicants) filed with the Commission, in the above-docketed proceedings, an application requesting acceptance of initial rate schedules under which Applicants will make wholesale sales of electric energy, capacity, replacement reserves and certain ancillary services and will reassign transmission capacity and resell firm transmission rights. Applicants' application also requested certain waivers and authorizations. In particular, Applicants requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by Applicants. On December 20, 2001, the Commission issued an order (Order) that accepted Applicants application, subject to any tariff condition adopted by the Commission in Docket No. ER01–118–000.

The Commission's December 20, 2001 Order granted Applicants request for blanket approval under Part 34, subject to the conditions found in Appendix A in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Applicants 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.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, Applicants are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Applicants, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Applicants' issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 22, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the 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. 02–65 Filed 1–2–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER02–159–000]**

## GNE, LLC; Notice of Issuance of Order

December 27, 2001.

GNE, LLC (GNE) filed with the Commission, in the above-docketed proceeding, an application for market-based rate authority. GNE's rate schedule provides for the sale of capacity, energy, and/or ancillary services and the reassignment of transmission capacity. GNE also requested certain waivers and authorizations. In particular, GNE requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by GNE. On December 19, 2001, the Commission

issued an order that accepted the tariff for sales of capacity and energy at market-based rates (Order), subject to any tariff condition adopted by the Commission in Docket No. EL01–118–000.

The Commission's December 19, 2001 Order granted GNE's request for blanket approval under Part 34, subject to the conditions found in Appendix A in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by GNE 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.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, GNE is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of GNE, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of GNE's issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 22, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the 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. 02–69 Filed 1–2–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP02–48–000]**

## National Fuel Gas Supply Corporation and Tennessee Gas Pipeline Company; Notice of Application

December 27, 2001.

Take notice that on December 7, 2001, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203 and Tennessee Gas Pipeline Company (Tennessee), 9 E. Greenway Plaza, Houston, Texas 77048, filed a joint application pursuant to Section 7 of the Natural Gas Act and Part 157 of the Commission's Rules and Regulations for a certificate of public convenience and necessity authorizing a capacity lease between National Fuel and Tennessee and to abandon service currently provided by National Fuel to Tennessee all as more fully set forth in the application 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).

Specifically, National Fuel seeks to abandon the currently certificated transportation service it provides to Tennessee under Rate Schedule X–51 between Clarence, New York and Ellisburg, Pennsylvania. Further, National Fuel seeks authority to lease capacity to Tennessee on a firm basis for a term of ten years commencing November 1, 2002. The lease will include 90,000 Dth per day of capacity from Clarence to Ellisburg and 130,000 Dth per day from Ellisburg to Leidy, Pennsylvania. This leased capacity is part of Tennessee's Can-East Project (also known as the Leidy Extension) which is designed to provide firm transportation of gas from various points on Tennessee's system for delivery to Texas Eastern Transmission Company and Transcontinental Gas Pipe Line Corporation at Leidy.

Any questions regarding the application should be directed to National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, New York 14203 at 716–857–7949 or by E-mail at *reitzd@natfuel.com* and Marguerite N. Woung-Chapman, General Counsel, Tennessee Gas Pipeline Company, 9 E. Greenway Plaza, Suite 340, Houston, Texas 77048 at 832–676–7329 or by E-mail at *marguerite.woung-chapman@elpaso.com.*

Any person desiring to be heard or to make any protest with reference to said application should file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All such motions to intervene or protests should be filed on or before January 17, 2002. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. 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. 02–63 Filed 1–2–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. ER01–2783–000 and ER01–2783–001]**

## ODEC Power Trading, Inc.; Notice of Issuance of Order

December 27, 2001.

ODEC Power Trading, Inc. (ODEC) filed with the Commission, in the above-docketed proceeding, an application for authority to sell electric energy and capacity at market-based rates. ODEC also requested certain waivers and authorizations. In particular, ODEC requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by ODEC. On December 19, 2001, the Commission issued an order that accepted ODEC's application for sales of capacity and energy at market-based rates (Order), subject to any tariff condition adopted by the Commission in Docket No. EL01–118–000.

The Commission's December 19, 2001 Order granted ODEC's request for

blanket approval under Part 34, subject to the conditions found in Appendix A in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by ODEC 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.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, ODEC is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of ODEC, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of ODEC's issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 22, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the 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. 02–66 Filed 1–2–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EL02–43–000]**

## Southern California Water Company, Complainant, v. Mirant Americas Energy Marketing, L.P., Respondent; Notice of Complaint

December 27, 2001.

Take notice that on December 21, 2001, Southern California Water Company (SCWC) filed a Complaint against Mirant Americas Energy Marketing, L.P. (MAEM). SCWC requests that the Commission issue an order finding that a firm power purchase contract between SCWC and MAEM was not the product of a competitive wholesale power market and the rate charged by MAEM under this contract is unjust and unreasonable.

Any person desiring to be heard or to protest this 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 must be filed on or before January 10, 2002. 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. Answers to the complaint shall also be due on or before January 10, 2002. 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. 02–64 Filed 1–2–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP02–46–000]**

## Tennessee Gas Pipeline Company, Notice of Application

December 27, 2001.

Take notice that on December 10, 2001, Tennessee Gas Pipeline Company (Tennessee), 9 E. Greenway Plaza, Houston, Texas 77048, filed an application pursuant to Section 7 of the Natural Gas Act and Part 157 of the Commission's Rules and Regulations for a certificate of public convenience and necessity to construct and operate a new compressor station and to authorize incremental recourse rates for service through Tennessee's Leidy Extension all as more fully set forth in the application 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).

Specifically, Tennessee seeks to construct and operate a 4,730 horsepower compressor station and other appurtenant facilities in Potter County, Pennsylvania. The proposed facilities will allow Tennessee to make firm deliveries of up to 150,000 Dth per day directly to Dominion Transmission, Inc. (Dominion). The proposed compressor station is part of Tennessee's larger Can-East Project which will establish its Leidy Extension. Tennessee states that the Can-East Project will extend its existing mainline system to the Leidy Hub by utilizing 280,000 Dth per day of capacity that Tennessee intends to lease from Dominion and National Fuel Gas Supply Corporation (National Fuel).[1] The estimated cost of the proposed facilities is $9.7 million.

Tennessee also proposes to offer service over its Leidy Extension under its existing FERC Gas Tariff at incremental recourse rates under its Rate Schedules FT–A and IT. Tennessee states that its customers will also have the option of selecting negotiated rates. Tennessee has included pro forma tariff sheets reflecting the proposed changes to its tariff necessary to effect service on the Leidy Extension.

[1] The lease between Tennessee and Dominion is the subject of Docket No. CP02–47–000. The lease between Tennessee and National Fuel is the subject of Docket No. CP02–48–000.

Any questions regarding the application should be directed to Marguerite N. Woung-Chapman, General Counsel, Tennessee Gas Pipeline Company, 9 E. Greenway Plaza, Suite 340, Houston, Texas 77048 at 832–676–7329 or by E-mail at *marguerite.woung-chapman@elpaso.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 January 17, 2002, 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. 02–61 Filed 1–2–02; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7125–5]**

### Agency Information Collection Activities: Proposed Collection, Comment Request; Enforcement Policy Regarding the Sale and Use of Aftermarket Catalytic Converters

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Enforcement Policy Regarding the Sale and Use of Aftermarket Catalytic Converters; EPA ICR # 1292.05; OMB No. 2060–0135; expires May 31, 2002. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before March 4, 2002.

**ADDRESSES:** U.S. Environmental Protection Agency, Office of Enforcement and Compliance Assurance, Office of Regulatory Enforcement (2242A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Copies of the ICR can be obtained free of charge by contacting Jack McLaughlin as provided below.

**FOR FURTHER INFORMATION CONTACT:** Jack McLaughlin, Telephone: (303) 236–9513; Facsimile number: (303) 236–9514; e-mail: *mclaughlin.jack.@epamail.epa.gov.*

**SUPPLEMENTARY INFORMATION:**

*Affected entities:* Entities potentially affected by this action are manufacturers and installers of aftermarket automobile catalytic converters.

*Title:* Enforcement Policy Regarding the Sale and Use of Aftermarket Catalytic Converters (OMB Control number 2060–0135; EPA ICR # 1292.05.) expiring 5/31/2002.

*Abstract:* Section 203(a)(3) of the Clean Air Act (Act) prohibits removing or rendering inoperative automobile emission control devices or elements of design. But for the adoption of the aftermarket catalytic converter enforcement policy (51 FR 28114–28119, 28133 (Aug. 5, 1986); 52 FR 42144 (Nov. 3, 1987)), the manufacture, sale or installation of aftermarket catalytic converters (catalysts) not equivalent to new original equipment (OE) catalysts would constitute a violation of the Act. However, because replacement OE catalysts are expensive, many consumers had elected to not replace catalysts that malfunctioned subsequent to the expiration of the emissions warranty on their vehicles.

The Agency believes that allowing the installation of aftermarket catalysts on older vehicles can be environmentally beneficial if the Agency can be assured that the aftermarket catalysts meet certain standards and if installers are accountable to select the proper aftermarket catalyst for each vehicle application. Manufacturers of new aftermarket catalysts are required, on a

one-time basis, for each catalyst line manufactured, to identify the catalyst physical specifications and summarize pre-production testing of the prototype. In addition, the manufacturer must submit semi-annual reports to EPA of the number of each type of catalyst manufactured and a summary of warranty card information (or copies of warranty cards, at the manufacturer's option). Companies that recondition used catalysts must, on a one-time basis, identify the company and provide information regarding procedures to be used to test used catalysts. All used catalysts must be individually bench-tested, and the company must submit semi-annual reports to EPA of the identity of persons who distribute the reconditioned catalysts and the number of reconditioned catalysts of each type that are sold to each distributor. Companies that install aftermarket catalysts have no reporting requirements but for 6 months must keep copies of installation invoices and records that show the reason an aftermarket catalyst installation was appropriate. Removed catalysts must be tagged with identifying information and be kept for 15 days. EPA allows the use of pre-printed documents or computer-generated documents. All the recordkeeping under the policy is authorized by section 114 of the Act, 42 U.S.C. 7414 and section 208 of the Act, 42 U.S.C. 7542. Parties who comply with these policies are allowed to install aftermarket catalysts instead of OE catalysts.

Confidentiality provisions are found at 40 CFR part 2. These requirements have been in effect for over 10 years. Startup costs have been completed. The proposed ICR utilizes assumptions that are the same as the previous ICR. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

In addition to this information, you may obtain a copy of the draft ICR supporting statement as provided above. The EPA would like to solicit comments to:

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

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Burden Statement:* For new catalyst manufacturers the average hourly burden per year per respondent is about 5 hours for the reporting required by the policy and the associated recordkeeping. The reporting is mandatory. The frequency of response is estimated to be 1 report per year for a new product line and 2 reports per year on manufacturing and warranty card information. There are 6 entities in the country covered by the requirements. Total burden for all new catalyst manufacturers is about 60 hours per year. There are annual operating and maintenance costs of about $60 per manufacturer. There are annualized purchased service costs of $35,700 per respondent. There are no annualized capital costs. Startup costs have been completed.

For parties who recondition used catalysts, the average annual hourly reporting burden is 631 hours per respondent. The reporting is mandatory. The frequency of response is 2 reports per year based on about 8,900 tests of used catalysts per respondent. Total burden for all 8 respondents is about 5,048 hours. There are annual operation and maintenance costs of about $200 per respondent. There are annualized capital costs of about $38,244 per respondent.

For parties who install aftermarket catalysts there is no reporting burden. The average annual recordkeeping burden is about 3.5 hours per respondent. There are no annualized operation and maintenance costs or annualized capital costs. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: December 28, 2001.

**Barry N. Breen,**

*Acting Assistant Administrator, Office of Enforcement and Compliance Assurance.*

[FR Doc. 02–108 Filed 1–2–02; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7124–5]**

## Agency Information Collection Activities: Proposed Collection; Comment Request; Modification of Secondary Treatment Requirements for Discharges Into Marine Waters

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB):

Modification of Secondary Treatment Requirements for Discharges into Marine Waters, EPA ICR Number 0138.07, OMB Control Number 2040–0088, expiring July 31, 2002. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before March 4, 2002.

**ADDRESSES:** U.S. EPA; Office of Wetlands, Oceans and Watersheds; Oceans and Coastal Protection Division (4504F); 1200 Pennsylvania Avenue, SW; Washington, DC 20460. Interested persons may obtain a copy of the ICR without charge by contacting the person identified below.

**FOR FURTHER INFORMATION CONTACT:** Virginia Fox-Norse, 202–260–8448 (phone), 202–260–9920 (facsimile), fox-norse.virginia@epa.gov (electronically).

**SUPPLEMENTARY INFORMATION:** *Affected entities:* Entities potentially affected by this action are those municipalities that currently have section 301(h) waivers from secondary treatment, have applied for a renewal of a section 301(h) waiver, or those with a pending section 301(h) waiver application, and the states within which these municipalities are located.

*Title:* Modification of Secondary Treatment Requirements for Discharges

into Marine Waters (OMB Control Number 2040–0088; EPA ICR Number 0138.07), expiring July 31, 2002.

*Abstract:* Regulations implementing section 301(h) of the Clean Water Act (CWA) are found at 40 CFR part 125, subpart G. The section 301(h) program involves collecting information from two sources: (1) The municipal wastewater treatment facility, commonly called a publicly owned treatment works (POTW), and (2) the state in which the POTW is located. Municipalities had the opportunity to apply for a waiver from secondary treatment requirements, but that opportunity closed in December, 1982. A POTW seeking to obtain a section 301(h) waiver, holding a current waiver or reapplying for a waiver, provides application, monitoring, and toxic control program information. The state provides information on its determination whether the discharge under the proposed conditions of the waiver ensures the protection of water quality, biological habitats, and beneficial uses of receiving waters and whether the discharge will result in additional treatment, pollution control, or any other requirement for any other point or nonpoint sources. The state also provides information to certify that the discharge will meet all applicable state laws and that the state accepts all permit conditions.

There are 4 situations where information will be required under the section 301(h) program:

(1) A POTW continuing the application process for a section 301(h) waiver, or reapplying for a waiver. As the permits with section 301(h) waivers reach their expiration dates, EPA must have updated information on the discharge to determine whether the section 301(h) criteria are still being met and whether the section 301(h) waiver should be reissued. Under 40 CFR 125.59(f), each section 301(h) permittee is required to submit an application for a new section 301(h) modified permit within 180 days of the existing permit's expiration date. 40 CFR 125.59(c) lists the information required for a modified permit. The information that EPA needs to determine whether the POTW's reapplication meets the section 301(h) criteria is outlined in the questionnaire attached to 40 CFR part 125, subpart G.

(2) Monitoring and toxic control program information: Once a waiver has been granted, EPA must continue to assess whether the discharge is meeting section 301(h) criteria, and that the receiving water quality, biological habitats, and beneficial uses of the receiving waters are protected. To do this, EPA needs monitoring information furnished by the permittee. According to 40 CFR 125.68(d), any permit issued with a section 301(h) waiver must contain the monitoring requirements of 40 CFR 125.63(b), (c), and (d) for biomonitoring, water quality criteria and standards monitoring, and effluent monitoring, respectively. Section 125.68(d) also requires reporting at the frequency specified in the monitoring program. In addition to monitoring information, EPA needs information on the toxics control program required by § 125.66 to ensure that the permittee is effectively minimizing industrial and nonindustrial toxic pollutant and pesticide discharges into the treatment works.

(3) Application revision information: Section 125.59(d) of 40 CFR allows a POTW to revise its application one time only, following a tentative decision by EPA to deny the waiver request. In its application revision, the POTW usually corrects deficiencies and changes proposed treatment levels as well as outfall and diffuser locations. The application revision is a voluntary submission for the applicant, and a letter of intent to revise the application must be submitted within 45 days of EPA's tentative decision (40 CFR 125.59(f)). EPA needs this information to evaluate revised applications to determine whether the modified discharge will ensure protection of water quality, biological habitats, and beneficial uses of receiving waters.

(4) State determination and state certification information: For revised or renewal applications for section 301(h) waivers, EPA needs a state determination. The state determines whether all state laws (including water quality standards) are satisfied. This helps ensure that water quality, biological habitats, and beneficial uses of receiving waters are protected. Additionally, the state must determine if the applicant's discharge will result in additional treatment, pollution control, or any other requirement for any other point or nonpoint sources. This process allows the state's views to be taken into account when EPA reviews the section 301(h) application and develops permit conditions. For revised and renewed section 301(h) waiver applications, EPA also needs the CWA section 401(a)(1) certification information to ensure that all state water quality laws are met by any permit it issues with a section 301(h) modification, and the state accepts all the permit conditions. This information is the means by which the state can exercise its authority to concur with or deny a section 301(h) decision made by the EPA Regional Office.

The EPA would like to solicit comments to:

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

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Burden Statement:* The estimated annual average burden for the 51 respondents totals 65,037 hours for this information collection. The average annual reporting burden varies depending on the size of the respondent and the category of the information collection. The frequency of response varies from once every five years, to case-by-case, depending on the category. 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.

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 displayed in 40 CFR part 9 and 48 CFR chapter 15.

Please send comments regarding these matters, or any other aspect of information collection, including suggestions for reducing the burden, to the address listed above.

Dated: December 20, 2001.

**Robert H. Wayland III,**

*Director, Office of Wetlands, Oceans and Watersheds.*

[FR Doc. 02–111 Filed 1–2–02; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7124–6]**

## Agency Information Collection Activities; Submission to OMB; Comment Request; EPA ICR No. 1759.03/OMB Control No. 2070–0148; Agricultural Worker Protection Standard Training and Notification

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (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: Worker Protection Standard Training and Notification; EPA ICR No. 1759.03; OMB Control No. 2070–0148. The ICR, which is abstracted below, describes the nature of the information collection activity and its estimated burden and costs. The **Federal Register** document required under 5 CFR 1320.8(d) that solicited comments on this collection of information published on January 31, 2001 (66 FR 8397). EPA received no comments on this ICR during the 60-day comment period that was provided.

**DATES:** Additional comments may be submitted on or before February 4, 2002.

**ADDRESSES:** Send your comments, referencing the proper ICR numbers to: Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave, NW., Washington, DC 20460; and send a copy of your comments 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:** Sandy Farmer at EPA by phone on 202–260–2740, by E-mail: *farmer.sandy@epa.gov* or access the ICR at *http://www.epa.gov/icr/icr.htm* and refer to EPA ICR No. 1759.03; OMB Control No. 2070–0148.

**SUPPLEMENTARY INFORMATION:**

*ICR Title:* Worker Protection Standard Training and Notification (EPA ICR 1759.03, OMB Control No. 2070–0148).

*ICR Status:* This is a request for extension of an existing approved collection that is currently scheduled to expire on December 31, 2001. EPA is asking OMB to approve this ICR for three years. Under 5 CFR 1320.10(e)(2), the Agency may continue to conduct or sponsor the collection of information while the submission is pending at OMB.

*Abstract:* The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 U.S.C. 136) requires the Agency (EPA) to register pesticides prior to distribution and sale within the United States. The Agency is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The Worker Protection Standard (WPS) for agricultural pesticides, 40 CFR part 170, includes requirements for protection of agricultural workers and pesticide handlers from hazards of pesticides used on farms, on forests, in nurseries and in greenhouses. The WPS is designed to reduce or eliminate exposure to pesticides and establish procedures for responding to exposure-related emergencies. The WPS requirements include prohibitions against applying pesticides in a way that would cause exposure to workers and others; a waiting period before workers can return to areas treated with pesticides; basic safety training and distribution and posting of information about pesticide hazards, as well as pesticide application information; arrangements for the supply of soap, water, and towels in case of pesticide exposure; and provisions for emergency assistance. The information collection activity involves the training of agricultural workers and information exchanges (third party notifications) between agricultural employers and employees at farm, forest, nursery and greenhouse establishments to ensure worker safety. No information is collected by the Agency under this ICR.

*Burden Statement:* The total annual respondent burden for providing the notifications associated with the Pesticides Worker Protection Standards as a whole is estimated to be 2,294,625 hours, with incremental activity burdens ranging from 2 minutes per respondent to provide initial basic safety information and 45 minutes per respondent for handler training. According to the PRA, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. 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. The Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that is subject to approval under the PRA, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

The ICR provides a detailed explanation of the information collection activity and the corresponding burden estimate, which is only briefly summarized here.

*Respondents/affected entities:* 4,476,250.

*Estimated total number of potential respondents:* 4,476,250.

*Frequency of response:* As needed.

*Estimated total/average number of responses for each respondent:* 3.

*Estimated total annual burden hours:* 2,294,625.

*Estimated total annual burden costs:* $94,883,757.

*Changes in the ICR Since the Last Approval:* The total annual burden associated with this ICR has increased by 52,183 hours, from 2,242,442 hours in the previous ICR to 2,294,625 hours for this renewal ICR. The change is primarily related to information EPA obtained through the consultation process required by the PRA that led the Agency to increase its training burden estimate, and is described in detail in the ICR.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this notice, as described above.

Dated: December 19, 2001.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 02–112 Filed 1–2–02; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7125–2]**

### Clean Air Scientific Advisory Committee, Subcommittee on Particle Monitoring; Notification of Public Advisory Committee Meeting

*Summary*—Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Clean Air Scientific Advisory Committee (CASAC) Subcommittee on Particle Monitoring will meet on Monday, January 28, 2002 from 8:30 am to 4 p.m. Eastern Time. The meeting will be held in Classroom 1 (ground floor near the visitor entrance) of the US EPA Environmental Research Center, Route 54 and T.W. Alexander Drive, Research Triangle Park, NC. The meeting is open to the public, however, due to limited space, seating will be on a first-come basis.

*Background*—The CASAC Subcommittee on Particle Monitoring (formerly the CASAC Technical Subcommittee for Fine Particle Monitoring) was established in 1996 to provide advice and comment to EPA (through CASAC) on appropriate methods and network strategies for monitoring fine particles in the context of implementing the revised national ambient air quality standards (NAAQS) for particulate matter.

*Purpose of the Meeting*—During this meeting, the Subcommittee will develop advice on implementation of EPA's continuous PM monitoring program. The discussion will be based on the draft document *Continuous Monitoring Implementation Plan* prepared by EPA's Office of Air Quality Planning and Standards (OAQPS). EPA will provide an overview briefing of that document to the subcommittee during the meeting to clarify areas of confusion, stimulate further discussion and receive verbal input from subcommittee members. Following the meeting, the Subcommittee will develop a report advising EPA on the implementation plan addressing: (a) program strengths; (b) areas of concern; and (c) any recommendations that might optimize implementation of the PM continuous mass program. Once completed by the Subcommittee, the report will be reviewed by the Clean Air Scientific Advisory Committee during a public teleconference to be announced in a subsequent **Federal Register** notice.

*Availability of Review Materials*—A copy of the review document, and referenced enclosures, are available from EPA on their website (see *www.epa.gov/ttn/amtic/pmcont.html*).

*For Further Information*—Members of the public wishing an Agenda or a roster of the Subcommittee should contact Ms. Rhonda Fortson, Management Assistant, Clean Air Scientific Advisory Committee, EPA Science Advisory Board (1400A), Suite 6450, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail at (202) 564–4563; fax at (202) 501–0582; or via e-mail at *fortson.rhonda@epa.gov.* Those desiring additional information about the meeting, should contact Mr. Robert Flaak, Designated Federal Officer, Clean Air Scientific Advisory Committee, EPA Science Advisory Board (1400A), Suite 6450, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail at (202) 564–4546; fax at (202) 501–0582; or via e-mail at *flaak.robert@epa.gov.* A copy of the draft agenda will be posted on the SAB Website (*www.epa.gov/sab*) (under the AGENDAS subheading) approximately 2 weeks before the meeting. The Agenda may also be obtained from Ms. Fortson at the same time.

Members of the public who wish to make a brief oral presentation must contact Mr. Flaak in writing (by letter or by fax—see previously stated information) no later than 12 noon Eastern Time, Wednesday, January 23, 2002 in order to be included on the Agenda. Public comments will be limited to ten minutes per speaker or organization, with a total time of ninety minutes overall for all speakers. Written comments must be received no later than the day prior to the meeting, preferably in electronic format (see below for details).

**Providing Oral or Written Comments at SAB Meetings**

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

*Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes. For conference call meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total, unless otherwise stated. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting.

*Written Comments:* Although the SAB accepts written comments until two days following the date of the meeting (unless otherwise stated above), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file formats: WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

*General Information*—Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on our Website (*http://www.epa.gov/sab*) and in The FY2000 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

*Meeting Access*—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Mr. Flaak or Ms. Fortson at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: December 21, 2001.

**John R. Fowle, III,**

*Acting Staff Director, EPA Science Advisory Board.*

[FR Doc. 02–107 Filed 1–2–02; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[PF–1010; FRL–6773–6]**

### Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

**DATES:** Comments, identified by docket control number PF–1010, must be received on or before February 4, 2002.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1010 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Carol E. Frazer, Ph.D., Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8810; e-mail address: frazer.carol@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does This Action Apply to Me?*

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

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111<br>112<br>311<br><br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>Pesticide manufacturing |

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

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

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–1010. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

### *C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1010 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–1010. Electronic comments may also be filed online at many Federal Depository Libraries.

### *D. How Should I Handle CBI That I Want To Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

### *E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**II. What Action is the Agency Taking?**

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

**List of Subjects**

Environmental protection, Agricultural commodities, Biopesticides, Feed additives, Food additives, Pesticides and pests, Pollution prevention, Reporting and recordkeeping requirements.

Dated: December 20, 2001.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

**Summary of Petition**

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioners and represents the view of the petitioners. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

EPA has received a pesticide petition 1F6244 from Nutra-Park Inc., 8383 Greenway Blvd., Suite 520, Middleton, WI 53562, proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the biochemical pesticide Lysophosphatidylethanolamine (LPE) in or on all food commodities.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Nutra-Park Inc. has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Nutra-Park Inc. and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

**I. Nutra-Park Inc.**

*PP 1F6244*

*A. Product Name and Proposed Use Practices*

The commercial name for the end use product containing Lysophosphatidylethanolamine (LPE) is LPE E94; 10% Aqueous, EPA File Symbol 70515-R. Presently, the product is being registered for use as a pre-harvest and post-harvest ripening and shelf life enhancer for fruits and vegetables. As a pre-harvest spray, 100 400 parts per million (ppm) of the active ingredient is sprayed on the raw agricultural commodities until run-off. As a post-harvest treatment, the raw agricultural commodities are dipped into or sprayed with a solution containing 25 100 ppm and air dried prior to storage.

*B. Product Identity/Chemistry*

1. *Identity of the pesticide and corresponding residues.* The active ingredient LPE is a phospholipid derived from phosphatidylethanolamine (PE) by the enzymatic removal of one fatty acid. The residues in or on raw agricultural commodities are likely to be primarily the LPE. Small amounts of free fatty acid, phosphate and ethanolamine may be present. However, none of the residues would be distinguishable from the naturally occurring moieties.

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* The current analytical methodology cannot distinguish between naturally occurring residues and those residues resulting from the application of LPE. LPE is found in large quantities in egg yolk and meat. LPE is naturally present in small amounts in plant tissues and other biological matrices and can account for up to 10% of the phospholipid content of cell membranes. The additional amount of LPE as a result of its use as a ripening agent and shelf life enhancer will not significantly add to the amount of naturally occurring residues.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* As stated above, the current analytical methodology cannot distinguish between naturally occurring residues present in or on the raw agricultural commodities and the residues resulting from application of the product. Based on the natural occurrence of the chemical, its favorable toxicological profile and inconsequential exposure resulting from label-directed uses, measuring of the residues is not warranted.

*C. Mammalian Toxicological Profile*

Based on the available acute toxicity data, LPE technical and its 20% formulation, do not pose any acute toxicity risks. The acute toxicity studies place LPE technical in acute toxicity category IV for acute oral ($LD_{50}$ >5,000 milligrams/kilograms (mg/kg) male and female), inhalation ($LC_{50}$ >2.5mg/L male and female), skin irritation (dermal irritation index is 0.0), and eye irritation (no irritation at 72 hours) and toxicity category III for acute dermal ($LD_{50}$ >2,000 mg/kg male and female). The acute toxicity studies place the LPE 10% formulation in acute toxicity category IV for acute oral ($LD_{50}$ >5,000 mg/kg male and female), eye irritation (no irritation at 72 hours), skin irritation (dermal irritation index is 0.0), and inhalation ($LC_{50}$ >4.63 mg/L male and female) and toxicity category III for acute dermal ($LD_{50}$ >2,000 mg/kg male and female). Both LPE technical and its 10% formulation cause skin sensitization in the guinea pig.

Information on the chronic effects of LPE is obtained from the open literature. LPE and related phospholipids, such as phosphatidylcholine, phosphatidylethanolamine, phosphatidylserine, phosphatidylinositol, phosphatidic acid, phosphatidylglycerol, lysophosphatidylcholine, and lysophosphatidylserine, are synthesized by microorganisms, plants and animals. These important biomolecules are ubiquitous in nature and have multifunctional properties in living cells. Lysophospholipids are continuously generated in microbial, plant and animal systems and are readily utilized in various cell functions or used in synthesizing new phospholipids. All phospholipids have specific roles in executing certain cellular functions and maintaining the integrity of cellular membranes. Furthermore, these biomolecules are of immense importance to various food and non-food industries as safe multifunctional natural additives/

ingredients. Presence of hydrolytic enzymes, known as lipases, phospholipases and lysophospholipases, in microbial (including soil microorganisms), plant and animal (including humans) systems ensures the biodegradation of phospholipids and their lyso counterparts into harmless metabolites/by-products.

*D. Aggregate Exposure*

1. *Dietary exposure*—i. *Food*. LPE is a member of the phospholipids. Phospholipids are a heterogeneous group of compounds that are classed together partially on the basis of solubility and partially on the basis of the ester phosphorus present in the compounds. Phospholipids are found in all cellular organisms as part of the structure of the cellular membrane.

The framework of membranes surrounding the cell and intracellular organelles is composed of a bilayer of lipid. The basic unit of the bilayer is a composite of phospholipids (phosphatidylcholine, sphingomyelin, phosphatidylethanolamine, phosphatidylserine, phosphatidylinositol). LPE is a phospholipid derived from phosphatidylethanolamine by the enzymatic removal of one fatty acid. Residues of LPE naturally occur in raw agricultural commodities and are consumed daily. The level of residues of LPE in raw agricultural commodities through the use of this product will not be significantly increased over the level naturally occurring.

ii. *Drinking water*. Because of the benign nature of the compound and because it is composed of moieties that are consumed by all organisms, dissipation of LPE in the environment will, in all likelihood, be through microbial mediated degradation. There is little or no possibility of LPE leaching into the ground water. LPE may get into surface water during a run-off event. However, microbial degradation will rapidly remove the residues. The levels of residues that might get into ground or surface water used for drinking water will not be significant compared to the exposure from naturally occurring residues of LPE.

2. *Non-dietary exposure*. The potential for non-dietary exposure to the general population, including infants and children, is unlikely as the potential use sites are commercial, agricultural, and horticultural settings. However, non-dietary exposure would not be expected to pose any quantifiable risk due to a lack of residues or a level of residues present that are of no toxicological concern.

*E. Cumulative Exposure*

Based on its abundance in nature and long history of use by humans without deleterious effects, there is reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to residues of LPE. This includes all anticipated dietary exposures and all other exposures for which there are reliable information. The exposure to LPE as a result of its label directed use on raw agricultural food or feed commodities will not result in a significant increase in the cumulative exposure over the present exposure, daily consumption by the human population from both naturally occurring sources and from processed foods.

*F. Safety Determination*

1. *U.S. population*. LPE is naturally present in small amounts in plant tissues and other biological matrices and can account for up to 10% of the phospholipid content of cell membranes. LPE is found in many food or feed commodities such as human breast milk, cow milk, corn grain and starch, oats and wheat. Large quantities are present in egg yolk and meat. Based on its abundance in nature and long historical use of the ingredient by the human population without deleterious effects, there is reasonable certainty that no harm will result from aggregate exposure to the U.S. population.

2. *Infants and children*. LPE is found in mother's milk and in cow milk. It is also present in egg yolk and meat and corn, oats, and wheat. These commodities do constitute a significant percentage of infant and children diets. Based on its long consumption by infants and children without deleterious effects, there is reasonable certainty that no harm will result from this additional inconsequential exposure to infants and children.

*G. Effects on the Immune and Endocrine Systems*

LPE is a naturally occurring residue in raw agricultural food and feed commodities and in processed food. To date, there is no evidence to suggest that LPE affects the immune system, functions in a manner similar to any known hormone, or that it acts as an endocrine disruptor.

*H. Existing Tolerances*

LPE is a constituent naturally found in eggs and various animal tissue derived products (e.g., fish meal, fish oil, lard, meat meal) already exempted from regulation under section 25(b)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act. There is a temporary exemption from the requirement of a tolerance established specific to LPE (40 CFR 180.1199).

*I. International Tolerances*

Nutra-Park Inc. is not aware of any tolerance, exemption from tolerance, or maximum residue level issued for LPE.

[FR Doc. 02–113 Filed 1–2–02; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7124–4]**

## Pemaco Superfund Site; Notice of Proposed Administrative Settlement

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), 42 U.S.C. 9600 *et seq*., notice is hereby given that a proposed Agreement and Covenant Not to Sue (Prospective Purchaser Agreement) associated with the Pemaco National Priorities List Superfund Site was executed by the United States Environmental Protection Agency (EPA) on December 7, 2001. The proposed Prospective Purchaser Agreement would resolve certain potential claims of the United States under sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), and section 7003 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6973, against The Trust for Public Lands, a nonprofit corporation, and The City of Maywood, California, (the Purchasers). The Trust for Public Lands plans to acquire the 5-acre parcel constituting the Superfund Site, located in Los Angeles County at 5050 Slauson Avenue, Maywood, California (the Property). The Trust for Public Land plans to transfer the Property to the City for use as a public park. The park will be part of the Los Angeles River Greenway, a system of public parks and paths along a 51-mile stretch of the Los Angeles River.

In exchange for the settlement, the Purchasers have agreed to pay EPA a one-time payment of $10,000 in cash that will be placed in a special account for use at the Site.

For thirty (30) calendar days following the date of publication of this notice, EPA will receive written

comments relating to the proposed settlement. If requested prior to the expiration of this public comment period, EPA will provide an opportunity for a public meeting in the affected area. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

**DATES:** Comments must be submitted on or before February 4, 2002.

**ADDRESSES:** The proposed Prospective Purchaser Agreement and additional background documents relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. A copy of the proposed settlement may be obtained from William Keener, Assistant Regional Counsel (ORC–1), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Comments should reference ''The Trust for Public Lands PPA, Pemaco Superfund Site'' and ''Docket No. 2002–03'' and should be addressed to William Keener at the above address.

**FOR FURTHER INFORMATION CONTACT:** William Keener, Assistant Regional Counsel (ORC–1), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; phone: (415) 972–3940; fax (415) 947–3570; e-mail: *keener.bill@epa.gov*.

Dated: December 12, 2001.

**Jane Diamond,**

*Acting Director, Superfund Division, Region IX.*

[FR Doc. 02–110 Filed 1–2–02; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL HOUSING FINANCE BOARD

**[No. 2001–N–13]**

### Notice of Annual Adjustment of the Limit in Average Total Assets For Community Financial Institutions and Notice of Annual Adjustment of the Limits on Annual Compensation for Federal Home Loan Bank Directors

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Federal Housing Finance Board (Finance Board) has adjusted the limit in average total assets that defines a ''Community Financial Institution'' (CFI) based on the annual percentage increase in the Consumer Price Index for all urban consumers (CPI–U), as published by the Department of Labor (DOL), pursuant to the requirements of Section 2(13)(B) of the Federal Home Loan Bank Act (Bank Act) and the Finance Board's regulations. Notice is hereby given that the Finance Board also has adjusted the limits on annual compensation for the Federal Home Loan Bank (Bank) directors, based on the CPI–U, as published by the DOL, pursuant to the requirements of Section 7(i)(2)(B) of the Bank Act and the Finance Board's regulations concerning statutory limits on Bank Directors' compensation.

**FOR FURTHER INFORMATION CONTACT:** James L. Bothwell, Managing Director and Chief Economist, (202) 408–2821; Scott L. Smith, Acting Director, Office of Policy, Research and Analysis, (202) 408–2991; or Kirsten L. Landeryou, Office of Policy, Research and Analysis, (202) 408–2552. Staff also can be reached by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

**SUPPLEMENTARY INFORMATION:** The Bank Act (12 U.S.C. 1422(13)(B)), as amended by the Gramm-Leach-Bliley Act (GLB Act) (Pub. L. No. 106–102, 133 Stat. 1338 (November 12, 1999)) and § 900.1 of the Finance Board's regulations (12 CFR 900.1) require the Finance Board to adjust annually the limit in average total assets (CFI Asset Cap) set forth in section 2(13)(A)(ii) of the Bank Act (12 U.S.C. 1422(13)(A)(ii)) and § 900.1 of the Finance Board's regulations that defines a CFI, based on the annual percentage increase, if any, in the CPI–U, as published by the Department of Labor (DOL). Section 7(i)(2)(B) of the Bank Act (12 U.S.C. 1427(i)(2)(B)), as amended by the GLB Act, and § 918.3(a)(1) of the Finance Board's regulations (12 CFR 913.3(a)(1)), require the Finance Board, beginning January 1, 2001, to make a similar annual adjustment to the compensation limits set forth in section 7(i)(2)(A) of the Bank Act (12 U.S.C. 1427(i)(2)(A)) and § 918.3(a)(1) of the Finance Board's regulations, for members of the boards of directors of the Banks based on the annual percentage increase, if any, in the CPI–U, as published by the DOL.

Pursuant to the Finance Board's regulations, for purposes of the CFI Asset Cap, the Finance Board is required to publish notice by **Federal Register** of the CPI–U-adjusted cap. For purposes of the Banks' board of directors annual compensation adjustments, the Finance Board is required to publish notice, by **Federal Register**, distribution of a memorandum or otherwise, of the CPI–U-adjusted limits on annual compensation. The annual adjustment of the existing CFI Asset Cap and annual Bank director compensation limits, effective January 1 of a particular calendar year, reflects the percentage by which the CPI–U published for November of the preceding calendar year exceeds the CPI–U published for November of the year before the preceding calendar year (if at all). For example, the adjustment of the limits effective January 1, 2002 are based on the percentage increase in the CPI–U from November 2000 to November 2001. The Finance Board has determined that it is appropriate to use data from November rather than waiting for the December data to become available so that the Banks can be notified of the revised asset limit and compensation limits as close to the effective date as possible. Other Federal agencies do not rely on December data, which is published in mid-January, when calculating annual inflation adjustments and, as a result, are able to announce the adjustments prior to the effective date of January 1.

The DOL encourages the use of CPI–U data that has not been seasonally adjusted in ''escalation agreements'' because seasonal factors are updated annually and seasonally adjusted data are subject to revision for up to five years following the original release; unadjusted data are not routinely subject to revision, and previously published unadjusted data are only corrected when significant calculation errors are discovered. Accordingly, the Finance Board is using data that had not been seasonally adjusted to calculate the new CFI Asset Cap and annul Bank director compensation limits.

The unadjusted CPI–U increased 1.9 percent between November of 2000 and November of 2001. Based on this data, the Finance Board adjusted the CFI Asset Cap for 2001 from $517 million to $527 million, beginning January 1, 2002.

The Finance Board also adjusted, based on the 1.9 percent increase in the CPI–U, the annual compensation for the listed members of the boards of directors of the Banks as follows, beginning January 1, 2002: for a Chairperson—$26,341; for a Vice-Chairperson—$21,073; for any other member of a Bank's board of directors—$15,805.

Dated: December 27, 2001.

By the Federal Housing Finance Board.

**John T. Korsmo,**

*Chairman.*

[FR Doc. 02–49 Filed 1–2–02; 8:45 am]

**BILLING CODE 6725–01–P**

## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

**SUMMARY: Background**

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is nd supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

**FOR FURTHER INFORMATION CONTACT:**

Federal Reserve Board Clearance Officer–Mary M. West–Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829); OMB Desk Officer–Alexander T. Hunt–Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7860).

**SUPPLEMENTARY INFORMATION:**

**Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Reports:**

*1. Report title:* Annual Salary Survey, ad hoc surveys, and Compensation Trend Survey.
*Agency form number:* FR 29a, b, c.
*OMB Control number:* 7100–0290.
*Frequency: FR 29a, once each year; FR 29b, on occasion; FR 29c, once each year.*
*Reporters:* Employers considered competitors for Federal Reserve employees.
*Annual reporting hours:* FR 29a, 270 hours; FR 29b, 30 hours; FR 29c, 1,300 hours.
*Estimated average hours per response:* FR 29a, 6 hours; FR 29b, 1 hour; FR 29c, 2 hours.
*Number of respondents:* FR 29a, 45; FR 29b, 10; FR 29c, 650.
Small businesses are affected.
*General description of report:* This information collection is voluntary (sections 10(4) and 11(1) of the Federal Reserve Act (12 U.S.C. 244 and 248(1)) and is given confidential treatment (5 U.S.C §§ 552 (b)(4) and (b)(6)).
*Abstract:* The surveys collect information on salaries, employee compensation policies, and other employee programs from employers that are considered competitors for Federal Reserve employees. The data from the surveys primarily are used to determine the appropriate salary structure and salary adjustments for Federal Reserve employees.
*2. Report title:* Recordkeeping and Disclosure Requirements Associated with Securities Transactions Pursuant to Regulation H.
*Agency form number:* Reg H–3.
*OMB Control number:* 7100–0196.
*Frequency:* Development of policy statement, one–time; Trust company report, quarterly; Transactions recordkeeping, on occasion; and Disclosure, on occasion.
*Reporters:* State member banks and trust companies.
*Annual reporting hours:* 158,423 hours.
*Estimated average hours per response:* Development of policy statement, 30 minutes; Trust company report, 15 minutes; Transaction recordkeeping, 3 minutes; and Disclosure, 3 minutes.
*Number of respondents:* 1,324.
Small businesses are affected.
*General description of report:* This information collection is mandatory (12 U.S.C. 325). If the records maintained by state member banks come into the possession of the Federal Reserve, they are given confidential treatment (5 U.S.C. 552(b)(4), (b)(6), and (b)(8)).
*Abstract:* State–chartered member banks and trust companies effecting securities transactions for customers must establish and maintain a system of records, furnish confirmations to customers, and establish written policies and procedures relating to securities trading. They are required to maintain records for three years following the transaction. These requirements are necessary for customer protection, to avoid or settle customer disputes, and to protect the bank against potential liability arising under the anti–fraud and insider trading provisions of the Securities Exchange Act of 1934.

**Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Report:**

*1. Report title:* Application for Employment with the Board of Governors of the Federal Reserve System.
*Agency form number:* FR 28.
*OMB Control number:* 7100–0181.
*Frequency:* On occasion.
*Reporters:* Employment applicants.
*Annual reporting hours:* 8,625 hours.
*Estimated average hours per response:* 1 hour.
*Number of respondents:* 8,500.
Small businesses are not affected.
*General description of report:* This information collection is required to obtain a benefit (sections 10(4) and 11(1) of the Federal Reserve Act (12 U.S.C. 244 and 248(1)). The Board is required to treat the information collected on the Application as confidential pursuant to the requirements of the Privacy Act (5 U.S.C. 552a). Individual respondent data are regarded as confidential under the Freedom of Information Act (5 U.S.C. 552(b)(2) and (b)(6)).
*Abstract:* The Application collects information to determine the qualifications, suitability, and availability of applicants for employment with the Board. The Application asks about education, training, employment, and other information covering the period since the applicant left high school.
*Current actions:* The Federal Reserve will add two short supplemental forms to the Application. One form will be given to all applicants and collects information about the gender and race of the applicant. The information from this form will be used to assist the Board with federal equal opportunity record keeping, reporting, and other legal requirements. The second form will be filled out by applicants for Research Assistant positions in the divisions of Monetary Affairs, International Finance, and Research and Statistics. The survey will serve to streamline the recruiting process by attempting to determine an applicant's interest in the policy and research topics that are germane to individual research sections.

**Final Approval Under OMB Delegated Authority to the Implement the Following Report:**

*1. Report title:* Survey of Board Publications.
*Agency form number:* FR 1373a and b.
*OMB Control number:* 7100–0301.
*Frequency:* FR 1373a, 1.5; FR 1373b small–panel, 8; and FR 1373b large–panel,
*2. Reporters:* FR 1373a, educators who have previously requested materials from the Board; FR 1373b, current subscribers of Board publications.
*Annual reporting hours:* 762 hours.
*Estimated average hours per response:* FR 1373a, 30 minutes; FR 1373b, 15 minutes.

*Number of respondents:* FR 1373a, 400; FR 1373b small–panel, 131; FR 1373b large–panel, 400.
Small businesses are affected.
*General description of report:* This information collection is voluntary. The FR 1373a survey is authorized pursuant to the Federal Trade Commission Improvement Act (15 U.S.C. 57(a)); the FR 1373b survey is authorized pursuant to 12 U.S.C. 248(i). The specific information collected is not considered confidential.
*Abstract:* Data from the FR 1373a survey will help the Board staff to 1) conduct periodic reviews and evaluations of the consumer education resources available to consumers and consumer educators, and to 2) evaluate consumer education resources under consideration for distribution. Data from the FR 1373b survey will help the Board staff to evaluate Board publications that are available to the public. The staff will use the FR 1373b data to help determine if the Board should continue to issue certain publications and, if so, whether the public would like to see changes in the method of information delivery, issuance frequency, content, or format/appearance.

Board of Governors of the Federal Reserve System, December 28, 2001.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 02–123 Filed 1–2–02; 8:45 am]

**BILLING CODE 6210–01–S**

## 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 January 17, 2002.

**A. Federal Reserve Bank of Boston** (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

*1. Joseph R. Doherty and the Joseph R. Doherty Family Limited Partnership, L.P.*, Somerville, Massachusetts; to acquire voting shares of Central Bancorp, Inc., Somerville, Massachusetts, and thereby indirectly acquire voting shares of Central Co-operative Bank, Somerville, Massachusetts.

**B. Federal Reserve Bank of Chicago** (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

*1. Brian and Elizabeth Riddell as general partners of Riddell Family Limited Partnership*, Dakota Dunes, South Dakota, and William and Linda Biles, Tie Siding, Wyoming; to acquire additional voting shares of First Heartland Bancorp., Sioux Center, Iowa; and thereby indirectly acquire additional voting shares of First National Bank of Sioux Center, Sioux Center, Iowa, and Pender State Bank, Pender, Nebraska.

Board of Governors of the Federal Reserve System, December 27, 2001.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 02–34 Filed 1–2–02; 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 January 28, 2002.

**A. Federal Reserve Bank of New York** (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

*1. Trustco Bank Corp NY*, Glenville, New York; to acquire 9.9 percent of the common stock of Troy Financial Corporation, and thereby indirectly acquire The Troy Commercial Bank, and the Troy Savings Bank, all of Troy, New York.

Board of Governors of the Federal Reserve System, December 27, 2001.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 02–35 Filed 1–2–02; 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 January 28, 2002.

**A. Federal Reserve Bank of New York** (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

*1. United National Bancorp and UnitedTrust Bank*, both of Bridgewater, New Jersey; to acquire and merge with Vista Bancorp, Inc., Phillipsburg, New Jersey, and thereby indirectly acquire Vista Bank, N.A., Phillipsburg, New Jersey.

**B. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

*1. First Service Financial Company*, Crestwood, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of FirstService Bank, Crestwood, Missouri (in organization).

Board of Governors of the Federal Reserve System, December 28, 2001.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 02–124 Filed 1–2–02; 8:45 am]

**BILLING CODE 6210–01–S**

## GENERAL SERVICES ADMINISTRATION

**[OMB Control No. 3090–0023]**

### Proposed Collection; Comment Request Entitled Surplus Personal Property Mailing List Application

**AGENCY:** Property Management Division (FBP), GSA.

**ACTION:** Notice of request for public comments regarding extension of a currently approved OMB clearance (3090–0023).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy will be submitting to the Office of Acquisition Policy will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved collection concerning Surplus Personal Property Mailing List Application.

*Public comments are particularly invited on:* Whether this collection of information is necessary for the proper performance of functions of the GSA, mainly on the Surplus Mailing List, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Comments may be submitted on or before March 4, 2002.

**FOR FURTHER INFORMATION CONTACT:** Victor Arnold-Bik, Property Management Division, GSA (703) 305–5809.

**ADDRESSES:** Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to Stephanie Morris, General Services Administration (MVP), 1800 F Street, NW., Washington, DC 20405.

**SUPPLEMENTARY INFORMATION:**

### A. Purpose

The General Services Administration is requesting the Office of Management and Budget (OMB) to extend a currently approved information collection, 3090–0023, concerning Surplus Personal Property Mailing List Application. This GSA Form 2170 is completed by persons who wish to have their names placed on the Surplus Personal Property Mailing List maintained by GSA Regional Sales Offices. Mailing labels are produced based on the type of property and geographical area indicated by the prospective bidder on the mailing list application.

### B. Annual Reporting Burden

*Respondents:* 12,000.

*Annual responses:* 12,000.

*Burden hours:* 996.

*Obtaining Copies of Proposals:* A copy of this proposal may be obtained from the General Services Administration, Acquisition Policy Division (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, or be telephoning (202) 501–4744, or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0023, Surplus Personal Property Mailing List Application, in all correspondence.

Dated: December 21, 2001.

**Michael Carleton,**

*Chief Information Officer.*

[FR Doc. 02–119 Filed 1–2–02; 8:45 am]

**BILLING CODE 6820–61–M**

## GENERAL SERVICES ADMINISTRATION

**[OMB Control No. 3090–0006]**

### Submission for OMB Review and Extension GSAR Clause, 552.237–71, Qualifications of Employees

**AGENCY:** General Services Administration (GSA).

**ACTION:** Notice of emergency reinstatement and request for public comments of the reinstated collection 3090–0006.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration requested in August 2001 that the Office of Management and Budget (OMB) reinstate an information collection that pertains to GSAR Clause, Qualifications of Employees. OMB reinstated the collection November 2001. Information collected under this authority is required by regulation. This notice indicates GSA's intent to request an extension by 3 years of OMB's emergency reinstatement of this collection and to request public review and comment on the collection.

*Public comments are particularly invited on:* Whether this information collection generated by the GSAR Clause, Qualifications of Employees, is necessary for security reasons, to properly determine if an employee is suitable to work under a GSA service contract for guards, child care, cleaning, and maintenance contract; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Comments may be submitted on or before March 4, 2002.

**FOR FURTHER INFORMATION CONTACT:** Julia Wise, Acquisition Policy Division, GSA (202) 208–1168.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Stephanie Morris, General Services Administration (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

The General Services Administration has various mission responsibilities related to the acquisition and provision of service contracts. These mission responsibilities generate requirements that are realized through the solicitation and award of service contracts for guards, childcare, cleaning, and maintenance. Individual solicitations and resulting contracts may impose unique information collection/reporting requirements on contractors, not required by regulation, but necessary to evaluate particular program accomplishments and measure success in meeting program objectives.

**B. Annual Reporting Burden**

*Respondents:* 15,496.
*Responses Per Respondent:* 1.
*Total Responses:* 15,496.
*Hours Per Response:* 1.
*Total Burden Hours:* 15,496.
*Obtaining Copies of Proposals:* A copy of this proposal may be obtained from the General Services Administration, Acquisition Policy Division (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, or by telephoning (202) 501–4744, or by faxing your request to (202) 501–4067. Plese cite OMB Control No. 3090–0006, Qualifications of Employees, in all correspondence.

Dated: December 21, 2001.

**Michael Carleton,**

*Chief Information Officer.*

[FR Doc. 02–120 Filed 1–3–02; 8:45 am]

**BILLING CODE 6820–61–M**

## GENERAL SERVICES ADMINISTRATION

**[OMB Control No. 3090–0014]**

### Submission for OMB Review; Comment Request Entitled Transfer Order-Surplus Personal Property and Continuation Sheet

**AGENCY:** Federal Supply Service, GSA.

**ACTION:** Notice of a request for an extension to an existing OMB clearance (3090–0014).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration (GSA) has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Transfer Order-Surplus Personal Property and Continuation Sheet. A request for public comments was published at 66 FR 43871, August 21, 2001. No comments were received.

**DATES:** Comments may be submitted on or before February 4, 2002.

**FOR FURTHER INFORMATION CONTACT:** Denise Thomas, Federal Supply Services, GSA (703) 308–0742.

**ADDRESSES:** Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Stephanie Morris, General Services Administration (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

The General Services Administration is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0014, concerning Transfer Order-Surplus Personal Property and Continuation Sheet. This form is used by public agencies, nonprofit educational or public health activities, programs for the elderly, service education activities, programs for the elderly, service educational activities, and public airports to apply for donation of Federal surplus personal property. The SF 123 serves as the transfer instrument and includes item descriptions, transportation instructions, nondiscrimination assurances, and approval signatures.

**B. Annual Reporting Burden**

*Respondents: 63,000.*

*Annual Responses: 63,000.*

*Burden Hours: 18,900.*

*Obtaining Copies of Proposals:* A copy of this proposal may be obtained from the General Services Administration, Acquisition Policy Division (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, or by telephoning (202) 501–4744, or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0014, Transfer Order-Surplus Personal Property and Continuation Sheet, in all correspondence.

Dated: December 21, 2001.

**Michael Carleton,**

*Chief Information Officer.*

[FR Doc. 02–118 Filed 1–2–02; 8:45 am]

**BILLING CODE 6820–61–M**

## GENERAL SERVICES ADMINISTRATION

**[OMB Control No. 3090–0112]**

### Submission for OMB Review; Comment Request Entitled State Agency Monthly Donation Report of Surplus Property

**AGENCY:** Federal Supply Service, GSA.

**ACTION:** Notice of request for public comments regarding an extension of a currently approved OMB Clearance (3090–0112).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning GSA Form 3040, State Agency Monthly Donation Report of Surplus Personal Property.

*Public comments are particularly invited on:* Whether this collection of information is necessary for the proper performance of functions of the GSA, to conduct a report assessing the distribution of surplus property, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before: March 4, 2002.

**FOR FURTHER INFORMATION CONTACT:** Denise Thomas, Federal Supply Services (703) 308–0742.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Stephanie Morris, General Services Administration (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

The General Services Administration will be requesting the Office of Management and Budget (OMB) to renew information collection, 3090–0112, concerning GSA Form 3040, State Agency Monthly Donation Report of Surplus Personal Property. This report

complies with Public Law 94–519, which requires annual reports of donations of personal property to public agencies for use in carrying out such purposes as conservation, economic development, education, parks and recreation, public health, and public safety.

**B. Annual Reporting Burden**

*Respondents:* 55.
*Annual responses:* 220.
*Burden hours:* 330.

*Copy of Proposal.* A copy of this proposal may be obtained from the General Services Administration, Acquisition Policy Division (MVP), Room 4035, 1800 F Street NW., Washington, DC 20405, or by telephoning (202) 501–4744 or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0112, State Agency Monthly Donation Report of Surplus Property, in all correspondence.

Dated: December 21, 2001.

**Michael Carleton,**

*Chief Information Officer.*

[FR Doc. 02–121 Filed 1–2–02; 8:45 am]

**BILLING CODE 6820–61–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Findings of Scientific Misconduct

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

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

*Shaan F. Munjee, M.S., Wake Forest University School of Medicine:* Based on the report of an investigation conducted by the Wake Forest University School of Medicine (WFUSM) and additional analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) found that Shaan F. Munjee, M.S., former research fellow, Department of Cancer Biology at WFUSM, engaged in scientific misconduct by falsifying and fabricating data in research supported by National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), National Institutes of Health (NIH), grants 5 R29 DK52623–03 and 5 R29 DK52623–04, ''PTHRP and prostate growth.''

Specifically, PHS found that Ms. Munjee falsified data relating to the signaling of protein kinase in prostate cancer cell lines. From March 2000 through October 2000, Ms. Munjee falsified and fabricated data in her notebook from experiments to misrepresent her productivity and the significance of her findings. Ms. Munjee reported the falsified and fabricated data in: (1) Laboratory group meetings, a journal club, and a Cancer Biology retreat within WFUSM; (2) NIH grant application 5 R29 DK52623–04, ''PTHRP and prostate growth''; and (3) an abstract submitted to the American Association for Cancer Research. Given the extensive nature of Ms. Munjee's data falsification and fabrication, none of her research can be considered reliable. Her actions adversely and materially affected the laboratory's ongoing research in prostate cancer by causing an unproductive avenue of research to be pursued and by preventing the principal investigator from submitting a competitive renewal application for a NIH grant. No publications required correction or retraction.

Ms. Munjee has entered into a Voluntary Exclusion Agreement in which she has voluntarily agreed for a period of three (3) years, beginning on December 17, 2001:

(1) To exclude herself from any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in, nonprocurement transactions (*e.g.*, grants and cooperative agreements) of the United States Government as defined in 45 CFR Part 76 (Debarment Regulations); and

(2) to exclude herself from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

**FOR FURTHER INFORMATION CONTACT:** Director, Division of Investigative Oversight, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

**Chris B. Pascal,**

*Director, Office of Research Integrity.*

[FR Doc. 02–25 Filed 1–2–02; 8:45 am]

**BILLING CODE 4150–31–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Advisory Committees; Tentative Schedule of Meetings for 2002

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing a tentative schedule of forthcoming meetings of its public advisory committees for 2002. During 1991, at the request of the Commissioner of Food and Drugs (the Commissioner), the Institute of Medicine (the IOM) conducted a study of the use of FDA's advisory committees. In its final report, one of the IOM's recommendations was for the agency to publish an annual tentative schedule of its meetings in the **Federal Register**. This publication implements the IOM's recommendation.

**FOR FURTHER INFORMATION CONTACT:** Linda Ann Sherman, Advisory Committee Oversight and Management Staff (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1220.

**SUPPLEMENTARY INFORMATION:** The IOM, at the request of the Commissioner, undertook a study of the use of FDA's advisory committees. In its final report in 1992, one of the IOM's recommendations was for FDA to adopt a policy of publishing an advance yearly schedule of its upcoming public advisory committee meetings in the **Federal Register**; FDA has implemented this recommendation. The annual publication of tentatively scheduled advisory committee meetings will provide both advisory committee members and the public with the opportunity, in advance, to schedule attendance at FDA's upcoming advisory committee meetings. Because the schedule is tentative, amendments to this notice will not be published in the **Federal Register**. However, changes to the schedule will be posted on the FDA advisory committees' Web site located at http://www.fda.gov/oc/advisory/default.htm. FDA will continue to publish a **Federal Register** notice 15 days in advance of each upcoming advisory committee meeting to announce the meeting (21 CFR 14.20).

The following list announces FDA's tentatively scheduled advisory committee meetings for 2002. You may also obtain up-to-date meeting information by calling the Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area):

| Committee Name | Dates of Meetings | Advisory Committee 5-Digit Information Line Code |
|---|---|---|
| **OFFICE OF THE COMMISSIONER** | | |
| Science Board to the Food and Drug Administration | April 16, November 12 | 12603 |
| **CENTER FOR BIOLOGICS EVALUATION AND RESEARCH** | | |
| Allergenic Products Advisory Committee | March 15, November 4 | 12388 |
| Biological Response Modifiers Advisory Committee | February 28–March 1 (Alternate: January 30–31), July 18–19 (Alternate: May 9–10), November 7–8 (Alternate: October 10–11). | 12389 |
| Blood Products Advisory Committee | March 14–15, June 13–14, September 12–13, December 12–13. | 19516 |
| Transmissible Spongiform Encephalopathies Advisory Committee. | January 16–17, June 26–27, October 17–18 | 12932 |
| Vaccines and Related Biological Products Advisory Committee | January 30–31, March 6–7, May 21–22, July 10–11, September 10–11, November 18–19. | 12391 |
| **CENTER FOR DRUG EVALUATION AND RESEARCH** | | |
| Advisory Committee for Pharmaceutical Science | February 25–26, May 7–9, October 23–25 | 12539 |
| Advisory Committee for Reproductive Health Drugs | September 13 | 12537 |
| Anesthetic and Life Support Drugs Advisory Committee | January 30–31, April 11–12 | 12529 |
| Anti-Infective Drugs Advisory Committee | February 19–20 | 12530 |
| Antiviral Drugs Advisory Committee | January 24, March 19, June 24–25, October 16–17. | 12531 |
| Arthritis Advisory Committee | February 19–20, May 14–15, July 29–30, September 12–13, December 10–11. | 12532 |
| Cardiovascular and Renal Drugs Advisory Committee | January 17–18, April 11–12, July 18–19, October 10–11. | 12533 |
| Dermatologic and Ophthalmic Drugs Advisory Committee | September 20 | 12534 |
| Drug Abuse Advisory Committee | No meetings planned | 12535 |
| Endocrinologic and Metabolic Drugs Advisory Committee | March 14–15, May 23–24, July 22–23, September 26–27, December 5–6. | 12536 |
| Gastrointestinal Drugs Advisory Committee | September 27 | 12538 |
| Medical Imaging Drugs Advisory Committee | April 18, August 15 | 12540 |
| Nonprescription Drugs Advisory Committee | April 22–23 | 12541 |
| Oncologic Drugs Advisory Committee | January 31, February 27–28, June 6–7 | 12542 |
| Peripheral and Central Nervous System Drugs Advisory Committee. | February 15 | 12543 |
| Pharmacy Compounding Advisory Committee | September 27 | 12440 |
| Psychopharmacologic Drugs Advisory Committee | September 13 | 12544 |
| Pulmonary-Allergy Drugs Advisory Committee | January 17–18, May 16–17 | 12545 |
| **CENTER FOR FOOD SAFETY AND APPLIED NUTRITION** | | |
| Food Advisory Committee | June 4–5, September 24–25 | 10564 |
| **CENTER FOR DEVICES AND RADIOLOGICAL HEALTH** | | |
| Device Good Manufacturing Practice Advisory Committee | No meetings planned | 12398 |
| Medical Devices Advisory Committee: | | |

| Committee Name | Dates of Meetings | Advisory Committee 5-Digit Information Line Code |
|---|---|---|
| Anesthesiology and Respiratory Therapy Devices Panel | March 18, May 13, September 23, October 28 | 12624 |
| Circulatory System Devices Panel | March 4–5, June 3–4, September 9–10, November 4–5, December 2–3. | 12625 |
| Clinical Chemistry and Clinical Toxicology Devices Panel | February 11–12, May 23–24, August 19–20, November 8. | 12514 |
| Dental Products Panel | May 9–10, August 22–23, October 29–30 | 12518 |
| Ear, Nose, and Throat Devices Panel | February 21–22, April 25–26, June 20–21, August 15–16, October 17–18, December 12–13. | 12522 |
| Gastroenterology and Urology Devices Panel | February 1, May 17, August 9, November 7 | 12523 |
| General and Plastic Surgery Devices Panel | February 7–8, April 9–10, July 8–9, October 1–2 | 12519 |
| General Hospital and Personal Use Devices Panel | March 11–12, June 10–11, September 9–10, December 5–6. | 12520 |
| Hematology and Pathology Devices Panel | April 15–16, June 17–18, September 26–27 | 12515 |
| Immunology Devices Panel | March 15, June 14, September 13, December 6 | 12516 |
| Medical Devices Dispute Resolution Panel | As needed | 10232 |
| Microbiology Devices Panel | February 21–22, May 9–10, September 19–20, October 28–29. | 12517 |
| Molecular and Clinical Genetics Panel | April 19, July 26, November 1 | 10231 |
| Neurological Devices Panel | February 25–26, May 9–10, August 1–2, November 21–22. | 12513 |
| Obstetrics and Gynecology Devices Panel | April 22–23, July 22–23, October 21–22 | 12524 |
| Ophthalmic Devices Panel | January 17–18, March 14–15, May 16–17, July 18–19, September 12–13, November 14–15. | 12396 |
| Orthopaedic and Rehabilitation Devices Panel | January 10, April 11–12, July 11–12, October 17–18. | 12521 |
| Radiological Devices Panel | February 4, May 20, August 12, November 18 | 12526 |
| National Mammography Quality Assurance Advisory Committee | May 6, September 23 | 12397 |
| Technical Electronic Product Radiation Safety Standards Committee. | May 15 | 12399 |
| **CENTER FOR VETERINARY MEDICINE** | | |
| Veterinary Medicine Advisory Committee | January 22–24, September 16 | 12548 |
| **NATIONAL CENTER FOR TOXICOLOGICAL RESEARCH** | | |
| Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants. | March 13–14, September 24–25 | 12560 |
| Science Advisory Board to the National Center for Toxicological Research. | June 11–12 | 12559 |

Dated: December 26, 2001.

**Linda A. Suydam,**

*Senior Associate Commissioner.*

[FR Doc. 02–26 Filed 1–2–02; 8:45 am]

**BILLING CODE 4160–02–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Joint Meeting of the Transmissible Spongiform Encephalopathies Advisory Committee and the Blood Products Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming joint meeting of two public advisory committees of the Food and Drug Administration (FDA). At least one portion of the joint meeting will be closed to the public.

*Name of Committees*: Transmissible Spongiform Encephalopathies Advisory Committee and the Blood Products Advisory Committee.

*General Function of the Committees*: To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time*: The meeting will be held on January 16, 2002, from 1 p.m. to 4:30 p.m.; and on January 17, 2002, from 8 a.m. to 5:15 p.m.

*Location*: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

*Contact*: William Freas or Sheila D. Langford, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12392. Please call the Information Line for up-to-date information on this meeting.

*Agenda*: On January 17, 2002, the committees will listen to updates on the ''Revised FDA Guidance on Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and Variant Creutzfeldt-Jakob Disease (vCJD) by Blood and Blood Products'' document, and other related topics. For the purpose of further evaluating the adequacy of our present blood deferral recommendations, the committee will then discuss the effectiveness of measures taken to protect humans from foodborne exposure to the bovine spongiform encephalopathy (BSE) agent in countries with BSE.

*Procedure*: On January 17, 2002, from 8 a.m. to 4 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 11, 2002. Oral presentations from the public will be scheduled between approximately 1:20 p.m. and 2:20 p.m. on January 17, 2002. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 11, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

*Closed Committee Deliberations*: On January 16, 2002, from 1 p.m. to 4 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). This portion of the meeting will be closed to permit discussion of this material.

FDA regrets that it was unable to publish this notice 15 days prior to the January 16 and 17, 2002, Joint Meeting of the Transmissible Spongiform Encephalopathies Advisory Committee and the Blood Products Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Joint Meeting of the Transmissible Spongiform Encephalopathies Advisory Committee and the Blood Products Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 26, 2001.

**Linda A. Suydam,**

*Senior Associate Commissioner.*

[FR Doc. 02–45 Filed 1–2–02; 8:45 am]

**BILLING CODE 4160–02–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, DHHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

**XAGE–1, A Gene Expressed in Multiple Cancers and Uses Thereof**

Drs. Ira H. Pastan (NCI), Xiu F. Liu (NCI), Byungkook Lee (NCI) and Lee J. Helman (NCI)

DHHS Ref. No. E–161–00/0 (Provisional Application) filed September 1, 2000 and E–161–00/1 (PCT Application) filed August 31, 2001

*Licensing Contact:* Richard Rodriguez; 301/496–7056 ext. 287; e-mail: *rodrigur@od.nih.gov*.

The XAGE–1 gene is a human X-linked gene that is strongly expressed in breast cancer, lung cancer and several other cancers as well as normal testes. The largest open reading frame of the XAGE–1 transcript encodes a putative protein of 16.3 kD (p16) with a potential transmembrane domain at the amino terminus. In addition, the XAGE–1 transcript contains a second ATG in the reading frame corresponding to residue 66, which would encode a 9 kD protein (p9). *In vitro* transfection experiments using 293 T cells have revealed a 9 kD protein. However, the size of the endogenously expressed protein is not yet known. XAGE–1 shares homology with GAGE/PAGE proteins in the C-terminal end.

The invention relates to the fact that the XAGE–1 gene is expressed in a number of human cancers, specifically: breast, lung, prostate, pancreatic, and ovarian cancers. The proteins p9 and p16, immunogenic fragments thereof, analogs of these proteins, and nucleic acids encoding these proteins, fragments, or analogs, can be administered to persons with XAGE–1 expressing cancers to raise or augment an immune response to the cancer. The invention further provides nucleic acid sequences encoding the protein, as well as expression vectors, host cells, and antibodies to the proteins. Further, the invention provides immunoconjugates that comprise an antibody to p16 or to p9, and an effector molecule, such as a label, a radioisotope, or a toxin. The invention also provides methods of inhibiting the growth of XAGE–1 expressing cells by contacting them with immunoconjugates of an anti-p9 or p16 antibody and a toxic moiety. The invention also provides kits for the detection of p9 or p16 proteins in a sample. The XAGE–1 gene and encoded protein could be of value in the development of a cancer diagnostic and/or a cancer immunotherapy.

The above mentioned invention is available for licensing on an exclusive or non-exclusive basis.

**Histone Deacetylase Inhibitors in Diagnosis and Treatment of Thyroid Neoplasms**

Tito A. Fojo and Susan Bates (NCI)
DHHS Reference No. E–286–00/0 filed 10 Jan 2001

*Licensing Contact:* Matthew Kiser; 301/496–7056 ext. 224; e-mail: *kiserm@od.nih.gov*.

The invention disclosed are novel approaches to thyroid cancer therapy. These approaches include methods to enhance thyroid specific gene expression, for example methods to enhance expression of thyroglobulin and/or the Na/I symporter in thyroid cancer cells. Enhanced expression of thyroid-specific genes promotes cellular differentiation and reduces biologically aggressive behavior such as invasion and metastasis. In addition, enhanced expression of thyroglobulin and/or the Na/I symporter increases the ability of thyroid cancer cells to concentrate iodine, thereby making the cells more susceptible to radioactive iodine therapy. Also disclosed are methods for detecting thyroid neoplasms in a subject, by administering a therapeutically effective amount of a histone deacetylase inhibitor, administering a detectable agent whose uptake or concentration in thyroid cells is increased by administration of the histone deacetylase inhibitor, and detecting the detectable agent.

Dated: December 20, 2001.

**Jack Spiegel,**

*Director, Division of Technology, Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 02–11 Filed 1–2–02; 8:45 am]

**BILLING CODE 4140–01–P**

## 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; Small Animal Imaging Resources Program.

*Date:* January 16, 2002.

*Time:* 10:15 a.m. to 2:15 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* 6116 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

*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, 301–946–7576.

(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: December 21, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–20 Filed 1–2–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Research Resources; 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 Center for Research Resources Special Emphasis Panel, Science Education Partnership Award.

*Date:* February 7–8, 2002.

*Time:* February 7, 2002, 8 AM to Adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

*Contact Person:* Sybil A. Wellstood, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, One Rockledge Centre, Room 6018, 6705 Rockledge Drive, MSC 7965, Bethesda, MD 20892–7965, (301) 435–0814, *wellstoods@ncrr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: December 27, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–131 Filed 1–2–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Research Resources; Notice of 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 open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend the need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the 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 Center for Research Resources Initial Review Group, Comparative Medicine Review Committee.

*Date:* February 7–8, 2002.

*Closed:* February 7, 2002, 8 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Four Points by Sheraton, 8400 Wisconsin Avenue, Bethesda, MD 20814.

*Open:* February 8, 2002, 8 am to 9 am.

*Agenda:* To discuss program planning and other issues.

*Place:* Four Points by Sheraton, 8400 Wisconsin Avenue, Bethesda, MD 20814.

*Closed:* February 8, 2002, 9 a.m. to Adjournment.

*Agenda:* To review and evaluate grant applications.

*Contact Person:* D.G. Patel, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, 6705 Rockledge Drive, Room 6018, Bethesda, MD 20892–7965, (301) 435–0824, *dgpatel@ncrr.nih.gov.*

*Name of Committee:* National Center for Research Resources Initial Review Group, Comparative Medicine Review Committee.

*Date:* February 7–8, 2002.

*Closed:* February 7, 2002, 8 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Four Points by Sheraton, 8400 Wisconsin Avenue, Bethesda, MD 20814.

*Open:* February 8, 2002, 8 a.m. to 9 a.m.

*Agenda:* To discuss program planning and other issues.

*Place:* Four Points by Sheraton, 8400 Wisconsin Avenue, Bethesda, MD 20814.

*Closed:* February 8, 2002, 8 a.m. to Adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* Four Points by Sheraton, 8400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Camille M. King, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, One Rockledge Centre, MSC 7965, 6705 Rockledge Drive, Suite 6018, Bethesda, MD 20892–7965, (301) 435–0815, *kingc@ncrr.nih.gov.*

*Name of Committee:* National Center for Research Resources Initial Review Group, General Clinical Research Centers Review Committee.

*Date:* February 12–14, 2002.

*Open:* February 12, 2002, 8 a.m to 9 a.m.

*Agenda:* To discuss program planning and other issues.

*Place:* Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Closed:* February 12, 2002, 9 a.m. to Adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* John L. Meyer, PhD, Deputy Director, Office of Review, National Center for Research Resources, National Institutes of Health, 6705 Rockledge Drive, MSC 7965, One Rockledge Centre, Room 6018, Bethesda, MD 20892–7965, 301–435–0806, meyerj@ncrr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: December 27, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–136 Filed 1–2–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Research Resources; 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 Center for Research Resources Special Emphasis Panel, Biomedical Research Technology.

*Date:* February 26–27, 2002.

*Time:* February 26, 2002, 8 a.m. to Adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

*Contact Person:* Mohan Viswanathan, PHD, Scientific Review Administrator, National Center for Research Resources, National Institutes of Health, Office of Review, 6705 Rockledge Drive, MSC 7965, One Rockledge Centre, Room 6018, Bethesda, MD 20892, (301) 435–0829, *viswanathanm@ncrr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: December 27, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–137 Filed 1–2–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of 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, Severe Asthma Research Program.

*Date:* December 27, 2001.

*Time:* 9:00 AM to 10:30 AM.

*Agenda:* To review and evaluate grant applications.

*Place:* 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Anne P Clark, PhD, NIH, NHLBI, DEA, Review Branch, Rockledge II, 6701 Rockledge Drive, Room 7202, Bethesda, MD 20892–7924, 301/435–0310.

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, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: December 21, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–21 Filed 1–2–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Human Genome Research Institute; Notice of 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 open to the public as indicated below, 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.

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 Inherited Disease Research Access Committee.

*Date:* January 9–10, 2002.

*Open:* January 9, 2002, 7:00 PM to 10:00 PM.

*Agenda:* To discuss matters of program relevance.

*Place:* The Westin Grand Hotel, 2350 M Street, NW, Washington, DC 20037.

*Closed:* January 10, 2002, 8:30 AM to 3:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* The Westin Grand Hotel, 2350 M Street, NW, Washington, DC 20037.

*Contact Person:* Jerry Roberts, PhD, Scientific Review Administrator, Office of Scientific Review, National Institutes of Health, Building 38A, Bethesda, MD 20892, 301–402–0838.

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 Inherited Disease Research Access Committee.

*Date:* January 10, 2002.

*Time:* 3:00 PM to 4:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* The Westin Grand Hotel, 2350 M Street, NW., Washington, DC 20037.

*Contact Person:* Rudy O. Pozzatti, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301–402–0838.

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 No. 93.172, Human Genome Researach, National Institutes of Health, HHS)

Dated: December 21, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–22 Filed 1–2–02; 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 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 Allergy and Infectious Diseases Special Emphasis Panel.

*Date:* February 25, 2002.

*Time:* 8:30 am to 12 pm.

*Agenda:* To review and evaluate contract proposals.

*Place:* 6700–B Rockledge Drive, Room 2220, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Vassil S. Georgiev, 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.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

*Date:* February 25, 2002.

*Time:* 1 pm to 5 pm.

*Agenda:* To review and evaluate contract proposals.

*Place:* 6700–B Rockledge Drive, Room 2223, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Vassil S. Georgiev, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drice, MSC–7610, Bethesda, MD 20892–7610, 301–496–2550.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

*Date:* February 26, 2002.

*Time:* 8:30 am to 12 pm.

*Agenda:* To review and evaluate contract proposals.

*Place:* 6700–B Rockledge Drive, Room 2223, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Vassil S. Georgiev, 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, 310–496–2550.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

*Date:* February 27, 2002.

*Time:* 1 pm to 5 pm.

*Agenda:* To review and evaluate contract proposals.

*Place:* Holiday Inn—Gaithersburg, 2 Montgomery Village Avenue, Gaithersburg, MD 20879, (Telephone Conference Call).

*Contact Person:* Vassil S. Georgiev, 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, 310–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 21, 2001.

**LaVerne Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–13 Filed 1–2–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of 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 National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plant to attend the need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed in the public in accordance with the provisions set forth in sections 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or 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 grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Council of Aging.

*Date:* January 29–30, 2002.

*Closed:* January 29, 2002, 3 PM to 6 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

*Open:* January 30, 2002, 8 AM to 1:30 PM.

*Agenda:* Call to Order; report on Task force on Minority Aging; reports on Clinical Investigators Working Group and Working Group on Program; report on Intramural Research Program; and Program Highlights

*Place:* 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

*Agenda:* To review and evaluate intramural Research Program.

*Place:* 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

*Contact Person:* Miriam F. Kelty, PhD, Director, Office of Extramural Affairs, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, 301–496–9322.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: www.nih.gov/nia/naca/, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 21, 2001.

**LaVerne Y. Stringfield,**

*Director, Officer of Federal Advisory Committee Policy.*

[FR Doc. 02–14 Filed 1–2–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Arthritis and Musculoskeletal and Skin 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 Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

*Date:* January 4, 2002.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Richard J. Bartlett, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Bldg./Bldg. 45, MSC 6500/Room 5AS–37B, Bethesda, MD 20892, (301) 594–4952.

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. 93,846, Arthritis and Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: December 26, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–15 Filed 1–2–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Arthritis and Musculoskeletal and Skin 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 Institutes of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

*Date:* January 9, 2002.

*Time:* 1 pm to 2 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Tracy A. Shahan, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Building, MSC 6500, 45 Center Drive, 5AS–25H, Bethesda, MD 20892, (301) 594–4952.

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. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: December 26, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–16 Filed 1–2–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Arthritis and Musculoskeletal and Skin 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 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 Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

*Date:* January 15, 2002.

*Time:* 8:30 AM to 1 PM.

*Agenda:* To review and evaluate contract proposals.

*Place:* Holiday Inn, 8120 Wisconsin Ave, Bethesda, MD 20814.

*Contact Person:* Aftab A. Ansari, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Building, MSC 6500, 45 Center Drive, 5AS–25S, Bethesda, MD 20892, (301) 594–4952.

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 No. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS).

Dated: December 26, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–17 Filed 1–2–02; 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 Special Emphasis Panel.

*Date:* January 2, 2002.

*Time:* 11 a.m. to 11:45 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

*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 jrichters@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: December 21, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–18 Filed 1–2–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Arthritis and Musculoskeletal and Skin 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 Arthritis and Musculoskeletal and Skin Diseases Special Emphasis, Panel.

*Date:* January 4, 2002.

*Time:* 11 a.m. to 12:59 p.m.

*Agenda:* 45 Center Drive, Natcher Bldg., Conf. Rms., A & D, Bethesda, MD 20892.

*Contact Person:* Tommy L. Broadwater, PhD, Grants Review Branch, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25U, Bethesda, MD 20892, 301–594–4952.

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. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: December 27, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–133 Filed 1–2–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel.

*Date:* January 23, 2002.

*Time:* 2 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470, *dsommers@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, 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: December 27, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–134 Filed 1–2–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

*Date:* January 17, 2002.

*Time:* 12 p.m. to 1:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* 600 Executive Boulevard, Suite 409, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Ronald Suddendorf, PhD., Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2926.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: December 27, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–135 Filed 1–2–02; 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:* December 26, 2001.

*Time:* 2:00 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:* Jeanne N. Ketley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, (301) 435–1789.

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:* January 7, 2002.

*Time:* 2:00 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:* Mary Ann Guadagno, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1104, MSC 7770, Bethesda, MD 20892, (301) 451–8011.

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.

*Names of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* January 7, 2002.

*Time:* 3:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Paul K Strudler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435–1716.

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:* January 8, 2002.

*Time:* 11:00 a.m. to 12:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Michael Micklin, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, micklinm@csr.nih.gov.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* January 11, 2002.

*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:* Michael Micklin, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, micklinm@csr.nih.gov.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* January 11, 2002.

*Time:* 4:30 p.m. to 6:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Philip Perkins, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435–1718.

*Name of Committee:* Oncological Sciences Integrated Review Group, Pathology B Study Section.

*Date:* January 28–30, 2002.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Keystone Resort, Keystone, CO 80222.

*Contact Person:* Martin L. Padarathsingh, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7804, Bethesda, MD 20892, (301) 435–1717.

(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: December 21, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–19 Filed 1–2–02; 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:* January 4, 2002

*Time:* 4 p.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Cheryl M. Corsaro, PhD, Scientific Review Administrator, Genome Study Section, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, *corsaroc@csr.nih.gov*.

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:* January 31, 2002.

*Time:* 11 a.m.. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*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*.

(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: December 27, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 02–132 Filed 1–2–02; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Prospective Grant of Co-Exclusive License: ''cDNA for Human and Pig Dihydropyrimidine Dehydrogenase'

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an co-exclusive license to practice the inventions embodied in U.S. Patents 5,856,454 and 6,015,673, entitled ''cDNA for Human and Pig Dihydropyrimidine Dehydrogenase'' to Variagenics, Inc. of Cambridge, MA.

The prospective co-exclusive license territory will be worldwide and the field of use may be limited to *in vitro* diagnostics.

**DATES:** Only written comments and/or license applications which are received by the National Institutes of Health on or before March 4, 2002 will be considered.

**ADDRESSES:** Requests for copies of the patents, inquiries, comments, and other materials relating to the contemplated co-exclusive license should be directed to: Matthew B. Kiser, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 496–7056 x224; Facsimile (301) 402–0220; E-mail kiserm@od.nih.gov.

**SUPPLEMENTARY INFORMATION:** The technology relates to the DPD gene. Cancer patients having a DPD deficiency are at risk of a severe toxic reaction to the commonly used anticancer agent 5-fluorouracil (5–FU). Claimed are DPD genes from human and pig, methods for detecting the level of nucleic acids that encode DPD in patient, and nucleic acids that are useful as probes for this purpose.

The prospective co-exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective co-exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated co-exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: December 20, 2001.

**Jack Spiegel,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer.*

[FR Doc. 02–12 Filed 1–2–02; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NV–050–1430–ES; N–41565–30]**

### Notice of Realty Action: Lease/Conveyance for Recreation or Public Purposes

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Partial assignment of 30.0 acres and change of use for recreation or public purposes lease amendment.

**SUMMARY:** The Clark County School District (CCSD) proposes an amendment to Recreation or Public Purposes (R&PP) Lease N–41565–30 to add 30.0 acres to an existing lease of 12.5 acres and to change the use of the lease from a maintenance facility to a high school. CCSD would acquire the additional 30.0 acres through partial assignment from Clark County's R&PP Lease N–51437 which will be a change of use from a park to a high school. The land has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*).

T. 21 S., R. 60 E., M.D.M.,
Sec. 15, W½NE¼NW¼SW¼,
NW¼NW¼SW¼, SW¼NW¼SW¼,
W½SE¼NW¼SW¼,
W½NE¼SW¼SW¼,
E½NW¼SW¼SW¼,
NW¼NW¼SW¼SW¼.

Containing 42.5 acres, more or less, located at the corner of Buffalo Drive and Twain Avenue.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations

of the Secretary of the Interior and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

1. Easements in accordance with the Clark County Transportation Plan.

2. Those rights for water line purposes which have been granted to the Las Vegas Valley Water District by Permit No. N–24659 under the Act of October 21, 1976 (43 U.S.C. 1761).

3. Those rights for power and telephone line purposes which have been granted to Nevada Power Company and Sprint Central by Permit N–24663 under the Act of October 21, 1976 (43 U.S.C. 1761).

4. Those rights for power and telephone line purposes which have been granted to Nevada Power Company and Sprint Central by Permit N–58098 under the Act of October 21, 1976 (43 U.S.C. 1761).

5. Those rights for power line purposes which have been granted to the Nevada Power Company by Permit No. N–59318 under the Act of October 21, 1976 (43 U.S.C. 1761).

6. Those rights for roadway purposes which have been granted to Clark County by Permit N–59691 under the Act of October 21, 1976 (43 U.S.C. 1761).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada or by calling (702) 647–5088.

**Application Comments**

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for a high school to the Las Vegas Field Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108. Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor directly related to the suitability of the land for a high school. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, these realty actions will become the final determination of the Department of the Interior.

Dated: December 14, 2001.

**Rex Wells,**

*Assistant Field Manager, Division of Lands, Las Vegas, NV.*

[FR Doc. 02–83 Filed 1–2–02; 8:45 am]

BILLING CODE 4310–HC–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Water Exchange Agreements With Mendota Pool Group, 2003–2013, CA

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of intent to prepare an environmental impact statement (EIS).

**SUMMARY:** The Department of the Interior, Bureau of Reclamation (Reclamation), will prepare an EIS, pursuant to the National Environmental Policy Act (NEPA), to evaluate the proposed exchange of up to 25,000 acre-feet of water per year over a 10-year period with the Mendota Pool Group. Alternatives will be identified and evaluated on the basis of criteria adopted to maintain environmental quality and provide for continued agricultural production. The purpose of the proposed project is to provide water to irrigable lands on Mendota Pool Group properties in Westlands Water District and San Luis Water District to offset substantial reductions in contract water supplies attributable to the Central Valley Project Improvement Act (CVPIA), the Endangered Species Act listings and regulations, and new Delta water quality rules. Providing this water would enable the Mendota Pool Group farmers to maintain production on historically irrigated lands. The project is not intended to increase the amount of water for farming activities, but would replace some of the contract water lost because of increased environmental regulations that restrict water deliveries south of the export pumps at Tracy, California.

Through initial scoping meetings, Reclamation will seek public input on the scope of the project and potential alternatives, or combination of alternatives, for consideration in the EIS.

There are no known Indian Trust Assets or environmental justice issues associated with the proposed action.

**DATES:** One scoping meeting will be held to solicit comments from interested parties to assist in determining the scope of the environmental analysis and to identify the significant issues related to this proposed action. The meeting is scheduled for Monday, January 14, 2002, 6 to 8 p.m., in Mendota, California.

Submit written comments on the proposed project scope on or before January 28, 2002.

**ADDRESSES:** The scoping meeting will be held at the City Council Chambers, Mendota City Hall, 643 Quince St., Mendota, CA 93640; telephone: (559) 655–3291.

Written comments on the scope of the alternatives and impacts to be considered should be sent to Mrs. Judi Tapia, Bureau of Reclamation, South-Central California Area Office, 1243 N Street, Fresno CA 93721–1813; by telephone at (559) 487–5179 (TDD 559–487–5933); by E-mail at *jtapia@mp.usbr.gov;* or faxed to (559) 487–5397.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Tapia, Environmental Specialist, at the above address or by telephone at (559) 487–5179 (TDD 559–487–5933).

**SUPPLEMENTARY INFORMATION:** The Delta export service area of the Central Valley Project (CVP) has total contractual obligations and delivery losses of approximately 3.45 million acre-feet per year. The theoretical maximum pumping capability of CVP facilities serving this area is approximately 3.09 million acre-feet per year. Available supplies are apportioned under a hierarchy of allocation in which agricultural water service contracts, totaling about 1.85 million acre-feet per year, are provided water only after all other obligations are met. Implementation of the CVPIA provided water only after all other obligations are met. Implementation of the CVPIA (1992), Endangered Species Act (1993–1995), and revised Bay-Delta water quality standards has further reduced pumping capabilities and water supplies available to agricultural contractors. Currently these parties can expect to receive a long-term average supply of about 50 to 55 percent of contract water as compared to a pre-1992 average of 88 to 92 percent.

The project proponents propose to pump an average of 27,000 acre-feet of groundwater per year over the 10-year period from non-CVP wells located adjacent to the Mendota Pool into the Mendota Pool to make up for a portion of the annual shortfall in the contract water to be delivered via the CVP. The actual quantity of water to be pumped would depend on whether the year is classified as wet (0 acre-feet per year),

normal (31,600 acre-feet per year), or dry (40,000 acre-feet per year). Of the total quantity pumped, a maximum of 25,000 acre-feet per year would be exchanged with Reclamation. This water would be made available to Reclamation in the Mendota Pool to offset their existing water contract obligations. In exchange, Reclamation would make an equivalent amount of CVP water available to the members of the Mendota Pool Group for irrigation purposes at Check 13 of the Delta-Mendota Canal. Any quantity of water pumped beyond the 25,000 acre-feet exchanged would be delivered directly to other lands that are presently under irrigation around the Pool. As part of this program, a maximum of 12,000 acre-feet per year of groundwater would be pumped from deep wells (i.e., screened interval greater than 130 feet deep), with the remainder coming from shallow wells (i.e., screened interval less than 130 feet deep). The proposed project will comply with the terms specified in the Settlement Agreement for Mendota Pool Transfer Pumping Program, effective January 1, 2001.

The primary environmental resource issues that have been identified, and that will be evaluated in the EIS, include groundwater levels, groundwater quality, subsidence, surface water quality, and biological resources.

The environmental review will be conducted pursuant to NEPA, the Endangered Species Act, and other applicable laws, to analyze the potential environmental impacts of implementing each of the feasible alternatives. All reasonable alternatives as required by NEPA and its implementing regulations will be examined. The final Environmental Impact Report, certified by Westlands Water District in 1998, will provide a useful beginning, as will subsequent environmental reports and ongoing sampling activities, thus allowing Reclamation to expedite completion of the analysis. Alternatives, with their related designs and cost estimates identified in the earlier document, will be re-evaluated and updated to reflect current conditions. Public input on additional alternatives, or combinations of alternatives, that should be considered will be sought through the initial scoping meeting. In addition, public input will be sought on the criteria that should be used to carry forward alternatives, or combination of alternatives, for further consideration.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment letter. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public disclosure in their entirety.

Dated: December 3, 2001.

**Frank Michny,**

*Regional Environmental Officer.*

[FR Doc. 02–33 Filed 1–2–02; 8:45 am]

**BILLING CODE 4310–MN–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Glen Canyon Dam Adaptive Management Work Group (AMWG), Notice of Meeting

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMP provides an organization and process to ensure the use of scientific information in decision making concerning Glen Canyon Dam operations and protection of the affected resources consistent with the Grand Canyon Protection Act. The AMP has been organized and includes a federal advisory committee (the AMWG), a technical work group (the TWG), a monitoring and research center, and independent review panels. The TWG is a subcommittee of the AMWG and provides technical advice and information for the AMWG to act upon.

**DATES AND LOCATION:** The Glen Canyon Dam Adaptive Management Work Group will conduct the following public meeting.

Phoenix, Arizona—January 17–18, 2002. The meeting will begin at 9:30 a.m. and conclude at 5 p.m. on the first day and will 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 approve the Strategic Plan, and discuss the following: FY 2003 budget, basin hydrology, Protocol Evaluation Panel (PEP) recommendations, 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 Web site 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 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 members at the meeting.

**FOR FURTHER INFORMATION CONTACT:** Randall Peterson, telephone (801) 524–3758; faxogram (801) 524–3858; *rpeterson@uc.usbr.gov.*

Dated: November 30, 2001.

**Rick L. Gold,**

*Regional Director.*

[FR Doc. 02–32 Filed 1–2–02; 8:45 am]

**BILLING CODE 4310–MN–M**

## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 731–TA–910–912 (Final)]**

### Low Enriched Uranium From Germnay, the Netherlands, and the United Kingdom

**AGENCY:** United States International Trade Commission.

**ACTION:** Termination of investigations.

**SUMMARY:** On December 21, 2001, the Department of Commerce published notice in the **Federal Register** of negative final determinations of sales at less than fair value in connection with the subject investigations (66 FR 65886, December 21, 2001). Accordingly, pursuant to section 207.40(a) of the Commission's Rules of Practice and

Procedure (19 CFR 207.40(a)), the antidumping investigations concerning low enriched uranium from Germany, the Netherlands, and the United Kingdom (investigations Nos. 731–TA–910–912 (Final)) are terminated.

**EFFECTIVE DATE:** December 21, 2001.

**FOR FURTHER INFORMATION CONTACT:** Bonnie Noreen (202–205–3167), 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 these investigations may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public*.

**Authority:** These investigations are 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).

By order of the Commission.

Issued: December 28, 2001.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 02–138 Filed 1–2–02; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–762]**

### Static Random Access Memory Semiconductors From Taiwan; Notice of Final Decision Affirming Remand Determination

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice of a final court decision affirming its final negative determination, made pursuant to court remand, in the antidumping duty investigation of static random access memory semiconductors (SRAMs) from Taiwan.

**FOR FURTHER INFORMATION CONTACT:** Michael Diehl, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3095. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

**SUPPLEMENTARY INFORMATION:** In April of 1998, the Commission published its determination that an industry in the United States was materially injured by reason of imports of SRAMs from Taiwan found by the Department of Commerce (Commerce) to be sold at less than fair value. The Commission also found that the domestic industry was not materially injured or threatened with material injury by reason of subject imports of SRAMs from the Republic of Korea. Static Random Access Memory Semiconductors from the Republic of Korea and Taiwan, Investigation Nos. 731–TA–761–762 (Final), USITC Pub. 3098 (April 1998). See 63 FR 18443 (April 15, 1998).

The Taiwan Semiconductor Industry Association and others sought review of the affirmative determination in the United States Court of International Trade (CIT). On June 30, 1999, the CIT remanded the determination to the Commission with instructions to provide further explanation regarding the Commission's volume and price effects determinations. Taiwan Semiconductor Industry Ass'n v. United States, 59 F.Supp.2d 1324 (CIT 1999) (Taiwan I).

After an additional remand from the CIT on April 11, 2000, Taiwan Semiconductor Industry Ass'n v. United States, 105 F.Supp.2d 1363 (2000) (Taiwan II), the Commission determined that a domestic industry in the United States was not materially injured or threatened with material injury by reason of subject imports of SRAMs from Taiwan. Static Random Access Memory Semiconductors from Taiwan (Views on Remand), Investigation No. 731–TA–762 (Second Remand), USITC Pub. 3319 (June 2000). On August 29, 2000, the CIT affirmed the Commission's negative remand determination. Taiwan Semiconductor Industry Ass'n v. United States, 118 F.Supp.2d 1250 (CIT 2000) (Taiwan III).

On September 28, 2000, Commerce published notice of the CIT decision, pursuant to 19 U.S.C. 1516a(c). 65 F.R. 58263. In accordance with Timken Co. v. United States, 893 F.2d 337 (Fed. Cir. 1990), Commerce stated that it would continue to order the suspension of liquidation of the subject merchandise. Commerce also indicated that, if the CIT decision was affirmed on appeal, it would revoke the antidumping duty order.

Petitioner Micron Technology, a domestic producer of SRAMs, appealed the CIT's decisions in Taiwan I and Taiwan III. On September 21, 2001, the United States Court of Appeals for the Federal Circuit (CAFC) affirmed the CIT's decision to remand for further explanation in Taiwan I, and affirmed the Commission's negative remand determination. Taiwan Semiconductor Industry Ass'n v. United States, 266 F.3d 1339 (2001). The CAFC issued its mandate on December 11, 2001.

The judicial proceedings having ended and the final court decision having been issued, the Commission, pursuant to 19 U.S.C. 1516a(e), publishes notice of the final court decision affirming its negative remand determination.

Issued: December 28, 2001.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 02–139 Filed 1–2–02; 8:45 am]

**BILLING CODE 7020–02–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on November 7, 2001, a proposed Consent Decree in the *United States* v. *Aristech Chemical Corporation*, Civil Action No. C–1–01–772, was lodged with the United States District Court for the Southern District of Ohio, Western Division.

In this action the United States seeks civil penalties and injunctive relief against Aristech Chemical Corporation (''Aristech'') pursuant to Section 113(b) of the Clean Air Act (''CAA''), 42 U.S.C. 7413(b) (1983), *amended by*, 42 U.S.C. 7413(b) (Supp. 1991), for alleged violations at Aristech's Ironton, Ohio facility. Under the settlement, Aristech will pay a civil penalty of $450,000, and apply for and obtain a permit for the Phenol Expansion Project, under the CAA's Prevention of Significant Deterioration (''PSD'') program, from the State of Ohio, the permitting authority.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to *United States* v. *Aristech Chemical Corporation*, D.J. Ref. 90–5–2–1–06701/1.

The Consent Decree may be examined at the Office of the United States Attorney for the Southern District of Ohio, Western Division, Potter Stuart Federal Courthouse, 5th and Walnut Streets, Room 220, Cincinnati, Ohio 45202, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604. A copy of the 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. In requesting a copy, please enclose a check in the amount of $7.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

**William D. Brighton,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 01–91 Filed 1–2–02; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Request for Resubmission of Comments on Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, the Department of Justice published a notice on October 4, 2001 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.), had been lodged with the United States District Court for the District of Puerto Rico, and provided a public comment period that ended on November 6, 2001. The notice provided an address to which comments should be mailed.

The Department of Justice has experienced disruptions in mail delivery in October and November. To date, the Department has received no comments on the proposed consent decree in this case.

In recognition of the possibility that comments were mailed but did not reach the Department due to the mail disruptions, the Department is requesting that any persons who sent comments on the proposed consent decree during the period resubmit a copy of those comments to the Department. To be clear, the Department is *not* reopening the comment period or accepting new comments. The Department will only consider comments that were previously mailed during the comment period that ended on November 6, 2001.

Any person who submitted comments to the Department during the comment period and wishes to have those comments considered must resubmit their comments within 10 days of the date of publication of this notice. Resubmitted comments should be sent either (1) by telecopy to Scott J. Jordan at 202–514–8865 or (2) by mail to Camille Vélez-Rivé, Assistant United States Attorney, US Attorney's Office, Room 452, Federal Office Building, Carlos Chardon Street, Hato Rey, Puerto Rico 00918.

**Mary F. Edgar,**

*Assistant Chief, Environmental Defense Section, Environment & Natural Resources Division.*

[FR Doc. 02–39 Filed 1–2–02; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed partial consent decree in *United States* v. *The Ed Krewatch Partnership, Antonio* v. *Nero, Gardner Asphalt Corporation, Emulsion Products Company, and Raymond T. Hyer, Jr.,* Civil Action No. 01:659, was lodged with the United States Court for the District of Delaware on September 28, 2001.

The proposed partial consent decree pertains to the Krewatch Farm Superfund Site (''Site''), located near Seaford, Delaware. The United States has sued a number of defendants pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607, to recover past response costs incurred at the Site. Two defendants, Antonio V. Nero and The Ed Krewatch Partnership (''Settling Defendants''), have agreed to a settlement memorialized in the partial consent decree. In the settlement, defendant Antonio V. Nero agrees to pay $10,000 for reimbursement of costs expended in the cleanup by the Environmental Protection Agency. Defendant The Ed Krewatch Partnership agrees to pay $152,000 in cash and 40% of the proceeds of the sale of the farm on which the Site is located. In addition, The Ed Krewatch Partnership agrees to reimburse $22,667.25 to the state environmental agency Delaware Department of Natural Resources and Environmental Control (''DNREC'').

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *The Ed Krewatch Partnership, et al.,* DOJ Ref. # 90–11–3–07224.

The proposed consent decree may be examined at the office of the United States Attorney, District of Delaware, 1201 N. Market Street, Wilmington, DE and at the Region III Office of the Environmental Protection Agency, 1650 Arch St., Philadelphia, PA 19103. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy please refer to the referenced case and enclose a check in the amount of $9.75 ($.25 per page reproduction cost), payable to the Consent Decree Library.

**Robert D. Brook,**

*Assistant Section Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.*

[FR Doc. 02–95 Filed 1–2–02; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'')

Consistent with Departmental policy, 28 CFR 50.7 and 38 FR 19029, notice is hereby given that on November 13, 2001, a proposed Consent Decree in *United States* v. *Frederick Gendron, et al.,* Civil Action No. 01–422–JD, was lodged with the United States District Court for the District of New Hampshire. The proposed Consent Decree will resolve the United States' claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9607, as amended (''CERCLA''), on behalf of the U.S. Environmental Protection Agency (''EPA'') against the defendant relating to the Gendron Junkyard Site located at 11–13 Hobbs Road in Pelham, New Hampshire (the ''Site''). The Complaint alleges that the defendants are liable under Section 107 of CERCLA, 42 U.S.C. 9607, for recovery of response costs incurred at or in connection with the release or threatened release of hazardous substances at the Site.

The Consent Decree requires the Settling Defendants to pay to the U.S. EPA Hazardous Substance Superfund $650,000 in reimbursement of past

response costs, and includes a covenant not to sue by the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Any comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611, and should refer to *United States* v. *Gendron, et al.,* Civil Action No. 01–422–JD, Ref. 90–11–3–07116.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of New Hampshire U.S. Department of Justice, 55 Pleasant Street, Room 352, Concord, New Hampshire 03301–3904, and at U.S. EPA New England (Region 1), One Congress Street, Suite 1100, Boston, Massachusetts 02114–2023. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611. In requesting a copy, please enclose a check (there is a 25 cent per page reproduction cost) in the amount of $6.00 payable to the Consent Decree Library.

**Ronald Gluck,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.*

[FR Doc. 02–90 Filed 1–2–02; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601 et seq.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a third proposed consent decree in *United State* v. *Viacom, Inc. and Schindler Elevator Corporation*, Civil Action No. 1:01–CV–123, was lodged on November 1, 2001, with the United States District Court for the Middle District of Pennsylvania.

The proposed Consent Decree concerns the Westinghouse Elevator Plant Superfund Site (''Site''), which is located on approximately 90 acres, and has its southern boundary adjacent to part of the Gettysburg Battlefield National Park. The Site is located about 1.5 miles north of downtown Gettysburg in Cumberland Township, Adams County, Pennsylvania. Pursuant to the proposed consent decree and section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9607(a), the defendants will pay the United States for unreimbursed past costs at the Site, in the amount of $569,000 plus certain interest in connection with the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Viacom, Inc. and Schindler Elevator Corporation*, DOJ Ref. #90–11–3–1004/1.

The proposed consent decree may be examined at the office of the United States Attorney, 228 Walnut Street, Suite 220 Harrisburg, Pennsylvania 17108 and the Region 3 Office of the U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103–2029. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. (202) 624–0892. In requesting a copy please refer to the referenced case and enclose a check (25 cents per page reproduction costs) in the amount of $5.25 for the consent decree (21 pages), payable to the Consent Decree Library.

**Robert Brook,**

*Assistant Chief,*

*Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 02–92 Filed 1–02–02; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

**[AAG/A Order No. 254–2001]**

### Privacy Act of 1974; System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the Immigration and Naturalization Service (INS), Department of Justice, proposes to modify the following system of records—previously published March 7, 1997, (62 FR 10580):

The Immigration and Naturalization Service, Office of Internal Audit Investigations (OIA) Index and Records, JUSTICE/INS–002.

INS proposes to republish the notice to: (1) Include new information in the Categories of Records section, (2) add two new routine uses (J and K), and (3) modify the ''Retention and Disposal'' section as described in the attached **Federal Register** notice.

Routine use J will allow contractors working for INS to have access to the information in this system of records. Routine use K allows disclosure to former employees when the Department of Justice requires information and/or consultation assistance from the former employee that is necessary for personnel-related or other official purposes regarding a matter within that person's former area of responsibility. Also, INS is making a modification to the Retention and Disposal section of the notice. The National Archives and Records Administration (NARA) has oversight responsibility for retention and disposal schedules. NARA withdrew the entire General Records Schedule (GRS) 22, Inspector General Records, and the disposal authority formerly provided under this schedule. GRS 22 covered the records in this system. Therefore, INS is modifying this notice to include a new Retention and Disposal Schedule for OIA records. Also, other minor corrections and edits have been made to reflect the current status of this system of records.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which the comment on new routine use disclosures and system modifications. The Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires a 40-day period in which to conclude its review of this revised system notice. Therefore, please submit any comments by February 4, 2002. OMB, the Congress, and the public are invited to send written comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress.

Dated: December 20, 2001.

**Janis A. Sposato,**

*Acting Assistant Attorney General for Administration.*

**JUSTICE/INS–002**

**SYSTEM NAME:**

Office of Internal Audit Investigations Index and Records

**SYSTEM LOCATION:**

Headquarters office, Immigration and Naturalization Service (INS), 425 I Street, NW., Washington, DC. In addition, field offices of the INS have access only to hardcopy files during an

investigation. A complete address list of the principal offices of INS is detailed in JUSTICE/INS–999, last published in the **Federal Register** on April 13, 1999 (64 FR 18052).

* * * * *

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Information relating to investigations, including:

a. Letters, memoranda, and other documents citing complaints of alleged criminal, civil, or administrative misconduct (i.e., program subject files and internal review case files).

b. Investigative files (i.e., selected and non-selected cases) which include: reports of investigations to resolve allegations of misconduct or violations of law with related exhibits, statements, affidavits or records obtained during investigations; prior criminal or non-criminal records of individuals as they relate to the investigations; reports from or to other law enforcement bodies; information obtained from informants and identifying data with respect to such informants; nature of allegations made against suspects and identifying data concerning such subjects; public source materials; and employee identifying data (e.g., full name, social security number, address, duty station, grade, job series, entrance on duty [EOD] date, and date of birth) obtained from the National Finance Center [NFC] payroll system.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

* * * * *

B. To General Service Administration and National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

* * * * *

J. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

K. Pursuant to subsection (b)(3) of the Privacy Act, the Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

* * * * *

**RETENTION AND DISPOSAL:**

Program subject files are destroyed when 10 years old. Internal review case files are maintained until the end of the fiscal year in which the case was closed. One year after these records are closed, they are transferred to the National Records Center and kept for 10 years and then are destroyed. General internal review files will be destroyed when superseded, obsolete, or no longer needed for reference. Investigative case files concerning selected cases are maintained permanently. Ten years after the case is closed, it is transferred to NARA. Non-selected investigatory files are destroyed 10 years after the case is closed. Electronic versions of records created by the electronic mail and word processing applications are deleted when a file copy is generated or when no longer needed for reference or updating.

* * * * *

**SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

The Attorney General has exempted this system from subsections (c)(3) and (4); (d); (e) (1), (2), (3), (5), and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d), and (e)(1) pursuant to 5 U.S.C. 552a(k)(2). INS has published implementing regulations in accordance with the requirements of 5 U.S.C. 553 (b), (c), and (e) and these were published in the **Federal Register** of June 25, 1997 (62 FR 34169) and can be found at 28 CFR 16.99 (g) and (h).

[FR Doc. 02–37 Filed 1–2–02; 8:45 am]

**BILLING CODE 4410–10–M**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### United States v. Waste Management, Inc. et al.

On October 23, 2001, a Joint Motion to Modify the Final Judgment was filed with the United States District Court for the Eastern District of New York, in a civil antitrust case, *United States et al.* v. *Waste Management, Inc. et al.,* Civil No 98 CV 7168. On December 5, 2001, the United States published a notice in the **Federal Register** seeking public comments on the proposed modification to the Final Judgment during a 60 day period. The comment period will expire on February 4, 2002. Given recent mail delivery interruptions in Washington, DC., and current uncertainties involving the resumption of timely mail service, the Department of Justice strongly encourages that comments be submitted via e-mail or fax to J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530 (facsimile: (202) 307–5802; e-mail *comments.lit2@usdoj.gov;* telephone: (202) 307–0924).

**Constance K. Robinson,**

*Director of Operations & Merger Enforcement.*

[FR Doc. 02–40 Filed 1–2–02; 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—Advanced Technology Institute: National Shipbuilding Research Program (''NSRP'')

Notice is hereby given that, on October 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''), Advanced Technology Institute has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the membership of the National Shipbuilding Research Program (''NSRP''). 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, Bender Shipbuilding and Repair Company, Mobile, AL has been added as a party 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 Advanced Technology Institute intends to file additional written notification disclosing all changes in membership.

On March 13, 1998, Advanced Technology Institute 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 January 29, 1999 (64 FR 4708).

The last notification was filed with the Department on April 11, 2000. A

notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 26, 2000 (65 FR 39428).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 02–99 Filed 1–2–02; 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—DVD Copy Control Association (''DVD CCA'')

Notice is hereby given that, on October 12, 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''), DVD Copy Control Association (''DVD CCA'') 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, A&R Cambridge Limited, Cambridge, Cambridgeshire, UNITED KINGDOM; AD Device Corporation, Tokyo, JAPAN; ANAM Electronics Co., Ltd., Ansan-City, Kyungki-Do, REPUBLIC OF KOREA; Applied Research Corporation, Taipei Hsien, TAIWAN; Aplus Technics Co., Ltd., Taipei, TAIWAN; Apollo Electronics Group Limited, Kowloon Bay, Kowloon, HONG KONG—CHINA; Argus Electronics Co., Ltd., Taipei, TAIWAN; Arts Electronics Co. Ltd., Hong Kong, HONG KONG—CHINA; Behavior Tech Computer Corp., Taipei, TAIWAN; Beijing Durban Yu Chang Electronics Co. Ltd., Kowloon, HONG KONG—CHINA; CNERC–OD, Shanghai, PEOPLE'S REPUBLIC OF CHINA; Coach Master International dba CMI Worldwide, Inc., Seattle, WA; Comjet Information Systems Corp., Taipei, TAIWAN; Concord Disc Manufacturing Corp., Anaheim, CA; Cyrus Electronics Ltd., Huntingdon, Cambridgeshire, UNITED KINGDOM; D.M. Technology Co., Ltd., Anyang City, Kyunggi-Do, REPUBLIC OF KOREA; Diskware Co., Ltd., Koutou-Ku, Tokyo, JAPAN; Diversion Technologies, Inc., Castro Valley, CA; Dragon DVD Technology Sdn Bhd, Kuala Lumpur, MALAYSIA; Duplico 2000, S.L., Barcelona, SPAIN; Eltech Electronics Technology (M) Sdn Bhd, Senai, Johore, MALAYSIA; Enlight Corporation, Taipei, TAIWAN; Fujitsu Ten Limited, Hyogoku, Kobe, JAPAN; GBM Advanced Technology Corp., Taipei, TAIWAN; Gigastorage Corporation Taiwan, Hsinchu, TAIWAN; Gradiente Electronica S.A., Sao Paulo, SP, BRAZIL; Hanpin Electron Co., Ltd., Tainan Hsien, TAIWAN; Kanematsu Corporation, Tokyo, JAPAN; Koninklijke Philips Electronics N.V., Eindhoven, THE NETHERLANDS; Lection Technology Co., Ltd., Nei-Hu, Taipei, TAIWAN; Microsoft Corporation, Redmond, WA; MRT Technology, City of Industry, CA; Nokia Corporation, Espoo, FINLAND; nReady Netware Ltd., Quarry Bay, HONG KONG—CHINA; Nvidia Corporation, Santa Clara, CA; Optical Experts Manufacturing, Inc., Charlotte, NC; OptoMedia Electronics Corp., Taipei Hsien, TAIWAN; Paramount Pictures Corporation, Los Angeles, CA; Planet Optical Disc Limited FZE, Dubai, UNITED ARAB EMIRATES; Princo Corporation, Hsin-Chu, TAIWAN; Proside Corporaton, Chiba, JAPAN; Pro-Tech Industries Corp., Kowloon, HONG KONG—CHINA; Provac Disc Media Inc., Toronto, Ontario, CANADA; Raymedia Co., LTD., Kyungki-do, REPUBLIC OF KOREA; Regency Recordings, Braeside, Victoria, AUSTRALIA; Shenzhen E-Boda Technology Co., Ltd., Shenzhen, PEOPLE'S REPUBLIC OF CHINA; Shenzhen Hongyu Industrial Co. Ltd., Shenzhen, PEOPLE'S REPUBLIC OF CHINA; Shunde Xiongfeng Electric Industrial Company, Shunde City, Guangdong, PEOPLE'S REPUBLIC OF CHINA; Silicon Integrated Systems Corporation, Sunnyvale, CA; SM Summit Holdings Limited, Singapore, SINGAPORE; Soft4D Co., Ltd., Songnam-Si, Kyungki-Do, REPUBLIC OF KOREA; Sony Pictures Entertainment Inc., Culver City, CA; STMicroelectronics, Inc., Carrollton, TX; The Walt Disney Company, Burbank, CA; Trident Microsystems, Inc., Santa Clara, CA; TVIA, Inc., Santa Clara, CA; Videon Central Inc., State College, PA; ViXS Systems Inc., Toronto, Ontario, CANADA; Welton Electronics Ltd., Chai Wan, HONG KONG—CHINA; Zenix Electronics Limited, Tsimshatsui, Kowloon,HONG KONG—CHINA; and Zomax Incorporated, Plymouth, MN have been added as parties to this venture. Also, Shiba Tech Co., Ltd., Kowloon, HONG KONG—CHINA; and Vision Tech International Holdings, Limited, Wan Chai, HONG KONG—CHINA have been dropped as parties to this venture. The following members have changed their names: Changzhou Shinco Digital Technology to Jiangsu Shinco Electronic Group Co., Ltd., Changzhou Jiangsu, PEOPLE'S REPUBLIC OF CHINA; Advanced Media Corporation to AMC Co., Ltd., Tokushima, JAPAN; and BMG Storage Media to Arvato Storage Media, Gutersloh, GERMANY.

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 DVD Copy Control Association (''DVD CCA'') intends to file additional written notification disclosing all changes in membership.

On April 11, 2001, DVD Copy Control Association (''DVD CCA'') 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 August 3, 2001 (66 FR 40727).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 02–101 Filed 1–2–02; 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—IAP Research, Inc.

Notice is hereby given that, on October 22, 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''), IAP Research, 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, Litton Systems Inc., Poly-Scientific Division, a subsidiary of Northrop Grumman Corporation, Blacksburg, VA; Rea Magnet Wire Co., Inc., Lafayette, IN; and Quebec Metal Powders Limited, Sorel-Tracy, Quebec, CANADA 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 IAP Research, Inc. intends to file additional written notification disclosing all changes in membership.

On July 21, 1999, IAP Research, 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 of December 14, 1999 (64 FR 69799).

The last notification was filed with the Department on June 19, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on July 27, 2001 (66 FR 39203).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 02–97 Filed 1–2–02; 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—Open SystemC Initiative (''OSCI'')

Notice is hereby given that, on October 9, 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''), Open SystemC Initiative (''OSCI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are ARM Ltd., Cambridge, UNITED KINGDOM; Cadence Design Systems, Inc., San Jose, CA; CoWare, Inc., Santa Clara, CA; Fujitsu Limited, Tokyo, JAPAN; Mentor Graphics Corporation, Wilsonville, OR; Motorola, Inc., Schaumburg, IL; NEC Electronics Inc., Santa Clara, CA; and Synopsys, Inc., Mountain View, CA.

The nature and objectives of the venture are research and development of a rich computer language and reference implementation, based on C++ class libraries, called ''SystemC'', to form a freely available, open source, and interoperable platform for system-level design and intellectual property modeling.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 02–100 Filed 12–26–01; 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—Origen Therapeutics, Inc./Embrex, Inc.

Notice is hereby given that, on October 23, 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''), Origen Therapeutics, Inc./Embrex, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identifies of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identifies of the parties are Origen Therapeutics, Inc., Burlingame, CA; and Embrex, Inc., Research Triangle Park, NC. The nature and objectives of the venture are to conduct research on the use of avian embryonic stem cell technology, coupled with automated egg injection technology to form highly chimeric poultry. The activities of this joint venture will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, Department of Commerce.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 02–98 Filed 1–2–02; 8:45 am]

**BILLING CODE 4410–11–M**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

December 26, 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 each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Ms. Marlene Howze (202) 693–4158) or by e-mail to *Howze-Marlene@dol.gov.*

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–4718), 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.

*Type of Review:* Extension of a currently approved collection.

*Agency:* Employment Standards Administration.

*Title:* Worker Information—Terms and Conditions of Employment.

*OMB Number:* 1215–0187.

*Frquency:* On occasion.

*Affected Public:* Businesses or other for-profit; Individuals or households; Farms.

*Number of Respondents:* 137,000.

*Estimated Time Per respondents:* 32 minutes.

*Total Burden Hours:* 73,067.

*Total Annualized capital/startup costs:* $0.

*Total annual costs (operating/maintaining systems or purchasing services):* $29,160.

*Description:* The Migrant and Seasonal Agricultural Worker Protection Act requires farm labor contractors, agricultural employer and agricultural associations who recruit migrant and seasonal agricultural workers to disclose in writing the terms and conditions of employment and to provide, upon request, a written statement of such terms.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 02–47 Filed 1–2–02; 8:45 am]

**BILLING CODE 4510–27–M**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

December 21, 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 on (202) 693–4129 or *e-mail: King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer MSHA, 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.

*Type of Review:* Extension of a currently approved collection.

*Agency:* Mine Safety and Health Administration (MSHA).

*Title:* Respirator Program Records—30 CFR 56.5005 and 57.5005.

*OMB Number:* 1219–0048.

*Affected Public:* Business or other for-profit.

*Frequency:* On occasion, Annually, and Monthly.

*Type of Reporting:* Recordkeeping.

*Number of Respondents:* 310.

| Requirement | Annual responses | Average response time (hours) | Estimated annual burden (hours) |
|---|---|---|---|
| Develop a respirator program | 310 | 5 | 1,550 |
| Fit-testing records | 1,500 | .25 | 375 |
| Respirator inspection records | 3,720 | .83 | 310 |
| Total | 5,530 | ..... | 2,235 |

*Total Annualized Capital/Startup Costs:* $0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* $156,350.

*Description:* Where protective equipment or respirators are required because of exposure to harmful substances, 30 CFR 56.5005 and 57.5005 require a written respirator program that addresses such issues as selection, fitting, use, and maintenance of respirators to ensure that workers are properly and effectively using the equipment, and that such equipment offers adequate protection for workers. Records of fit-testing are essential for determining that the worker is wearing the proper respirator. Certain records are also required to be kept in connection with respirators, including records of the date of issuance of the respirator, and fit-test results. The fit-testing records are essential for determining that the worker is wearing the proper respirator.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 02–48 Filed 1–2–02; 8:45 am]

**BILLING CODE 4510–43–M**

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

**[Application No. D–10886, et al.]**

### Proposed Exemptions; Morgan Stanley & Co. Incorporated (MS&Co)

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

**Written Comments and Hearing Requests**

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration (PWBA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. ___, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to PWBA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *''moffittb@pwba.dol.gov''*, or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513,

200 Constitution Avenue, N.W., Washington, DC 20210.

**Notice to Interested Persons**

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

**Morgan Stanley & Co. Incorporated (MS&Co) Located in New York, New York**

[Exemption Application No. D–10886]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the September 16, 1998 acquisition (the Acquisition), on behalf of the Central States, Southeast and Southwest Areas Pension Fund (the Fund), of certain Argentine bonds (the Bonds) from MS&Co, a party in interest with respect to the Fund, by the Capital Asset Trust (the Trust) at the direction of Alliance Capital Management L.P. (Alliance), an investment manager for the Fund, provided the following conditions are satisfied:

(a) The Acquisition was a one-time transaction for cash;

(b) The Fund paid no more than the current fair market value of the Bonds as of the date of the Acquisition;

(c) The Fund paid no commissions or expenses with respect to the Acquisition;

(d) The Acquisition and subsequent sale of the Bonds (the Sale) resulted in the Fund's receipt of a one-day profit totaling $147,250.01;

(e) Upon identifying the Acquisition as a ''prohibited transaction'', MS&Co and Alliance acted promptly to comply with the relevant provisions of ERISA and the Code;

(f) Alliance and MS&Co took whatever actions were necessary to ensure that the Fund was adequately protected with respect to the Acquisition;

(g) Subsequent to the Acquisition, Alliance implemented an internal computer system designed to prevent transactions between client plans and named fiduciaries with respect to such plans; and

(h) The transaction was not part of an agreement, arrangement or understanding designed to benefit a party in interest.

EFFECTIVE DATE OF EXEMPTION: The effective date of this proposed exemption, if granted, is September 16, 1998.

*Summary of Facts and Representations*

1. The Fund is a jointly managed Taft-Hartley Plan established in 1955. As of September 30, 1998, the Fund had approximately 375,604 participants and beneficiaries and an approximate fair market value of $17 billion.

2. At the time of the Acquisition, the named fiduciary for the Fund was Morgan Stanley Dean Witter & Co. (MSDW). MSDW is a worldwide financial services firm that provides services, either directly or through its subsidiaries, to corporations, governments, and individual investors. MSDW became the Fund's named fiduciary as a result of a court order issued pursuant to a consent decree (the Consent Decree) that, among other things, prohibited the Fund's investment managers from engaging in transactions with ''parties in interest'' such as MS&Co.[1]

MS&Co is a wholly-owned subsidiary of MSDW having business offices in New York and other cities worldwide. MS&Co is, among other things, a registered broker-dealer, a member of the National Association of Securities Dealers, and a member of most major United States and foreign commodity exchanges.

3. Pursuant to an agreement dated May 2, 1994 (the Agreement), MSDW (through its predecessor-in-interest, the Morgan Stanley Group, Inc.) appointed Alliance as an investment manager with respect to a portion of the assets in the Fund. In this regard, at the time of the Acquisition, Alliance acted as a ''qualified professional asset manager'' [2] with respect to certain Fund assets invested in the Trust, a Massachusetts trust in which the Fund was a participant.[3] Specifically, Alliance was hired to manage a particular type of asset class, International Fixed Income-Emerging Markets Debt. The applicant represents that Alliance, an investment adviser registered with the Securities and Exchange Commission, is entirely independent of MSDW and its affiliates and does not have any management or ownership relationship with such entities.

Relevant sections of the Agreement provided that Alliance would: (a) invest Fund assets held in the Trust in accordance with investment objectives specified in writing by MSDW; (b) act in accordance with the Consent Decree and ERISA and not engage in any unexempted ''prohibited transaction''; and (c) comply with all federal or state law requirements that are imposed with respect to transactions involving the assets of the Fund.

In addition, the applicant represents that MSDW delivered to Alliance, on a regular basis, a ''prohibited transaction'' notice. According to the applicant, such notice specifically advised that Alliance should not, among other things, execute trades through MS&Co. Furthermore, the applicant represents that Alliance's ''Current Investment Guidelines'' for the Trust, dated October 31, 1997, provided that Alliance: would not effect a prohibited transaction; and would not deal with any MSDW entity.

4. The applicant represents that, on September 16, 1998, Alliance learned through news reports that the

[1] The Consent Decree was issued pursuant to *Raymond J. Donovan, Secretary of Labor,* v. *Frank Fitzsimmons, et al.,* Civil Action No. 78 C 342.

[2] As such term is defined in Section V(a) of the Department's Prohibited Transaction Class Exemption 84–14 (49 FR 9494 (1984)).

[3] The applicant represents that the beneficial interests of the Trust were held by two employee benefit plans subject to ERISA and thus the Trust itself was an entity the assets of which were subject to ERISA. At the time of the Acquisition, the Fund owned approximately 98.1% of the beneficial interests in the Trust, and the Marsh & McLennan US Retirement Plan owned approximately 1.9% of such interests.

International Monetary Fund and certain banks were preparing a package of loans worth $4.5 billion for Argentina. The applicant states that Alliance believed the news would have a positive effect on Argentine fixed income securities. As a result, Alliance contacted MS&Co and asked for an ''offering'' on the Bonds in contravention of the safeguards described above. The applicant represents that the Bonds are $9,500,000 Face Amount Argentina Floating Rate Bonds due March 31, 2005.

According to the applicant, as a result of inadvertent errors made by personnel involved in the Acquisition, MS&Co agreed to fill the order. Alliance's purchase of the Bonds was made for settlement on September 21, 1998 for $7,566,947.91 (the Acquisition Price). Of this amount, $7,262,750.00 consisted of principal and $304,197.91 consisted of accrued interest.

5. At the time of the Acquisition, MS&Co was a market maker in the Bonds. The applicant represents, however, that the Bonds were not in MS&Co's inventory at the time of the Acquisition. In this regard, the applicant states that a market maker will, from time to time, go into the market to replenish a particular security which the market maker has sold out of its inventory. Similarly, in this instance, MS&Co made a business decision to sell the Bonds at the Acquisition Price to Alliance even though it did not contemporaneously hold the Bonds. The applicant states that MS&Co committed itself to the Acquisition Price based on the belief that it could go into the market and obtain the Bonds at a discount relative to such price.

However, in meeting its obligations with respect to the Acquisition, MS&Co was ultimately required to purchase the Bonds at a price higher than the Acquisition Price. In this regard, despite its commitment to sell the Bonds to Alliance for $7,566,947.91, market conditions were such that MS&Co was forced to acquire the Bonds in two separate trades for a total cost of approximately $7,714,000. In so doing, the applicant represents, MS&Co lost approximately $147,000.

6. The applicant represents that the Acquisition Price represented the Bonds' fair market value at the time of the Acquisition. In this regard, it is represented that in providing the Acquisition price to Alliance, the MS&Co trader responsible for the emerging markets fixed income desk used pricing mechanisms commonly employed in the over-the-counter fixed income markets such that the purchase price was fair and reasonable. Specifically, the Acquisition Price was determined in consideration of: Bid and ask prices for the Bonds available on interdealer computer screens; [4] news events relating to Argentina's receipt of potential economic relief; prior bid and ask data historically furnished by interdealer brokers; certain volume requirements; and other objective criteria.

The applicant states that at the time the Acquisition occurred, the Bonds traded in relatively high volumes and were well known and well followed. As a result, the market for the Bonds was extremely ''transparent'' at the time of the Acquisition with only a nominal spread between relevant bid and ask prices. In consideration of these and other factors such as Alliance's status as a valued MS&Co client, the MS&Co trader offered to sell the Bonds to Alliance at the Acquisition Price.

7. Shortly after the Acquisition, Alliance decided to sell the Bonds. In this regard, during the course of the September 16, 1998 trading day, Alliance observed significant fluctuations in the price of the Bonds. The applicant states that when relevant bond prices rose to the extent that Alliance believed selling the Bonds would be in the best interest of the Fund, Alliance sold the Bonds. In this regard, Alliance sold the Bonds to Goldman, Sachs & Co. (Goldman, Sachs) for $7,714,197.92 (the Sale). The applicant notes that the Fund, through the Trust, made a profit of $147,250.01 on the Acquisition and Sale.[5]

8. In certifying its compliance with the Agreement to MSDW, Alliance noted that the Acquisition may have constituted a ''prohibited transaction''. Upon being so alerted, the applicant represents that MS&Co filed a Form 5330 with the Internal Revenue Service on June 30, 1999, and paid an excise tax of $1,135,042.19 (15% of $7,566,947.91). The applicant notes that the Acquisition was fully disclosed in the Fund's audited financial statements and was corrected within the meaning of section 4975(f)(5) of the Code.[6]

9. The applicant states that neither Alliance nor MS&Co intended to engage in a ''prohibited transaction'' when consummating the Acquisition. In this regard, various mechanisms were in place to prevent Alliance from inadvertently violating the ''prohibited transaction'' provisions of ERISA, all of which failed, the applicant represents, in an unforeseeable and improbable manner.[7] Subsequent to the Acquisition, Alliance has devised an internal computer system in an effort to ensure that future ''prohibited transactions'' do not similarly occur. Such system identifies situations when a specific trade is placed between a client plan and a party in interest who is a named fiduciary. The system flags the trade and alerts Alliance's compliance department.

10. The applicant represents that the proposed exemption is administratively feasible in that the Bonds were sold on the same day they were acquired. In addition, the applicant states that the transaction was in the interests of the Fund's participants and beneficiaries since the Acquisition and Sale resulted in the Fund's receipt of a one-day profit totaling $147,250.01. Finally, the applicant represents that the Acquisition was fair to the Fund since the Fund paid no more than the current fair market value for the Bonds at the time of the Acquisition.

11. In summary, the applicant represents that the requested retroactive individual exemption will satisfy the criteria of section 408(a) of the Act for the following reasons:

(a) The Acquisition was a one-time transaction for cash;

(b) The Fund paid no more than the current fair market value of the Bonds as of the date of the Acquisition;

(c) The Fund paid no commissions or expenses with respect to the Acquisition;

(d) The Acquisition and the Sale resulted in the Fund's receipt of a one-day profit totaling $147.250.01;

[4] The applicant states that interdealer brokers, who are independent of the approximately 30–40 securities dealers that comprise the major market makers, collect and post dealer quotes (and execute trades between dealers). Information concerning dealer quotes is updated via computer monitors available to each of the primary securities dealers.

[5] The applicant states that although there was one other participant in the Trust, the Trust implemented separate accounting such that all of the profit attributable to the Acquisition and Sale went solely to the Fund. In this regard, the Department is not providing relief to any other participant in the Trust, nor is it expressing any opinion as to representations made by the applicant concerning the composition and operations of the Trust.

[6] The Department is expressing no opinion as to whether the Acquisition was corrected in accordance with relevant provisions of the Code.

[7] In addition to the safeguards discussed above, the applicant states that Morgan Stanley Dean Witter Investment Management Inc., a wholly owned subsidiary of MSDW, had provided materials to Alliance at the outset of its appointment as an investment manager for the Fund which noted the restrictions on trading with MS&Co. In addition, prior to the Transaction, Mellon Bank, N.A., the Fund's custodian, had created and implemented a prohibited transaction surveillance system designed to reject attempted trades on behalf of the Fund and the Trust with parties with whom the Fund or the Trust were prohibited from dealing, including MSDW and its affiliates.

(e) Upon identifying the Acquisition as a ''prohibited transaction'', MS&Co and Alliance, an investment manager for the Fund, acted promptly to comply with the relevant provisions of ERISA and the Code;

(f) Alliance and MS&Co took whatever actions were necessary to ensure that the Fund was adequately protected with respect to the Acquisition;

(g) Subsequent to the Acquisition, Alliance implemented an internal computer system designed to prevent transactions between client plans and named fiduciaries with respect to such plans; and

(h) The transaction was not part of an agreement, arrangement or understanding designed to benefit a party in interest.

**FOR FURTHER INFORMATION CONTACT:** Christopher J. Motta of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

**Union Bank of California (UBOC), Located in San Francisco, California**

[Application No. D–10976]

*Proposed Exemption*

Section I—Retroactive and Prospective Exemption for In-Kind Redemption of Assets

If the proposed exemption is granted, the restrictions of section 406(a) and 406(b) of ERISA and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (F) of the Code, shall not apply, as of June 15, 2001, to certain in-kind redemptions (the Redemptions) by the Union Bank of California Retirement Plan or any other employee benefit plan sponsored by UBOC or an affiliate of UBOC (an In-house Plan) of shares (the Shares) of proprietary mutual funds (the Portfolios) offered by the HighMark Funds or other investment companies (the Funds) for which HighMark Capital Management, Inc. or an affiliate thereof (the Adviser) provides investment advisory and other services, provided that the following conditions are met:

(A) The In-house Plan pays no sales commissions, redemption fees, or other similar fees in connection with the Redemptions (other than customary transfer charges paid to parties other than UBOC and affiliates of UBOC (UBOC Affiliates));

(B) The assets transferred to the In-house Plan pursuant to the Redemptions consist entirely of cash and Transferable Securities. Notwithstanding the foregoing, Transferable Securities which are odd lot securities, fractional shares and accruals on such securities may be distributed in cash;

(C) With certain exceptions defined below, the In-house Plan receives a pro rata portion of the securities of the Portfolio upon a Redemption that is equal in value to the number of Shares redeemed for such securities, as determined in a single valuation performed in the same manner and as of the close of business on the same day in accordance with the procedures established by the Funds pursuant to Rule 2a–4 under the Investment Company Act of 1940, as amended from time to time (the 1940 Act), (using sources independent of UBOC and UBOC Affiliates);

(D) UBOC, the Adviser, or any affiliate thereof, does not receive any fees, including any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with any redemption of the Shares;

(E) Prior to a Redemption, UBOC provides in writing to an independent fiduciary, as such term is defined in Section II (an Independent Fiduciary), a full and detailed written disclosure of information regarding the Redemption;

(F) Prior to a Redemption, the Independent Fiduciary provides written approval for such Redemption to UBOC, such approval being terminable at any time prior to the date of the Redemption without penalty to the In-house Plan, and such termination being effectuated by the close of business following the date of receipt by UBOC of written or electronic notice regarding such termination (unless circumstances beyond the control of UBOC delay termination for no more than one additional business day);

(G) Before approving a Redemption, based on the disclosures provided by the Portfolios to the Independent Fiduciary and discussions with appropriate operational personnel of the In-house Plan, UBOC, and the Adviser as necessary to form a basis for making the following determinations, the Independent Fiduciary determines that the terms of the Redemption are fair to the participants of the In-house Plan and comparable to and no less favorable than terms obtainable at arms-length between unaffiliated parties;

(H) Not later than thirty (30) business days after the completion of a Redemption, UBOC or the relevant Fund provides to the Independent Fiduciary a written confirmation regarding such Redemption containing:

(i) The number of Shares held by the In-house Plan immediately before the Redemption (and the related per Share net asset value and the total dollar value of the Shares held),

(ii) The identity (and related aggregate dollar value) of each security provided to the In-house Plan pursuant to the Redemption, including any security valued in accordance with the Funds' procedures for obtaining current prices from independent market-makers,

(iii) The current market price of each security received by the In-house Plan pursuant to the Redemption, and

(iv) The identity of each pricing service or market-maker consulted in determining the value of such securities;

(I) The value of the securities received by the In-house Plan for each redeemed Share equals the net asset value of such Share at the time of the transaction, and such value equals the value that would have been received by any other investor for shares of the same class of the Portfolio at that time;

(J) Subsequent to a Redemption, the Independent Fiduciary performs a post-transaction review which will include, among other things, testing a sampling of material aspects of the Redemption deemed in its judgment to be representative, including pricing. For Redemptions occurring on June 15, 2001,the Independent Fiduciary's review included testing a limited sampling of certain material aspects of the Redemption deemed in its judgment to be representative; [8]

(K) Each of the In-house Plan's dealings with: the Funds, the Adviser, the principal underwriter for the Funds, or any affiliated person thereof, are on a basis no less favorable to the In-house Plan than dealings between the Funds and other shareholders holding shares of the same class as the Shares;

(L) UBOC maintains, or causes to be maintained, for a period of six years from the date of any covered transaction such records as are necessary to enable the persons described in paragraph (M) below to determine whether the conditions of this exemption have been met, except that (i) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of UBOC, the records are lost or destroyed prior to the end of the six-year period, (ii) no party in interest with respect to the In-house Plan other than UBOC shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if such records are not maintained or are not available for examination as required by paragraph (M) below.

[8] The reason for this difference is to conform to the language used in the initial independent fiduciary agreement that U.S. Trust and UBOC entered into with respect to the June 15, 2001 transactions.

(M)(1) Except as provided in subparagraph (2) of this paragraph (M), and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (L) above are unconditionally available at their customary locations for examination during normal business hours by (i) any duly authorized employee or representative of the Department of Labor, the Internal Revenue Service, or the Securities and Exchange Commission, (ii) any fiduciary of the In-house Plan or any duly authorized representative of such fiduciary, (iii) any participant or beneficiary of the In-house Plan or duly authorized representative of such participant or beneficiary, (iv) any employer with respect to the In-house Plan, and (v) any employee organization whose members are covered by such In-house Plan.

(2) None of the persons described in paragraphs (M)(1)(ii) through (v) shall be authorized to examine trade secrets of UBOC, the Funds, or the Adviser, or commercial or financial information which is privileged or confidential.

(3) Should UBOC, the Funds, or the Adviser refuse to disclose information on the basis that such information is exempt from disclosure pursuant to paragraph (M)(2) above, UBOC, the Funds, or the Adviser shall, by the close of the 30th day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Section II—Definitions

For purposes of this proposed exemption,

(A) The term ''affiliate'' means:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(B) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(C) The term ''net asset value'' means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in the Portfolio's prospectus and statement of additional information, and other assets belonging to the Portfolio, less the liabilities charged to each such Portfolio, by the number of outstanding shares.

(D) The term ''Independent Fiduciary'' means a fiduciary who is: (i) Independent of and unrelated to UBOC and its affiliates, and (ii) appointed to act on behalf of the In-house Plan with respect to the in-kind transfer of assets from one or more Portfolios to or for the benefit of the In-house Plan. For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to UBOC if: (i) such fiduciary directly or indirectly controls, is controlled by or is under common control with UBOC; (ii) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption; (except that an Independent Fiduciary may receive compensation from UBOC in connection with the transactions contemplated herein if the amount or payment of such compensation is not contingent upon or in any way affected by the Independent Fiduciary's ultimate decision); and (iii) more than 1 percent (1%) of such fiduciary's gross income, for federal income tax purposes, in its prior tax year, will be paid by UBOC and its affiliates in the fiduciary's current tax year.

(E) The term ''Transferable Securities'' shall mean securities (1) for which market quotations are readily available as determined pursuant to procedures established by the Funds under Rule 2a–4 of the 1940 Act; and (2) which are not: (i) securities which may not be publicly offered or sold without registration under the Securities Act of 1933; (ii) securities issued by entities in countries which (a) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Funds, or (b) permit transfers of ownership of securities to be effected only by transactions conducted on a local stock exchange; (iii) certain portfolio positions (such as forward foreign currency contracts, futures and options contracts, swap transactions, certificates of deposit and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities or can only be traded with the counter-party to the transaction to effect a change in beneficial ownership; (iv) cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements; and (v) other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable).

(F) The term ''relative'' means a ''relative'' as that term is defined in section 3(15) of ERISA (or a ''member of the family,'' as that term is defined in section 4975(e)(6) of the Code), or a brother, sister, or a spouse of a brother or a sister.

*Summary of Facts and Representations*

1. UnionBanCal Corporation (UNBC) is a bank holding company headquartered in San Francisco, California, the majority of the shares of which are owned by The Bank of Tokyo—Mitsubishi, Ltd., which in turn is wholly owned by Mitsubishi Tokyo Financial Group, Inc. UBOC, a federally chartered bank also headquartered in San Francisco, is a wholly owned subsidiary of UNBC. As of December 31, 2000, UNBC had approximately $35.2 billion in total assets.

2. UBOC is the trustee of the Union Bank of California Retirement Plan (the Retirement Plan). The Retirement Plan is an In-house defined benefit Plan maintained by UBOC for certain current and former employees of UBOC and UBOC Affilates. As of January, 2001, the Retirement Plan had approximately 13,895 participants. As of May 31, 2001 the Retirement Plan had approximately $616 million in assets.

3. According to the applicant, UBOC's Employee Deferred Compensation and Benefit Plans Administrative Committee (the Committee) determined previously that the Retirement Plan would benefit from the investment of its assets in certain Portfolios of the HighMark Funds [9] (the HighMark Portfolios). The HighMark Portfolios are mutual fund portfolios organized within the HighMark Funds. The HighMark Funds and any other Funds to which the exemption may apply are open-end investment companies registered under the 1940 Act with respect to which HighMark Capital Management, Inc. or an affiliate (the Adviser) acts as an investment adviser.

At the time, the Committee considered the HighMark Portfolios to be an appropriate vehicle for diversifying the Retirement Plan's assets. In addition, the Committee determined that investment in the HighMark Portfolios by the Retirement Plan would allow the Retirement Plan to continue to use in-house investment managers that had provided investment services to the Plan. As a result, the Committee decided to invest Retirement Plan assets in the HighMark Portfolios in accordance with Prohibited

[9] The HighMark Funds formerly were known as The HighMark Group.

Transaction Exemption 77–3 (PTE 77–3, 42 FR 18734 (1977)).[10]

4. The applicant states that the Committee decided recently to reallocate the management of Retirement Plan assets among the affiliated and unaffiliated investment managers who would manage such assets on a separate account basis.[11] The allocation of assets among the managers was based on a revised, comprehensive asset allocation strategy and policy developed by the Committee with the assistance of an independent consulting firm. The applicant notes such management avoids mutual fund fees and regulatory costs associated with investment in SEC-registered mutual fund portfolios.

5. HighMark Capital Management, Inc., a wholly-owned subsidiary of UNBC (HCM), serves as investment adviser to each of the Portfolios of the HighMark Funds. HCM is registered under the Investment Advisers Act of 1940 (the Advisers Act). The applicant describes the HighMark Funds and Portfolios as follows:

HighMark Funds, a Massachusetts business trust, is an open-end management investment company registered under the 1940 Act. HighMark Funds currently is comprised of thirteen portfolios, including the following three Portfolios:

(i) HighMark Value Momentum Fund
(ii) HighMark Growth Fund
(iii) HighMark Small Cap Value Fund

As previously noted, HCM serves as investment adviser to each of the HighMark Portfolios listed above. The applicant represents that, in addition, HCM, UBOC, and UBOC Affiliates may provide other services to the HighMark Funds and the HighMark Portfolios, including accounting, administration, and shareholder services.

6. The applicant also represents that, as of June 15, 2001:

(i) A total of approximately $63.2 million in Retirement Plan assets was invested in the HighMark Value Momentum Fund (representing a 10.51% ownership in such Portfolio);

(ii) A total of approximately $46.1 million in Retirement Plan assets was invested in the HighMark Growth Fund (representing a 12.40% ownership interest in such Portfolio); and

(iii) A total of approximately $61.7 million in Retirement Plan assets was invested in the HighMark Small Cap Value Fund (representing a 43.94% ownership interest in such Portfolio).[12]

7. The applicant represents that, on June 15, 2001, the Retirement Plan redeemed all of its Shares in the HighMark Value Momentum Fund and the HighMark Growth Fund and approximately $40 million of its Shares of the HighMark Small Cap Value Fund (the June 15, 2001 Redemptions). The applicant further represents that the June 15, 2001 Redemptions were an appropriate means of effectuating this diversification of investment managers and the shift to separate account management for the Retirement Plan. In this regard, the applicant represents that the HighMark Funds, under the supervision of the HighMark Funds' board of trustees (none of whom are directors, officers or employees of UBOC, HCM, or their affiliates), had the option to determine whether to effect the June 15, 2001 Redemptions in cash or in kind, and determined to effect such Redemptions in kind.[13]

8. The applicant represents that it is possible that the Committee or other fiduciaries of the Retirement Plan or other In-house Plans[14] may at a later date determine that it is in the best interest of the Retirement Plan or other In-house Plan and its participants and beneficiaries to redeem such Plan's interest in HighMark Portfolios or other Funds, other than those described in Paragraphs 5 and 6 above, for which UBOC or a UBOC Affiliate provides investment advisory services. Consequently, in the event that this proposed exemption is granted, and to the extent that all of the terms and conditions of the exemption, as granted, are met, the relief requested herein shall apply to any such future redemption that is effected in-kind.

9. The applicant states that the June 15, 2001 Redemptions involved ministerial transactions performed in accordance with pre-established, objective procedures. As a result, the applicant represents that the transactions did not permit UBOC or a UBOC Affiliate to use its influence or control to purchase particular securities from the HighMark Portfolios. In addition, the applicant states that all Shares are offered and sold exclusively through the use of prospectuses and materials provided pursuant to the requirements of the Securities Act of 1933 and the 1940 Act and the rules and regulations thereunder.

10. The applicant states that, to the extent possible, the Retirement Plan transferred Shares in return for a proportionate share of the securities

[10] The applicant has not requested exemptive relief with respect to any investment in the HighMark Portfolios by the Retirement Plan. The applicant notes that the Retirement Plan may acquire or redeem shares in the HighMark Portfolios or any other Funds pursuant to Prohibited Transaction Exemption (PTE) 77–3. In this regard, PTE 77–3 permits the acquisition or sale of shares of a registered, open-end investment company be an employee benefit plan covering only employees of such investment company, employees of the investment adviser or principal underwriter for such investment company, or employees of any affiliated person (as defined therein) of such investment adviser or principal underwriter, provided certain conditions are met. The Department is expressing no opinion in this proposed exemption regarding whether any transactions with the Funds by the Retirement Plan or any other In-house Plan is covered by PTE 77–3.

[11] The affiliated managers would include HighMark Capital Management, Inc. The applicant states that HighMark Capital Management, Inc. manages any separate account holding In-house Plan assets outside the Funds without compensation from the In-house Plan, other than reimbursement of direct expenses as permitted by ERISA.

[12] As previously noted, the Department is expressing no opinion regarding the applicability of PTE 77–3 to the acquisition of the Shares by the Retirement Plan. In addition, the Department is expressing no opinion as to the applicability of section 404 of ERISA to the acquisition of the Shares by the Retirement Plan. In this regard, the Department directs the applicant's attention to an advisory opinion issued to Federated Investors [Advisory Opinion 98–06A (July 30, 1998)], in which the Department noted that if the decision by a plan fiduciary to enter into a transaction is not ''solely in the interest'' of the plan's participants and beneficiaries, e.g., if the decision is motivated by the intent to generate seed money that facilitates the marketing of the mutual fund, then the plan fiduciary would be liable for any loss resulting from such breach of fiduciary responsibility, even if the acquisition of mutual fund shares was exempt by reason of PTE 77–3.

[13] The applicant represents that the HighMark Funds' board of trustees in 2000 adopted a resolution establishing objective procedures for in-kind redemptions intended to conform with the requirements set forth in a no-action letter issued by the staff of the Securities and Exchange Commission re *Signature Financial Group, Inc.* (1999 SEC No-Act.LEXIS 981, avail. 12/28/99)) (''the Signature Financial letter'') governing in-kind redemptions of shares held by ''affiliated shareholders'' of the HighMark Funds. The procedures require, among other things, that the redemption be effected on a pro rata basis, based on the relevant HighMark Portfolios' current net assets at the time of redemption, and that the board of trustees verify that an in-kind redemption is effected in accordance with the procedures.

[14] The applicant informed the Department that on November 26, 2001, an in-kind distribution was made of the Retirement Plan's entire investment in the HighMark International Fund. U.S. Trust served as the independent fiduciary for this transaction. The applicant represents that UBOC also sponsors a 401(k) Plan which permits participants to direct the investment of their plan accounts among various investment options, including several HighMark Funds. According to the applicant, the 401(k) plan intends to redeem all of its shares in the Highmark Growth Fund and the HighMark Large Cap Value Fund (formally known as the Income Equity Fund) in connection with a change of investment options. The applicant has been informed by the Funds that it will effect the requested redemptions in-kind. According to the applicant, the securities will be distributed to mutual funds that replace the Highmark Growth Fund and the Highmark Large Cap Value Fund as investment options under the 401(k) Plan. UBOC anticipates that these redemptions would occur on or about December 14, 2001, subject to completion of the independent fiduciaries review and approval of the transactions.

held by each HighMark Portfolio in the June 15, 2001 Redemptions. According to the applicant, the Retirement Plan received only cash and Transferable Securities pursuant to the June 15, 2001 Redemptions. In this regard, each Transferable Security subject to a Redemption was transferred in-kind to the Retirement Plan. However odd lot securities, fractional shares and accruals on such securities were transferred in cash.[15] The applicant states that the June 15, 2001 Redemptions were carried out, to the extent possible, on a pro rata basis as to the number and kind of securities transferred to the Retirement Plan.[16]

11. The applicant represents that, for purposes of the June 15, 2001 Redemptions, the values of the HighMark Portfolio securities were determined based on the current market price of such securities as of the close of business on June 15, 2001 (the Valuation Date). As required by the no action letter re Signature Financial Group, Inc. issued by the staff of the Securities and Exchange Commission, the value of the securities in each Portfolio were determined by using the valuation procedures established by the HighMark Funds in accordance with Rule 2a–4 under the 1940 Act.[17] In this regard, responsibility for valuations rests with the HighMark Funds' administrator (the Administrator), which is unrelated to UBOC. The Administrator has contracted with independent, third-party pricing agents approved by the HighMark Funds' board of trustees to provide security quotations.[18]

12. The applicant represents that, in connection with the June 15, 2001 Redemptions, U.S. Trust Company, N.A. (U.S. Trust), a federally chartered bank, confirmed its independence from UBOC and is qualified to serve as an Independent Fiduciary, as that term is defined in Section II of the proposed exemption. U.S. Trust, in turn, represented that it understood and accepted the duties, responsibilities and liabilities in acting as a fiduciary under ERISA for the Retirement Plan.

U.S. Trust represents that it was responsible for (i) determining whether the terms of each Redemption of Shares of the HighMark Portfolios was fair to the participants of the Retirement Plan and comparable to and no less favorable than terms that would be reached at arms' length between unaffiliated parties, and (ii) opining as to the fairness and reasonableness of each such Redemption, as compared to a redemption for cash and subsequent reinvestment of such cash. This determination and opinion was set forth in a written report (the Report) dated June 8, 2001. Specifically, in the Report, U.S. Trust stated that:

(a) the Redemptions would not involve certain transaction costs otherwise incurred in a cash redemption;[19]

(b) the Shares and cash associated with the Redemptions would be valued in accordance with procedures established by the HighMark Funds and applicable law, and that the same procedures are used to determine the net asset value of the HighMark Portfolios; and

(c) U.S. Trust reviewed a written document detailing the procedures for in-kind redemptions for affiliated parties, and concluded that it matched its understanding of procedures for in-kind redemptions.

[15] According to the report submitted by the Independent Fiduciary, none of the HighMark Portfolios held securities which were not Transferable Securities at the time of the June 15, 2001 Redemptions, and, therefore, there was no cash adjustment to reflect the value of such securities. The applicant states, however, that such cash adjustments may be made with respect to future Redemptions to the extent relevant Fund holds such excluded securities.

[16] According to the applicant, the securities transferred from each HighMark Portfolio in the June 15, 2001 Redemptions were selected under a ''first in, first out'' (FIFO) procedure. Under this procedure, ''tax lots'' of securities to be distributed in kind in satisfaction of the in-kind redemption were selected on the basis of when the securities were acquired for the Portfolio, with the securities held longest by the Portfolio being distributed first, until distribution of the Plan's pro rata share of such security was completed. The applicant represents that the FIFO procedure is the one normally used by the High Mark Funds equity and fixed income funds for selecting securities to be sold or distributed in kind. The applicant further represents that with respect future in-kind redemptions pursuant to this exemption, securities will also be selected on a ''first in, first out'' basis or similar objective, ministerial procedure.

[17] In the no action letter to Signature Financial Group, Inc. discussed above, the Division of Investment Management of the SEC states that it will not recommend enforcement action pursuant to Section 17(a) of the Investment Company Act of 1940 for certain in-kind distributions of portfolio securities to an affiliate of a mutual fund. Funds seeking to use this ''safe harbor'' must value the securities to be distributed to an affiliate in an in-kind distribution ''in the same manner as they are valued for purposes of computing the distributing fund's net asset value.'' The applicant represented that, having adopted the Signature Financial Letter procedures for use in its affiliate transactions, it must use those procedures for transactions with its in-house plans, as these in-house plans are affiliates of the mutual fund. The Department agreed to the use of the Signature Financial Letter procedures for determining the value of the securities in this in-kind transaction, with certain limitations.

The Signature Financial Letter requires pro rata distribution of the securities. The letter does not address the marketability of such securities. The range of securities distributed pursuant to this ''safe harbor'' may therefore be broader than range of securities covered by SEC Rule 17a–7, 17 CFR Sec. 270.17a–7. In granting past exemptive relief with respect to in-kind transactions involving mutual funds, the Department has required that the securities being distributed in-kind fall within Rule 17a–7. One of the requirements of Rule 17a–7 is that the securities are those for which ''market quotations are readily availabale.'' SEC Rule 17a–7(a). The Department has determined, and the applicant agrees, that exemptive relief in this case will also be limited to in-kind distribution of securities for which market quotations are readily available. The value of any other securities will be paid to the plan in cash.

[18] Under the exemption requested by UBOC, the Plan will receive only securities for which market quotations are readily available (as determined pursuant to the Funds' procedures described above) or cash.

[19] The Report states that, with respect to the Redemptions involving Shares of the HighMark Value Momentum Fund and the HighMark Growth Fund, if the Retirement Plan were to receive cash rather than securities pursuant to the transaction, substantially all (in the case of the HighMark Value Momentum Fund) or the majority (in the case of the HighMark Growth Fund) of that cash would be reinvested in securities which would result in brokerage commissions and a buy-sell spread, the costs of which would be incurred by the Retirement Plan. The Report states further that depending on the form and timing of the Redemptions, part of the Portfolios' selling costs might be absorbed by the Retirement Plan as a shareholder in the Portfolios. Therefore, according to U.S. Trust, to the extent that the Redemption of the Retirement Plan's Shares of the HighMark Value Momentum Fund and the HighMark Growth Fund were effected in-kind, those costs would be avoided.

U.S. Trust notes, however, that the Retirement Plan would sell substantially all of the securities received in redemption of its Shares of the HighMark Small Cap Value Fund shortly after the Redemption. In this regard, the applicant represents that the unaffiliated investment manager appointed to manage the ''small capitalization stock'' portion of the Retirement Plan's assets on a separate account basis after the June 15, 2001 Redemptions pursues an investment strategy that is different from that pursued by the HighMark Small Cap Value Fund. Accordingly, the Retirement Plan, at the request of the new manager, sold substantially all of the securities it received from the HighMark Small Cap Value Fund in connection with the June 15, 2001 Redemptions. However, UBOC contributed a cash payment to the Retirement Plan in an amount estimated by U.S. Trust to be equal to the difference between the transaction costs associated with the Retirement Plan's in-kind redemption of Shares of the HighMark Small Cap Value Fund and the transaction costs associated with a hypothetical cash redemption of such Shares. In calculating the transaction costs of a hypothetical cash redemption, U.S. Trust assumed that, prior to the cash redemption, the Fund would raise cash by selling the securities that were, in fact, distributed in kind. Under this scenario, those selling costs would be allocated proportionately across all shareholders in the Fund (including the Retirement Plan) before the Retirement Plan received its cash distribution. U.S. Trust concluded that UBOC's cash payment to the Retirement Plan made the Retirement Plan whole for redeeming its HighMark Small Cap Value Fund Shares in kind rather than in cash and, consequently, the redemption of such shares was fair to Retirement Plan participants.

In connection with the November 26, 2001 in-kind distribution from the HighMark International Fund, the same issue arose, i.e., the new investment manager choose not to retain most of the securities distributed in kind. As in the earlier Small Cap Value Fund transaction, UBOC has agreed to make a cash payment sufficient to make the Retirement Plan whole.

In the Report, U.S. Trust stated that, based upon its review of the methodology of the Redemptions of Shares of each of the HighMark Portfolios and an analysis of the costs associated with the Redemptions versus a cash redemption for the Retirement Plan's assets held by the HighMark Portfolios (and, with respect to the HighMark Small Cap Value Fund, the cash payment to the Retirement Plan noted above), the Redemptions would be fair to the participants of the Retirement Plan. The Report also stated that the methodology used to conduct the Redemptions would be comparable to and no less favorable than a similar in kind redemption reached at arms' length between unaffiliated parties. Therefore, U.S. Trust approved the Redemptions from the HighMark Portfolios, provided the Redemptions were conducted in accordance with the information provided to it by UBOC and the HighMark Funds.

The Report also states that, if the Redemptions were thereafter undertaken, U.S. Trust would confirm in writing whether each such Redemption was effectuated consistent with the required criteria and procedures set forth in the Report, based on representations requested from UBOC and testing a limited sampling of certain material aspects of the Redemptions, deemed in U.S. Trust's judgment to be representative. Accordingly, subsequent to the June 15, 2001 Redemptions, U.S. Trust conducted the post-transaction review described above and concluded, based on information provided to it, that the Retirement Plan received its pro rata portion of each Transferable Security (rounded to the nearest round lot) held by the HighMark Portfolios and its pro rata portion of cash that the HighMark Portfolios held based on the Plan's ownership percentage of each such Portfolio (or, in the case of the Small Cap Fund, the percentage of the Small Cap Fund that the Redemption amount represented), and that the June 15, 2001 Redemptions were effectuated in a manner consistent with the required criteria and procedures set forth in the Report.

13. In summary, it is represented that the June 15, 2001 and November 26, 2001 Redemptions satisfied, and any Redemptions to occur in the future will satisfy, the statutory criteria for an exemption under section 408(a) of ERISA for the following reasons:

(A) The In-house Plan pays no sales commissions, redemption fees, or other similar fees in connection with the Redemptions (other than customary transfer charges paid to parties other than UBOC and UBOC Affiliates);

(B) The assets transferred to the In-house Plan pursuant to the Redemptions consist entirely of cash and Transferable Securities. Notwithstanding the foregoing, odd lot securities, fractional shares and accruals on such securities may be distributed in cash;

(C) With certain exceptions defined below, the In-house Plan receives a pro rata portion of the securities of the Portfolio upon a Redemption that is equal in value to the number of Shares redeemed for such securities, as determined in a single valuation performed in the same manner and as of the close of business on the same day in accordance with the procedures established by the Funds pursuant to Rule 2a-4 under the 1940 Act (using sources independent of UBOC and UBOC Affiliates);

(D) UBOC, or any UBOC affiliate, does not receive any fees, including any fees payable pursuant to Rule 12b-1 under the 1940 Act, in connection with any Redemption of the Shares;

(E) Prior to a Redemption, UBOC provides in writing to the Independent Fiduciary a full and detailed written disclosure of information regarding the Redemption;

(F) Prior to a Redemption, the Independent Fiduciary provides written approval of such Redemption to UBOC, such approval being terminable at any time prior to the date of the Redemption without penalty to the In-house Plan, and such termination being effectuated by the close of business following the date of receipt by UBOC of written or electronic notice regarding such termination (unless circumstances beyond the control of UBOC delay termination for no more than one additional business day);

(G) Before approving a Redemption, based on the disclosures provided by the Portfolios to the Independent Fiduciary and discussions with appropriate operational personnel of the In-house Plan, UBOC, and the Adviser as necessary to form a basis for making the following determinations, the Independent Fiduciary determines that the terms of the Redemption are fair to the participants of the In-house Plan and comparable to and no less favorable than terms obtainable at arms-length between unaffiliated parties;

(H) Not later than thirty (30) business days after the completion of a Redemption, the relevant Fund provides to the Independent Fiduciary a written confirmation regarding such Redemption containing:

(i) the number of Shares held by the In-house Plan immediately before the Redemption (and the related per Share net asset value and the total dollar value of the Shares held),

(ii) the identity (and related aggregate dollar value) of each security provided to the In-house Plan pursuant to the Redemption, including any security valued in accordance with the Funds' procedures for obtaining current prices from independent market-makers,

(iii) the current market price of each security received by the In-house Plan pursuant to the Redemption, and

(iv) the identity of each pricing service or market-maker consulted in determining the value of such securities;

(I) The value of the securities received by the In-house Plan for each redeemed Share equals the net asset value of such Share at the time of the transaction, and such value equals the value that would have been received by any other investor for shares of the same class of the Portfolio at that time;

(J) Subsequent to a Redemption, the Independent Fiduciary performs a post-transaction review which will include, among other things, testing a sampling of material aspects of the Redemption deemed in its judgment to be representative, including pricing; and

(K) Each of the In-house Plan's dealings with the Funds, the Investment Adviser, the principal underwriter for the Funds, or any affiliated person thereof, are on a basis no less favorable to the In-house Plan than dealings between the Funds and other shareholders holding shares of the same class as the Shares.

*Notice to Interested Persons*

The applicant will provide notice of the proposed exemption within 30 days after publication thereof in the **Federal Register** (i) to active participants in the Retirement Plan by electronic communication through applicant's on-line employee intranet service and by posting at major job sites, and (ii) to retiree participants in pay status in the Retirement Plan by first class mail. Notices posted at major job sites will include a copy of the proposed exemption as published in the **Federal Register**. The notices will inform interested persons of their right to comment and/or request a hearing. Comments and requests for a hearing must be received by the Department not later than 60 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Ms. Andrea W. Selvaggio of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

**Cargill, Incorporated and Associated Companies Salaried Employees' Pension Plan, et al (the Original Plans) Located in Minneapolis, Minnesota**

[Application Nos. D–11017 through D–11023]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the proposed exemption is granted, effective October 18, 1996, the restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act, and the sanctions resulting from section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) the acquisition (the Stock Acquisition) and holding of certain shares of Cargill, Incorporated common stock (the Common Stock) by the Cargill, Incorporated and Associated Companies Master Pension Trust (the Master Trust); and (2) the acquisition, holding and, where relevant, exercise by the Master Trust of a certain irrevocable put option associated with the Common Stock (the Put Option); provided that the following conditions are satisfied:

(A) Prior to the Stock Acquisition, a qualified, independent fiduciary acting on behalf of the Master Trust (the Independent Fiduciary) determined that the Stock Acquisition was appropriate for, and in the best interests of, the Original Plans and the Master Trust.

(B) The $178.75 per share purchase price the Master Trust paid for each share of Common Stock pursuant to the Stock Acquisition equaled the August 31, 1996 fair market value of each such share as determined by a qualified, independent appraiser selected by the Independent Fiduciary.

(C) Subsequent to the Stock Acquisition, the Independent Fiduciary represented the interests of the Master Trust with respect to the Master Trust's holding of the Common Stock and the Master Trust's holding of the Put Option, and will continue to represent such interests as long as the Master Trust holds such stock and Put Option.

(D) Subsequent to the Stock Acquisition, the Independent Fiduciary took and will take whatever action is necessary to protect the rights of the Master Trust with respect to the Master Trust's holding of the Common Stock and the Master Trust's holding of the Put Option.

(E) Upon request by the Independent Fiduciary, Cargill, Incorporated (Cargill) purchased, or will purchase, all or a portion of the Common Stock held by the Trust, in accordance with the terms of the Put Option, for the greater of: (1) the price of the Common Stock as of the date of the Stock Acquisition; or (2) the fair market value of the Common Stock as of the date the Put Option is exercised.

(F) Subsequent to the Stock Acquisition, the Common Stock did not, at any time, represent more than ten percent (10%) of the total fair market value of the assets held by: (1) any Original Plan; or (2) after the Original Plans were merged into each other on January 1, 1997, any remaining Original Plan that continued to have an undivided interest in the assets of the Master Trust (a Remaining Plan).

(G) For purposes of securing its obligations with respect to the Put Option, Cargill established, and will continue to maintain, an escrow account containing cash and/or U.S. government securities amounting to at least 25 percent (25%) of the total current fair market value of the Common Stock held by the Master Trust.

(H) All transactions between Cargill and the Master Trust, or between Cargill and any Original Plan or Remaining Plan (collectively, the Plans), arising in connection with the Stock Acquisition, were no less favorable to the Master Trust or Plan than arm's-length transactions involving unrelated parties.

(I) Cargill reimbursed the Master Trust, with interest (the Reimbursement), for the Master Trust's payment of certain legal expenses associated with the Master Trust's holding of the Common Stock (the Legal Fees).

(J) Cargill paid, and will continue to pay, the fees of the Independent Fiduciary and its financial advisor to the extent such fees relate to either the Stock Acquisition or the continued holding of the Common Stock and the Put Option by the Master Trust.

(K) At no time subsequent to the Stock Acquisition has the Master Trust held more than 25% of the aggregate amount of Common Stock issued and outstanding.

(L) Cargill adopts written procedures which require that a Remaining Plan fiduciary: (1) review all expenses submitted for payment by the Master Trust; and (2) approve the payment of only those expenses that are reasonable and necessary for the administration of a Remaining Plan.

(M) Cargill adopts written procedures which require that independent legal counsel provide Cargill with a written opinion regarding the payment by the Master Trust or a Remaining Plan of expenses associated with a transaction between Cargill and a Remaining Plan.

(N) In the event this proposed exemption is granted, Cargill, within 60 days of the date of such grant, files Form 5330 with the Internal Revenue Service and pays the applicable excise taxes with respect to the Master Trust's payment of the Legal Fees.

**EFFECTIVE DATE:** The effective date of this proposed exemption, if granted, is October 18, 1996.

*Summary of Facts and Representations*

1. Cargill is a Delaware corporation established in 1865 by William W. Cargill (Mr. Cargill). Cargill is engaged in, among other things, the wholesaling of agricultural and other bulk commodities. As of February 28, 2001, Cargill had approximately 85,000 employees and annual revenues in excess of $47 billion.

2. By October of 1993, Cargill had established certain tax qualified defined benefit plans (the Original Plans). At that time, the Original Plans were comprised as follows:

a. Cargill, Incorporated and Associated Companies Salaried Employees' Pension Plan (the Salaried Employees' Pension Plan);

b. Cargill, Incorporated Pension Plan for Seaboard Grain Miller Represented Employees (the Seaboard Grain Miller Employees' Pension Plan);

c. Cargill, Incorporated and Associated Companies Pension Plan for Grain Miller Represented Employees (the Grain Miller Employees' Pension Plan);

d. Cargill, Incorporated and Associated Companies Pension Plan for Union Represented Hourly Wage Employees (the Hourly Wage Employees' Pension Plan);

e. Cargill, Incorporated and Associated Companies Pension Plan for Production Employees (the Production Employees' Pension Plan);

f. Cargill, Incorporated and Associated Companies Pension Plan for Poultry Products Employees (the Poultry Products Employees' Pension Plan); and

g. Cargill, Incorporated and Associated Companies Pension Plan for Union Represented Poultry Products Employees (the Union Poultry Products Employees' Pension Plan);

3. The Common Stock is one of five classes of stock authorized by Cargill. Each share of Common Stock, and, generally, each share of Cargill's other classes of stock, is entitled to one vote. In addition, holders of the Common Stock are entitled to receive dividends on their shares in an amount decided annually by Cargill's Board of Directors.

4. Prior to October 18, 1996, the Common Stock was held solely by the lineal descendants of Mr. Cargill and their spouses and ex-spouses (the Cargill Common Stock Holders), either directly or indirectly through corporations and trusts of which they are beneficiaries.[20] On October 18, 1996, the Original Plans obtained a portion of the Common Stock through the Stock Acquisition.[21] In this regard, on that date, the Master Trust acquired 167,832 shares of the Common Stock pursuant to the Stock Acquisition, for a purchase price of $178.75 per Share. The applicant represents that the Original Plans paid cash for the Common Stock, the aggregate value of which was $29,999,970 as of the date of the Stock Acquisition. According to the applicant, immediately after the Stock Acquisition, the Common Stock represented less than 10% of the assets in the Master Trust.[22]

5. The applicant represents that State Street Bank and Trust Company (State Street) acted as Independent Fiduciary for purposes of the Stock Acquisition. State Street represents that it is independent of Cargill and receives less than 1% of its aggregate annual gross revenue from Cargill. In addition, State Street represents that it is qualified to act as Independent Fiduciary on behalf of the Master Trust due to its status as one of the country's largest trust companies and its extensive experience in managing retirement plan assets. The applicant represents that, subsequent to the Stock Acquisition, State Street has acted as Independent Fiduciary with respect to the Plans' continued holding of the Common Stock and the Put Option.

6. The applicant represents that, for purposes of the Stock Acquisition, the Cargill Common Stock Holders proposed a price of $178.75 per share. The applicant states that the Independent Fiduciary retained a qualified, independent advisor for the purpose of determining whether: (1) the proposed $178.75 per share sale price exceeded the fair market value of such shares; and (2) the terms of the proposed Stock Acquisition were fair and reasonable to the Master Trust from a financial point of view. In this regard, the applicant states that the Independent Fiduciary selected Duff & Phelps Financial Consulting Co. (Duff & Phelps) to make such determinations.

In a letter dated October 18, 1996, Duff and Phelps stated that, in its capacity as financial advisor to the Independent Fiduciary for purposes of the Stock Acquisition, it reviewed, among other things: audited financial statements of Cargill; unaudited interim financial statements of Cargill for the three months ended August, 31, 1996; and certain internal documents and analyses provided by Cargill management. In carrying out its duties, Duff and Phelps stated that it additionally reviewed relevant financial and operating information for specific publicly traded companies which it deemed comparable in whole or in part to Cargill.

Upon this review, Duff and Phelps compared Cargill's historical results and future prospects against several sets of publicly traded companies. Duff and Phelps stated that the fair market value of the Common Stock was thereafter determined upon reviewing the relative performance and pricing multiples of such companies and discounting the derived common stock value to reflect the illiquidity of the Common Stock. In the October 18, 1996 letter, Duff and Phelps concluded that: (a) the price of $178.75 per share to be paid by the Master Trust was not in excess of fair market value within the meaning of ERISA; and (b) the terms of the proposed Stock Acquisition were fair and reasonable to the Master Trust from a financial point of view.

The applicant represents that, upon the Independent Fiduciary's review of the information provided by Duff and Phelps, the Independent Fiduciary determined that, as of October 18, 1996, the Stock Acquisition was appropriate for, and in the best interests of, the Original Plans and the Master Trust. The applicant states that, in consideration of this, on that date, the Independent Fiduciary directed that the Master Trust acquire the Common Stock pursuant to the Stock Acquisition.

7. The applicant represents that at no time subsequent to the Stock Acquisition did the Common Stock represent more than 10% of the fair market value of any Original Plan or, after the merging of the Original Plans (see paragraph 9), any Remaining Plan. The applicant additionally represents that the Master Trust has never held, and will never hold, more than 25% of the aggregate amount of Cargill's issued and outstanding Common Stock.

8. In addition to receiving the Common Stock pursuant to the Stock Acquisition, the Trust received the Put Option. In this regard, the Trust received an option which requires that Cargill, at the direction of the Independent Fiduciary, purchase from the Master Trust any or all of the Common Stock held by the Master Trust. According to the terms of the Put Option, the price of any share sold pursuant to a Put Option shall be the greater of: (1) the price at which the Master Trust acquired the Common Stock; or (2) the fair market value of the Common Stock as of the date the Put Option is exercised. The applicant represents that the Put Option has remained in effect since the Stock Acquisition and will continue to remain in effect to the extent the Master Trust continues to hold any of the Common Stock.

9. After the Stock Acquisition, Cargill decided to merge certain of the Original Plans. In this regard, on January 1, 1997, the Seaboard Grain Miller Employees' Pension Plan, the Grain Miller Employees' Pension Plan, and the Union Poultry Products Employees' Pension Plan were merged into the Salaried Employees' Pension Plan. In addition, at the same time, the Poultry Products Employees' Plan was merged into the Production Employees' Pension Plan. Thus, after the mergers, the following plans remained: the Salaried Employees' Pension Plan having 22,726 participants and $652,213,466 in total assets as of December 31, 1999; the Production Employees' Pension Plan having 6,564 participants and $48,773,333 in total assets as of December 31, 1999; and the Hourly Wage Employees' Pension Plan having 8,449 participants and $147,72,972 in total assets as of December 31, 1999.

10. Subsequent to the Stock Acquisition, State Street retained responsibility for monitoring the Master Trust's continued ownership of the Common Stock. Thus, for as long as the Master Trust held the Common Stock, State Street, as Independent Fiduciary, was required to determine whether it would be in the interests of the Master Trust for the Master Trust to exercise

[20] As a result, the Common Stock did not satisfy the definition of ''qualifying employer security''. In this regard, with respect to defined benefit plans, 407(d)(5)(A) of the Act defines a ''qualifying employer security'' as, among other things, ''stock'' which satisfies the requirements of section 407(f)(1) of the Act. Section 407(f)(1)(b) of the Act states that ''stock'' meets the requirements of that section to the extent that at least 50 percent of the aggregate amount of stock of the same class issued and outstanding at the time of acquisition is held by persons independent of the issuer.

[21] Since the Common Stock was not a ''qualifying employer security'', the Stock Acquisition violated section 407(a)(1)(A) of the Act which provides that a plan may not acquire or hold any employer security which is not a qualifying employer security. In violating section 407(a) of the Act, the Stock Acquisition also violated section 406(a)(1)(E) of the Act which provides that a fiduciary with respect to a plan shall not cause the plan to engage in a transaction involving the acquisition, on behalf of the plan, of any employer security in violation of section 407(a) of the Act.

[22] The applicant states that, as of November 30, 2000, the Common Stock represented approximately 4% of the total assets held by the Master Trust.

the Put Option. State Street was, therefore, responsible for monitoring the financial status of Cargill at regular intervals to determine whether the Common Stock continued to be a stable and prudent investment for the Plans and the Master Trust.

State Street was also given full investment discretion with respect to the Common Stock. As a result, State Street had the authority to: (1) Direct the trustee of the Master Trust with respect to the exercise of voting rights, conversion rights or tender offers; (2) join in or oppose voting trusts, mergers, consolidations, foreclosures, reorganizations, recapitalizations and liquidations and (3) exercise any and all rights relating to the Common Stock. The applicant represents that State Street will continue to have each of these responsibilities for as long as the Master Trust and the Plans hold the Common Stock.

11. Cargill established, and continues to maintain, an escrow account (the Escrow Account) to secure Cargill's obligations under the Put Option. The applicant represents that the Escrow Account will remain in effect for the duration of the Trust's ownership of any of the Common Stock and will be maintained at an independent banking institution approved by State Street. The purpose of the Escrow Account, the applicant states, is to ensure that the Master Trust will receive a price for the Common Stock that is in accordance with the terms of the Put Option. Specifically, pursuant to any exercise of the Put Option by the Master Trust, State Street is entitled, as Independent Fiduciary, to draw upon the Escrow Account to satisfy Cargill's obligations under the terms of the Put Option in the event Cargill fails to purchase the Common Stock at the price required by such option. According to the applicant, the Escrow Account contains only cash and/or United States government securities amounting to at least 25% of the total fair market value of the Common Stock held by the Master Trust. Subsequent to the Stock Acquisition, the Master Trust has at all times had, the applicant states, a lien against the assets in the Escrow Account that gives the Master Trust priority over all creditors of Cargill with respect to the assets in the Escrow Account. The applicant represents that this lien will remain in place to the extent the Master Trust continues to hold any of the Common Stock.

12. Cargill previously received temporary exemptive relief, pursuant to Prohibited Transaction Exemption (PTE) 94–23 (59 FR 10830 (March 8, 1994)), for the purchase and holding of Common Stock by the Master Trust.[23] Subsequent to the publication of the proposed exemption in the **Federal Register** (58 FR 58194 (October 29, 1993), the Department received a written comment objecting to the Master Trust's payment of the fees of State Street and Duff and Phelps. In response, as noted in PTE 94–23, Cargill agreed to pay such fees in order to avoid the depletion of the assets of the Master Trust.

Cargill failed to meet this requirement when it inadvertently caused the Master Trust to pay the Legal Fees. In this regard, subsequent to the Stock Acquisition, Cargill directed that the Master Trust pay certain of the Independent Fiduciary's legal fees, the amount of which totaled $80,791. The applicant represents that such payment was due, in part, to certain personnel changes occurring within Cargill. Since Cargill failed to act in accordance with the representations it made in response to a commentator under PTE 94–23, the relief provided by the exemption ceased to be available. As a result, the applicant is seeking retroactive relief for the Stock Acquisition, as well as the Plans' subsequent holding of the Common Stock, and the acquisition, holding and potential exercise of the Put Option, by means of this proposed exemption.

13. The applicant states that Cargill has taken the appropriate steps to reimburse the Master Trust for its payment of the Legal Fees. In this regard, the applicant represents that the Master Trust was reimbursed $80,791 for the Legal Fees. The applicant states that, in addition, Cargill paid certain interest to the Master Trust. According to the applicant, the amount of such interest, $36,696, represented the Master Trust's overall rate of return on its entire portfolio of investments from the date the Legal Fees were paid by the Master Trust to the date the Legal Fees were refunded to the Master Trust.

The applicant represents that Cargill will undertake certain steps to prevent future inappropriate payments of expenses by the Master Trust. In this regard, the applicant represents that, if this proposed exemption is granted, Cargill will designate a fiduciary, as such term is defined by the Act, to review all expenses submitted for payment by the Master Trust. The applicant represents that, only upon such fiduciary's determination that an expense is reasonable and necessary for the administration of a Remaining Plan will the fiduciary approve, in writing, the payment of the expense. In addition, the applicant represents that no expense associated with any transactions between Cartill and a Remaining Plan will be paid by such Remaining Plan unless Cargill obtains a written opinion from independent legal counsel.

14. In summary, that applicant represents that the proposed exemption is protective of, and in the best interests of, the Remaining Plans and the Master Trust since:

(A) Prior to the Stock Acquisition, the Independent Fiduciary determined that the Stock Acquisition was appropriate for, and in the best interests of, the Original Plans and the Master Trust.

(B) The $178.75 per share purchase price the Master Trust paid for each share of Common Stock pursuant to the Stock Acquisition equaled the August 31, 1996 fair market value of each such share as determined by a qualified, independent appraiser selected by the Independent Fiduciary.

(C) Subsequent to the Stock Acquisition, the Independent Fiduciary represented the interests of the Master Trust with respect to the Master Trust's holding of the Common Stock and the Master Trust's holding of the Put Option, and continues to represent such interests as long as the Master Trust holds such stock and Put Option.

(D) Subsequent to the Stock Acquisition, the Independent Fiduciary protected the rights of the Master Trust with respect to the Master Trust's holding of the Common Stock and the Master Trust's holding of the Put Option, and will continue to protect such rights as long as the Master Trust holds such stock and Put Option.

(E) Upon request by the Independent Fiduciary, Cargill purchased, or will purchase, all or a portion of the Common Stock held by the Trust, in accordance with the terms of the Put Option, for the greater of: (1) The price of the Common Stock as of the date of the Stock Acquisition; or (2) the fair market value of the Common Stock as of the date any Put Option is exercised.

(F) Subsequent to the Stock Acquisition, the Common Stock did not, at any time, represent more than ten percent (10%) of the total fair market value of the assets held by any Original Plan or any Remaining Plan.

(G) For purposes of securing its obligations with respect to the Put Option, Cargill established, and will continue to maintain, an escrow account containing cash and/or U.S. government securities amounting to at least 25% of the total current fair market value of the

[23] In this regard, the relief provided by PTE 94–23 expired on March 8, 1999 with respect to the acquisition of Common Stock by the Master Trust. As noted in the granted exemption, however, the Master Trust was allowed to hold the Common Stock subsequent to the end of the five year period.

Common Stock held by the Master Trust.

(H) All transactions between Cargill and the Master Trust; or between Cargill and a Plan, arising in connection with the Stock Acquisition, were no less favorable to the Master Trust or Plan than arm's-length transactions involving unrelated parties.

(I) Cargill reimbursed the Master Trust, with interest (i.e., the Reimbursement), for the Legal Fees.

(J) Cargill paid, and will continue to pay, the fees of the Independent Fiduciary and its financial advisor to the extent such fees relate to either the Stock Acquisition or the continued holding of the Common Stock and the Put Option by the Master Trust.

(K) At no time subsequent to the Stock Acquisition has the Master Trust held more than 25% of the aggregate amount of Common Stock issued and outstanding.

(L) Cargill adopts written procedures requiring that a plan fiduciary: (1) review all expenses submitted for payment by the Master Trust; and (2) approve the payment of only those expenses that are reasonable and necessary for the administration of a Remaining Plan.

(M) Cargill adopts written procedures requiring that independent legal counsel provide Cargill with a written opinion regarding the payment by the Master Trust or a Remaining Plan of expenses associated with a transaction between Cargill and a Remaining Plan.

(N) In the event this proposed exemption is granted, Cargill, within 60 days of the date of such grant, files Form 5330 with the Internal Revenue Service and pays the applicable excise taxes with respect to the Master Trust's payment of the Legal Fees.

*Notice to Interested Persons:* The applicant represents that notice to interested persons will be made within twenty (20) business days following publication of this notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than sixty (60) days from the date of publication of this notice of proposed exemption in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Christopher Motta of the Department, telephone (202) 693–8544. (This is not a toll-free number.)

**Blue Cross and Blue Shield of Kansas, (the Company) and Anthem Insurance Companies, Inc. (Anthem), Located in Topeka, KS and Indianapolis, IN, Respectively**

[Application No. D–11030]

*Proposed Exemption*

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[24]

Section I. Covered Transactions

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the receipt of cash (Cash), including without limitation, Cash held in an escrow fund (the Escrow Fund), by any eligible policyholder (the Eligible Policyholder) of the Company and Anthem, the Company's future parent,[25] which is an employee benefit plan (the Plan), as well as the Blue Cross and Blue Shield of Kansas, Inc. Health Benefit Plan (the Company Health Plan), which is sponsored by the Company, in exchange for the termination of such Plan's membership interest in the Company, in accordance with the terms of a plan of conversion (the Plan of Conversion) adopted by the Company and implemented pursuant to Article 40, Chapter 40 of the Kansas Statutes Annotated (the K.S.A.)

The proposed exemption is subject to the general conditions set forth below in Section II.

Section II. General Conditions

(a) The Plan of Conversion is implemented in accordance with procedural and substantive safeguards that are imposed under Kansas Insurance Law for a ''sponsored demutualization'' and is subject to review and approval by the Kansas Insurance Commissioner (the Commissioner).

(b) The Commissioner reviews the terms of the options that are provided to Eligible Policyholders of the Company as part of such Commissioner's review of the Plan of Conversion, and only approves the Plan following a determination that —

(1) Such Plan is (i) fair and equitable to policyholders, (ii) complies with the requirements of Kansas law, and

(iii) does not unjustly enrich any officer, director, agent or employee of the company; and

(2) The new stock insurer meets the minimum requirements to obtain a certificate of authority to transact business in Kansas and its operation is not hazardous to existing or future policyholders or the public.

(c) Each Eligible Policyholder has an opportunity to vote at a special meeting to approve the Plan of Conversion after receiving full written disclosure from the Company.

(d) With the exception of the Company Health Plan, one or more independent fiduciaries of a Plan that is an Eligible Policyholder elects to receive Cash pursuant to the terms of the Plan of Conversion and neither the Company nor any of its affiliates exercises any discretion or provides ''investment advice,'' within the meaning of 29 CFR 2510.3–21(c) with respect to such acquisition.

(e) In the case of the Company Health Plan, a committee (the Company Health Plan Committee), comprised of management-level employees of the Company, determines whether to vote for or against the implementation of the Plan of Conversion, but does not otherwise exercise investment discretion over the Company Health Plan's assets.

(f) All Eligible Policyholders that are Plans participate in the demutualization on the same terms and conditions as other Eligible Policyholders that are not Plans.

(g) One-third of the total Cash consideration is distributed to an Eligible Policyholder on a *pro rata* basis as the ''fixed component'' and the remaining two-thirds Cash consideration is allocated among each Eligible Policyholder as the ''variable component'' in accordance with a fair and objective standard, based upon actuarial formulas which take into account a policy's past and future contributions to the Company's surplus.

(h) No Eligible Policyholder pays any brokerage commissions or fees in connection with the receipt of the demutualization consideration.

(i) All of the Company's policyholder obligations remain in force and are not affected by the Plan of Conversion.

(j) The terms of the transactions are at least as favorable to the Plans as an

[24] For purposes of this proposed exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

[25] For purposes of this proposed exemption, references to the Company will generally include references to Anthem, unless noted, or unless the context requires otherwise.

arm's length transaction with an unrelated party.

Section III. Definitions

For purposes of this proposed exemption,

(a) The term ''Blue Cross and Blue Shield of Kansas, Inc.'' means the Company and its future parent, Anthem, unless otherwise noted, or unless the context requires otherwise.

(b) An ''affiliate'' of the Company includes —

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the Company (For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.); and

(2) Any officer, director or partner in such person.

(c) The term ''Eligible Policyholders'' means persons who, according to the Company's records, are the holders of certain in force group and non-group insurance policies of the Company on the date on which the Company's Board of Directors approves and adopts the Plan of Conversion.

*Summary of Facts and Representations*

Description of the Parties

1. The Company, which is located in Topeka, Kansas, is a mutual insurance company organized in 1992 under Kansas law. Through its operating divisions and subsidiaries, the Company is engaged in a variety of activities including providing accident and health coverage to subscribers, substantially all of whom are residents of the State of Kansas. The Company also performs administrative services and claims processing for other Blue Cross and Blue Shield plans' subscribers and for programs such as Medicare, Medicaid and the Federal Employee Health Benefits Program. As of December 31, 2000, the Company had total assets of approximately $731 million. As of February 9, 2001, the Company's most recent financial strength rating from A.M. Best Company, Inc. was ''A–'' or ''Excellent.''

As a mutual insurance company, the Company does not have capital stock but instead has members (Members) who are owners of policies and contracts issued by the Company. A policyholder's membership interest in the Company includes the right to vote, and to participate in the distribution of the Company's surplus in the event of the Company's voluntary dissolution or liquidation. Each Member has one vote.

Pursuant to Article 40, Chapter 40 of the Kansas Statutes Annotated (i.e., the K.S.A.), the Company may be converted to a stock company under a process called ''demutualization.'' In the event of such a demutualization, Eligible Policyholders of the Company may receive Cash consideration (some or all of which may be held in an escrow fund, as described below) in exchange for their mutual membership interests in the Company. The Company's demutualization will not affect the rights of policyholders under their insurance contracts. In addition, only the Company's policyholders, and not policyholders of an affiliate of the Company, may vote and receive Cash consideration in connection with the demutualization.

2. The Company provides a variety of insurance products to both non-group and group policyholders. As of October 25, 2001, the Company had 171,403 Eligible Policyholders. The non-group policyholders include 124,347 Medicare Supplement policyholders and 36,317 policyholders holding non-group major medical policies or specialty policies such as ''cancer only'' indemnity policies. The remaining 10,739 are group policyholders. Of the group policyholders, approximately 6,000 are ERISA-covered welfare plans.

3. Anthem, which will become the ultimate parent of the Company pursuant to the Plan of Conversion, maintains its principal place of business in Indianapolis, Indiana. Anthem is currently organized as a stock insurance company under the laws of the State of Indiana. Together with its subsidiaries, Anthem is one of the nation's largest health benefits companies. As an independent licensee of the Blue Cross Blue Shield Association (BCBSA), Anthem and its affiliates offer BCBSA-branded products throughout Indiana, Ohio, Kentucky, Connecticut, Colorado, Nevada, New Hampshire and Maine. In addition, Anthem and its affiliates provide health care coverage or services to over 7 million people in these states. As of December 31, 2000, Anthem had approximately $5.7 billion in assets, $3.8 billion in liabilities and surplus of $1.9 billion.

4. The Company sponsors the Company Health Plan, a welfare plan which is expected to be an Eligible Policyholder entitled to receive consideration in connection with the implementation of the Plan of Conversion discussed herein. The Company Health Plan provides health insurance benefits to approximately 2,200 employee and retiree participants (and their respective dependents) through three separate benefit programs based on the participants' location within Kansas: (a) a health maintenance organization program with a self-referral benefit; (b) a preferred provider program; and (c) a traditional major medical program. Each program includes coverage for medical care, hospitalization, prescription drugs, and dental care, subject to the terms and conditions of the program. Thus, the Company Health Plan's assets consist solely of insurance and premiums withheld from employees which are remitted to the insurers and there is no valuation of the assets of such Plan.

Active employees do not have an option among these three programs. Instead, those living in the service area of the health maintenance organization are enrolled in that coverage, and those outside the service area are enrolled in the preferred provider program. Retirees in the health maintenance organization service area can choose between that coverage and the traditional major medical program. Retirees living outside that service area are enrolled in the preferred provider program. The Company pays 75 percent of the cost of coverage of employees, retirees and their respective dependents. Under the Plan of Conversion, the Company may receive approximately $1,178,000 in the distribution if the total distribution is $321 million. The Company intends to use the entire amount of the distribution in respect of the Company Health Plan to defray employee and retiree costs of coverage within a year of the distribution.

The Company Restructuring

5. On May 24, 2001, the Company's Board of Directors (the Board) authorized management to develop a plan of demutualization (i.e., the Plan of Conversion) pursuant to which the Company would be converted from a mutual insurance company to a stock insurance company. The Plan of Conversion, which was adopted by the Board on October 25, 2001, provides for the conversion (the Conversion) of the Company into a stock insurance company and the sale by the Company, pursuant to an Alliance Agreement, dated as of May 30, 2001 (the Alliance Agreement), of certain newly-issued shares of common stock to Anthem, Anthem West, Inc., an Indiana company and a wholly-owned subsidiary of Anthem, or to Anthem, Inc., a newly-formed public holding company and the parent of Anthem, to hold all of the shares of its common stock.[26] In the

[26] Anthem has separately applied to the Department for an administrative exemption in

Continued

Conversion, all policyholders' membership interests in the Company will be extinguished in exchange for a special distribution (the Special Distribution), to the extent declared by the Board, plus an additional amount of Cash that will be deposited into the Escrow Fund (described in Representation 9 of the proposal) and distributed, after resolution of a potential contingent litigation matter (the Contingent Litigation Matter) of the Company, to the Eligible Policyholders as provided in the Plan of Conversion.

The Board believes that the Company's Conversion into a stock corporation and the sale of the Company to Anthem, which makes possible the distribution of the value of the Company to Eligible Policyholders, is in the best interests of the Company's policyholders. If the Company is to continue to provide high quality insurance services at reasonable costs to its policyholders in a health insurance market that has become national in scope, it must spread its costs over a sufficiently large policyholder base. The Company, however, holds a certificate of authority to sell insurance only in Kansas.

Even if it were to seek to sell coverage in other states, it could not use the Blue Cross and Blue Shield names and service marks to do so, for those names and service marks are controlled by the BCBSA, whose licensees are provided exclusive areas within which they may use those names and service marks.

In addition to being unable to expand geographically, the Company finds that its potential customer base within the state shrinks every year, as national corporations purchase or supplant local businesses. The Company is also unable to diversify its risks geographically. An adverse local illness, or adverse local legislation, or a natural disaster could have substantial impact on its financial soundness. The Conversion, wherein the Company will become a part of a substantially larger, multi-state insurer, will benefit the Company and its policyholders in several ways:

- The Conversion will provide the Company with sufficient capital to compete with national commercial companies as well as access to a larger total capital pool with which to acquire other health plans or related businesses.
- The Conversion will enable the Company to take advantage of economies of scale by eliminating duplicative resources and streamlining its compliance efforts in an increasingly complex regulatory environment.
- By virtue of the Company's becoming part of the diversified geographical base of Anthem that results from the demutualization, the Company will have increased flexibility in responding to localized adverse risk events, avoiding the twin perils of decreased financial stability or excessive increases in rates to avoid financial instability. By having such a diversified base, the Company will have the ability to participate better in insurance offerings to multi-state accounts.
- The Conversion will result in the Company being able to offer a greater variety of career paths to its employees and the potential for greater and more varied challenges, which in turn should permit it to continue to attract and retain the kinds of employees needed to provide its policyholders with quality service.
- The Conversion will allow the Company to take advantage of best practices in health insurance from Anthem and its health insurance affiliates.
- The Conversion will allow the Company to maintain a significant level of local employment.
- The Conversion will provide for sustained local input into medical policy.
- The Conversion will provide Eligible Policyholders with an opportunity to receive Cash in exchange for their otherwise illiquid membership interests, which will be extinguished. Thus, Eligible Policyholders will realize economic value from their membership interests that is not currently available to them so long as the organization remains a mutual company.

6. Accordingly, the Company requests an administrative exemption from the Department which, if granted, will permit the receipt of Cash (including, without limitation, the Cash consideration to be held in the Escrow Fund described herein) by an Eligible Policyholder that is a Plan, including the Company Health Plan, in exchange for such Eligible Policyholder's membership interest in the Company, in accordance with the Plan of Conversion adopted by the Company and implemented pursuant to Kansas Insurance Law.

The Company represents that the receipt of Cash by a Plan, in exchange for such Eligible Policyholders' mutual membership interest in the Company, may be viewed as a prohibited sale or exchange of property between the Plan and the Company in violation of section 406(a)(1)(A) of the Act. Moreover, the Company states that the transaction may also be construed as a transfer of plan assets to, or a use of plan assets by or for the benefit of, a party in interest in violation of section 406(a)(1)(D) of the Act.

The proposed exemption is conditioned upon a number of substantive safeguards. Among the safeguards is the requirement that distributions to Plans pursuant to the exemption must be on terms that are no less favorable to the Plans than Eligible Policyholders that are not Plans. In this regard, Plans that are Eligible Policyholders must participate in the demutualization transaction on the same terms and conditions as Eligible Policyholders that are not Plans. Further, the demutualization will not, in any way, change premiums or reduce policy benefits, guarantees or other policy obligations of the Company to its policyholders and contractholders.

Procedural Requirements under Kansas Insurance Law for Restructuring

7. Kansas Insurance Law provides a regulatory framework for the conversion of a mutual insurance company into a stock company, including a ''sponsored demutualization,'' whereby all of the stock of an insurer is acquired by another company in return for cash. It is represented that the Company's proposed Conversion will be in the nature of a ''sponsored demutualization.''

K.S.A. 40–4002 requires the demutualizing insurer's board of directors to adopt, by a two-thirds majority, a resolution stating the reasons a conversion to a stock insurance company would be in the best interests of the policyholders of the mutual insurance company. Following adoption of the resolution, a detailed plan of conversion will be developed and approved by a two-thirds majority of the board. The plan of conversion must also be submitted to the Kansas Insurance Commissioner for approval, subject to certain hearing requirements.

Additionally, such plan must be approved by two-thirds of the policyholders of the mutual insurer (or by a simple majority, if a majority of policyholders vote) at a meeting called for the purpose of considering the plan of conversion.[27] Policyholders may vote in person or by proxy. A copy of the plan of conversion and any information the Commissioner deems necessary to

connection with its contemplated demutualization. On November 6, 2001, the Department issued a final exemption (Prohibited Transaction Exemption 2001–44) to Anthem at 66 FR 56133.

[27] It is represented that neither the Company nor any of its affiliates will exercise investment discretion or provide ''investment advice,'' within the meaning of 29 CFR 2510.3–21(c), with respect to any election made by an Eligible Policyholder that is a Plan.

policyholder understanding, including a summary of the plan of conversion, must be furnished to policyholders.

K.S.A. 40–4003a sets forth alternative structures which may be used for a conversion, including a plan in which policyholders exchange their membership interests for cash or other consideration, and requires the insurer to file a plan of conversion complying with the terms and conditions set forth for such structure. Existing policyholders of a converting insurer have their rights protected under K.S.A. 40–4003c, which provides for policies in force on the effective date of conversion remaining in force, with only voting rights, assessment provisions, and rights to share in surplus being extinguished.

The Commissioner is required to hold a hearing regarding the plan of conversion, giving not less than 20 days' notice to the insurer and the policyholders of the insurer of the hearing. The Commissioner must approve the plan if she finds it is fair and equitable to policyholders, complies with the requirements of the law, does not unjustly enrich any director, officer, agent or employee of the company, and the new stock insurer would meet the minimum requirements to obtain a certificate of authority to transact business in Kansas and its operation would not be hazardous to existing or future policyholders or the public. The amount of consideration provided to policyholders is deemed to be fair and equitable if it is at least equal to the amount of statutory surplus contributed by policyholders. If the Commissioner approves the plan of conversion, he or she will issue a new certificate of authority to the converted insurer and the date of such issuance is deemed to be the conversion date.

In addition to the provisions governing conversion to a stock company, because this transaction involves Anthem's acquisition of the Company's stock, it will also be subject to review under K.S.A. 40–3304. This provision of the statute regulates the acquisition of a domestic insurer and requires Commissioner review and public hearings.

As far as timing is concerned, between November 19 and November 27, 2001, the Company sent notices to policyholders regarding a January 11, 2002 policyholder meeting to consider the Plan of Conversion. The Company anticipates that the Commissioner will hold a hearing on the Plan of Conversion between January 7 and January 9, 2002 and that the Commissioner will approve such Plan during the first quarter of 2002.

Distributions to Eligible Policyholders

8. Under the proposed transaction, Eligible Policyholders of the Company will be entitled to receive total Cash consideration, currently estimated at $321 million, in exchange for their mutual membership interests in the Company.[28] The Cash consideration will consist of two components. In this regard, one-third of the Cash consideration will be distributed to Eligible Policyholders, *pro rata,* as the ''fixed component'' while the remaining two-thirds will be allocated among Eligible Policyholders as the ''variable component.'' Such latter allocation will be made in accordance with a fair and objective standard, based upon actuarial formulas which will take into account a policy's past and estimated future contributions to the Company's surplus.

On the effective date of the Conversion (the Conversion Date), Eligible Policyholders will be entitled to receive $190 million in exchange for their mutual membership interests in the Company. Of this amount, Anthem will pay $48 million in Cash to the Escrow Fund. In addition, at or prior to the closing, the Company will declare the Special Distribution, which will be payable after the closing to the Eligible Policyholders, in an amount equal to the excess of the Company's consolidated closing book value over $155 million, subject to certain rounding considerations.[29]

The amount of this excess is currently estimated to be approximately $131 million. The Special Distribution, together with 7 percent interest from the Conversion Date, will be paid directly to the Eligible Policyholders as soon as is reasonably practicable following the resolution of the closing balance sheet used to calculate the amount of the Special Distribution.

As stated above, of the $190 million purchase price, $48 million will be held in the Escrow Fund pending the resolution of the Contingent Litigation Matter, involving a subpoena dated February 28, 2001 received by the Company from the Office of the Inspector General, U.S. Department of Health and Human Services. The subpoena seeks documents related to an investigation of possible improper claims against Medicare. The amounts held in the Escrow Fund will be used to pay all costs, expenses and liabilities related to the Contingent Litigation Matter, to pay related taxes which might become payable, and to pay all costs and expenses of the escrow, with any remaining amounts to be distributed to Eligible Policyholders following the final resolution of such matter.[30] At present, the Company has been responding to the subpoena which underlies the Contingent Litigation Matter through the production of documents, which production is nearly complete, except for certain issues with respect to which the Company is awaiting clarification from the U.S. Department of Justice.

Both the Special Distribution and any amounts remaining in escrow will be distributed to Eligible Policyholders in accordance with the distribution principles set forth in the Plan of Conversion. The Board has received an opinion from Dresdner Kleinwort

[28] The proceeds of the demutualization will belong to the Plan if they would be deemed to be owned by the Plan under ordinary notions of property rights. See ERISA Advisory Opinion 92–02A, January 17, 1992 (assets of plan generally are to be identified on the basis of ordinary notions of property rights under non-ERISA law). It is the view of the Department that, in the case of an employee welfare benefit plan with respect to which participants pay a portion of the premiums, the appropriate plan fiduciary must treat as plan assets the portion of the demutualization proceeds attributable to participant contributions. In determining what portion of the proceeds are attributable to participant contributions, the plan fiduciary should give appropriate consideration to those facts and circumstances that the fiduciary knows or should know are relevant to the determination, including the documents and instruments governing the plan and the proportion of total participant contributions to the total premiums paid over an appropriate time period. In the case of an employee pension benefit plan, or where any type of plan or trust is the policyholder, or where the policy is paid for out of trust assets, it is the view of the Department that all of the proceeds received by the policyholder in connection with a demutualization would constitute plan assets.'' See ERISA Advisory Opinion 2001–02A, February 15, 2001.

[29] The Alliance Agreement formerly provided that in the event the Special Distribution equal to the entire excess of the closing book value over $155 million was not paid, the purchase price would be increased by 30 percent of the excess of the undistributed closing book value over $155 million. Under the Alliance Agreement, as amended, and pursuant to a resolution adopted by the Company on October 25, 2001, the Special Distribution is currently equal to the excess of the closing book value over $155 million.

The parties expect that the full amount of the Special Distribution will be paid. It is represented that it is a condition to the company's obligation to close that the Commissioner must grant ''any required approval to the payment of the Special Distribution'' or the Company will be required to obtain an opinion from its financial advisor confirming the fairness, from a financial point of view, of the purchase price to the Eligible Policyholders in the absence of the Special Distribution.

[30] Even if the entire Escrow Fund were applied to costs related to the Contingent Litigation Matter, it is represented that Eligible Policyholders would still receive $142 million plus the Special Distribution amount (currently estimated at $131 million) within 90 to 120 days after the Conversion Date. Thus, the Company asserts that there is no possibility that Eligible Policyholders will receive nothing in return for their mutual membership interests.

Wasserstein, independent financial advisors to the Company, that the purchase price payable to the Eligible Policyholders and into the Escrow Fund for the benefit of the Eligible Policyholders pursuant to the Alliance Agreement is ''fair'' to the Eligible Policyholders, from a financial point of view.

The Escrow Fund

9. The Alliance Agreement provides that $48 million of the $190 million purchase price to be received by the Company from Anthem will be deposited by the Company (or Anthem or its specified affiliate on the Company's behalf) into the Escrow Fund. The Escrow Fund will be a separately-designated, interest-bearing deposit account established on or prior to the Conversion Date, under the terms of an escrow agreement (the Escrow Agreement) which will be entered into by and among the Company, Anthem and an escrow agent (the Escrow Agent).[31] The Escrow Agent will be an unrelated New York bank with trust powers that is selected by the Company, and accepted by Anthem, to act as Escrow Agent under the Escrow Agreement.

The Company will deposit, into the Escrow Fund, amounts recovered from insurers with respect to the Contingent Litigation Matter, net of any reasonable out-of-pocket costs and expenses incurred in effecting such recovery. The Escrow Fund will also provide funding for the payment of (a) the net after-tax amount of costs and expenses attributable solely to the Contingent Litigation Matter and (b) such other amounts as may be specified in the Escrow Agreement or in the Alliance Agreement. Following the satisfaction of all such costs and expenses, the Escrow Agreement will provide for the payment of Cash consideration by the Company to Eligible Policyholders. Tax benefits related to the costs and expenses will be determined once they are finally realized by the Company. However, the Company may withdraw amounts, from time to time, to cover such costs and expenses.

The Escrow Fund will continue until the Contingent Litigation Matter has been finally disposed of by binding settlement or court order, all tax amounts have been finally determined, all amounts that are reasonably recoverable from any insurer in respect of the Contingent Litigation Matter are recovered, and all amounts in the Escrow Fund have been paid or distributed by the Escrow Agent in accordance with the Escrow Agreement and the Alliance Agreement. Upon delivery by the Company and the Policyholder Committee of a certificate certifying that all such amounts have been paid, the Escrow Fund will terminate and all remaining amounts held in the Escrow Fund will be distributed to Eligible Policyholders in accordance with the Plan of Conversion. No amounts need be distributed if the Policyholder Committee determines that it would be impractical to do so, taking into account the costs of distribution in relation to the amounts to be distributed. Any amounts that are not so distributed will instead be distributed to a charitable foundation selected by the Policyholder Committee.

Amounts held in the Escrow Fund will be invested by the Escrow Agent solely in obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States of America or an agency or instrumentality thereof with a maturity date of one year or less from the date of investment. All costs and expenses of maintaining the Escrow Fund, including the fees and expenses of the Escrow Agent, the costs and expenses of making distributions out of the Escrow Fund and the fees and expenses of the Policyholder Committee, will be borne by the Escrow Fund. The rights of Eligible Policyholders to amounts held in the Escrow Fund will not be represented by any form of certificate or instrument and will not be transferable or assignable except by will, the laws of intestacy or by other operation of law.

A committee comprised of five individuals who were members of the Board of Directors of the Company prior to the Conversion Date and are acceptable to Anthem (the Policyholder Committee) will oversee the conduct of the Contingent Litigation Matter.[32] The Policyholder Committee will also certify amounts payable to the Company out of the Escrow Fund for the indemnification of costs incurred by the Company related to the Contingent Litigation Matter. The Policyholder Committee may then dispute the amounts claimed by the Company. However, once the dispute is settled pursuant to provisions in the Alliance Agreement, the Policyholder Committee will certify the indemnification amounts payable to the Company.

In addition, the Commissioner will retain regulatory oversight over the investment and distribution of the assets held in the Escrow Fund to ensure that the interests of Eligible Policyholders are protected.

The Company expects that less than 25 percent of the interests in the Escrow Fund will be held by ''benefit plan investors'' within the meaning of the Department's Plan Asset Regulations, 29 CFR 2510.3–101(f), and, accordingly, the assets of the Escrow Fund should not constitute ''plan assets'' subject to the Act. If the Company determines that 25 percent threshold has been exceeded by Plan investors, it will inform the Department of this determination.

Company Health Plan Oversight

10. The Company has arranged for the retention of a committee, comprised of three management-level employees, to act as a fiduciary for the Company Health Plan in connection with the implementation of the Plan of Conversion. The Company Health Plan Committee will determine whether to vote for or against the implementation of the Plan of Conversion. The Company Health Plan Committee's vote on behalf of the Company Health Plan will represent one vote out of the approximately 171,403 votes which may be cast by Eligible Policyholders. The Company does not believe that the Company Health Plan Committee will exercise any investment discretion with respect to the type of consideration to be distributed in the demutualization, since the compensation will consist solely of Cash.

11. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Plan of Conversion will be implemented in accordance with procedural and substantive safeguards that are imposed under Kansas law and will be subject to review and supervision of the Commissioner.

(b) The Commissioner will review the terms and options that are provided to Eligible Policyholders, including Plans, as part of such Commissioner's review of the Plan of Conversion and the Commissioner will approve the Plan of Conversion following a determination that, among other things, the Plan of Conversion is fair and equitable to policyholders.

(c) The Plan of Conversion will provide the Company with access to new sources of capital that should help

[31] It is represented that the Escrow Fund was required due to the difficulty in estimating the potential costs related to the Contingent Litigation Matter and to assure Eligible Policyholders that the acquisition offers received by the Company did not reflect any discount to the value of the Company due to the Contingent Litigation Matter. Thus, the Escrow Fund is intended to facilitate the Anthem transaction without diminishing potential returns to policyholders.

[32] It is represented that no members of the Policyholder Committee will serve on the Company Health Plan Committee that is described in Representation 10.

sustain the Company's financial strength, increase its ability to conduct its business efficiently and improve the Company's competitive position in the insurance industry.

(d) With the exception of the Company Health Plan, one or more independent Plan fiduciaries will determine whether to vote for or against the implementation of the Plan of Conversion, following the receipt of full written disclosure from the Company.

(e) In the case of the Company Health Plan, the Company Health Plan Committee will determine whether to vote for or against the implementation of the Plan of Conversion, but it will not otherwise exercise investment discretion over the Company Health Plan's assets.

(f) Each Eligible Policyholder will have an opportunity to comment on the Plan of Conversion and will be solely responsible for any decisions that may permitted under the Plan of Conversion regarding the Cash consideration to be received in the demutualization.

(g) The proposed exemption will allow Eligible Policyholders that are Plans to receive Cash in exchange for their membership interests in the Company, which will be extinguished, and neither the Company nor any of its affiliates will exercise investment discretion or provide ''investment advice,'' within the meaning of 29 CFR 2510.3–21(c), with respect to such decisions.

(h) All Plans that are Eligible Policyholders will participate in the transactions and on the same basis as Eligible Policyholders that are not Plans.

(i) The demutualization will not, in any way, change premiums or reduce policy benefits, guarantees or other policy obligations of the Company to its policyholders and contractholders.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady of the Department, telephone (202) 693–8556. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 27th day of December, 2001.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 02–24 Filed 1–2–02; 8:45 am]

BILLING CODE 4510–29–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–237 and 50–249]**

## Exelon Generation Company, LLC; Notice of Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 191 to Facility Operating License No. DPR–19 and Amendment No. 185 to Facility Operating License No. DPR–25, issued to Exelon Generation Company, LLC (the licensee), which revised the Operating License (OL) and Technical Specifications (TS) for operation of the Dresden Nuclear Power Station, Units 2 and 3 (DNPS) located in Grundy County, Illinois. The amendment is effective as of the date of issuance.

The amendment modified the OL and TS to allow an increase of the authorized operating power level from 2527 megawatts thermal (MWt) to 2957 MWt at DNPS. The change represents an increase of approximately 17 percent above the current rated thermal power and is considered an extended power uprate.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing in connection with this action was published in the **Federal Register** on November 20, 2001 (66 FR 58183). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment (66 FR 65752).

Further details with respect to the action may be found in (1) The application for amendment dated December 27, 2000, as supplemented by letters dated February 12; April 6 and 13; May 3, 18, and 29; June 5, 7, and 15; July 6 and 23; August 7, 8, 9, 13 (two letters), 14 (two letters), 29, and 31 (two letters); September 5 (two letters), 14, 19, 25, 26, and 27 (two letters); October 17; November 2, 16, and 30; and December 10, 17 and 18, 2001, (2) Amendment Nos. 191 and 185 to License Nos. DPR–19 and DPR–25, respectively, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. 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.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 21st day of December, 2001.

For the Nuclear Regulatory Commission.

**Lawrence W. Rossbach,**

*Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 02–73 Filed 1–2–02; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–254 and 50–265]**

### Exelon Generation Company, LLC; Notice of Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 202 to Facility Operating License No. DPR–29 and Amendment No. 198 to Facility Operating License No. DPR–30, issued to Exelon Generation Company, LLC (the licensee), which revised the Operating License (OL) and Technical Specifications (TS) for operation of the Quad Cities Nuclear Power Station, Units 1 and 2 (QCNPS) located in Rock Island County, Illinois. The amendment is effective as of the date of issuance.

The amendment modified the OL and TS to allow an increase of the authorized operating power level from 2511 megawatts thermal (MWt) to 2957 MWt at QCNPS. The change represents an increase of approximately 17.8 percent above the current rated thermal power and is considered an extended power uprate.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing in connection with this action was published in the **Federal Register** on November 19, 2001 (66 FR 57990). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment (66 FR 65759).

Further details with respect to the action may be found in (1) the application for amendment dated December 27, 2000, as supplemented by letters dated February 12, March 20, April 6 and 13, May 3, 18, and 29, June 5, 7, and 15, July 6 and 23, August 7, 8, 9, 13 (two letters), 14 (two letters), 29, and 31 (two letters), September 5, 19, 25, and 27 (two letters), October 17, November 2 (two letters), 16, and 30, and December 10 and 17, 2001, (2) Amendment Nos. 202 and 198 to License Nos. DPR–29 and DPR–30, respectively, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. 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.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 21st day of December, 2001.

For the Nuclear Regulatory Commission.

**Stewart N. Bailey,**

*Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management Office of Nuclear Reactor Regulation.*

[FR Doc. 02–74 Filed 1–2–02; 8:45 am]

**BILLING CODE 7590–01–P**

## OFFICE OF MANAGEMENT AND BUDGET

### Public Availability of Year 2001 Agency Inventories Under the Federal Activities Inventory Reform Act of 1998 (Public Law 105–270) (''FAIR Act'')

**AGENCY:** Office of Management and Budget, Executive Office of the President.

**ACTION:** Notice of Public Availability of Agency Inventories of Activities That Are Not Inherently Governmental.

**SUMMARY:** Agency Inventories of Activities that are not Inherently Governmental are now available to the public from the agencies listed below, in accordance with the ''Federal Activities Inventory Reform Act of 1998'' (Public Law 105–270) (''FAIR Act''). This is the third release of the 2001 FAIR Act inventories. In addition, the Office of Federal Procurement Policy has prepared and has made available a summary FAIR Act User's Guide through its Internet site: *http://www.whitehouse.gov/OMB/procurement/index.html.* This User's Guide will help interested parties review 2001 FAIR Act inventories, and will also include the web-site addresses to access agency inventories.

The FAIR Act requires that OMB publish an announcement of public availability of agency Inventories of Activities that are not Inherently Governmental upon completion of OMB's review and consultation process concerning the content of the agencies' inventory submissions. OMB has now completed this process for the year 2001.

The attached Inventories of Activities that are not Inherently Governmental are now available.

**Mitchell E. Daniels, Jr.,**

*Director.*

Attachment.

ATTACHMENT

| Agency | Contact |
|---|---|
| Agriculture | Joseph Marshall, 202–720–8345 Website: www.usda.gov/ocfo. |
| Agriculture (OIG) | Delmas Thornsbury, 202–720–4474 Website: www.usda.gov/oig. |
| Commodity Futures Trading Commission | Emory Bevill, 202–418–5187 Website: www.cftc.gov/. |

ATTACHMENT—Continued

| Agency | Contact |
|---|---|
| Central Intelligence Agency | CIA Office of Public Affairs, 703–482–0623. No Website available. |
| Federal Financial Institutions Examinations Council Appraisal Subcommittee. | Marc Weinberg, 202–872–7520 Website: www.asc.gov. |
| General Services Administration | Tom Fitzpatrick, 202–501–0324 Website: www.cfo.gsa.gov. |
| Housing and Urban Development | Janice Blake-Green, 202–708–0638 Website: www.hud.gov/cfo/cforept.html. |
| Justice | Larry Silvis, 202–616–3754 Website: www.usdoj.gov. |
| Labor | Kathy Alejandro, 202–693–4026 Website: www.dol.gov. |
| National Capital Planning Commission | Connie Harshaw, 202–482–7200 Website: www.ncpc.gov. |
| National Labor Relations Board (OIG) | Emil George, 202–273–1960 Website: www.nlrb.gov/active.html. |
| Social Security Administration | Phil Kelly, 410–965–4656 Website: www.ssa.gov/budget. |
| Smithsonian Institution | Bruce Dauer, 202–357–2917 Website: www.si.edu. |
| Transportation | Bill Moga, 202–366–9666 Website: www.dot.gov. |
| Treasury | Kevin Whitfield, 202–622–0248 Website: www.treas.gov/fair. |
| U.S. Commission on Civil Rights | George Harbison, 202–376–8356 Website: www.usccr.gov. |
| Woodrow Wilson Center | Ronnie Dempsey, 202–691–4216 Website: www.wilsoncenter.org. |

[FR Doc. 02–43 Filed 1–2–02; 8:45 am]
BILLING CODE 3110–01–P

## OFFICE OF MANAGEMENT AND BUDGET

### Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies

**AGENCY:** Office of Management and Budget, Executive Office of the President.

**ACTION:** Final guidelines.

**SUMMARY:** These final guidelines implement section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106–554; H.R. 5658). Section 515 directs the Office of Management and Budget (OMB) to issue government-wide guidelines that ''provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies.'' By October 1, 2002, agencies must issue their own implementing guidelines that include ''administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency'' that does not comply with the OMB guidelines. These final guidelines also reflect the changes OMB made to the guidelines issued September 28, 2001, as a result of receiving additional comment on the ''capable of being substantially reproduced'' standard (paragraphs V.3.B, V.9, and V.10), which OMB previously issued on September 28, 2001, on an interim final basis.

**DATES:** *Effective Date:* January 3, 2002.

**FOR FURTHER INFORMATION CONTACT:** Brooke J. Dickson, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Telephone (202) 395–3785 or by e-mail to informationquality@omb.eop.gov.

**SUPPLEMENTARY INFORMATION:** In section 515(a) of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106–554; H.R. 5658), Congress directed the Office of Management (OMB) to issue, by September 30, 2001, government-wide guidelines that ''provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies * * *'' Section 515(b) goes on to state that the OMB guidelines shall:

''(1) apply to the sharing by Federal agencies of, and access to, information disseminated by Federal agencies; and

''(2) require that each Federal agency to which the guidelines apply—

''(A) issue guidelines ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by the agency, by not later than 1 year after the date of issuance of the guidelines under subsection (a);

''(B) establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the guidelines issued under subsection (a); and

''(C) report periodically to the Director—

''(i) the number and nature of complaints received by the agency regarding the accuracy of information disseminated by the agency and

''(ii) how such complaints were handled by the agency.''

Proposed guidelines were published in the **Federal Register** on June 28, 2001 (66 FR 34489). Final guidelines were published in the **Federal Register** on September 28, 2001 (66 FR 49718). The Supplementary Information to the final guidelines published in September 20001 provides background, the underlying principles OMB followed in issuing the final guidelines, and statements of intent concerning detailed provisions in the final guidelines.

In the final guidelilnes published in September 2001, OMB also requested additional comment on the ''capable of being substantially reproduced'' standard and the related definition of ''influential scientific or statistical information'' (paragraphs V.3.B, V.9, and V.10), which were issued on an interim final basis. The final guidelines published today discuss the public comments OMB received, the OMB response, and amendments to the final guidelines published in September 2001.

In developing agency-specific guidelines, agencies should refer both to the Supplementary Information to the final guidelines published in the **Federal Register** on September 28, 2001 (66 FR 49718), and also to the Supplementary Information published today. We stress that the three ''Underlying Principles'' that OMB followed in drafting the guidelines that we published on September 28, 2001 (66 FR 49719), are also applicable to the amended guidelines that we publish today.

In accordance with section 515, OMB has designed the guidelines to help agencies ensure and maximize the quality, utility, objectivity and integrity of the information that they disseminate (meaning to share with, or give access

to, the public). It is crucial that information Federal agencies disseminate meets these guidelines. In this respect, the fact that the Internet enables agencies to communicate information quickly and easily to a wide audience not only offers great benefits to society, but also increases the potential harm that can result from the dissemination of information that does not meet basic information quality guidelines. Recognizing the wide variety of information Federal agencies disseminate and the wide variety of dissemination practices that agencies have, OMB developed the guidelines with several principles in mind.

First, OMB designed the guidelines to apply to a wide variety of government information dissemination activities that may range in importance and scope. OMB also designed the guidelines to be generic enough to fit all media, be they printed, electronic, or in other form. OMB sought to avoid the problems that would be inherent in developing detailed, prescriptive, ''one-size-fits-all'' government-wide guidelines that would artificially require different types of dissemination activities to be treated in the same manner. Through this flexibility, each agency will be able to incorporate the requirements of these OMB guidelines into the agency's own information resource management and administrative practices.

Second, OMB designed the guidelines so that agencies will meet basic information quality standards. Given the administrative mechanisms required by section 515 as well as the standards set forth in the Paperwork Reduction Act, it is clear that agencies should not disseminate substantive information that does not meet a basic level of quality. We recognize that some government information may need to meet higher or more specific information quality standards than those that would apply to other types of government information. The more important the information, the higher the quality standards to which it should be held, for example, in those situations involving ''influential scientific, financial, or statistical information'' (a phrase defined in these guidelines). The guidelines recognize, however, that information quality comes at a cost. Accordingly, the agencies should weigh the costs (for example, including costs attributable to agency processing effort, respondent burden, maintenance of needed privacy, and assurances of suitable confidentiality) and the benefits of higher information quality in the development of information, and the level of quality to which the information disseminated will be held.

Third, OMB designed the guidelines so that agencies can apply them in a common-sense and workable manner. It is important that these guidelines do not impose unnecessary administrative burdens that would inhibit agencies from continuing to take advantage of the Internet and other technologies to disseminate information that can be of great benefit and value to the public. In this regard, OMB encourages agencies to incorporate the standards and procedures required these guidelines into their existing information resources management and administrative practices rather than create new and potentially duplicative or contradictory processes. The primary example of this is that the guidelines recognize that, in accordance with OMB Circular A–130, agencies already have in place well-established information quality standards and administrative mechanisms that allow persons to seek and obtain correction of information that is maintained and disseminated by the agency. Under the OMB guidelines, agencies need only ensure that their own guidelines are consistent with these OMB guidelines, and then ensure that their administrative are consistent with these OMB guidelines, and then ensure that their administrative mechanisms satisfy the standards and procedural requirements in the new agency guidelines. Similarly, agencies may rely on their implementation of the Federal Government's computer security laws (formerly, the Computer Security Act, and now the computer security provisions of the Paperwork Reduction Act) to establish appropriate security safeguards for ensuring the ''integrity'' of the information that the agencies disseminate.

In addition, in response to concerns expressed by some of the agencies, we want to emphasize that OMB recognizes that Federal agencies provide a wide variety of data and information. Accordingly, OMB understands that the guidelines discussed below cannot be implemented in the same way by each agency. In some cases, for example, the data disseminated by an agency are not collected by that agency; rather, the information the agency must provide in a timely manner is compiled from a variety of sources that are constantly updated and revised and may be confidential. In such cases, while agencies' implementation of the guidelines may differ, the essence of the guidelines will apply. That is, these agencies must make their methods transparent by providing documentation, ensure quality by reviewing the underlying methods used in developing the data and consulting (as appropriate) with experts and users, and keep users informed about corrections and revisions.

**Summary of OMB Guidelines**

These guidelines apply to Federal agencies subject to the Paperwork Reduction Act (44 U.S.C. chapter 35). Agencies are directed to develop information resources management procedures for reviewing and substantiating (by documentation or other means selected by the agency) the quality (including the objectivity, utility, and integrity) of information before it is disseminated. In addition, agencies are to establish administrative mechanisms allowing affected persons to seek and obtain, where appropriate, correction of information disseminated by the agency that does not comply with the OMB or agency guidelines. Consistent with the underlying principles described above, these guidelines stress the importance of having agencies apply these standards and develop their administrative mechanisms so they can be implemented in a common sense and workable manner. Moreover, agencies must apply these standards flexibly, and in a manner appropriate to the nature and timeliness of the information to be disseminated, and incorporate them into existing agency information resources management and administrative practices.

Section 515 denotes four substantive terms regarding information disseminated by Federal agencies: quality, utility, objectivity, and integrity. It is not always clear how each substantive term relates—or how the four terms in aggregate relate—to the widely divergent types of information that agencies disseminate. The guidelines provide definitions that attempt to establish a clear meaning so that both the agency and the public can readily judge whether a particular type of information to be disseminated does or does not meet these attributes.

In the guidelines, OMB defines ''quality'' as the encompassing term, of which ''utility,'' ''objectivity,'' and ''integrity'' are the constituents. ''Utility'' refers to the usefulness of the information to the intended users. ''Objectivity'' focuses on whether the disseminated information is being presented in an accurate, clear, complete, and unbiased manner, and as a matter of substance, is accurate, reliable, and unbiased. ''Integrity'' refers to security—the protection of information from unauthorized access or revision, to ensure that the information is not compromised

through corruption or falsification. OMB modeled the definitions of ''information,'' ''government information,'' ''information dissemination product,'' and ''dissemination'' on the longstanding definitions of those terms in OMB Circular A–130, but tailored them to fit into the context of these guidelines.

In addition, Section 515 imposes two reporting requirements on the agencies. The first report, to be promulgated no later than October 1, 2002, must provide the agency's information quality guidelines that describe administrative mechanisms allowing affected persons to seek and obtain, where appropriate, correction of disseminated information that does not comply with the OMB and agency guidelines. The second report is an annual fiscal report to OMB (to be first submitted on January 1, 2004) providing information (both quantitative and qualitative, where appropriate) on the number, nature, and resolution of complaints received by the agency regarding its perceived or confirmed failure to comply with these OMB and agency guidelines.

**Public Comments and OMB Response**

*Applicability of Guidelines.* Some comments raised concerns about the applicability of these guidelines, particularly in the context of scientific research conducted by Federally employed scientists or Federal grantees who publish and communicate their research findings in the same manner as their academic colleagues. OMB believes that information generated and disseminated in these contexts is not covered by these guidelines unless the agency represents the information as, or uses the information in support of, an official position of the agency.

As a general matter, these guidelines apply to ''information'' that is ''disseminated'' by agencies subject to the Paperwork Reduction Act (44 U.S.C. 3502(1)). See paragraphs II, V.5 and V.8. The definitions of ''information'' and ''dissemination'' establish the scope of the applicability of these guidelines. ''Information'' means ''any communication or representation of knowledge such as facts or data * * *'' This definition of information in paragraph V.5 does ''not include opinions, where the agency's presentation makes it clear that what is being offered is someone's opinion rather than fact or the agency's views.''

''Dissemination'' is defined to mean ''agency initiated or sponsored distribution of information to the public.'' As used in paragraph V.8, ''agency INITIATED * * * distribution of information to the public'' refers to information that the agency disseminates, e.g., a risk assessment prepared by the agency to inform the agency's formulation of possible regulatory or other action. In addition, if an agency, as an institution, disseminates information prepared by an outside party in a manner that reasonably suggests that the agency agrees with the information, this appearance of having the information represent agency views makes agency dissemination of the information subject to these guidelines. By contrast, an agency does not ''initiate'' the dissemination of information when a Federally employed scientist or Federal grantee or contractor publishes and communicates his or her research findings in the same manner as his or her academic colleagues, even if the Federal agency retains ownership or other intellectual property rights because the Federal government paid for the research. To avoid confusion regarding whether the agency agrees with the information (and is therefore disseminating it through the employee or grantee), the researcher should include an appropriate disclaimer in the publication or speech to the effect that the ''views are mine, and do not necessarily reflect the view'' of the agency.

Similarly, as used in paragraph V.8., ''agency * * * SPONSORED distribution of information to the public'' refers to situations where an agency has directed a third-party to disseminate information, or where the agency has the authority to review and approve the information before release. Therefore, for example, if an agency through a procurement contract or a grant provides for a person to conduct research, and then the agency directs the person to disseminate the results (or the agency reviews and approves the results before they may be disseminated), then the agency has ''sponsored'' the dissemination of this information. By contrast, if the agency simply provides funding to support research, and it the researcher (not the agency) who decides whether to disseminate the results and—if the results are to be released—who determines the content and presentation of the dissemination, then the agency has not ''sponsored'' the dissemination even though it has funded the research and even if the Federal agency retains ownership or other intellectual property rights because the Federal government paid for the research. To avoid confusion regarding whether the agency is sponsoring the dissemination, the researcher should include an appropriate disclaimer in the publication or speech to the effect that the ''views are mine, and do not necessarily reflect the view'' of the agency. On the other hand, subsequent agency dissemination of such information requires that the information adhere to the agency's information quality guidelines. In sum, these guidelines govern an agency's dissemination of information, but generally do not govern a third-party's dissemination of information (the exception being where the agency is essentially using the third-party to disseminate information on the agency's behalf). Agencies, particularly those that fund scientific research, are encouraged to clarify the applicability of these guidelines to the various types of information they and their employees and grantees disseminate.

Paragraph V.8 also states that the definition of ''dissemination'' does not include ''* * * distribution limited to correspondence with individuals or persons, press releases, archival records, public filings, subpoenas or adjudicative processes.'' The exemption from the definition of ''dissemination'' for ''adjudicative processes'' is intended to exclude, from the scope of these guidelines, the findings and determinations that an agency makes in the course of adjudications involving specific parties. There are well-established procedural safeguards and rights to address the quality of adjudicatory decisions and to provide persons with an opportunity to contest decisions. These guidelines do not impose any additional requirements on agencies during adjudicative proceedings and do not provide parties to such adjudicative proceedings any additional rights of challenge or appeal.

*The Presumption Favoring Peer-Reviewed Information.* As a general matter, in the scientific and research context, we regard technical information that has been subjected to formal, independent, external peer review as presumptively objective. As the guidelines state in paragraph V.3.b.i: ''If data and analytic results have been subjected to formal, independent, external peer review, the information may generally be presumed to be of acceptable objectivity.'' An example of a formal, independent, external peer review is the review process used by scientific journals.

Most comments approved of the prominent role that peer review plays in the OMB guidelines. Some comments contended that peer review was not accepted as a universal standard that incorporates an established, practiced, and sufficient level of objectively. Other

comments stated that the guidelines would be better clarified by making peer review one of several factors that an agency should consider in assessing the objectivity (and quality in general) of original research. In addition, several comments noted that peer review does not establish whether analytic results are capable of being substantially reproduced. In light of the comments, the final guidelines in new paragraph V.3.b.i qualify the presumption in favor of peer-reviewed information as follows: ''However, this presumption is rebuttable based on a persuasive showing by the petitioner in a particular instance.''

We believe that transparency is important for peer review, and these guidelines set minimum standards for the transparency of agency-sponsored peer review. As we state in new paragraph V.3.b.i: ''If data and analytic results have been subjected to formal, independent, external peer review, the information may generally be presumed to be of acceptable objectivity. However, this presumption is rebuttable based on a persuasive showing by the petitioner in particular instance. If agency-sponsored peer review is employed to help satisfy the objectively standard, the review process employed shall meet the general criteria for competent and credible peer review recommended by OMB–OIRA to the President's Management Council (9/20/01) (http://www.whitehouse.gov/omb/inforeg/oira_review-process.html), namely, 'that (a) peer reviewers be selected primarily on the basis of necessary technical expertise, (b) peer reviewers be expected to disclosed to agencies prior technical/policy positions they may have taken on the issues at hand, (c) peer reviewers be expected to disclose to agencies their sources of personal and institutional funding (private or public sector), and (d) peer reviews be conducted in an open and rigorous manner.' ''

The importance of these general criteria for competent and credible peer review has been supported by a number of expert bodies. For example. ''the work of fully competent peer-review panels can be undermined by allegations of conflict of interest and bias. Therefore, the best interests of the Board are served by effective policies and procedures regarding potential conflicts of interest, impartiality, and panel balance.'' (*EPA's Science Advisory Board Panels: Improved Policies and Procedures Needed to Ensure Independence and Balance,* GAO–01–536, General Accounting Office, Washington, DC, June 2001, page 19.) As another example, ''risk analyses should be peer-reviewed and accessible—both physically and intellectually—so that decision-makers at all levels will be able to respond critically to risk characterizations. The intensity of the peer reviews should be commensurate with the significance of the risk or its management implications.'' (*Setting Priorities, Getting Results: A New Direction for EPA,* Summary Report, National Academy of Public Administration, Washington, DC, April 1995, page 23.)

These criteria for peer reviewers are generally consistent with the practices now followed by the National Research Council of the National Academy of Sciences. In considering these criteria for peer reviewers, we note that there are many types of peer reviews and that agency guidelines concerning the use of peer review should tailor the rigor of peer review to the importance of the information involved. More generally, agencies should define their peer-review standards in appropriate ways, given the nature and importance of the information they disseminate.

*Is Journal Peer Review Always Sufficient?* Some comments argued that journal peer review should be adequate to demonstrate quality, even for influential information that can be expected to have major effects or public policy. OMB believes that this position overstates the effectiveness of journal peer review as a quality-control mechanism.

Although journal peer review is clearly valuable, there are cases where flawed science has been published in respected journals. For example, the NIH Office of Research Integrity recently reported the following case regarding environmental health research:

> ''Based on the report of an investigation conducted by [XX] University, dated July 16, 1999, and additional analysis conducted by ORI in its oversight review, the US Public Health Service found that Dr. [X] engaged in scientific misconduct. Dr. [X] committed scientific misconduct by intentionally falsifying the research results published in the journal SCIENCE and by providing falsified and fabricated materials to investigating officials at [XX] University in response to a request for original data to support the research results and conclusions report in the SCIENCE paper. In addition, PHS finds that there is no original data or other corroborating evidence to support the research results and conclusions reported in the SCIENCE paper as whole.'' (66 FR 52137, October 12, 2001).

Although such cases of falsification are presumably rare, there is a significance scholarly literature documenting quality problems with articles published in peer-reviewed research. ''In a [peer-reviewed] meta-analysis that surprised many—and some doubt—researchers found little evidence that peer review actually improves the quality of research papers.'' (*See, e.g., Science,* Vol. 293, page 2187 (September 21, 2001.)) In part for this reason, many agencies have already adopted peer review and science advisory practices that go beyond journal peer review. *See, e.g.,* Sheila Jasanoff, *The Fifth Branch: Science Advisers as Policy Makers,* Cambridge, MA, Harvard University Press, 1990; Mark R. Powell, *Science at EPA: Information in the Regulatory Process.* Resources for the Future, Washington, DC., 1999, pages 138–139; 151–153; *Implementation of the Environmental Protection Agency's Peer Review Program: An SAB Evaluation of Three Reviews,* EPA–SAB–RSAC–01–009, A Review of the Research Strategies Advisory Committee (RSAC) of the EPA Science Advisory Board (SAB), Washington, DC., September 26, 2001. For information likely to have an important public policy or private sector impact, OMB believes that additional quality checks beyond peer review are appropriate.

*Definition of ''Influential''.* OMB guidelines apply stricter quality standards to the dissemination of information that is considered ''influential.'' Comments noted that the breadth of the definition of ''influential'' in interim final paragraph V.9 requires much speculation on the part of agencies.

We believe that this criticism has merit and have therefore narrowed the definition. In this narrower definition, ''influential'', when used in the phrase ''influential scientific, financial, or statistical information'', is amended to mean that ''the agency can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important public policies or important private sector decisions.'' The intent of the new phrase ''clear and substantial'' is to reduce the need for speculation on the part of agencies. We added the present tense—''or does have''—to this narrower definition because on occasion, an information dissemination may occur simultaneously with a particular policy change. In response to a public comment, we added an explicit reference to ''financial'' information as consistent with our original intent.

Given the differences in the many Federal agencies covered by these guidelines, and the differences in the nature of the information they disseminate, we also believe it will be helpful if agencies elaborate on this definition of ''influential'' in the context of their missions and duties, with due consideration of the nature of the

information they disseminate. As we state in amended paragraph V.9, ''Each agency is authorized to define 'influential' in ways appropriate for it given the nature and multiplicity of issues for which the agency is responsible.''

*Reproducibility.* As we state in new paragraph V.3.b.ii: ''If an agency is responsible for disseminating influential scientific, financial, or statistical information, agency guidelines shall include a high degree of transparency about data and methods to facilitate the reproducibility of such information by qualified third parties.'' OMB believes that a reproducibility standard is practical and appropriate for information that is considered ''influential'', as defined in paragraph V.9—that ''will have or does have a clear and substantial impact on important public policies or important private sector decisions.'' The reproducibility standard applicable to influential scientific, financial, or statistical information is intended to ensure that information disseminated by agencies is sufficiently transparent in terms of data and methods of analysis that it would be feasible for a replication to be conducted. The fact that the use of original and supporting data and analytic results have been deemed ''defensible'' by peer-review procedures does not necessarily imply that the results are transparent and replicable.

*Reproducibility of Original and Supporting Data.* Several of the comments objected to the exclusion of original and supporting data from the reproducibility requirements. Comments instead suggested that OMB should apply the reproducibility standard to original data, and that OMB should provide flexibility to the agencies in determining what constitutes ''original and supporting'' data. OMB agrees and asks that agencies consider, in developing their own guidelines, which categories of original and supporting data should be subject to the reproducibility standard and which should not. To help in resolving this issue, we also ask agencies to consult directly with relevant scientific and technical communities on the feasibility of having the selected categories of original and supporting data subject to the reproducibility standard. Agencies are encouraged to address ethical, feasibility, and confidentiality issues with care. As we state in new paragraph V.3.b.ii.A, ''Agencies may identify, in consultation with the relevant scientific and technical communities, those particular types of data that can practicably be subjected to a reproducibility requirement, given ethical, feasibility, or confidentiality constraints.'' Further, as we state in our expanded definition of ''reproducibility'' in paragraph V.10, ''If agencies apply the reproducibility test to specific types of original or supporting data, the associated guidelines shall provide relevant definitions of reproducibility (*e.g.* standards for replication of laboratory data).'' OMB urges caution in the treatment of original and supporting data because it may often be impractical or even impermissible or unethical to apply the reproducibility standard to such data. For example, it may not be ethical to repeat a ''negative'' (ineffective) clinical (therapeutic) experiment and it may not be feasible to replicate the radiation exposures studied after the Chernobyl accident. When agencies submit their draft agency guidelines for OMB review, agencies should include a description of the extent to which the reproducibility standard is applicable and reflect consultations with relevant scientific and technical communities that were used in developing guidelines related to applicability of the reproducibility standard to original and supporting data.

It is also important to emphasize that the reproducibility standard does not apply to all original and supporting data disseminated by agencies. As we state in new paragraph V.3.b.ii.A, ''With regard to original and supporting data related [to influential scientific, financial, or statistical information], agency guidelines shall not require that all disseminated data be subjected to a reproducibility requirement.'' In addition, we encourage agencies to address how greater transparency can be achieved regarding original and supporting data. As we also state in new paragraph V.3.b.ii.A, ''It is understood that reproducibility of data is an indication of transparency about research design and methods and thus a replication exercise (*i.e.,* a new experiment, test, or sample) shall not be required prior to each dissemination.'' Agency guidelines need to achieve a high degree of transparency about data even when reproducibility is not required.

*Reproducibility of Analytic Results.* Many public comments were critical of the reproducibility standard and expressed concern that agencies would be required to reproduce each analytical result before it is disseminated. While several comments commended OMB for establishing an appropriate balance in the ''capable of being substantially reproduced'' standard, others considered this standard to be inherently subjective. There were also comments that suggested the standard would cause more burden for agencies.

It is no OMB's intent that each agency must reproduce each analytic result before it is disseminated. The purpose of the reproducibility standard is to cultivate a consistent agency commitment to transparency about how analytic results are generated: the specific data used, the various assumptions employed, the specific analytical methods applied, and the statistical procedures employed. If sufficient transparency is achieved on each of these matters, then an analytic result should meet the ''capable of being substantially reproduced'' standard.

While there is much variation in types of analytic results, OMB believes that reproducibility is a practical standard to apply to most types of analytic results. As we state in new paragraph V.3.b.ii.B, ''With regard to analytic results related [to influential scientific, financial, or statistical information], agency guidelines shall generally require sufficient transparency about data and methods that an independent reanalysis could be undertaken by a qualified member of the public. These transparency standards apply to agency analysis of data from a single study as well as to analyses that combine information from multiple studies.'' We elaborate upon this principle in our expanded definition of ''reproducibility'' in paragraph V.10: ''With respect to analytic results, 'capable of being substantially reproduced' means that independent analysis of the original or supporting data using identical methods would generate similar analytic results, subject to an acceptable degree of imprecision or error.''

Even in a situation where the original and supporting data are protected by confidentiality concerns, or the analytic computer models or other research methods may be kept confidential to protect intellectual property, it may still be feasible to have the analytic results subject to the reproducibility standard. For example, a qualified party, operating under the same confidentiality protections as the original analysts, may be asked to use the same data, computer model or statistical methods to replicate the analytic results reported in the original study. *See, e.g.,* ''Reanalysis of the Harvard Six Cities Study and the American Cancer Society Study of Particulate Air Pollution and Mortality,'' A Special Report of the Health Effects Institute's Particle Epidemiology Reanalysis Project, Cambridge, MA, 2000.

The primary benefit of public transparency is not necessarily that errors in analytic results will be detected, although error correction is clearly valuable. The more important benefit of transparency is that the public will be able to assess how much an agency's analytic result hinges on the specific analytic choices made by the agency. Concreteness about analytic choices allows, for example, the implications of alternative technical choices to be readily assessed. This type of sensitivity analysis is widely regarded as an essential feature of high-quality analysis, yet sensitivity analysis cannot be undertaken by outside parties unless a high degree of transparency is achieved. The OMB guidelines do not compel such sensitivity analysis as a necessary dimension of quality, but the transparency achieved by reproducibility will allow the public to undertake sensitivity studies of interest.

We acknowledge that confidentiality concerns will sometimes preclude public access as an approach to reproducibility. In response to public comment, we have clarified that such concerns do include interests in ''intellectual property.'' To ensure that the OMB guidelines have sufficient flexibility with regard to analytic transparency, OMB has, in new paragraph V.3.b.ii.B.i, provided agencies an alternative approach for classes or types of analytic results that cannot practically be subject to the reproducibility standard. ''[In those situations involving influential scientific, financial, or statistical information * * *] making the data and methods publicly available will assist in determining whether analytic results are reproducible. However, the objectivity standard does not override other compelling interests such as privacy, trade secrets, intellectual property, and other confidentiality protections. '' Specifically, in cases where reproducibility will not occur due to other compelling interests, we expect agencies (1) to perform robustness checks appropriate to the importance of the information involved, e.g., determining whether a specific statistic is sensitive to the choice of analytic method, and, accompanying the information disseminated, to document their efforts to assure the needed robustness in information quality, and (2) address in their guidelines the degree to which they anticipate the opportunity for reproducibility to be limited by the confidentiality of underlying data. As we state in new paragraph V.3.b.ii.B.ii, ''In situations where public access to date and methods will not occur due to other compelling interests, agencies shall apply especially rigorous robustness checks to analytic results and document what checks were undertaken. Agency guidelines shall, however, in all cases, require a disclosure of the specific data sources that have been used and the specific quantitative methods and assumptions that have been employed.''

Given the differences in the many Federal agencies covered by these guidelines, and the differences in robustness checks and the level of detail for documentation thereof that might be appropriate for different agencies, we also believe it will helpful if agencies elaborate on these matters in the context of their missions and duties, with due consideration of the nature of the information they disseminate. As we state in new paragraph V.3.b.ii.B.ii, ''Each agency is authorized to define the type of robustness checks, and the level of detail for documentation thereof, in ways appropriate for it given the nature and multiplicity of issues for which the agency is responsible.''

We leave the determination of the appropriate degree of rigor to the discretion of agencies and the relevant scientific and technical communities that work with the agencies. We do, however, establish a general standard for the appropriate degree of rigor in our expanded definition of ''reproducibility'' in paragraph V.10: '' 'Reproducibility' means that the information is capable of being substantially reproduced, subject to an acceptable degree of imprecision. For information judged to have more (less) important impacts, the degree of imprecision that is tolerated is reduced (increased).'' OMB will review each agency's treatment of this issue when reviewing the agency guidelines as a whole.

Commercial also expressed concerns regarding interim final paragraph V.3.B.iii, ''making the data and models publicly available will assist in determining whether analytic results are capable of being substantially reproduced,'' and whether it could be interpreted to constitute public dissemination of these materials, rendering moot the reproducibility test. (For the equivalent provision, see new paragraph V.3.b.ii.B.i.) The OMB guidelines do not require agencies to reproduce each disseminated analytic result by independent reanalysis. Thus, public dissemination of data and models per se does not mean that the analytic result has been reproduced. It means only that the result should be CAPABLE of being reproduced. The transparency associated with this capability of reproduction is what the OMB guidelines are designed to achieve.

We also want to build on a general observation that we made in our final guidelines published in September 2001. In those guidelines we stated: ''... in those situations involving influential scientific[, financial,] or statistical information, the substantial reproducibility standard is added as a quality standard above and beyond some peer review quality standards'' (66 FR 49722 (September 28, 2001)). A hypothetical example may serve to illustrate this point. Assume that two Federal agencies initiated or sponsored the dissemination of five scientific studies after October 1, 2002 (see paragraph III.4) that were, before dissemination, subjected to formal, independent, external peer review, i.e., that met the presumptive standard for ''objectivity'' under paragraph V.3.b.i. Further assume, at the time of dissemination, that neither agency reasonably expected that the dissemination of any of these studies would have ''a clear and substantial impact'' on important public policies, *i.e.,* that these studies were not considered ''influential'' under paragraph V.9, and thus not subject to the reproducibility standards in paragraphs V.3.b.ii.A or B. Then assume, two years later, in 2005, that one of the agencies decides to issue an important and far-reaching regulation based clearly and substantially on the agency's evaluation of the analytic results set forth in these five studies and that such agency reliance on these five studies as published in the agency's notice of proposed rulemaking would constitute dissemination of these five studies. These guidelines would require the rulemaking agency, prior to publishing the notice of proposed rulemaking, to evaluate these five studies to determine if the analytic results stated therein would meet the ''capable of being substantially reproduced'' standards in paragraph V.3.b.ii.B and, if necessary, related standards governing original and supporting data in paragraph V.3.b.ii.A. If the agency were to decide that any of the five studies would not meet the reproducibility standard, the agency may still rely on them but only if they satisfy the transparency standard and—as applicable—the disclosure of robustness checks required by these guidelines. Otherwise, the agency should not disseminate any of the studies that did not meet the applicable standards in the guidelines at the time

it publishes the notice of proposed rulemaking.

Some comments suggested that OMB consider replacing the reproducibility standard with a standard concerning ''confirmation'' of results for influential scientific and statistical information. Although we encourage agencies to consider ''confirmation'' as a relevant standard—at least in some cases—for assessing the objectivity of original and supporting data, we believe that ''confirmation'' is too stringent a standard to apply to analytic results. Often the regulatory impact analysis prepared by an agency for a major rule, for example, will be the only formal analysis of an important subject. It would be unlikely that the results of the regulatory impact analysis had already been confirmed by other analyses. The ''capable of being substantially reproduced'' standard is less stringent than a ''confirmation'' standard because it simply requires that an agency's analysis be sufficiently transparent that another qualified party could replicate it through reanalysis.

*Health, Safety, and Environmental Information.* We note, in the scientific context, that in 1996 the Congress, for health decisions under the Safe Drinking Water Act, adopted a basic standard of quality for the use of science in agency decisionmaking. Under 42 U.S.C. 300g–1(b)(3)(A), an agency is directed, ''to the degree that an Agency action is based on science,'' to use ''(i) the best available, peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices; and (ii) data collected by accepted methods or best available methods (if the reliability of the method and the nature of the decision justifies use of the data).''

We further note that in the 1996 amendments to the Safe Drinking Water Act, Congress adopted a basic quality standard for the dissemination of public information about risks of adverse health effects. Under 42 U.S.C. 300g–1(b)(3)(B), the agency is directed, ''to ensure that the presentation of information [risk] effects is comprehensive, informative, and understandable.'' The agency is further directed, ''in a document made available to the public in support of a regulation [to] specify, to the extent practicable—(i) each population addressed by any estimate [of applicable risk effects]; (ii) the expected risk or central estimate of risk for the specific populations [affected]; (iii) each appropriate upper-bound or lower-bound estimate of risk; (iv) each significant uncertainty identified in the process of the assessment of [risk] effects and the studies that would assist in resolving the uncertainty; and (v) peer-reviewed studies known to the [agency] that support, are directly relevant to, or fail to support any estimate of [risk] effects and the methodology used to reconcile inconsistencies in the scientific data.''

As suggested in several comments, we have included these congressional standards directly in new paragraph V.3.b.ii.C, and made them applicable to the information disseminated by all the agencies subject to these guidelines: ''With regard to analysis of risks to human health, safety and the environment maintained or disseminated by the agencies, agencies shall either adopt or adapt the quality principles applied by Congress to risk information used and disseminated pursuant to the Safe Drinking Water Act Amendments of 1996 (42 U.S.C. 300g–1(b)(3)(A) & (B)).'' The word ''adapt'' is intended to provide agencies flexibility in applying these principles to various types of risk assessment.

Comments also argued that the continued flow of vital information from agencies responsible for disseminating health and medical information to medical providers, patients, and the public may be disrupted due to these peer review and reproducibility standards. OMB responded by adding to new paragraph V.3.ii.C: ''Agencies responsible for dissemination of vital health and medical information shall interpret the reproducibility and peer-review standards in a manner appropriate to assuring the timely flow of vital information from agencies to medical providers, patients, health agencies, and the public. Information quality standards may be waived temporarily by agencies under urgent situations (*e.g.,* imminent threats to public health or homeland security) in accordance with the latitude specified in agency-specific guidelines.''

*Administrative Correction Mechanisms.* In addition to commenting on the substantive standards in these guidelines, many of the comments noted that the OMB guidelines on the administrative correction of information do not specify a time period in which the agency investigation and response must be made. OMB has added the following new paragraph III.3.i to direct agencies to specify appropriate time periods in which the investigation and response need to be made. ''Agencies shall specify appropriate time periods for agency decisions on whether and how to correct the information, and agencies shall notify the affected persons of the corrections made.''

Several comments stated that the OMB guidelines needed to direct agencies to consider incorporating an administrative appeal process into their administrative mechanisms for the correction of information. OMB agreed, and added the following new paragraph III.3.ii: ''If the person who requested the correction does not agree with the agency's decision (including the corrective action, if any), the person may file for reconsideration within the agency. The agency shall establish an administrative appeal process to review the agency's initial decision, and specify appropriate time limits in which to resolve such requests for reconsideration.'' Recognizing that many agencies already have a process in place to respond to public concerns, it is not necessarily OMB's intent to require these agencies to establish a new or different process. Rather, our intent is to ensure that agency guidelines specify an objective administrative appeal process that, upon further complaint by the affected person, reviews an agency's decision to disagree with the correction request. An objective process will ensure that the office that originally disseminates the information does not have responsibility for both the initial response and resolution of a disagreement. In addition, the agency guidelines should specify that if the agency believes other agencies may have an interest in the resolution of any administrative appeal, the agency should consult with those other agencies about their possible interest.

Overall, OMB does not envision administrative mechanisms that would burden agencies with frivolous claims. Instead, the correction process should serve to address the genuine and valid needs of the agency and its constituents without disrupting agency processes. Agencies, in making their determination of whether or not to correct information, may reject claims made in bad faith or without justification, and are required to undertake only the degree of correction that they conclude is appropriate for the nature and timeliness of the information involved, and explain such practices in their annual fiscal year reports to OMB.

OMS's issuance of these final guidelines is the beginning of an evolutionary process that will include draft agency guidelines, public comment, final agency guidelines, development of experience with OMB and agency guidelines, and continued refinement of both OMB and agency guidelines. Just as OMB requested public comment before issuing these final guidelines, OMB will refine these guidelines as experience develops and further public comment is obtained.

Dated: December 21, 2001.

**John D. Graham,**

*Administrator, Office of Information and Regulatory Affairs.*

**Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies**

*I. OMB Responsibilities*

Section 515 of the Treasury and General Government Appropriations Act for FY2001 (Public Law 106–554) directs the Office of Management and Budget to issue government-wide guidelines that provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information, including statistical information, disseminated by Federal agencies.

*II. Agency Responsibilities*

Section 515 directs agencies subject to the Paperwork Reduction Act (44 U.S.C. 3502(1)) to—

1. Issue their own information quality guidelines ensuring and maximizing the quality, objectivity, utility, and integrity of information, including statistical information, disseminated by the agency no later than one year after the date of issuance of the OMB guidelines;

2. Establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with these OMB guidelines; and

3. Report to the Director of OMB the number and nature of complaints received by the agency regarding agency compliance with these OMB guidelines concerning the quality, objectivity, utility, and integrity of information and how such complaints were resolved.

*III. Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies*

1. Overall, agencies shall adopt a basic standard of quality (including objectivity, utility, and integrity) as a performance goal and should take appropriate steps to incorporate information quality criteria into agency information dissemination practices. Quality is to be ensured and established at levels appropriate to the nature and timeliness of the information to be disseminated. Agencies shall adopt specific standards of quality that are appropriate for the various categories of information they disseminate.

2. As a matter of good and effective agency information resources management, agencies shall develop a process for reviewing the quality (including the objectivity, utility, and integrity) of information before it is disseminated. Agencies shall treat information quality as integral to every step of an agency's development of information, including creation, collection, maintenance, and dissemination. This process shall enable the agency to substantiate the quality of the information it has disseminated through documentation or other means appropriate to the information.

3. To facilitate public review, agencies shall establish administrative mechanisms allowing affected persons to seek and obtain, where appropriate, timely correction of information maintained and disseminated by the agency that does not comply with OMB or agency guidelines. These administrative mechanisms shall be flexible, appropriate to the nature and timeliness of the disseminated information, and incorporated into agency information resources management and administrative practices.

i. Agencies shall specify appropriate time periods for agency decisions on whether and how to correct the information, and agencies shall notify the affected persons of the corrections made.

ii. If the person who requested the correction does not agree with the agency's decision (including the corrective action, if any), the person may filed for reconsideration within the agency. The agency shall establish an administrative appeal process to review the agency's initial decision, and specify appropriate time limits in which to resolve such requests for reconsideration.

4. The Agency's pre-dissemination review, under paragraph III.2, shall apply to information that the agency first disseminates on or after October 1, 2002. The agency's administrative's mechanisms, under paragraph III.3., shall apply to information that the agency disseminates on or after October 1, 2001, regardless of when the agency first disseminated the information.

*IV. Agency Reporting Requirements*

1. Agencies must designate the Chief Information Officer or another official to be responsible for agency compliance with these guidelines.

2. The agency shall respond to complaints in a manner appropriate to the nature and extent of the complaint. Examples of appropriate responses include personal contacts via letter or telephone, form letters, press releases or mass mailings that correct a widely disseminated error or address or frequently raised complaint.

3. Each agency must prepare a draft report, no later than April 1, 2002, providing the agency's information quality guidelines and explaining how such guidelines will ensure and maximize the quality, objectivity, utility, and integrity of information, including statistical information, disseminated by the agency. This report must also detail the administrative mechanisms developed by that agency to allow affected persons to seek and obtain appropriate correction of information maintained and disseminated by the agency that does not comply with the OMB or the agency guidelines.

4. The agency must publish a notice of availability of this draft report in the **Federal Register**, and post this report on the agency's website, to provide an opportunity for public comment.

5. Upon consideration of public comment and after appropriate revision, the agency must submit this draft report to the OMB for review regarding consistency with these OMB guidelines no later than July 1, 2001. Upon completion of that OMB review and completion of this report, agencies must publish notice of the availability of this report in its final form in the **Federal Register**, and post this report on the agency's web site no later than October 1, 2002.

6. On an annual fiscal-year basis, each agency must submit a report to the Director of OMB providing information (both quantitative and qualitative, where appropriate) on the number and nature of complaints received by the agency regarding agency compliance with these OMB guidelines and how such complaints were resolved. Agencies must submit these reports no later than January 1 of each following year, with the first report due January 1, 2004.

*V. Definitions*

1. ''Quality'' is an encompassing term comprising utility, objectivity, and integrity. Therefore, the guidelines sometimes refer to these four statutory terms, collectively, as ''quality.''

2. ''Utility'' refers to the usefulness of the information to its intended users, including the public. In assessing the usefulness of information that the agency disseminates to the public, the agency needs to reconsider the uses of the information not only from perspective of the agency but also from the perspective of the public. As a result, when transparency of information is relevant for assessing the information's usefulness from the

public's perspective, the agency must take care to ensure that transparency has been addressed in its review of the information.

3. ''Objectivity'' involves two distinct elements, presentations and substance.

a. ''Objectivity'' includes whether disseminated information is being presented in an accurate, clear, complete, and unbiased manner. This involves whether the information is presented within a proper context. Sometimes, in disseminating certain types of information to the public, other information must also be disseminated in order to ensure an accurate, clear, complete, and unbiased presentation. Also, the agency needs to identify the sources of the disseminated information (to the extent possible, consistent with confidentiality protections) and, in a specific, financial, or statistical context, the supporting data and models, so that the public can assess for itself whether there may be some reason to question the objectivity of the sources. Where appropriate, data should have full, accurate, transparent documentation, and error sources affecting data quality should be identified and disclosed to users.

b. In addition, ''objectivity'' involves a focus on ensuring accurate, reliable, and unbiased information. In a scientific, financial, or statistical context, the original and supporting data shall be generated, and the analytic results shall be developed, using sound statistical and research methods.

i. If data and analytic results have been subjected to formal, independent, external peer review, the information may generally be presumed to be of acceptable objectivity. However, this presumption is rebuttable based on a persuasive showing by the petitioner in a particular instance. If agency-sponsored peer review is employed to help satisfy the objectivity standard, the review process employed shall meet the general criteria for competent and credible peer review recommended by OMB–OIRA to the President's Management Council (9/20/01) (http://www.whitehouse.gov/omb/inforeg/oira_review-process.html), namely, ''that (a) peer reviewers be selected primarily on the basis of necessary technical expertise, (b) peer reviewers be expected to disclose to agencies prior technical/policy positions they may have taken on the issues at hand, (c) peer reviewers be expected to disclose to agencies their sources of personal and institutional funding (private or public sector), and (d) peer reviews be conducted in an open and vigorous manner.''

ii. If an agency is response for disseminating influential scientific, financial, or statistical information, agency guidelines shall include a high degree of transparency about data and methods to facilitate the reproducibility of such information by qualified third parties.

A. With regard to original and supporting data related thereto, agency guidelines shall not require that all disseminated data be subjected to a reproducibility requirement. Agencies may identify, in consultation with the relevant scientific and technical communities, those particular types of data that can practicable be subjected to a reproducibility requirement, given ethical, feasibility, or confidentiality constraints. It is understood that reproducibility of data is an indication of transparency about research design and methods and thus a replication exercise (i.e., a new experiment, test, or sample) shall not be required prior to each dissemination.

B. With regard to analytic results related thereto, agency guidelines shall generally require sufficient transparency about data and methods that an independent reanalysis could be undertaken by a qualified member of the public. These transparency standards apply to agency analysis of data from a single study as well as to analyses that combine information from multiple studies.

*i.* Making the data and methods publicly available will assist in determining whether analytic results are reproducible. However, the objectivity standard does not override other compelling interests such as privacy, trade secrets, intellectual property, and other confidentiality protections.

*ii.* In situations where public access to data and methods will not occur due to other compelling interests, agencies shall apply especially rigorous robustness checks to analytic results and document what checks were undertaken. Agency guidelines shall, however, in all cases, require a disclosure of the specific data sources that have been used and the specific quantitative methods and assumptions that have been employed. Each agency is authorized to define the type of robustness checks, and the level of detail for documentation thereof, in ways appropriate for it given the nature and multiplicity of issues for such the agency is responsible.

C. With regard to analysis of risks to human health, safety and the environment maintained or disseminated by the agencies, agencies shall either adopt or adapt the equality principles applied by Congress to risk information used and disseminated pursuant to the Safe Drinking Water Act Amendments of 1996 (42 U.S.C. 300g–1(b)(3)(A) & (B)). Agencies responsible for dissemination of vital health and medical information shall interpret the reproducibility and peer-review standards in a manner appropriate to assuring the timely flow of vital information from agencies to medical providers, patients, health agencies, and the public. Information quality standards may be waived temporarily by agencies under urgent situations (*e.g.,* imminent threats to public health or homeland security) in accordance with the latitude specified in agency-specific guidelines.

4. ''Integrity'' refers to the security of information—protection of the information from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification.

5. ''Information'' means any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms. This definition includes information that an agency disseminates from a web page, but does not include the provision of hyperlinks to information that others disseminate. This definition does not include opinions, where the agency's presentation makes it clear that what is being offered is someone's opinion rather than fact or the agency's views.

6. ''Government information'' means information created, collected, processed, disseminated, or disposed of by or for the Federal Government.

7. ''Information dissemination product'' means any books, paper, map, machine-readable material, audiovisual production, or other documentary material, regardless of physical form or characteristic, an agency disseminates to the public. This definition includes any electronic document, CD–ROM, or web page.

8. ''Dissemination'' means agency initiated or sponsored distribution of information to the public (see 5 CFR 1320.3(d) (definition of ''Conduct or Sponsor'')). Dissemination does not include distribution limited to government employees or agency contractors or grantees; intra- or inter-agency use or sharing of government information; and responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or other similar law. This definition also does not include distribution limited to correspondence with individuals or persons, press releases, archival records,

public filings, subpoenas or adjudicative processes.

9. ''Influential'', when used in the phrase ''influential scientific, financial, or statistical information'', means that the agency can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important public policies or important private sector decisions. Each agency is authorized to define ''influential'' in ways appropriate for it given the nature and multiplicity of issues for which the agency is responsible.

10. ''Reproducibility'' means that the information is capable of being substantially reproduced, subject to an acceptable degree of imprecision. For information judged to have more (less) important impacts, the degree of imprecision that is tolerate is reduced (increased). If agencies apply the reproducibility test to specific types of original or supporting data, the associated guidelines shall provide relevant definitions of reproducibility (*e.g.,* standards for replication of laboratory data). With respect to analytic results, ''capable of being substantially reproduced'' means that independent analysis of the original or supporting data using identical methods would generate similar analytic results, subject to an acceptable degree of imprecision or error.

[FR Doc. 02–59 Filed 1–2–02; 8:45 am]

**BILLING CODE 3110–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No 34–45191; File No. SR–CBOE–2001–59]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated Relating to the Amendment of CBOE Disciplinary Rules 17.9 and 17.10 and the Addition of CBOE Disciplinary Rule 17.15

December 26, 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 December 6, 2001, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the CBOE. The CBOE filed Amendment No. 1 on December 17, 2001.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend several provisions of its disciplinary rules and add a new disciplinary rule.

Below is the text of the proposed rule change, as amended. Proposed new language is *italicized* and proposed deletions are in brackets.

* * * * *

**Chicago Board Options Exchange, Incorporated Rules**

*Chapter XVII—Discipline*

Rule 17.9. Decision

Following a hearing conducted pursuant to Rule 17.6 of this Chapter, the Panel shall issue a decision in writing, based solely on the record, determining whether the Respondent has committed a violation and imposing the sanction, if any, therefor. Where the Panel is not composed of at least a majority of the members of the Business Conduct Committee, its determination shall be automatically reviewed by a majority of the Committee, which may affirm, reverse or modify in whole or in part or may remand the matter for additional findings or supplemental proceedings. Such modification may include an increase or decrease of the sanction. The decision shall include a statement of findings and conclusions, with the reasons therefor, upon all material issues presented on the record. Where a sanction is imposed, the decision shall include a statement specifying the acts or practices in which the Respondent has been found to have engaged and setting forth the specific provision of the Securities Exchange Act of 1934, as amended, rules and regulations promulgated thereunder, constitutional provisions, by-laws, rules, interpretations or resolutions of the Exchange of which the acts are deemed to be in violation. The Respondents *and the Office of Enforcement* shall be promptly sent a copy of the decision. After Board review pursuant to Rule 17.10, or the time for such review has expired, the decision will be considered final, and the Exchange shall publish a summary of the decision in the Exchange Bulletin.

Rule 17.10. Review

(a)(1) Petition. *Both t[T]he Respondent and the Office of Enforcement* shall have 15 days after service of notice of *any*[a] decision made pursant to Rule 17.9 of this Chapter to petition for review of the decision by filing a copy of the petition with the Secretary of the Exchange (''Secretary'') and *with all other parties to the hearing* [the Exchange's Office of Enforcement]. Such petition shall be in writing and shall specify the findings and conclusions to which exceptions are taken together with reasons for such exceptions. Any objections to a decision not specified by written exception shall be considered to have been abandoned.

(2) Written Submissions. Within 15 days after a [Respondent's]petition for review has been filed with the Secretary of the Exchange pursuant to paragraph (a)(1) of this Rule, *the other parties to the hearing*[Exchange staff] may *each* submit to the Secretary a written response to the petition. A copy of the response must be served upon the *petitioner*[Respondent]. *The petitioner*[A Respondent] has 15 days from the service of the response to file a reply with the Secretary and the *other parties* [Office of Enforcement].

(b) Conduct of Review. The review shall be conducted by the Board or a committee of the Board composed of at least three Directors whose decision must be ratified by the Board. Any Director who participated in a matter before the Business Conduct or other Committee may not participate in any review of that matter by the Board. Unless the Board shall decide to open the record for the introduction of evidence or to hear argument, such review shall be based solely upon the record and the written exceptions filed by the parties. New issues may be raised by the Board; *the parties to the hearing*[Respondents] shall be given notice of and any opportunity to address any such new issues. The Board may affirm, reverse or modify, in whole or in part, the decision of the Business Conduct Committee. Such modification may include an increase or decrease of the sanction. The decision of the Board shall be in writing, shall be promptly served on the Respondent *and the Office of Enforcement,* and shall be final.

(c) Review on Motion of Board. The Board may on its own initiative order review of a decision made pursuant to Rule 17.7 or 17.9 of this Chapter within 30 days after notice of the decision has

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Christopher R. Hill, Attorney II, Office of Enforcement, Legal Division, CBOE, to Sapna Patel, Attorney, Division of Market Regulation, Commission, dated December 13, 2001 (''Amendment No. 1''). In Amendment No. 1, the CBOE made some technical corrections to the proposed rule text.

been served on the Respondent *and the Office of Enforcement.* Such review shall be conducted in accordance with the procedure set forth in paragraph (b) of this Rule.

(d) No change.

*Rule 17.15. Ex Parte Communications*

*Members and persons associated with members shall not make or knowingly cause to be made an ex parte communications with any member of the Board with the intent to influence the outcome of any pending investigation or disciplinary proceeding. Members of the Board shall not make a knowingly cause to be made an ex parte communication with any members or persons associated with members with the intent to influence the outcome of any pending investigation or disciplinary proceeding. No violation of this Rule shall be deemed to occur if the ex parte communication deals solely with procedural matters rather than the merits of the investigation or proceeding.*

*Interpretations and Policies:*

*.01 ''Ex parte communication'' means an oral or written communication made without notice to all parties, that is, regulatory staff and Subjects of investigations or Respondents in proceedings. A written communication is ex parte unless a copy has been previously or simultaneously delivered to all interested parties. An oral communication is ex parte unless it is made in the presence of all interested parties except those who, on adequate prior notice, declined to be present.*

* * * * *

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE 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

a. *Ex Parte Communications With Board of Director (''Board'') Members Prohibited*

Currently, Exchange Rule 17.4(d) prohibits members or persons associated with members from making or causing ex parte communications with any member of the Business Conduct Committee (''BBC'') concerning the merits of any matter pending under the disciplinary rules of the Exchange. This prohibition is to eliminate the potential that such communications might somehow influence the outcome of an investigation or enforcement matter. The Exchange believes that Exchange disciplinary rules should also forbid ex parte communications with members of the Exchange Board. Such communications are already prohibited by other self-regulatory organizations.[4] Therefore, the exchange proposes to add a new Exchange Rule 17.15, ''Ex Parte Communications,'' which would prohibit ex parte communications with members of the Board that are made with the intent to influence the outcome of any pending investigation or disciplinary proceeding. The Exchange represents that proposed Exchange Rule 17.15 would expressly create a safe harbor for communication dealing solely with procedural matters rather than the merits of the investigation or proceeding. The text of the current Interpretation and Policy .01 to Exchange Rule 17.4(d) defining ''Ex Parte Communications'' will be duplicated as Interpretation and Policy .01 of proposed Exchange Rule 17.15.

b. *Exchange Right to Appeal*

Exchange Rule 17.10(a) permits a Respondent in a disciplinary matter to appeal a decision of the BCC to the Board, but does not grant the Exchange's Office of Enforcement (''OOE'') a similar right of appeal. Again, the Exchange believes that its OOE should have such a right, both to appeal factual findings that the OOE thinks may have been in error, as well as to appeal disciplinary sanctions that the OOE deems insufficient. Such appeals are already authorized at other exchanges.[5] Therefore, the Exchange proposes to amend Exchange Rules 17.9 and 17.10 to give the OOE and the Respondent equivalent rights in the appellate process.

2. Statutory Basis

The Exchange believes that the proposed rule change described above is consistent with the provisions of section 6(b)[6] of the Act, in general, and specifically furthers the objectives of sections 6(b)(1),[7] 6(b)(6),[8] and 6(b)(7)[9] of the Act, in particular, in that it will enhance the ability of the Exchange to enforce compliance by its members and persons associated with its members with provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. It will help ensure that members and persons associated with members are appropriately disciplined when they violate those provisions.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, in 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

[4] *See* American Stock Exchange LLC Exchange Disciplinary Proceedings Rule 11(a); National Association of Securities Dealers, Inc. (''NASD'') Rule 9143(a); and Pacific Exchange, Inc. Rule 10.3(a).

[5] *See* New York Stock Exchange, Inc. Rule 476(f); NASD Rule 9311; and Securities Exchange Act Release No. 43554 (November 14, 2001), 65 FR 69975 (November 21, 2001) (File No. SR–Amex–00–22).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(1).

[8] 15 U.S.C. 78f(b)(6).

[9] 15 U.S.C. 78f(b)(7).

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 CBOE. All submissions should refer to File No. SR–CBOE–2001–59 and should be submitted by January 24, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–76 Filed 1–2–02; 8:45 am]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45193; File No. SR–Phlx–2001–118)**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Implementation of a Fee with Respect to Certain Individuals Who Work on the Exchange's Trading Floor

December 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 December 19, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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

The Exchange proposes to amend its schedule of dues, fees, and charges to adopt a fee of $25 per month to be imposed on member/participant organizations for individuals employed by such member/participant organizations who work on the Exchange's trading floor, but who are not registered as Exchange members or foreign currency options (''FCO'') participants.[3] The Exchange intends to charge member/participant organizations a $25 fee per month for such individuals registered as of the first trading day of the month. The Exchange states that it intends to implement this fee beginning on January 1, 2002.[4]

The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(1) Purpose

The Exchange states that the purpose of the proposed rule change is to impose a fee on Exchange member/participant organizations for their employees who are registered to be on the Exchange's trading floor, but are not registered as members or FCO participants. The Exchange states that this fee is intended to help it offset the costs it incurs in registering these individuals.[5]

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(4),[7] in particular, in that it is an equitable allocation of reasonable fees among the Exchange's members because the member/participant organizations who pay the additional, minimal amount for registering their employees incur the benefit of having these employees on the Exchange's trading floor.

*B Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to Section 19(b)(A)(ii) of the Act[8] and Rule 19b–4(f)(2) hereunder.[9] 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 purpose of the Act. The Exchange has stated that it intends to implement this fee beginning on January 1, 2002.

### 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

[10] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] According to the Exchange, individuals registered to be on the Exchange's trading floor, but who are not registered as members or FCO participants, include trading floor personnel such as clerks, interns, stock execution clerks, and other associated persons of member/participant organizations. These individuals are required to be registered with the Exchange Pursuant to Exchange Rule 620(b).

[4] The Exchange states that this fee will be eligible for the monthly credit of up to $1,000 to be applied against certain fees, dues and charges and other amounts owed to the Exchange by certain members. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR–Phlx–2001–49).

[5] According to the Exchange, individuals who are registered as inactive nominees pursuant to Exchange By-Law Article XII, Section 12–10 and Exchange Rule 21 will not be subject to the proposed fee.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

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 Section. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–2001–118 and should be submitted by January 24, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–75 Filed 1–2–02; 8:45 am]

**BILLING CODE 8010–01–M**

## SOCIAL SECURITY ADMINISTRATION

### Rate for Attorney Fee Assessment Beginning in 2002

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Notice.

**SUMMARY:** The Social Security Administration is announcing that the attorney-fee assessment rate under section 206(d) of the Social Security Act, 42 U.S.C. 406(d), is 6.3 percent for 2002.

**FOR FURTHER INFORMATION CONTACT:** John B. Watson, Social Security Administration, Office of the General Counsel, Phone: (410) 965–3137, email: *John.Watson@ssa.qov.*

**SUPPLEMENTARY INFORMATION:** Section 406 of Public Law No. 106–170, the Ticket to Work and Work Incentives Improvement Act of 1999, established an assessment for the services required to determine and certify payments to attorneys from the benefits due claimants under Title II of the Act. This provision is codified in section 206 of the Act (42 U.S.C. 406). The legislation set the assessment for the calendar year 2000 at 6.3 percent of the amount that would be required to be certified for direct payment to the attorney under either section 206(a)(4) or 206(b)(1) before the application of the assessment. For subsequent years, the legislation requires the Commissioner of Social Security to determine the percentage rate necessary to achieve full recovery of the costs of determining and certifying fees to attorneys, but not in excess of 6.3 percent. For 2001, the Commissioner of Social Security determined that the assessment rate under section 206(d) of the Act would be 6.3 percent. (See 66 FR 5521, January 19, 2001).

The Commissioner of Social Security has determined, based on the best available data, that the current rate of 6.3 percent will continue for 2002. This assessment rate was based on information compiled by a private contractor, KPMG Consulting, who were tasked by the Social Security Administration to determine the costs we incur to determine and certify fees to attorneys. We will continue to review our costs on a yearly basis.

**Thomas G. Stapleton,**

*Acting Deputy Commissioner for Finance, Assessment and Management.*

[FR Doc. 02–27 Filed 1–2–02; 8:45 am]

**BILLING CODE 4191–02–U**

[10] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF STATE

### Office of Visa Services

**[Public Notice 3837]**

### 30-Day Notice of Proposed Information Collection: Form DS–3035, J–1 Visa Waiver Review Application

**ACTION:** Notice.

**SUMMARY:** The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

*Type of Request:* New Collection.

*Originating Office:* Bureau of Consular Affairs, Office of Visa Services (CA/VO).

*Title of Information Collection:* J–1 Visa Waiver Review Application.

*Frequency:* Once.

*Form Number:* DS–3035.

*Respondents:* All J–1 visa waiver applicants.

*Estimated Number of Respondents:* 10,000.

*Average Hours Per Response:* 2 hours.

*Total Estimated Burden:* 20,000 hours.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection 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, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

**FOR ADDITIONAL INFORMATION:** Copies of the proposed information collection and supporting documents may be obtained from Marcia Pryce, 2401 E St NW., U.S. Department of State, Washington, DC 20520, (202) 663–2866. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, (202) 395–5871.

Dated: October 9, 2001.

**Wayne E. Griffith,**

*Deputy Assistant, Secretary of State for Visa Services, Bureau of Consular Affairs, U.S. Department of State.*

[FR Doc. 02–114 Filed 1–2–02; 8:45 am]

**BILLING CODE 4710–06–P**

## DEPARTMENT OF STATE

**[Public Notice 3871]**

### Culturally Significant Objects Imported for Exhibition; Determinations: ''Russian Pictorialism''

**DEPARTMENT:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Russian Pictorialism,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Williams Tower Gallery, Houston, TX, and FotoFest Gallery at Vine Street Studios, Houston, TX, from on or about March 1, 2002, to on or about April 1, 2002, is in the national

interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 21, 2001.

**Patricia S. Harrison,**

*Assistant Secretary for Educational and Cultural Affairs, United States Department of State.*

[FR Doc. 02–116 Filed 1–2–02; 8:45 am]

**BILLING CODE 4710–08–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Request To Release Airport Land at the Laughlin/Bullhead International Airport, Bullhead City, Arizona From Airport Improvement Program Grant Obligations and Assurances

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Intent to Rule on Request to Release Airport Land from certain Airport Improvement Program Grant Obligations and Assurances.

**SUMMARY:** The FAA proposes to rule and invites public comment on the release of approximately 83 acres of land at the Laughlin/Bullhead International Airport, Bullhead City, Arizona, from certain Airport Improvement Program grant obligations and assurances. The purpose of the grant release is to permit the use of approximately 83 acres of airport property to be developed for non-aeronautical purposes.

**DATES:** Comments must be received on or before February 4, 2002.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, P.O. Box 92007, Los Angeles, CA 90009. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Norman Hicks, Executive Director/C.E.O., Mohave County, Airport Authority, Inc., 2550 Laughlin View Drive, Suite 117, Bullhead City, AZ 86429.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kevin Flynn, Supervisor, Arizona Standards Section, Airports Division, AWP–623, P.O. Box 92007, Los Angeles, CA 90009, Telephone: (310) 725–3632. Arrangements may be made with Mr. Flynn to review the request to release the subject airport property from certain grant obligations in person at the FAA Western-Pacific Regional office, 15000 Aviation Blvd., Hawthorne, CA 90250.

**SUPPLEMENTARY INFORMATION:** On April 5, 2000, new authorizing legislation became effective. That bill, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 10–181 (Apr. 5, 2000; 114 Stat. 61), requires that a 30-day public notice must be provided before the Secretary may waive any condition imposed on an interest is surplus property.

The following is a brief overview of the request:

On February 18, 1987, the State of Arizona, granted patent No. 7213 to Mohave County, Arizona, for 433.37 acres to be developed as a public use airport. Since 1987, the Mohave County Airport Authority, Inc. has received Airport Improvement Program (AIP) grants, which contain certain grant obligations and assurances that the airport land be dedicated for aeronautical purposes. The Mohave County Airport Authority, Inc. has requested the release of approximately 83 acres of dedicated airport land from certain AIP grant obligations and assurances at the Laughlin/Bullhead International Airport located in Bullhead City Arizona. The purpose of the release is to permit the use of dedicated airport property for non-aeronautical purposes. Net proceeds from the leasing and development of the subject land will be utilized by the Authority for capital improvements, operation, and maintenance at the Laughlin/Bullhead International Airport.

Issued in Hawthorne, California, on December 19, 2001.

**Herman C. Bliss,**

*Manager, Airports Division, Western-Pacific Region.*

[FR Doc. 02–56 Filed 1–2–02; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application 02–07–C–00–MFR To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Rogue Valley International-Medford Airport, Submitted by Jackson County, Rogue Valley International-Medford Airport, Medford, Oregon

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Intent to Rule on Application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Rogue Valley International-Medford Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR 158).

**DATES:** Comments must be received on or before February 4, 2002.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bern E. Case, Airport Director, at the following address: 3650 Biddle Road, Medford, OR 97504.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Rogue Valley International-Medford Airport, under section 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Ms. Suzanne Lee-Pang, (425) 227–2654, Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, Washington 98055–4056. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application (02–07–C–00–MFR) to impose and use PFC revenue at Rogue Valley International-Medford Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 20, 2001, the FAA determined that the application to impose and use the revenue from a PFC submitted by Jackson County, Rogue

Valley International-Medford Airport, Medford, Oregon, was substantially complete with requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 27, 2002.

The following is a brief overview of the application.

*Level of the proposed PFC:* $4.50.

*Proposed charge effective date:* June 1, 2003.

*Proposed charge expiration date:* May 1, 2004.

*Total requested for use approval:* $816,466.

*Brief description of proposed projects:* Realignment and Rehabilitation of Taxiway A; Terminal Area Plan (planning study).

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Operations by Air Taxi/Commercial Operators when enplaning revenue passengers in limited, irregular, special service air taxi/commercial operations such as air ambulance services, student instructions, non-stop sightseeing flights that begin and end at the airport and are concluded within a 25 mile radius of the airport.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue, SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Rouge Valley International-Medford Airport.

Issued in Renton, Washington on December 20, 2001.

**Carolyn T. Read,**

*Acting Manager, Planning, Programming, and Capacity Branch, Northwest Mountain Region.*

[FR Doc. 02–52 Filed 1–2–02; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Lawton-Ft. Sill Regional Airport, Lawton, OK

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Intent to Rule on Application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lawton-Ft. Sill Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comments must be received on or before February 4, 2002.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Barbara McNally, Manager of Lawton-Ft. Sill Regional Airport at the following address: Airport Manager, PO Box 351, Lawton-Ft. Sill Regional Airport, Lawton, OK 73502.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under section 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. G. Thomas Wade, Federal Aviation Adminsitration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610, (817) 222–5613.

The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lawton-Ft. Sill Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 19, 2001, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 12, 2002.

The following is a brief overview of the application.

*Level of the proposed PFC:* $4.50.

*Proposed charge effective date:* April 1, 2002.

*Proposed charge expiration date:* April 1, 2003.

*Total estimated PFC revenue:* $361,000.

*PFC application number:* 02–02–C–00–LAW.

*Brief description of proposed projects(s):*

**Projects to Impose and Use PFC'S**

1. Develop Pavement Management Program.
2. PFC Application and Administrative Fees.
3. Install Perimeter Security Fencing.
4. Construct Perimeter Service Road.
5. Upgrade Runway Markings.
6. Runway Safety Area Drainage Improvements.
7. Acquire Snow Removal Equipment.
8. Construct Apron.
9. Acquire 1.7 Acres for Development.

Proposed class or classes of air carriers to be exempted from collecting PFC's: FAR part 135 on demand air Taxi/Commercial Operator (ATCO) reporting on FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Lawton-Ft. Sill Regional Airport.

Issued in Fort Worth, Texas on December 19, 2001.

**Naomi L. Saunders,**

*Manager, Airports Division.*

[FR Doc. 02–53 Filed 1–2–02; 8:45 am]

**BILLING CODE 4410–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at San Francisco International Airport, San Francisco, CA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Intent to Rule on Application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use a PFC at San Francisco International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before February 4, 2002.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 150000 Aviation Blvd., Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. John L. Martin, Airport Director, San Francisco International Airport, at the following address: P.O. Box 8097, San Francisco, CA. 94128. Air carriers and foreign air carriers may submit copies of written comments previously provided to the San Francisco Airport Commission under section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Marlys Vandervelde, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2806. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at San Francisco International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 14, 2001, the FAA determined that the application to impose and use the revenue from a PFC submitted by the San Francisco Airport Commission was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 21, 2002.

The following is a brief overview of the impose and use application No. 02–02–C–00–SFO:

*Level of proposed PFC:* $4.50.

*Proposed charge effective date:* June 1, 2003.

*Proposed charge expiration date:* April 1, 2008.

*Total estimated PFC revenue:* $224,034,821.

Brief description of the proposed projects: Taxiway Improvements and Realignment, and Boarding Area ''A'' and ''G'' Apron Construction and Common Use Systems.

*Class or classes of air carriers which the public agency has requested not be required to collect PFCs:* Non-Scheduled On-Demand Air Carriers (formerly called Air Taxi/Commercial Operators).

Any persons may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the San Francisco Airport Commission.

Issued in Hawthorne, California, on December 14, 2001.

**Hermane C. Bliss,**

*Manager, Airports Division, Western-Pacific Region.*

[FR Doc. 02–55 Filed 1–2–02; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at San Jose International Airport, San Jose, CA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Intent to Rule on Application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at San Jose International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 258 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before February 4, 2002.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Ralph G. Tonseth, Director of Aviation, city of San Jose, Airport Department, at the following address: 1732 N. First Street, San Jose, CA 95112. Air carriers and foreign air carriers may submit copies of written comments previously provided to the city of San Jose under section 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Marlys Vandervelde, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2806. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at San Jose International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 14, 2001, the FAA determined that the application to impose and use a PFC submitted by the city of San Jose was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 20, 2002.

The following is a brief overview of the impose and use application No. 02–13–C–00–SJC:

*Level of proposed PFC:* $4.50.

*Proposed charge effective date:* September 1, 2008.

*Proposed charge expiration date:* May 1, 2010.

*Total estimated PFC revenue:* $142,846,000.

*Brief description of the proposed project:* Expanded Noise Attenuation within the 65 Community Noise Equivalent Level (CNEL) Noise Contour.

*Class or classes of air carriers which the public agency has requested not be required to collect PFCs:* Nonscheduled/On-Demand Air Carriers filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any

person may, upon request, inspect the application, notice and other documents germane to the application in person at the city of San Jose.

Issued in Hawthorne, California, on December 14, 2001.

**Herman C. Bliss,**

*Manager, Airports Division, Western-Pacific Region.*

[FR Doc. 02–54 Filed 1–2–02; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2001–9800]**

### Qualification of Drivers; Exemption Applications; Diabetes

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice; reopening of comment period.

**SUMMARY:** The FMCSA is reopening the comment period on its notice proposing to issue exemptions to certain insulin-using diabetic drivers of commercial motor vehicles (CMVs), from the diabetes mellitus prohibitions contained in the Federal Motor Carrier Safety Regulations (FMCSRs). This action allows the public to view relevant information added to the docket after the earlier October 1, 2001, deadline for comments.

**DATES:** Comments must be received on or before February 4, 2002.

**ADDRESSES:** You can mail or deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. You can also submit comments as well as see the submissions of other commenters at *http://dms.dot.gov.* Please include the docket number that appears in the heading of this document. You can examine and copy this document and all comments received at the same Internet address or at the Dockets Management Facility from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you want to know that we received your comments, please include a self-addressed, stamped postcard or include a copy of the acknowledgement page that appears after you submit comments electronically.

**FOR FURTHER INFORMATION CONTACT:** For further information about the proposed diabetes exemption program in this notice, Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987; for information about legal issues related to this notice, Mr. Joseph Solomey, Office of the Chief Counsel, (202) 366–1374, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

#### Background

On July 31, 2001, FMCSA published a notice requesting comments on its proposal to issue exemptions to certain insulin-treated diabetic drivers of commercial vehicles from the diabetes requirement at 49 CFR 391.41(b)(3) (66 FR 39548). The comment period closed on October 1, 2001. That notice referenced analytical results of crash risks for CMV operators with insulin-treated diabetes mellitus from an agency sponsored study (''A Preliminary Study of the Risk Associated with the Operation of Commercial Motor Vehicles by Drivers with Insulin-Treated Diabetes Mellitus,'' 1999). Although the final results of this study were available and presented at the time of the July 31st notice, the report presenting the study methodology and findings had not been finalized and approved by FMCSA, and was not available to the public.

Therefore, we are placing a copy of this final report entitled, ''A Study of the Risk Associated with the Operation of Commercial Motor Vehicles by Drivers with Insulin-Treated Diabetes Mellitus,'' 2001, in the docket and reopening the comment period.

Issued on: December 21, 2001.

**Joseph M. Clapp,**

*Administrator.*

[FR Doc. 02–57 Filed 1–2–02; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petitions for Waivers of Compliance

In accordance with Title 49 Code of Federal Regulations (CFR) § 211.41, and 49 U.S.C. 20103, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for wavier of compliance with certain requirements of the Federal railroad safety regulations. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being sought.

#### New York State Department of Transportation

[Docket Number FRA–2001–11233]

The New York State Department of Transportation (NYSDOT), with the cooperation and input of CSX Transportation, Inc. (CSX) and the National Railroad Passenger Corp. (Amtrak) seeks a permanent waiver of compliance from CFR Title 49 § 213.347—Automotive or railroad crossings at grade.

NYSDOT seeks approval to operate passenger trains at Class 7 speeds through highway rail grade crossings on the Empire State High Speed Corridor between New York City, New York and Schenectady, New York by implementing a Grade Crossing Risk Mitigation Plan. Specifically, CFR Title 49 § 213.347(b)(1) requires railroads to submit to FRA for approval a warning/barrier system. NYSDOT believes that present systems for prevent vehicles from entering the right of way are not yet reliable enough to prevent vehicles from entering the right of way to protect motorist and rail passenger safety. Accordingly, NYSDOT desires to address safety concerns at highway rail grade crossings by implementing a Five Year Hazard Mitigation Action Plan with highway railroad grade crossing improvement, elimination, and closing projects that will substantially reduce estimated risks.

Since FRA has not yet concluded its investigation of the ''Empire State High Speed Corridor Grade Crossing Mitigation Plan and Request for Waiver to Operate in Revenue Service at Speeds Over 100 MPH,'' the agency takes no position at this time on the merits of the stated justifications of the NYSDOT.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2001–11233) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza level) 400 Seventh Street, SW., Washington, DC 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is

taken. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

Issued in Washington, DC, December 28, 2001.

**Edward W. Pritchard,**

*Acting Director, Office of Safety Assurance and Compliance.*

[FR Doc. 02–58 Filed 1–2–02; 8:45 am]

**BILLING CODE 4910–06–M**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

### Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 24, 2001. No comments were received.

**DATES:** Comments must be submitted on or before February 4, 2002.

**FOR FURTHER INFORMATION CONTACT:** Evelyn Harley, Maritime Administration, MAR–580, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5867 or FAX 202–366–7901.

Copies of this collection can also be obtained from that office.

**SUPPLEMENTARY INFORMATION:** Maritime Administration (MARAD).

*Title:* Uniform Financial Reporting Requirements.

*OMB Control Number:* 2133–0005.

*Type of Request:* Extension of currently approved collection.

*Affected Public:* Vessel owners acquiring ships from MARAD on credit, companies chartering ships from MARAD, and companies having Title XI guarantee obligations.

*Form (S):* MA–172.

*Abstract:* The Uniform Financial Reporting Requirements are used as a basis for preparing and filing semi-annual and annual financial statements with the Maritime Administration (MARAD). Regulations requiring financial reports to MARAD are authorized by section 801, Merchant Marine Act, 1936, as amended.

*Annual Estimated Burden Hours:* 1881 hours.

*Addressee:* Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

*Comments are Invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, D.C. on December 27, 2001.

**Michael J. McMorrow,**

*Acting Secretary, Maritime Administration.*

[FR Doc. 02–38 Filed 1–2–02; 8:45 am]

**BILLING CODE 4910–81–P**

Federal Register

Thursday,
January 3, 2002

Part II

# Securities and Exchange Commission

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Nasdaq's Proposed Separation From the NASD and the Establishment of the NASD Alternative Display Facility; Notice**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45156; File No. SR–NASD–2001–90]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Nasdaq's Proposed Separation From the NASD and the Establishment of the NASD Alternative Display Facility

December 14, 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 December 7, 2001, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD amended the proposed rule change on December 14, 2001.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend its rules to reflect Nasdaq's separation from the NASD upon its approval as a national securities exchange and to establish rules that would govern trading otherwise than on an exchange, including rules governing the NASD Alternative Display Facility (''ADF''). Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

**0100. General Provisions**

**0120. Definitions.**

(a) No Change.

(b) ''Association'

The term ''Association'' means, collectively, the NASD, NASD Regulation, [Nasdaq,] and NASD Dispute Resolution.

(c) through (q) No Change.

**0130. Delegation, Authority and Access**

(a) The National Association of Securities Dealers, Inc., delegates to its subsidiaries (NASD Regulation, Inc. and NASD Dispute Resolution, Inc. [The Nasdaq Stock Market, Inc.], hereinafter ''Subsidiaries'') the authority to act on behalf of the Association as set forth in a Plan of Allocation and Delegation adopted by the Board of Governors and approved by the Commission pursuant to its authority under the Act.

(b) No Change.

* * * * *

**1000. MEMBERSHIP, REGISTRATION AND QUALIFICATION REQUIREMENTS**

* * * * *

**1022. Categories of Principal Registration**

(a) through (d) No Change.

(e) Limited Principal—Direct Participation Programs

(1) No Change.

(2) For purposes of the Rule 1000 Series, ''direct participation programs'' shall mean programs [which] *that* provide for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution including, but not limited to, oil and gas programs, cattle programs, condominium securities, Subchapter S corporate offerings and all other programs of a similar nature, regardless of the industry represented by the program, or any combination thereof. Excluded from this definition are real estate investment trusts, tax qualified pension and profit sharing plans pursuant to Sections 401 and 403(a) of the Internal Revenue Code (Code) and individual retirement plans under Section 408 of the Code, tax sheltered annuities pursuant to the provisions of Section 403(b) of the Code and any company including separate accounts registered pursuant to the Investment Company Act of 1940. Also excluded from this definition is any program [for which quotations are displayed on Nasdaq or which] *that* is listed on a registered national securities exchange or any program for which an application for [quotation on Nasdaq or] listing on a registered national securities exchange has been made.

(3) No Change.

(f) through (g) No Change.

* * * * *

**2000. BUSINESS CONDUCT**

**2100. GENERAL STANDARDS**

**2110. Standards of Commercial Honor and Principles of Trade**

A member, in the conduct of [his] *its* business, shall observe high standards of commercial honor and just and equitable principles of trade.

**IM–2110–1. ''Free-Riding and Withholding'**

(a) No Change.

(b) Violations of Rule 2110

Except as provided herein, it shall be inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of Rule 2110 for a member, or a person associated with a member, to fail to make a bona fide public distribution at the public offering price of securities of a public offering which trade at a premium in the secondary market whenever such secondary market begins regardless of whether such securities are acquired by the member as an underwriter, a selling group member or from a member participating in the distribution as an underwriter or selling group or otherwise. Therefore, it shall be a violation of Rule 2110 for a member, or a person associated with a member, to:

(1) through (8) No Change.

(9) Sell any of the securities to any person, or to a member of the immediate family of such person who is supported directly or indirectly to a material extent by such person, who owns or has contributed capital to a broker/dealer, other than solely a limited business broker/dealer as defined in paragraph (c) of this interpretation, or the account in which any such person has a beneficial interest, provided, however, that:

(A) The prohibition shall not apply to any person who directly or indirectly owns any class of equity securities of, or who has made a contribution of capital to, a member, and whose ownership or capital interest is passive and is less than 10% of the equity or capital of a member, as long as:

(i) Such person purchases hot issues from a person other than the member in which it has such passive ownership and such person is not in a position by virtue of its passive ownership interest to direct the allocation of hot issues, or

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

[2] 17 CFR 240.19b–4.

[3] Letter from Alden S. Adkins, Senior Vice President, NASD Market Operations Administration, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated December 14, 2001 (''Amendment No. 1''). First, Amendment No. 1 revises proposed Rule 4200(a)(12) to (i) clarify that the market where the security is listed, rather than the NASD, determines whether a normal unit of trading should be an amount other than 100 shares and (ii) delete an inadvertent reference to Nasdaq. Second, Amendment No. 1 deletes the phrase ''that enters into a contractual relationship with an NASD Market Participant'' from the definition of ''customer broker/dealer'' in proposed Rule 4300(d)(1) and adds the word ''not'' to the definition of ''Indirect electronic access'' before the word ''affiliates'' in the first sentence of proposed Rule 4300(d)(3). Finally, Amendment No. 1 waives the 35-day period for Commission action until such time as the waiver is withdrawn by the NASD.

(ii) such member's shares or shares of a parent of such member are publicly traded on a[n] *registered national securities* exchange [or Nasdaq].

(B) and (C) No Change.

(c) through (m) No Change.

* * * * *

**IM–2110–2. Trading Ahead of Customer Limit Order**

(a) General Application

To continue to ensure investor protection and enhance market quality, the Association's Board of Governors is issuing an interpretation to the Rules of the Association dealing with member firms' treatment of their customer limit orders in Nasda*q-listed* securities. This interpretation, which is applicable from 9:30 a.m. to 6:30 p.m. Eastern Time, will require members acting as market makers to handle their customer limit orders with all due care so that market makers do not ''trade ahead'' of those limit orders. Thus, members acting as market makers that handle customer limit orders, whether received from their own customers or from another member, are prohibited from trading at prices equal or superior to that of the limit order without executing the limit order.[, provided that, prior to September 1, 1995, this prohibition shall not apply to customer limit orders that a member firm receives from another member firm and that are greater than 1,000 shares. Such orders shall be protected from executions at prices that are superior but not equal to that of the limit order. In the interests of investor protection, the Association is eliminating the so-called disclosure ''safe harbor'' previously established for members that fully disclosed to their customers the practice of trading ahead of a customer limit order by a market-making firm.][1]

[Rule 2110 of the Association's Rules states that:]

[A member, in the conduct of [his] its business, shall observe high standards of commercial honor and just and equitable principles of trade.]

[Rule 2320, the Best Execution Rule, states that:]

[In any transaction for or with a customer, a member and persons associated with a member shall use reasonable diligence to ascertain the best inter-dealer market for the subject security and buy or sell in such a market so that the resultant price to the customer is as favorable as possible to the customer under prevailing market conditions.]

Interpretation

The following interpretation of Rule 2110 has been approved by the Board:

A member firm that accepts and holds an unexecuted limit order from its customer (whether its own customer or a customer of another member) in a Nasda*q-listed* security and that continues to trade the subject security for its own market-making account at prices that would satisfy the customer's limit order, without executing that limit order, shall be deemed to have acted in a manner inconsistent with just and equitable principles of trade, in violation of Rule 2110, provided that, [until September 1, 1995, customer limit orders in excess of 1,000 shares received from another member firm shall be protected from the market maker's executions at prices that are superior but not equal to that of the limit order, and provided further, that] a member firm may negotiate specific terms and conditions applicable to the acceptance of limit orders only with respect to limit orders that are: (a) For customer accounts that meet the definition of an ''institutional account'' as that term is defined in Rule 3110(c)(4); or (b) 10,000 shares or more, unless such orders are less than $100,000 in value. Nothing in this interpretation, however, requires members to accept limit orders from any customer.

[By rescinding the safe harbor position and adopting this interpretation,] [t]*T*he Association wishes to emphasize that members may not trade ahead of their customer limit orders in their market-making capacity even if the member had in the past fully disclosed the practice to its customers prior to accepting limit orders. The Association believes that, pursuant to Rule 2110, members accepting and holding unexecuted customer limit orders owe certain duties to their customers and the customers of other member firms that may not be overcome or cured with disclosure of trading practices that include trading ahead of the customer's order. The terms and conditions under which institutional account or appropriately sized customer limit orders are accepted must be made clear to customers at the time the order is accepted by the firm so that trading ahead in the firm's market making capacity does not occur. For purposes of this interpretation, a member that controls or is controlled by another member shall be considered a single entity so that if a customer's limit order is accepted by one affiliate and forwarded to another affiliate for execution, the firms are considered a single entity and the market making unit may not trade ahead of that customer's limit order.

The Association also wishes to emphasize that all members accepting customer limit orders owe those customers duties of ''best execution'' regardless of whether the orders are executed through the member's market making capacity or sent to another member for execution. [As set out above, the Best Execution Rule] Rule 2320 requires members to use reasonable diligence to ascertain the best inter-dealer market for the security and buy or sell in such a market so that the price to the customer is as favorable as possible under prevailing market conditions. The Association emphasizes that order entry firms should continue to routinely monitor the handling of their customers' limit orders regarding the quality of the execution received.

(b) No Change.

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**IM–2110–3. Front Running Policy**

It shall be considered conduct inconsistent with just and equitable principles of trade for a member or person associated with a member, for an account in which such member or person associated with a member has an interest, for an account with respect to which such member or person associated with a member exercises investment discretion, or for certain customer accounts, to cause to be executed:

(a) No Change.

(b) an order to buy or sell an underlying security when such member or person associated with a member causing such order to be executed has material, non-public market information concerning an imminent block transaction in an option overlying that security, or when a customer has been provided such material, non-public market information by the member or any person associated with a member; prior to the time information concerning the block transaction has been made publicly available.

The violative practice noted above may include transactions [which] *that* are executed based upon knowledge of less than all of the terms of the block transaction, so long as there is knowledge that all of the material terms of the transaction have been or will be agreed upon imminently.

[1] FN1 For purposes of the pilot program expanding the operation of certain Nasdaq transaction and quotation reporting systems and facilities in SR-NASD–99–57 during the period from 4 p.m. to 6:30 p.m. Eastern Time, members may generally limit the life of a customer limit order to the period of 9:30 a.m. to 4 p.m. Eastern Time. If a customer does not formally assent (''opt-in'') to processing of their limit order(s) during the extended hours period commencing after the normal close of the Nasdaq market, limit order protection will not apply to that customer's order(s).

The general prohibitions stated above shall not apply to transactions executed by member participants in automatic execution systems in those instances where participants must accept automatic executions.

These prohibitions also do not include situations in which a member or person associated with a member receives a customer's order of block size relating to both an option and the underlying security. In such cases, the member and person associated with a member may position the other side of one or both components of the order. However, in these instances, the member and person associated with a member would not be able to cover any resulting proprietary position(s) by entering an offsetting order until information concerning the block transaction involved has been made publicly available.

The application of this front running policy is limited to transactions that are required to be reported on the last sale reporting systems administered by Nasdaq, Consolidated Tape Association (CTA), or Option Price Reporting Authority (OPRA). Information as to a block transaction shall be considered to be publicly available when it has been disseminated via the tape or high speed communications line of one of those systems or of a third-party news wire service.

A transaction involving 10,000 shares or more of an underlying security or options covering such number of shares is generally deemed to be a block transaction, although a transaction of less than 10,000 shares could be considered a block transaction in appropriate cases. A block transaction that has been agreed upon does not lose its identity as such by arranging for partial executions of the full transaction in portions [which] *that* themselves are not of block size if the execution of the full transaction may have a material impact on the market. In this situation, the requirement that information concerning the block transaction be made publicly available will not be satisfied until the entire block transaction has been completed and publicly reported.

**IM–2110–4. Trading Ahead of Research Reports**

The Board of Governors, under its statutory obligation to protect investors and enhance market quality, is issuing an interpretation to the Rules regarding a member firm's trading activities that occur in anticipation of a firm's issuance of a research report regarding a security. The Board of Governors is concerned with activities of member firms that purposefully establish or adjust the firm's inventory position in [Nasdaq-listed securities,] an exchange-listed security traded *otherwise than on an exchange* [in the OTC market,] or a derivative security based primarily on a specific [Nasdaq or] exchange-listed security in anticipation of the issuance of a research report in that same security. For example, a firm's research department may prepare a research report recommending the purchase of a particular Nasdaq-listed security. Prior to the publication and dissemination of the report, however, the trading department of the member firm might purposefully accumulate a position in that security to meet anticipated customer demand for that security. After the firm had established its position, the firm would issue the report, and thereafter fill customer orders from the member firm's inventory positions.

The Association believes that such activity is conduct [which] *that* is inconsistent with just and equitable principles of trade, and not in the best interests of the investors. Thus, this interpretation prohibits a member from purposefully establishing, creating or changing the firm's inventory position in [a Nasdaq-listed security,] an exchange-listed security traded *otherwise than on an exchange* [in the third market] or a derivative security related to the underlying equity security, in anticipation of the issuance of a research report regarding such security by the member firm.

[Rule 2110 states that:

A member in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.]

In accordance with Article VII, Section 1(a)(ii) of the NASD By-Laws, the Association's Board of Governors has approved the following interpretation of Rule 2110:

Trading activity purposefully establishing, increasing, decreasing, or liquidating a position in [a Nasdaq security,] an exchange-listed security traded *otherwise than on an exchange* [in the over-the-counter market] or a derivative security based primarily upon a specific [Nasdaq or] exchange-listed security, in anticipation of the issuance of a research report in that security is inconsistent with just and equitable principles of trade and is a violation of Rule 2110.

For purposes of this interpretation, a ''purposeful'' change in the firm's inventory position means any trading activities undertaken with the intent of altering a firm's position in a security in anticipation of accommodating investor interest once the research report has been published. Hence, the interpretation does not apply to changes in an inventory position related to unsolicited order flow from a firm's retail or broker/dealer client base or to research done solely for in-house trading and not in any way used for external publication.

Under this interpretation, the Board recommends, but does not require, that member firms develop and implement policies and procedures to establish effective internal control systems and procedures that would isolate specific information within research and other relevant departments of the firm so as to prevent the trading department from utilizing the advance knowledge of the issuance of a research report. Firms that choose not to develop ''Chinese Wall'' procedures bear the burden of demonstrating that the basis for changes in inventory positions in advance of research reports was not purposeful.

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**IM–2110–5. Anti-Intimidation/ Coordination**

The Board of Governors is issuing this interpretation to codify a longstanding policy. It is conduct inconsistent with just and equitable principles of trade for any member or person associated with a member to coordinate the prices (including quotations), trades, or trade reports of such member with any other member or person associated with a member; to direct or request another member to alter a price (including a quotation); or to engage, directly or indirectly, in any conduct that threatens, harasses, coerces, intimidates, or otherwise attempts improperly to influence another member or person associated with a member. This includes, but is not limited to, any attempt to influence another member or person associated with a member to adjust or maintain a price or quotation, whether displayed on any [automated system] *facility* operated by the *NASD* [The Nasdaq Stock Market, Inc. (Nasdaq),] or otherwise, or refusals to trade or other conduct that retaliates against or discourages the competitive activities of another market maker or market participant. Nothing in this interpretation respecting coordination of quotes, trades, or trade reports shall be deemed to limit, constrain, or otherwise inhibit the freedom of a member or person associated with a member to:

(1) Set unilaterally its own bid [and] *or* ask in any [Nasdaq] security, the prices at which it is willing to buy or sell any [Nasdaq] security, and the quantity of shares of any [Nasdaq] security that it is willing to buy or sell;

(2) set unilaterally its own dealer spread, quote increment, or quantity of shares for its quotations (or set any relationship between or among its dealer spread, inside spread, or the size of any quote increment) in any [Nasdaq] security;

(3) communicate its own bid or ask, or the prices at or the quantity of shares in which it is willing to buy or sell any [Nasdaq] security to any person, for the purpose of exploring the possibility of a purchase or sale of that security, and to negotiate for or agree to such purchase or sale;

(4) communicate its own bid or ask, or the price at or the quantity of shares in which it is willing to buy or sell any [Nasdaq] security, to any person for the purpose of retaining such person as an agent or subagent for the member or for a customer of the member (or for the purpose of seeking to be retained as an agent or subagent), and to negotiate for or agree to such purchase or sale;

(5) through (7) No Change.

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**2200. Communications with Customers and the Public**

**2210. Communications with the Public**

(a) and (b) No Change.

(c) Filing Requirements and Review Procedures

(1) through (6) No Change.

(7) The following types of material are excluded from the foregoing filing requirements and (except for research reports under paragraph (G)) spot-check procedures:

(A) No Change.

(B) Advertisements or sales literature [which] *that* do no more than identify the [Nasdaq] symbol of the member and/or of a security in which the member is a [Nasdaq] registered market maker;

(C) through (G) No Change.

(8) and (9) No Change.

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**2300. TRANSACTIONS WITH CUSTOMERS**

2310. No Change.

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**IM–2310–1. Possible Application of SEC Rules 15g–1 through 15g–9**

Members should be aware that, effective January 1, 1990, any transaction [which] *that* involves a [non-Nasdaq,] non-exchange-listed equity security trading for less than five dollars per share may be subject to the provisions of SEC Rules 15g–1 through 15g–9, and those Rules should be reviewed to determine if an executed customer suitability agreement is required.

Accounts opened, and recommendations made, prior to January 1, 1991 remain subject to former Article III, Sections 2 and 21(c) of the Rules of Fair Practice as previously in effect, as set forth in Notice to Members 90–52 (August 1990).

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**IM–2310–2. Fair Dealing with Customers**

(a) through (d) No Change.

(e) Fair Dealing with Customers with Regard to Derivative Products or New Financial Products.

The Board emphasizes members' obligations for fair dealing with customers when making recommendations or accepting orders for new financial products. As new products are introduced from time to time, it is important that members make every effort to familiarize themselves with each customer's financial situation, trading experience, and ability to meet the risks involved with such products and to make every effort to make customers aware of the pertinent information regarding the products. Members must follow specific guidelines, set forth below, for qualifying the accounts to trade the products and for supervising the accounts thereafter.

(1) Index Warrants

Members are obliged to comply with the Rules, regulations and procedures applicable to index warrants and foreign currency warrants contained in the Rule 2840 Series.

(2) Hybrid Securities and Selected Equity-Linked Debt Securities (''SEEDS'') Designated as Nasdaq National Market Securities [Pursuant to the Rule 4400 Series]

*With respect to Hybrid Securities and Selected Equity-Linked Debt Securities (''SEEDS'') that have been designated as Nasdaq National Market Securities,* [M]*m*embers are obligated to comply with any Rules, regulations, or procedures applicable to such securities [pursuant to the Rule 4420 Series], *including those of Nasdaq,* as well as any other applicable Rule, regulation, or procedure of the Association. *Prior to the commencement of trading of a particular SEEDS, Nasdaq or the Association will distribute a circular providing guidance regarding member firm compliance responsibilities (including suitability recommendations and account approval) when handling transactions in SEEDS.*

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**2320. Best Execution and Interpositioning**

(a) through (f) No Change.

(g) (1) Unless two or more priced quotations for a [non-Nasdaq] *non-exchange-listed* security (as defined in the Rule [6700] *6600* Series) are displayed in an inter-dealer quotation system that permits quotation updates on a real-time basis, in any transaction for or with a customer pertaining to the execution of an order in a [non-Nasdaq] *non-exchange-listed* security, a member or person associated with a member[,] shall contact and obtain quotations from three dealers (or all dealers if three or less) to determine the best inter-dealer market for the subject security.

(2) Members that display priced quotations on a real-time basis for a [non-Nasdaq] *non-exchange-listed* security in two or more quotation mediums that permit quotation updates on a real-time basis must display the same priced quotations for the security in each medium.

(3) through (5) No Change.

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**2340. Customer Account Statements**

(a) through (b) No Change.

(c) Definitions.

For purposes of this Rule, the following terms will have the stated meanings:

(1) through (2) No Change.

(3) direct participation program or direct participation program security refers to the publicly issued equity securities of a direct participation program as defined in Rule 2810 (including limited liability companies), but does not include securities on deposit in a registered securities depository and settled regular way, securities listed on a national securities exchange [or The Nasdaq Stock Market], or any program registered as a commodity pool with the Commodities Futures Trading Commission.

(4) ''real estate investment trust'' or ''real estate investment trust security'' refers to the publicly issued equity securities of a real estate investment trust as defined in Section 856 of the Internal Revenue Code, but does not include securities on deposit in a registered securities depository and settled regular way or securities listed on a national securities exchange [or The Nasdaq Stock Market].

(5) No Change.

(d) No Change.

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**2520. Margin Requirements**

(a)–(e) No Change.

(f) Other Provisions

(1) Determination of Value for Margin Purposes

Active securities dealt in on a national securities exchange [or OTC Marginable securities listed on Nasdaq] shall, for margin purposes, be valued at current market prices provided that, whether or not dealt in on an exchange [or listed on Nasdaq], only those options contracts on a stock or stock index, or a stock index warrant, having an expiration that exceeds nine months and that are listed or guaranteed by the carrying broker-dealer, may be deemed to have market value for the purposes of Rule 2520. Other securities shall be valued conservatively in view of current market prices and the amount [which] *that* might be realized upon liquidation. Substantial additional margin must be required in all cases where the securities carried in ''long'' or ''short'' positions are subject to unusually rapid or violent changes in value, or do not have an active market [on Nasdaq or] on a national securities exchange, or where the amount carried is such that the position(s) cannot be liquidated promptly.

(2)–(9) No Change.

(10) Margin For Index/Currency Warrants

(A) This subparagraph (10) sets forth the minimum amount of margin [which] that must be deposited and maintained in margin accounts of customers having positions in index warrants, currency index warrants or currency warrants dealt in on [Nasdaq or] a national securities exchange. The Association may at any time impose higher margin requirements in respect of such positions when it deems such higher margin requirements to be advisable. The initial deposit of margin required under this Rule must be made within five full business days after the date on which a transaction giving rise to a margin requirement is effected. The margin requirements set forth in this subparagraph (J) are applicable only to index warrants, currency index warrants and currency warrants listed for trading on Nasdaq or a national securities exchange on or after September 28, 1995.

(B) Definitions

The following definitions shall apply to transactions in index warrants, currency index warrants, and currency warrants.

(i) through (ii) No Change.

(iii) The term ''current market value'' of an index warrant, currency index warrant or currency warrant shall mean the total cost or net proceeds of the transaction on the day the warrant was purchased or sold and at any other time shall mean the most recent closing price of that issue of warrants on [Nasdaq, in the case of a Nasdaq-listed index warrants, or] the exchange on which it is listed on any day with respect to which a determination of current market value is made.

(iv) through (xiv) No Change.

(C) through (D) No Change.

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**2522. Definitions Related to Options, Currency Warrants, Currency Index Warrants and Stock Index Warrants Transactions**

(a) The following definitions shall apply to the margin requirements for options, currency warrants, currency index warrants and stock index warrants transactions:

(1) through (46) No Change.

(47) Options Trading

The term ''options trading'' means trading in any option issued by The Options Clearing Corporation, whether or not of a type, class or series [which] *that* has been approved for trading [on Nasdaq or] on a national securities exchange.

(48) through (49) No Change.

(50) Primary Market

The term ''primary market'' means (A) in respect of an underlying security that is principally traded on a national securities exchange, the principal exchange market in which the underlying security is traded and (B) in respect of an underlying security that is principally traded in the over-the-counter market, the market reflected by any widely recognized quotation dissemination system or service [(Nasdaq in the case of a Nasdaq stock)].

(51) through (77) No Change.

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**2700. SECURITIES DISTRIBUTIONS**

* * * * *

**2720. Distribution of Securities of Members and Affiliates—Conflicts of Interest**

(a) No Change.

(b) Definitions

For purposes of this Rule, the following words shall have the stated meanings:

(1) through (2) No Change.

(3) Bona fide independent market—a market in a security [which] *that:*

(A) through (D) No Change.

(4) Bona fide independent market maker—a market maker [which] *that:*

(A) is registered *with the NASD* [as a Nasdaq] *or a national securities exchange as* a market maker in the security to be distributed pursuant to this Rule;

(B) through (C) No Change.

(5) through (18) No Change.

(c) through (p) No Change.

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**2800. SPECIAL PRODUCTS**

**2810. Direct Participation Programs**

(a) No Change.

(b) Requirements

(1) No Change.

(2) Suitability

(A) through (C) No Change.

(D) Subparagraphs (A) and (B), and, only in situations where the member is not affiliated with the direct participation program, subparagraph (C) shall not apply to:

(i) A secondary public offering of or a secondary market transaction in a unit, depositary receipt, or other interest in a direct participation program [for which quotations are displayed on Nasdaq or which] *that* is listed on a registered national securities exchange; or

(ii) an initial public offering of a unit, depositary receipt or other interest in a direct participation program for which an application for [inclusion on Nasdaq or] listing on a registered national securities exchange has been approved by [Nasdaq or] such exchange and the applicant makes a good faith representation that it believes such [inclusion on Nasdaq or] listing on an exchange will occur within a reasonable period of time following the formation of the program.

(3) through (5) No Change.

(6) Participation in Rollups

(A) through (B) No Change.

(C) No member or person associated with a member shall participate in any capacity in a limited partnership rollup transaction if the transaction is unfair or unreasonable.

(i) A limited partnership rollup transaction will be presumed not to be unfair or unreasonable if the limited partnership rollup transaction provides for the right of dissenting limited partners:

a. to receive compensation for their limited partnership units based on an appraisal of the limited partnership assets performed by an independent appraiser unaffiliated with the sponsor or general partner of the program [which] *that* values the assets as if sold in an orderly manner in a reasonable period of time, plus or minus other balance sheet items, and less the cost of

sale or refinancing and in a manner consistent with the appropriate industry practice. Compensation to dissenting limited partners of limited partnership rollup transactions may be cash, secured debt instruments, unsecured debt instruments, or freely[-] tradeable securities; provided, however, that:

1. through 3. No Change.

4. freely[-] tradeable securities [utilized] *used* as compensation to dissenting limited partners must be previously listed on a *registered* national securities exchange [or previously traded on Nasdaq] prior to the limited partnership rollup transaction, and the number of securities to be received in return for limited partnership interests must be determined in relation to the average last sale price of the freely[-] tradeable securities in the 20-day period following the date of the meeting at which the vote on the limited partnership rollup transaction occurs. If the issuer of the freely[-] tradeable securities is affiliated with the sponsor or general partner, newly issued securities to be [utilized] *used* as compensation to dissenting limited partners shall not represent more than 20 percent of the issued and outstanding shares of that class of securities after giving effect to the issuance. For purposes of the preceding sentence, a sponsor or general partner is ''affiliated'' with the issuer of the freely[-] tradeable securities if the sponsor or general partner receives any material compensation from the issuer or its affiliates in conjunction with the limited partnership rollup transaction or the purchase of the general partner's interest; provided, however, that nothing herein shall restrict the ability of a sponsor or general partner to receive any payment for its equity interests and compensation as otherwise provided by this subparagraph.

b. and c. No Change.

(ii) No Change.

(c) No Change.

* * * * *

**2840. Trading in Index Warrants, Currency Index Warrants, and Currency Warrants**

**2841. General**

(a) Applicability—This Rule 2840 Series shall be applicable[: (1) To the conduct of accounts, the execution of transactions, and the handling of orders in index warrants listed on The Nasdaq Stock Market (''Nasdaq''); and (2)] to the extent appropriate unless otherwise stated herein, to the conduct of accounts, the execution of transactions, and the handling of orders in exchange-listed stock index warrants, currency index warrants, and currency warrants by members who are not members of the exchange on which the warrant is listed or traded.

(b) and (c) No Change.

* * * * *

**2850. Position Limits**

[(a)] Except with the prior written approval of the Association pursuant to the Rule 9600 Series for good cause shown in each instance, no member shall effect for any account in which such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, a purchase or sale transaction in an index warrant listed [on Nasdaq or] on a national securities exchange if the member has reason to believe that as a result of such transaction the member, or partner, officer, director or employee thereof, or customer would, acting alone or in concert with others, directly or indirectly, hold or control an aggregate position in an index warrant issue on the same side of the market, combining such index warrant position with positions in index warrants overlying the same index on the same side of the market, in excess of the position limits established by the Association[, in the case of Nasdaq-listed index warrants,] or the exchange on which the index warrant is listed.

[(b) In determining compliance with this Rule, the position limits for Nasdaq-listed index warrants are as follows:]

[(1) Fifteen million warrants with respect to warrants on the same stock index (other than the Standard & Poor's MidCap 400 Index) with an original issue price of ten dollars or less.]

[(2) Seven million five hundred thousand warrants, with respect to warrants on the Standard & Poor's MidCap 400 Index with an original issue price of ten dollars or less.]

[(3) For stock index warrants with an original issue price greater than ten dollars, positions in these warrants must be converted to the equivalent-of warrants on the same index priced initially at ten dollars by dividing the original issue price of the index warrants priced above ten dollars by ten and multiplying this number by the size of such index warrant position. After recalculating a warrant position pursuant to this subparagraph, such recalculated warrant position shall be aggregated with other warrant positions on the same underlying index on the same side of the market and subjected to the applicable position limit set forth in subparagraph (1) or (2) above. For example, if an investor held 100,000 Nasdaq 100 Index warrants offered originally at $20 per warrant, the size of this position for the purpose of calculating position limits would be 200,000, or 100,000 times 20/10.]

**2851. Exercise Limits**

(a) Except with the prior written approval of the Association pursuant to the Rule 9600 Series for good cause shown, in each instance, no member or person associated with a member shall exercise, for any account in which such member or person associated with such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, a long position in any index warrant if as a result thereof such member or partner, officer, director or employee thereof or customer, acting alone or in concert with others, directly or indirectly,[:]

[(1) Has or will have exercised within any five (5) consecutive business days a number of index warrants overlying the same index in excess of the limits for index warrant positions contained in Rule 2850; or

(2)] Has or will have exceeded the applicable exercise limit fixed from time to time by an exchange for an index warrant [not dealt in on Nasdaq].

(b) The Association, pursuant to the Rule 9600 Series for good cause shown, may institute other limitations concerning the exercise of index warrants from time to time by action of the Association. Reasonable notice shall be given of each new limitation fixed by the Association. These exercise limitations are separate and distinct from any other exercise limitations imposed by the issuers of index warrants.

**[2852. Reporting Requirements]**
***Reserved***

[(a) Each member shall file with the Association a report with respect to each account in which the member has an interest, each account of a partner, officer, director or employee of such member, and each customer account of the member, which has established an aggregate position of 100,000 index warrants on the same side of the market in an index warrant issue listed on Nasdaq, combining such index warrant position with positions in index warrants overlying the same index on the same side of the market traded on Nasdaq or a national securities exchange.]

[(b) Such report shall identify the person or persons having an interest in such account and shall identify separately the total number of each type of index warrant that comprises the reportable position in such account. The

report shall be in such form as may be prescribed by the Association and shall be filed no later than the close of business on the next business day following the day on which the transaction or transactions necessitating the filing of such report occurred. Whenever a report shall be required to be filed with respect to an account pursuant to this Rule, the member filing such report shall file with the Association such additional periodic reports with respect to such account as the Association may from time to time prescribe.]

* * * * *

**2854. [Trading Halts or Suspensions]**
***Reserved***

[(a) The trading in an index warrant on Nasdaq shall be halted whenever the Senior Vice President for Market Regulation, or its designee, shall conclude that such action is appropriate in the interests of a fair and orderly market and to protect investors. Among the factors that may be considered are the following:]

[(1) Trading has been halted or suspended in underlying stocks whose weighted value represents 20% or more of the index value;]

[(2) the current calculation of the index derived from the current market prices of the stocks is not available;]

[(3) other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.]

[(b) Trading in index warrants that has been the subject of a trading halt or suspension may resume if the Senior Vice President for Market Regulation, or its designee, determines that the conditions which led to the halt or suspension are no longer present or that the interests of a fair and orderly market are served by a resumption of trading. In either event, the reopening may not occur until the Association has determined that trading in underlying stocks whose weighted value represents more than 50% of the index is occurring.]

* * * * *

**2860. Options**

(a) No Change.

(b) Requirements

(1) General

(A) Applicability—This Rule shall be applicable (i) [to the trading of options contracts issued by The Options Clearing Corporation and displayed on The Nasdaq Stock Market and to the terms and conditions of such contracts; (ii)] to the extent appropriate unless otherwise stated herein, to the conduct of accounts, the execution of transactions, and the handling of orders in exchange-listed options by members [who] *that* are not members of an exchange on which the option executed is listed; [(iii)] *(ii)* to the extent appropriate unless otherwise stated herein, to the conduct of accounts, the execution of transactions, and the handling of orders in conventional options; and [(iv)] *(iii)* other matters related to options trading.

Unless otherwise indicated herein, subparagraphs (3) through (12) shall apply only to [options displayed on Nasdaq and] standardized and conventional options on common stock and subparagraphs (13) through (24) shall apply to transactions in all options as defined in paragraph (a), including common stock. The position and exercise limits for FLEX Equity Options for members [who] *that* are not also members of the exchange on which FLEX Equity Options trade shall be the same as the position and exercise limits as applicable to members of the exchange on which such FLEX Equity Options are traded.

(B) through (C) No Change.

(2) Definitions

The following terms shall, unless the context otherwise requires, have the stated meanings:

(A) through (F) No Change.

(G) Call—The term ''call'' means an option contract under which the holder of the option has the right, in accordance with the terms of the option, to purchase the number of units of the underlying security or to receive a dollar equivalent of the underlying index covered by the option contract. In the case of a ''call'' issued by The Options Clearing Corporation on common stock [or on an option displayed on The Nasdaq Stock Market], it shall mean an option contract under which the holder of the option has the right, in accordance with the terms of the option, to purchase from The Options Clearing Corporation the number of units of the underlying security or receive a dollar equivalent of the underlying index covered by the option contract.

(H) through (DD) No Change. [(EE) Nasdaq Market Index Option—The term ''Nasdaq market index option'' means an option contract issued by The Options Clearing Corporation and displayed on Nasdaq based upon an underlying index which has been deemed by the Commission to be a market index.]

[(FF) Nasdaq Option Transaction—The term ''Nasdaq option transaction'' means a transaction effected by a member of the Association for the purchase or sale of an option contract which is displayed on The Nasdaq Stock Market or for the closing out of a long or short position in such option contract.]

(GG) through (II) are renumbered as (EE) through (GG).

[(JJ)] *(HH)* Options Contract—The term ''options contract'' means any option as defined in paragraph (a). For purposes of subparagraphs (3) through (12), an option to purchase or sell common stock shall be deemed to cover 100 shares of such stock at the time the contract granting such option is written. [A Nasdaq index option shall be deemed to cover a dollar equivalent to the numerical value of the underlying index multiplied by the applicable index multiplier.] If a stock option is granted covering some other number of shares, then for purposes of subparagraphs (3) through (12), it shall be deemed to constitute as many option contracts as that other number of shares divided by 100 (e.g., an option to buy or sell five hundred shares of common stock shall be considered as five option contracts). A stock option contract [which] *that,* when written, grants the right to purchase or sell 100 shares of common stock shall continue to be considered as one contract throughout its life, notwithstanding that, pursuant to its terms, the number of shares [which] that it covers may be adjusted to reflect stock dividends, stock splits, reverse splits, or other similar actions by the issuer of such stock.

(KK) through (NN) are renumbered as (II) through (LL).

[(OO)] *(MM)* Put—The term ''put'' means an option contract under which the holder of the option has the right, in accordance with the terms of the option, to sell the number of units of the underlying security or deliver a dollar equivalent of the underlying index covered by the option contract. In the case of a ''put'' issued by The Options Clearing Corporation on common stock [or on an option displayed on The Nasdaq Stock Market], it shall mean an option contract under which the holder of the option has the right, in accordance with terms of the option, to sell to The Options Clearing Corporation the number of units of the underlying security covered by the option contract or to tender the dollar equivalent of the underlying index.

[(PP) Registered Nasdaq Index Options Market Maker—The term ''registered Nasdaq index options market maker'' means a member who meets the qualifications for such, as set forth in subparagraph (3), is willing and

able to serve as such in connection with Nasdaq index option contracts and who is authorized by the Association to do so.]

(QQ) through (VV) are renumbered as (NN) through (SS).

[(WW)] *(TT)* The Options Clearing Corporation—The term ''The Options Clearing Corporation'' means The Options Clearing Corporation, the issuer of exchange-listed options [and options displayed on The Nasdaq Stock Market].

(XX) through (YY) are renumbered as (UU) through (VV).

[(ZZ) Underlying Index—The term ''underlying index'' means an index upon which a Nasdaq index option contract is based.]

(AAA) through (BBB) are renumbered as (YY) through (ZZ).

(3) Position Limits

(A) Stock Options—Except in highly unusual circumstances, and with the prior written approval of the Association pursuant to the Rule 9600 Series for good cause shown in each instance, no member shall effect for any account in which such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, non-member broker, or non-member dealer, an opening transaction through [Nasdaq,] the over-the-counter market or on any exchange in a stock option contract of any class of stock options if the member has reason to believe that as a result of such transaction the member or partner, officer, director or employee thereof, or customer, non-member broker, or non-member dealer, would, acting alone or in concert with others, directly or indirectly, hold or control or be obligated in respect of an aggregate equity options position in excess of:

(i) No Change.

(ii) 22,500 options contracts of the put class and the call class on the same side of the market covering the same underlying security, provid[ing]*ed* that the 22,500 contract position limit shall only be available for option contracts on securities [which] *that* underlie [Nasdaq or] exchange-traded options qualifying under applicable rules for a position limit of 22,500 option contracts; or

(iii) 31,500 option contracts of the put class and the call class on the same side of the market covering the same underlying security provid[ing]*ed* that the 31,500 contract position limit shall only be available for option contracts on securities [which] *that* underlie [Nasdaq or] exchange-traded options qualifying under applicable rules for a position limit of 31,500 option contracts; or

(iv) 60,000 options contracts of the put and the call class on the same side of the market covering the same underlying security, provid[ing]*ed* that the 60,000 contract position limit shall only be available for option contracts on securities [which] *that* underlie [Nasdaq or] exchange-traded options qualifying under applicable rules for a position limit of 60,000 option contracts; or

(v) 75,000 options contracts of the put and the call class on the same side of the market covering the same underlying security, provid[ing]*ed* that the 75,000 contract position limit shall only be available for option contracts on securities [which] *that* underlie [Nasdaq or] exchange-traded options qualifying under applicable rules for a position limit of 75,000 option contracts; or

(vi) through (ix) No Change.

(B) Index Options

[(i)] Except in highly unusual circumstances, and with the prior written approval of the Association pursuant to the Rule 9600 Series for good cause shown in each instance, no member shall effect for any account in which such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, an opening transaction in an option contract of any class of index options [displayed on Nasdaq or] dealt in on an exchange if the member has reason to believe that as a result of such transaction the member or partner, officer, director or employee thereof, or customer, would, acting alone or in concert with others, directly or indirectly, hold or control or be obligated in respect of an aggregate position in excess of position limits established by [the Association, in the case of Nasdaq index options, or] the exchange on which the option trades.

[(ii) In determining compliance with this subparagraph (3), option contracts on a market index displayed in Nasdaq shall be subject to a contract limitation fixed by the Association, which shall not be larger than the equivalent of a $300 million position. For this purpose, a position shall be determined by the product of the closing index value times the index multiplier times the number of contracts on the same side of the market.]

(C) through (D) No Change.

(4) through (6) No Change.

(7) Limit on Uncovered Short Positions

Whenever the Association shall determine in light of current conditions in the markets for options, or in the markets for underlying securities, that there are outstanding a number of uncovered short positions in option contracts of a given class in excess of the limits established by the Association for purposes of this subparagraph or that a percentage of outstanding short positions in option contracts of a given class are uncovered, in excess of the limits established by the Association for purposes of this subparagraph, the Association, upon its determination that such action is in the public interest and necessary for the protection of investors and the maintenance of a fair and orderly market in the option contracts or underlying securities, may prohibit any further opening writing transactions in option contracts of that class unless the resulting short position will be covered, and it may prohibit the uncovering of any existing covered short position in option contracts of one or more series of options of that class. [The Association may exempt transactions in Nasdaq options by registered Nasdaq options market makers from restrictions imposed under this subparagraph and it shall rescind such restrictions upon its determination that they are no longer appropriate.]

(8) through (11) No Change.

(12) Confirmations

Every member shall promptly furnish to each customer a written confirmation of each transaction in option contracts for such customer's account. Each such confirmation shall show the type of option, the underlying security or index, the expiration month, the exercise price, the number of option contracts, the premium, the commission, the trade and settlement dates, whether the transaction was a purchase or a sale (writing) transaction, whether the transaction was an opening or a closing transaction, whether the transaction was effected on a principal or agency basis and, for other than options issued by The Options Clearing Corporation, the date of expiration. The confirmation shall by appropriate symbols distinguish between exchange listed [and Nasdaq option transactions] and other transactions in option contracts.

(13) through (22) No Change.

(23) Tendering Procedures for Exercise of Options

(A) Exercise of Options Contracts

(i) Subject to the restrictions established pursuant to paragraph (b)(4) hereof and such other restrictions [which] *that* may be imposed by the Association, The Options Clearing Corporation or an options exchange pursuant to appropriate rules, an outstanding option contract issued by The Options Clearing Corporation may be exercised during the time period specified in the rules of The Options

Clearing Corporation. An exercise notice may be tendered to The Options Clearing Corporation only by the clearing member in whose account the option contract is carried. Exercise instructions of their customers relating to exchange listed [or Nasdaq] option contracts shall not be accepted by members after 5:30 p.m. (Eastern Time) on the business day immediately prior to the expiration date of any option contract. Exercise instructions in respect of such option contracts carried in any proprietary account of a member shall similarly not be accepted by any other member with [whom] *which* such member maintains an account after 5:30 p.m. (Eastern Time) on the business day immediately prior to the expiration date of any option contract.

(ii) through (iii) No Change.

(B) through (D) No Change.

[(E) Exercise of Nasdaq Index Option Contracts

(i) With respect to Nasdaq index option contracts, clearing members are required to follow the procedures of The Options Clearing Corporation for tendering exercise notices, and member organizations also are required to comply with the following procedures:]

[a. A memorandum to exercise any Nasdaq index option contract issued or to be issued in a customer or market maker account at The Options Clearing Corporation must be received or prepared by the member organization no later than 4:10 p.m. (Eastern Time) and must be time-stamped at the time it is received or prepared. Member organizations must accept exercise instructions until 4:10 p.m. (Eastern Time) each business day.]

[b. A memorandum to exercise any Nasdaq index option contract issued or to be issued in a firm account at The Options Clearing Corporation must be prepared by the member organization no later than 4:10 p.m. (Eastern Time) and must be time-stamped at the time it is prepared.]

[c. Any member or member organization that intends to submit an exercise notice for 25 or more contracts in the same series of Nasdaq index options on the same business day on behalf of an individual customer, registered Nasdaq options market maker or firm account must notify the Association of such exercises in a manner prescribed by the Association no later than 4:10 p.m. (Eastern Time) on that day. For purposes of this subparagraph (E), exercises for all accounts controlled by the same individual must be aggregated.]

[(ii) The provisions of subparagraphs (i) a. and b. above are not applicable in respect to any series of Nasdaq index options on the last day of trading prior to the expiration date of such series.]

(24) No Change.

* * * * *

**2870. [Nasdaq Index Options]** ***Reserved***

**[2871. Definitions]**

[(a) Aggregate Current Index Value—The term ''aggregate current index value'' means the value required to be delivered to the holder of a call or by the holder of a put (against payment of the aggregate exercise price) upon the valid exercise of an index option. Such value is equal to the index multiplier times the current index value on the trading day on which an exercise notice is properly tendered to The Options Clearing Corporation, or, if the day on which such notice is so tendered is not a trading day, then on the most recent trading day.]

[(b) Aggregate Index Option Exercise Price—The term ''aggregate index option exercise price'' in respect of an index option means the exercise price of such option times the index multiplier.]

[(c) Best Bid and Asked—The term ''best bid'' means the best or highest price of all the open, active bids. The term ''best asked'' means the best or lowest (but greater than zero) price of all the open active offers.]

[(d) Cabinet Transaction—The term ''cabinet transaction'' means a transaction in a Nasdaq index option executed at a price of $1.00 per contract for the purpose of opening or closing a position in an index option having a nominal market value.]

[(e) Call—The term ''call'' means an option contract under which the holder of the options has the right, in accordance with the terms of the option, to buy a number of units of the underlying security or to receive a dollar equivalent of the underlying index covered by the option contract.]

[(f) Class of Options—The term ''class of options'' means all option contracts of the same type of option covering the same underlying security or index.]

[(g) Clearing Member—The term ''clearing member'' means a member of the Association which has been admitted to membership in The Options Clearing Corporation pursuant to the provisions of the rules of The Options Clearing Corporation.]

[(h) Closing Purchase Transaction—The term ''closing purchase transaction'' means an option transaction in which the purchaser's intention is to reduce or eliminate a short position in the series of options involved in such transaction.]

[(i) Closing Sale Transaction—The term ''closing sale transaction'' means an option transaction in which the seller's intention is to reduce or eliminate a long position in the series of options involved in such transaction.]

[(j) Combination Order—The term ''combination order'' means an order to buy a number of call option contracts and the same number of put option contracts with respect to the same underlying security or index or put and call option contracts representing the same number of shares or units of trading at option, which contracts do not have both the same exercise price and expiration date; or an order to sell a number of call option contracts and the same number of put option contracts with respect to the same underlying security or index, or put and call option contracts representing the same number of shares, or units of trading at option, which contracts do not have both the same exercise price and expiration date (e.g., an order to buy two XYZ April 50 calls and to buy two XYZ July 40 puts is a combination order). In the case of adjusted option contracts, a combination order need not consist of the same number of put and call contracts if such contracts represent the same number of shares or units of trading at option.]

[(k) Covered—The term ''covered'' in respect of a short position in a call option contract means that the writer's obligation is secured by a ''specific deposit'' or an ''escrow deposit,'' meeting the conditions of Rules 610(e) or 610(h), respectively, of the rules of The Options Clearing Corporation, or the writer holds in the same account as the short position, on a unit-for-unit basis, a long position either in the underlying security or in an option contract of the same class of options where the exercise price of the option contract in such long position is equal to or less than the exercise price of the option contract in such short position. The term ''covered'' in respect of a short position in a put option contract means that the writer holds in the same account as the short position, on a unit-for-unit basis, a long position in an option contract of the same class of options having an exercise price equal to or greater than the exercise price of the option contract in such short position.]

[(l) Current Index Value—The term ''current index value'' means the level of a particular index (derived from the current market prices and capitalization of the underlying securities in the index group) at the close of trading on any trading day, or any multiple or fraction thereof specified by the Association as such value is reported by the reporting authority.]

[(m) Expiration Cycle—The term ''expiration cycle'' means all option contracts covering the same underlying security or index having the same expiration month, or the time period during which such options are authorized for trading.]

[(n) Expiration Date—The term ''expiration date'' of a Nasdaq option contract issued by The Options Clearing Corporation means the day and time fixed by the rules of The Options Clearing Corporation for the expiration of all option contracts having the same expiration month as such option contract.]

[(o) Expiration Month—The term ''expiration month'' in respect of an option contract means the month and year in which such option contract expires.]

[(p) Index Dollar Equivalent—The term ''index dollar equivalent'' is the dollar amount which results when the index value is multiplied by the appropriate index multiplier.]

[(q) Index Group—The term ''index group'' means a group of securities, whose inclusion and relative representation in the group is determined by the inclusion and relative representation of their current market values in a widely disseminated securities index specified by the Association.]

[(r) Index Multiplier—The term ''index multiplier'' as used in reference to an index option contract means the dollar amount (as specified by the Association) by which the current index value is multiplied to arrive at the index dollar equivalent. Such term replaces the term ''unit of trading'' used in reference to other kinds of options.]

[(s) Index Option Exercise Price—The term ''index option exercise price'' in respect of an index option means the specified index value which, when multiplied by the index multiplier, will yield the aggregate exercise price at which the aggregate current index value may be purchased (in the case of a call) or sold (in the case of a put) upon the exercise of such option.]

[(t) Index Option Premium—The term ''index option premium'' means the price of each such option (expressed in points), as agreed upon by the purchaser and seller in such transaction, times the index multiplier and the number of options subject to the transaction.]

[(u) Index Underlying Security—The term index underlying security means any of the securities included in an index group underlying a class of Nasdaq index options.]

[(v) Internalized Trade Transaction—The term ''Internalized Trade Transaction'' or ''ITT'' means an OCT entered into The Nasdaq Stock Market by a participant containing the terms of a transaction executed by the participant as principal where the participant is also the order entry firm.]

[(w) Long Position—The term ''long position'' means the number of outstanding option contracts of a given series of options held by a person (purchaser).]

[(x) Nasdaq Index Option Contract—The term ''Nasdaq index option contract'' means an option contract which is authorized for quotation display on The Nasdaq Stock Market.]

[(y) Nasdaq Index Options Order Entry Firm—The term ''order entry firm'' shall mean a member of the Association who is registered as an order entry firm for purposes of participation in the Nasdaq Index Options Service which permits the firm to enter options orders via Order Confirmation Transactions (OCT) or Internalized Trade Transaction (ITT).]

[(z) Nasdaq Index Options Participant—The term ''participant'' shall mean either a Nasdaq index options market maker or Nasdaq index options order entry firm registered as such with the Association for participation in the Nasdaq Index Options Service.]

[(aa) Nasdaq Index Options Service—The term ''Nasdaq Index Option Service'' or ''Service'' means the Service owned and operated by The Nasdaq Stock Market, Inc. which enables participants to report transaction in Nasdaq index options, to have reports of all Nasdaq index options transactions automatically forwarded to the Options Price Reporting Authority (OPRA) for dissemination to the public and the industry, and to ''lock-in'' these trades by sending both sides to The Options Clearing Corporation for clearance and settlement; and to provide participants with sufficient monitoring and updating capabilities to participate in such trading environment.]

[(bb) Nasdaq Market Index Option—The term ''Nasdaq market index option'' means an option contract issued by The Options Clearing Corporation and displayed on The Nasdaq Stock Market based upon an underlying index which has been deemed by the Commission to be a market index.]

[(cc) Opening Purchase Transaction—The term ''opening purchase transaction'' means an option transaction in which the buyer's intention is to create or increase a long position in the series of options involved in such transaction.]

[(dd) Opening Writing Transaction—The term ''opening writing transaction'' means an option transaction in which the seller's (writer's) intention is to create or increase a short position in the series of options involved in such transaction.]

[(ee) Options Clearing Corporation—The term ''Options Clearing Corporation'' (OCC) means The Options Clearing Corporation, the issuer of options displayed on The Nasdaq Stock Market.]

[(ff) Order Confirmation Transaction—The term ''Order Confirmation Transaction'' or ''OCT'' means a message entered into The Nasdaq Stock Market by an order entry firm which is directed to a market maker not simultaneously acting as both a market maker and an order entry firm, which message contains the information specified by the Association as necessary for trade reporting purposes and for submission of trade detail to The Options Clearing Corporation.]

[(gg) Outstanding—The term ''outstanding'' in respect of an option contract means an option contract which has neither been the subject of a closing sale transaction nor has been exercised nor has reached its expiration date.]

[(hh) Put—The term ''put'' means an option contract under which the holder of the option has the right, in accordance with the terms of the option, to sell the number of units of the underlying security or deliver a dollar equivalent of the underlying index covered by the option contract.]

[(ii) Registered Nasdaq Index Options Market Maker—The term ''registered Nasdaq index options market maker'' means a member who meets the qualifications for such as set forth in Rule 2873, is willing and able to serve as such in connection with Nasdaq index option contracts and who is authorized by the Association to do so.]

[(jj) Rules of The Options Clearing Corporation—The term ''rules of The Options Clearing Corporation'' means the by-laws and the rules of The Option Clearing Corporation, and all written interpretations thereof as may be in effect from time to time.]

[(kk) Series of Options—The term ''series of options'' means all option contracts of the same class of options having the same exercise price and expiration date and which cover the same number of units of the underlying security or index.]

[(ll) Short Position—The term ''short position'' means the number of outstanding option contracts of a given series of options with respect to which a person is obligated as a writer (seller).]

[(mm) Spread Order—The term ''spread order'' means an order to buy a stated number of option contracts and

to sell the same number of option contracts, or contracts representing the same number of shares or units of trading at option in a different series of the same class of options.]

[(nn) Straddle Order—The term ''straddle order'' means an order to buy a number of call option contracts and the same number of put option contracts with respect to the same underlying security or index, or put and call option contracts representing the same number of shares or units of trading at option, and having the same exercise price and expiration date; or an order to sell a number of call option contracts and the same number of put option contracts with respect to the same underlying security or index, or put and call option contracts representing the same number of shares or units of trading at option and having the same exercise price and expiration date, (e.g., an order to buy two XYZ July 50 calls and to buy two XYZ July 50 puts is a straddle order). In the case of adjusted option contracts, a straddle order need not consist of the same number of put and call contracts if such contracts both represent the same number of shares, or units of trading at option.]

[(oo) Type of Options—The term ''type of options'' means the classification of an option contract as either a put or a call.]

[(pp) Uncovered—The term ''uncovered'' in respect of a short position in an option contract means the short position is not covered.]

[(qq) Underlying Index—The term ''underlying index'' means an index upon which a Nasdaq index option contract is based.]

[(rr) Unit of Trading—The term ''unit of trading'' means the number of units of the underlying security designated by The Options Clearing Corporation as the subject of a single option contract. In the absence of any other designation, the unit of trading for a common stock is 100 shares.]

**[2872. Nasdaq Index Option Services Available]**

[(a) Level 2 Nasdaq Index Options Service]

[(1) Nature of Service

This service will provide the subscriber with access to the quotations of all of the registered Nasdaq index options market makers entering quotes on each of the Nasdaq index options, in addition to the last reported sale for each Nasdaq index option, the most recent index computation for the underlying index, daily high and low, daily volume, time of last sale and inside quotations.]

[(2) Availability

This service is available only to persons approved and authorized by the Association for retrieval of Nasdaq index options quotation and last sale data.]

[(b) Level 3 Nasdaq Index Options Service]

[(1) Nature of Service

This service will enable a registered Nasdaq index options market maker to enter quotations in The Nasdaq Stock Market only on the Nasdaq index options as to which the Association has authorized it to enter quotes pursuant to the procedures set forth in Rule 2873. A subscriber to Level 3 Nasdaq Index Options Service shall also receive Level 2 Nasdaq Index Options Service.]

[(2) Availability

Level 3 Nasdaq Index Options Service is available to any member which, upon application, is approved and authorized by the Association to participate in The Nasdaq Stock Market as a registered Nasdaq index options market maker.]

**[2873. Registration, Qualification and Other General Requirements Applicable to All Nasdaq Index Options Market Makers]**

[(a) Registration of Nasdaq Index Options Market Makers—Prior to acting as a market maker in Nasdaq index options, a member must make application to the Association on a form prescribed by the Association and become registered as such with it. In connection with such application, a member must submit to the Association such financial and other information as required by the Association to determine if such member meets the qualifications of a registered Nasdaq index options market maker specified herein. Such other information will include those classes and series of Nasdaq options in which such member desires to be registered as an index options market maker.]

[(b) Participation in the Nasdaq Index Options Service shall be mandatory for all Nasdaq index options market makers. Accordingly, a Nasdaq index options market maker's registration as such shall be conditioned upon the member's initial and continuing compliance with the following requirements:]

[(1) execution of a Nasdaq Index Options Service participant application agreement with the Association;]

[(2) maintenance of the physical security of the equipment located on the premises of the Nasdaq index options market maker to prevent the unauthorized entry of information into the Nasdaq Index Options Service;]

[(3) acceptance and settlement of each NASD index option trade that the Service identifies as having been effected by such Nasdaq index options market maker, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified trade by the clearing member on the regularly scheduled settlement date;]

[(4) membership in The Options Clearing Corporation, or a clearing arrangement with such member; and]

[(5) compliance with all applicable rules and operating procedures of the Association and the Commission.]

[(c) Nasdaq index options market makers shall be under a continuing obligation to inform the Association of non-compliance with any of the registration requirements set forth above.]

[(d) Obligation to Honor Trades—If a Nasdaq index options market maker, or clearing member acting on his behalf, is reported by the Service to clearing at the close of any trading day, or shown by the activity reports generated by the Service as constituting a side of a trade, such market maker, or clearing member acting on his behalf, shall honor such trade on the scheduled settlement date.]

[(e) Compliance with Rules and Registration Requirements—Failure by Nasdaq index options market makers to comply with any of the Rules or registration requirements applicable to the Service identified herein shall subject such participants to censure, fine, suspension or revocation of its registration as Nasdaq index options market maker and/or order entry firm or any other fitting penalty under the Rules of the Association.]

[(f) Market Maker Financial Requirements—A registered Nasdaq index options market maker shall continuously maintain net capital of at least $50,000 computed in accordance with the provisions of SEC Rule 15c3–1(c)(2) under the Act, plus $5,000 per options series up to a maximum requirement of $150,000.]

[(g) Normal Business Hours—A registered Nasdaq index options market maker shall keep the Association advised as to the normal business hours during which it shall enter quotations. All firms should be open and active between the hours of 9:30 a.m. and 4:10 p.m. (Eastern Time). Nasdaq shall publish a ''close symbol'' for a registered Nasdaq index options market maker on Level 2 and Level 3 terminals at the close of such firm's normal business hours.]

[(h) Initiation of Service—Upon initial application, the registration of a Nasdaq index options market maker in a Nasdaq index options series shall be effective at the start of business on the second business day following receipt of his registration application by the Association; provided, however, said registration is accepted by the Association. If said initial registration is received for a Nasdaq index options series which has not previously been authorized by the Association, the registered Nasdaq index options market maker's registration shall be effective at the start of business on the first day that the Nasdaq options series is authorized for quotation by the Association; provided, however, said registration is accepted by the Association. A Nasdaq index options market maker shall commence market making and participation in the Service by initially contacting the Nasdaq Market Operations Center to obtain authorization for the trading of a particular Nasdaq index options series and identifying those terminals on which the Service information is to be displayed and thereafter by an appropriate keyboard entry which obligates him to execute transactions for at least one contract at the market maker's displayed quotations so long as the market maker remains active. All entries shall be made in accordance with the requirements set forth in the User Guide.]

[(i) Withdrawal Procedure for Nasdaq Index Options Market Makers]

[(1) With the approval of the Association, a registered Nasdaq index options market maker may suspend its quotations in a Nasdaq index options series for a specified period of time upon a showing that it is seriously impaired in its ability to enter quotations, or, in the case of a contemplated financing in the underlying security, the presence of statutory prohibitions or restrictions, or such other reason acceptable to the Association.]

[(2) In the event of a malfunction in the Nasdaq index options market maker's equipment rendering on-line communications with the Service inoperable, the Nasdaq index options market maker is obligated to immediately contact the Nasdaq Market Operations Center by telephone to request withdrawal from the Service. Nasdaq operational personnel will in turn enter the withdrawal notification from a supervisory terminal. Such manual intervention, however, will take a certain period of time for completion and any transaction occurring prior to the effectiveness of the withdrawal shall remain the responsibility of the withdrawing market maker.]

[(3) A registered Nasdaq index options market maker who suspends its quotations in a Nasdaq index options series pursuant to subparagraphs (1) and (2) above may not re-enter quotations in such series during the same trading day without the prior approval of the Association.]

[(j) Voluntary Termination—A registered Nasdaq index options market maker may voluntarily terminate its registration as to any Nasdaq options series by withdrawing its quotations from the Service without prior approval of the Association, subject to the conditions set forth in Rules 2875 and 2876. Such Nasdaq index options market maker may, by making application to the Association under the procedures and requirements set forth in this Rule, re-register as a Nasdaq index options market maker in a Nasdaq options series in which his registration is terminated.]

[(k) A Nasdaq index options market maker withdrawing option quotations from the Nasdaq Index Options Service for any reason has a specific obligation to monitor his status to assure that a withdrawal has in fact occurred. Any transaction occurring prior to the effectiveness of the withdrawal shall remain the responsibility of the withdrawing market maker.]

[(l) Suspension and Termination of a Registered Nasdaq Index Options Market Maker's Authority to Enter Quotations by Action of the Association—The Association may, pursuant to provisions specified in the Code of Procedure as set forth in the Rule 9000 Series, suspend, condition or terminate a registered index options market maker's authority to enter quotations on one or more series of Nasdaq index options for violations of applicable Rules of the Association.]

[(m) Termination of Service on the Failure to Promptly Pay Fines and Assessments]

[(1) The Association, upon notice, may terminate service on any level of Nasdaq Index Options Service for failure of a subscriber to maintain the standards of availability specified in this Rule for such service or to pay the Service operator for services rendered.]

[(2) Any member which is a respondent in a complaint pursuant to any Rule of the Association is required promptly to pay any fine or costs imposed to the Treasurer of the Association. In the event that the respondent fails to do so, the Association may, after ten business days notice in writing to such respondent, suspend his authority to enter options quotations into or receive options quotations from Level 2 and 3 of the Nasdaq Index Options Services.]

**[2874. Character of Index Options Quotations Entered Into the Nasdaq Index Options Service by All Nasdaq Index Options Market Makers]**

[(a) All bids or offers for Nasdaq index options shall be for at least one option contract or the minimum unit of trading.]

[(b) All bids and offers for Nasdaq index options shall be expressed in terms of the applicable index multiplier (e.g., a bid of five for a Nasdaq index option having an index multiplier of $100 shall represent a bid to pay a premium of $500 for an option contract).]

[(c) All bids or offers for a Nasdaq index option contract for which The Options Clearing Corporation has established an adjusted unit of trading in accordance with paragraphs (c) and (d) of Section 11 of Article VI of the OCC's By-Laws shall be expressed in terms of dollars per the appropriate fractional part of the total securities and/or other property constituting such adjusted unit of trading.]

[(d) A registered Nasdaq index options market maker who receives a buy or sell order must execute a trade for at least one contract at his quotation as they appear on the Nasdaq CRT screen at the time of receipt of any such buy or sell order. Each quotation entered by a registered Nasdaq index options market maker must be reasonably related to the prevailing market.]

[(e) A registered Nasdaq index options market maker will be permitted to enter a one-sided quotation (0–1/16) with respect to those options which have no present market value.]

[(f) Crossed Markets—A registered Nasdaq index options market maker shall not be permitted, except under extraordinary circumstances, to enter quotations into the Nasdaq Index Options Service if (1) the bid quotation entered is greater than the ask quotation of another registered market maker in the same options series or (2) the asked quotation is less than the bid quotation of another registered market maker in the same options series.]

[(g) Quote Spread Parameters—A registered Nasdaq index options market maker shall not be permitted, except under extraordinary circumstances, to enter index option quotations into the Nasdaq Index Options Service if the spread between the market maker's bid and ask exceeds the following parameters:]

[(1) ¼ of $1, if the member's bid price is $.50 or less;]

[(2) ½ of $1, if the bid price is more than $.50 but does not exceed $10;]

[(3) ¾ of $1, if the bid price is more than $10 but does not exceed $20; or]

[(4) $1, if the bid price is more than $20;]

[Providing, however, that the allowable quote spread differentials for the longest term options series open for trading in each option class shall be twice the amounts stated in subparagraphs (1) through (4) above.]

[(h) Except under extraordinary circumstances, a registered Nasdaq index options market maker shall not be permitted to enter on an intra-day basis a bid quotation more than $1 lower and/or an offering more than $1 higher than the last reported transaction for the particular index option contract. However, this standard shall not ordinarily apply if the price per share (or other unit of trading of the underlying index value has changed since the last preceding transaction for the particular option contract, in which event a market maker may then bid no lower than or offer no more than $1 plus the aggregate change in the price per unit of trading) of the underlying index value since the time of the last preceding transaction for the particular index option contract. Nothing in this paragraph shall alter the maximum bid-ask differential established by paragraph (g) above.]

[(i) Whenever, in the judgment of the Association, the interest of maintaining a fair and orderly market so requires, the Association may waive the requirements of paragraph (h) above on a case by case basis.]

[(j) When unusual trading conditions exist, and the interest of maintaining a fair and orderly market, the Association may waive the requirements of paragraph (g) above in those option series 10 or more points in the money to allow market makers to make bid/ask differentials as wide as the quotation in the primary market as determined by the inside quotation displayed on Nasdaq. Such waiver shall not automatically carry over from one day to the next.]

**[2875. Commitment Rules Applicable to Options Market Makers in Nasdaq Index Options]**

[(a) Commitment Rule for Index Options Market Makers. A market maker in a Nasdaq index option, unless excused from entering quotations pursuant to Rule 2873(i) shall, during normal options business hours, continuously quote all options series in such index option through the expiration of the longest term index options authorized for trading at the time the member commences such market making. Failure to abide by this commitment shall cause the index options market maker to be subject to the sanctions contained in Rule 2876.]

[(b) The following examples illustrate the commitment rule for index option market makers established by this Rule.]

[(1) Member A is authorized as a Nasdaq index options market maker prior to the expiration of January Nasdaq-100 Index® Options. Member A is thus obligated to continuously quote all series of Nasdaq-100 put and call options authorized for trading in the January, February and March expirations through the expiration of the March options.]

[(2) Member B is authorized as a market maker in Nasdaq-100 Index® Options at the time these options are authorized for the Nasdaq Options Program, but prior to the commencement of trading in these index options. The first authorized expiration cycle in Nasdaq-100 Index options will consist of options expiring in April, May and June with trading to commence in March. Member B would be obligated to continuously quote all authorized Nasdaq-100 Index option series from the commencement of trading in such options in March through the expiration of June Nasdaq-100 Index options.]

**[2876. Sanctions Applicable to Nasdaq Index Options Market Makers]**

[(a) A registered Nasdaq market maker in index options whose quotation for any option series in which the member is a market maker is withdrawn without the approval of the Association shall, at or before the daily close of the Nasdaq Index Options Service, have its registration terminated in all Nasdaq index options series covering the same underlying index as that for which option quotations were suspended by the member, subject, however, to the re-registration procedures set forth in paragraph (b) below.]

[(b) A Nasdaq index options market maker in index options whose registration in options classes is terminated pursuant to paragraph (a) above may, by making application to the Association under the procedures and requirements set forth in Rule 2873, re-register as a Nasdaq index options market maker in any Nasdaq index options series in the options classes in which his registration was terminated pursuant to paragraph (a) above providing, however, that the Association shall not grant effectiveness to such registration until the near-term options and those in the following expiration cycle have expired.]

[(c) The following example illustrates the sanction for index options market makers established by paragraph (a) above.]

[(1) Market Maker A, without approval of the Association, withdraws quotations from the Nasdaq Index Options Service for a series of Nasdaq-100 Index® options causing the member's registration in all Nasdaq-100 Index options series to be terminated pursuant to paragraph (a) above.]

[(2) At the time Market Maker A's registration is terminated, January, February and March Nasdaq-100® Index options are trading. Pursuant to paragraph (b), any application by member A to again register as a market maker in Nasdaq-100 Index options would not be granted effectiveness by the Association until the expiration of the February Nasdaq-100 Index options.]

[(d) A registered market maker in Nasdaq index options who withdraws index options quotations from the Nasdaq Index Options Service in any options series without prior authorization during the 15 business days preceding the expiration of the near-term options on the same underlying index may be deemed to be in violation of Rule 2110.]

**[2877. Requirements Applicable to Nasdaq Index Options Order Entry Firms]**

[(a) Participation in the Nasdaq Index Options Service as an order entry firm requires current registration as such with the Association. Such registration shall be conditioned upon the order entry firm's initial and continuing compliance with the following requirements:]

[(1) Execution of a Nasdaq Index Options Service participant application agreement with the Association;]

[(2) membership in, or a clearing arrangement with, a member of The Options Clearing Corporation;]

[(3) compliance with all applicable rules and operating procedures of the Association and the Commission;]

[(4) maintenance of the physical security of the equipment located on the premises of the Nasdaq index options order entry firm to prevent the unauthorized entry of information into the Nasdaq Index Options Service; and]

[(5) acceptance and settlement of each trade that the Service identifies as having been effected by such Nasdaq index options order entry firm or, if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such

identified trade by the clearing member on the regularly scheduled settlement date.]

[(b) The registration required hereunder will apply solely to the qualification of a participant to participate in the Nasdaq Index Options Service. Such registration shall not be conditioned upon registration in any particular eligible or active Nasdaq index options contracts.]

[(c) Each participant shall be under a continuing obligation to inform the Association of non-compliance with any of the registration requirements set forth above.]

[(d) Upon the effectiveness of registration as a Nasdaq index options order entry firm, the participant may commence activity for entry of orders, as applicable. The operating hours of the Nasdaq Index Options Service are currently 9:30 a.m. to 4:10 p.m. (Eastern Time), but may be modified by the Association. The extent of participation in Nasdaq by a Nasdaq index options order entry firm shall be determined solely by the firm in the exercise of its ability to enter orders into Nasdaq.]

[(e) Market orders shall not be permitted in the Nasdaq Index Options Service. All orders entered into the Service other than accommodation transactions shall be priced and all orders shall be directed to a specified Nasdaq index options market maker. Nasdaq index options order entry firms will be immediately notified on the terminal screen and printer, if requested, of the execution or rejection of an order entered into via OCT.]

[(f) If a Nasdaq index options order entry firm or clearing member acting on his behalf, is reported by the Service to clearing at the close of any trading day, or shown by the activity reports generated by the Service as constituting a side of a Nasdaq index option trade, such order entry firm or clearing member acting on his behalf, shall honor such trade on the scheduled settlement date.]

[(g) Failure by a Nasdaq index options order entry firm to comply with any of the Rules or registration requirements applicable to the Service identified herein shall subject such participant to censure, fine, suspension or revocation of its registration as a Nasdaq index options order entry and/or market maker firm or any other fitting sanction under the Rules of the Association.]

**[2878. Transaction Reporting and Other Reporting Requirements]**

[(a) All Nasdaq index options participants, upon becoming so registered and qualified, shall have access to, and be required to utilize, the Order Confirmation Transaction (OCT) and Internalized Trade Transaction (ITT) trade reporting systems established by the Association for Nasdaq index options transactions. Such trade reporting systems are designed to ''lock-in'' all Nasdaq index options transactions. Thus these systems serve trade comparison and clearing functions as well as trade reporting functions, and require the participation of both the order entry and the market making firms in the reporting process. Because these procedures, which are detailed in the User Guide, vary from those applying to transaction reporting in other Nasdaq securities, it is imperative that all Nasdaq index options participants become familiar with and comply with the provisions of this Rule. Failure on the part of a Nasdaq index options participant to comply with Nasdaq index options reporting provisions may subject participants to censure, fine, suspension or revocation of registration as a Nasdaq index options market maker and/or order entry firm or any other fitting sanction under the Rules of the Association.]

[(b) Order Confirmation Transaction (OCT)—Nasdaq index options order entry firms shall enter an OCT into the Service promptly upon the execution of their order. Upon the acceptance by a market maker of an OCT, the Service shall automatically forward a trade report to the Options Price Reporting Authority (OPRA). Nasdaq index options market makers shall accept an OCT via terminal entry within two minutes as specified by the Association, or the OCT shall be ''timed-out,'' in which case the Service will notify the order entry firm of the market maker's non-acceptance of the order. The order entry firm will also be notified if the market maker affirmatively rejects the order via terminal entry. If the market maker wishes to subsequently confirm an OCT which has been timed-out or rejected, a new OCT must be entered into the Service by the order entry firm with a late trade indicator. Once accepted, an OCT may only be canceled or corrected by mutual consent of the market maker and order entry firm.]

[(c) Unsolicited Orders—Nasdaq index options market makers are not obligated to accept an OCT which is unsolicited but, if they choose to do so, must accept the order within two minutes of its receipt as specified by the Association. Upon the acceptance of an unsolicited OCT order by a Nasdaq index options market maker, the system will automatically forward a trade report to OPRA. Once accepted by the market maker, the OCT may only be canceled or corrected with the mutual consent of the market maker and the order entry firm.]

[(d) Internalized Trade Transaction (ITT)—Nasdaq Index Options Service participants shall, where appropriate, enter an ITT message into the Service within two minutes of the execution of an internalized trade. Upon the entry of an ITT message, the Service shall automatically forward a trade report to OPRA. An ITT may be subsequently canceled or corrected by the member.]

[(e) A Nasdaq index options order entry firm shall transmit OCT and ITT for transactions in Nasdaq index options other than cabinet transactions at the price recorded on the trade ticket exclusive of commission, taxes or other charges.]

[(f) Nasdaq index options participants may effect cabinet transactions in any class of options contracts authorized for trading via the Service at a price of $1.00 per contract, providing such price is reasonably related to the prevailing market for the option. In reporting cabinet transactions, participants shall designate these transactions as such with the appropriate indicator on OCT or ITT entered into the Service. Cabinet transactions will not be disseminated to OPRA but will be reported to OCC for clearance.]

[(g) Weekly and/or Monthly Reports—A member shall report weekly and/or monthly to the Association such data on Nasdaq index options quoted in the Service as the Board of Governors shall require. Such report shall be on a form prescribed by the Association.]

[(h) Trade Tickets—All trade tickets on transactions in Nasdaq index options and authorized underlying securities must indicate the time the order was received and the time the order was executed or canceled.]

**[2879. Authorization of Nasdaq Index Option Market Making]**

[(a) The Association shall not authorize index option market making in any options series unless, at the time such market making activity is to commence, there are a minimum of five registered Nasdaq index options market makers in the index option.]

[(b) Once market making has commenced in any class of Nasdaq index options, the Association shall withdraw approval of further market making activity with respect to any succeeding options series to be opened in that Nasdaq index option if there are fewer than three registered market makers in the index option.]

[(c) Whenever the Association shall withdraw its approval for index option market making activity in a particular

Nasdaq index options series pursuant to paragraph (b) above, it shall not reinstate such market making until the provisions of paragraph (a) above have been satisfied.]

* * * * *

**[2880. Nasdaq Index Option Contracts Authorized for Trading]**

[The Association may from time to time approve for display on Nasdaq put option contracts and call option contracts in respect of underlying indexes which have been selected by the Association and approved for trading. All such option contracts shall be designated as to the type of option, the underlying index, the expiration month and the exercise price. Only quotations in respect to option contracts in a class or series of options approved by the Association and currently open for display on the Service may be quoted by a registered Nasdaq index options market maker on the Nasdaq Index Options Service.]

**[2881. Series of Nasdaq Index Options for Trading]**

[(a) Nasdaq Index Options—After a particular class of index options has been approved for display on the Service and quotation thereon by registered Nasdaq index options market makers, the Association shall from time to time open for trading series of options therein. Prior to the opening of trading in any series of options the Association shall fix the expiration month and exercise price of options contracts included in each such series.]

[(1) Expiration Months—At the commencement of trading in a particular class of Nasdaq index options, series of options having three different expiration months will normally be opened. Such expirations shall occur in consecutive months. The first such expiration will occur in the month following the month in which such options are introduced, the second expiration will occur in the month following the first, and the third expiration will occur in the month following the second. Additional series of index options of the same class may be opened for trading at or about the time a prior series expires and the expiration month of each such series will normally be approximately three months following the opening of such series.]

[(2) Exercise Prices—The procedures for fixing the exercise or strike price of each series of index options opened for trading shall be as follows:]

[(A) Strike prices shall be fixed at an index value which is an integer.]

[(B) Regardless of the value of an index, the interval between strike prices will be $5.00.]

[(C) New series of index option contracts may be added up to the fifth business day prior to expiration.]

[(D) When new series of index option contracts within a new expiration cycle are opened for trading, two strike prices above and two strike prices below the current index value may be added.]

[(E) When the value of the index underlying a class of index options reaches a strike price, the Association may add one or more additional strike prices such that there are at least two strike prices above and two strike prices below the strike price which has been reached.]

[(F) In unusual market conditions, the Association may add additional series of index option contracts up to three strike prices above and three strike prices below the current index price.]

[(b) Specification Adjustments—The unit of trading and the exercise price initially established for index option contracts of a particular series are subject to adjustment in accordance with the rules of The Options Clearing Corporation. When such adjustment(s) have been determined, announcement thereof shall be made by the Association and, effective as of the time specified in such announcement, the adjusted unit of trading and the adjusted exercise price shall be applicable with respect to all subsequent transactions in such series.]

[(c) Contract Adjustments—Index option contracts shall be subject to adjustments in accordance with the rules of The Options Clearing Corporation.]

[(d) Puts and Calls—When calls are first opened for trading on an underlying index stock group, the Association may open a series of puts corresponding to each series of calls open or to be opened for trading on the same underlying index stock group.]

**[2882. Unit of Trading]**

[The unit of trading in each series of options displayed on the Service shall be the unit of trading established by The Options Clearing Corporation pursuant to the rules of The Options Clearing Corporation.]

**[2883. Suspension of Authorization of Nasdaq Index Option Contracts]**

[(a) The Association shall have the authority to suspend trading in Nasdaq index option contracts by either one or more market maker or all market makers where it deems it necessary and appropriate:]

[(1) to prevent fraudulent and manipulative acts and practices;]

[(2) to promote just and equitable principles of trade; or]

[(3) to prevent excessive speculation and promote the likelihood of a competitive and orderly market.]

[(b) The Association shall suspend trading in Nasdaq index options contracts by all market makers:]

[(1) If the underlying index is not being computed or disseminated; or]

[(2) if trading is halted or suspended in underlying stocks that collectively contribute (A) 20 percent of the current index group value (in the case of index stock groups comprised of more than 50 stocks); and (B) 10 percent of the current index group value (in the case of index stock groups comprised of 50 or fewer stocks).]

**[2884. Trade Comparison Procedures for Nasdaq Index Options]**

[(a) Scope and Applicability—All transactions in Nasdaq index options shall be reported to the Association pursuant to reporting procedures established by the Association. The Association shall report all compared transactions to The Options Clearing Corporation for clearance and settlement. All compared transactions in Nasdaq options which are cleared and settled through the facilities of The Options Clearing Corporation shall be subject to the rules of The Options Clearing Corporation.]

[(b) Responsibility of Clearing Members—Every member which is a member of The Options Clearing Corporation (a ''clearing member'') shall be responsible for the clearance and settlement of every Nasdaq index option transaction to which it is a party and for each Nasdaq index option transaction of a member for which it acts as correspondent and/or clearing agent pursuant to agreement. Unless specifically authorized by The Options Clearing Corporation, no member shall be permitted to have more than one such agreement with a clearing member in effect at any time.]

[(c) Reporting of Clearing Information]

[(1) Filing of Trade Information—Each Nasdaq index option participant shall individually report each transaction in a Nasdaq index option, for which it has a responsibility to report, each business day to the Association via OCT or ITT in the manner specified by the Association.]

[(2) (A) The Association will provide each Nasdaq index options participant with the opportunity to review on trade date OCT and ITT transactions to which the participant is a party.]

[(B) All OCT orders which are accepted by the contra party and all ITT which have not been canceled shall be considered to be compared trades, i.e., trades where the trade information agrees as to the identity of the other party to the transaction, the type of option contract, the underlying index, the exercise price, the expiration month, the number of options contracts, the amount of the premium, the designation of the parties as purchaser and writer, respectively, and the trade date, if other than the date of submission.]

[(3) Verification of Nasdaq Index Options Transactions—Each participant shall promptly review each OCT or ITT execution report received and report corrected trade information to the Association as soon as possible, but in any event, not later than the hour which shall be from time to time prescribed by the Association. It shall be the sole responsibility of participants to review the accuracy of all reports promptly upon receipt, and the Association shall not assume any responsibility for reviewing such reports for accuracy or for making any corrections not reported by a participant.]

[(4) Reporting of Compared Trades to The Options Clearing Corporation—On each business day, at or prior to such time as may be prescribed by The Options Clearing Corporation, the Association shall furnish The Options Clearing Corporation a report of each clearing member's compared trades as reported to the Association on that day. Only those trades which have been confirmed by both parties shall be furnished by the Association to The Options Clearing Corporation, and the Association shall assume no responsibility with respect to any unaccepted order nor for any delays or errors in the reporting of trades.]

**[2885. Clearance and Settlement Procedures for Nasdaq Index Options]**

[(a) Failure to Pay Premium]

[(1) Whenever The Options Clearing Corporation shall reject a Nasdaq index option transaction because of the failure of a clearing member acting on behalf of the purchaser to pay the premium due thereon as required by the rules of The Options Clearing Corporation, the member acting as or on behalf of the seller (writer) shall have the right either to cancel the transaction by giving notices thereof to the defaulting clearing member or to enter into either a new opening writing transaction or closing sale transaction, as the case may be, in respect of the same Nasdaq index option contract that was the subject of the rejected Nasdaq index option transaction, charging any loss resulting therefrom (including any commissions paid or payable in connection with such new transaction) to the defaulting clearing member. Such action shall be taken on the day the Nasdaq index option transaction was rejected by The Options Clearing Corporation, unless the Association shall extend such time.]

[(2) In the event the rejected transaction involves a Nasdaq index option contract of a series in which trading has been terminated or suspended before a new Nasdaq index option transaction can be effected to establish the amount of loss, the member acting as or on behalf of the seller shall have a claim against the defaulting clearing member for the amount of the premium due thereon.]

[(b) Index Option Contracts of Suspended Members—When announcement is made of the suspension from membership in the Association of a member, other than a clearing member of The Options Clearing Corporation (a ''non-clearing member''), pursuant to the By-Laws of the Association, all open short positions in option contracts of such member and all open positions that are secured in full by a specific deposit or evidenced by an escrow receipt in accordance with the rules of The Options Clearing Corporation, shall be closed out without unnecessary delay by all members carrying such positions for the account of the suspended non-clearing member; provided, however, that upon any such suspension, the Association may, in its discretion and where it determines that such is necessary for the protection of investors, suspend the mandatory close-out provisions hereof and may, in its discretion and where it determines that such is necessary for the protection of investors, reinstate such provisions at such time as it may determine. No temporary suspension of the mandatory close-out provisions hereof shall relieve any suspended non-clearing member of its obligations or of any damages incurred by members carrying positions for the account of such suspended non-clearing member. Should an open short position or an open position resulting from an exercise of an option contract not be closed when required by this Rule, the price for the purpose of determining claims shall be fixed by the price current at the time when such position should have been closed under this Rule. When a member of The Options Clearing Corporation is suspended pursuant to the provisions of the By-Laws, the positions of such clearing member shall be closed out in accordance with the rules of The Options Clearing Corporation.]

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**3100. BOOKS AND RECORDS, AND FINANCIAL CONDITION**

**3110. Books and Records**

(a) No Change.

(b) Marking of Customer Order Tickets

(1) No Change.

(2) A person associated with a member shall indicate on the memorandum for each transaction in a [non-Nasdaq] *non-exchange-listed* security, as that term is defined in the Rule [6700] *6600* Series, the name of each dealer contacted and the quotations received to determine the best inter-dealer market; however, the requirements of this subparagraph shall not apply if two or more priced quotations for the security are displayed in an inter-dealer quotation system, as defined in Rule 2320(g), that permits quotation updates on a real-time basis for which NASD Regulation has access to historical quotation information.

(c) No Change.

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**IM–3110. Customer Account Information**

(a) Members should be aware that, effective January 1, 1990, any transaction [which] *that* involves a [non-Nasdaq,] non-exchange-listed equity security trading for less than five dollars per share may be subject to the provisions of SEC Rules 15g–1 through 15g–9, and those rules should be reviewed to determine if an executed customer suitability agreement is required.

(b) through (h) No Change.

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**[3350] *5100*. Short Sale Rule**

(a) No member shall effect a short sale *in a Nasdaq National Market Security (as that term is defined in Rule 4200) otherwise than on an exchange* for the account of a customer or for its own account in a Nasdaq National Market security at or below the current national best (inside) bid when the current national best (inside) bid [as displayed by The Nasdaq Stock Market] is below the preceding national best (inside) bid in the security.

(b) No change.

(c) The provisions of paragraph (a) shall not apply to:

(1) Sales by a [qualified] registered market maker registered in the security *with* NASD [on Nasdaq] in connection with bona fide market making activity. For purposes of this paragraph,

transactions unrelated to normal market making activity, such as index arbitrage and risk arbitrage that are independent from a member's market making functions, will not be considered bona fide market-making activity.

(2) through (8) No Change.

(d) through (e) No Change.

(f) A member that is not currently registered as NASD [Nasdaq] market maker in a security and that has acquired a security while acting in the capacity of a block positioner shall be deemed to own such security for the purposes of this Rule notwithstanding that such member may not have a net long position in such security if and to the extent that such member's short position in such security is the subject of one or more offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities.

(g) through (h) No Change

(i) (1) A member shall be permitted, consistent with its quotation obligations, to execute a short sale for the account of a warrant market maker that would otherwise be in contravention of this Rule, if:

(A) The warrant market maker is a registered [Nasdaq] NASD market maker for the warrant; and

(B) No Change.

(j) No Change.

(k) Definitions

(1) through (2) No Change.

[(3)(A) Until February 1, 1996, the term ''qualified market maker'' shall mean a registered Nasdaq market maker that has maintained, without interruption, quotations in the subject security for the preceding 20 business days. Notwithstanding the 20-day period specified in this subparagraph, after an offering in a stock has been publicly announced, a registration statement has been filed, or a merger or acquisition involving two issues has been announced, no market maker may register in the stock as a qualified market maker unless it meets the requirements set forth below:]

[(i) For secondary offerings, the offering has become effective and the market maker has been registered in and maintained quotations without interruption in the subject security for 40 calendar days;]

[(ii) For initial public offerings, the market maker may register in the offering and immediately become a qualified market maker; provided however, that if the market maker withdraws on an unexcused basis from the security within the first 20 days of the offering, it shall not be designated as a qualified market maker on any subsequent initial public offerings for the next 10 business days;]

[(iii) After a merger or acquisition involving an exchange of stock has been publicly announced and not yet consummated or terminated, a market maker may immediately register in either or both of the two affected securities as a qualified market maker pursuant to the same-day registration procedures in Rule 4611; provided, however, that if the market maker withdraws on an unexcused basis from any stock in which it has registered pursuant to this paragraph within 20 days of so registering, it shall not be designated as a qualified market maker pursuant to this subparagraph (3) for any subsequent merger or acquisition announced within three months subsequent to such unexcused withdrawal.]

[(B) For purposes of this subparagraph (3), a market maker will be deemed to have maintained quotations without interruption if the market maker is registered in the security and has continued publication of quotations in the security through Nasdaq on a continuous basis; provided however, that if a market maker is granted an excused withdrawal pursuant to the requirements of Rule 4619, the 20 business day standard will be considered uninterrupted and will be calculated without regard to the period of the excused withdrawal. Beginning February 1, 1996, the term ''qualified market maker'' shall mean a registered Nasdaq market maker that meets the criteria for a Primary Nasdaq Market Maker as set forth in Rule 4612.]

[(l) This Rule shall be in effect until March 1, 2002.]

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**IM–[3350]*5100*. Short Sale Rule**

(a) (1) In developing a Short Sale Rule for Nasdaq National Market securities *effected otherwise than on an exchange*, the Association *has* adopted an exemption to the Rule for certain market making activity. This exemption [was deemed] *is* an essential component of the Rule because bona fide market making activity is necessary and appropriate to maintain continuous, liquid markets in Nasdaq National Market securities. Rule 3350(c)(1) states that short selling prohibitions shall not apply to sales by [qualified] *registered* [Nasdaq] *NASD* market makers in connection with bona fide market making activity and specifies that transactions unrelated to normal market making activity, such as index arbitrage and risk arbitrage that are independent from a member's market making functions, will not be considered as bona fide market making. Thus two standards are to be applied: one must be a ['qualified'' Nasdaq] *registered NASD* market maker and one must engage in ''bona fide'' market making activity to take advantage of this exemption. With this interpretation, the Association wishes to clarify for members some of the factors that will be taken into consideration when reviewing market making activity that may not be deemed to be bona fide market making activity and therefore would not be exempted from the Rule's application.

(2) through (3) No change.

(b) (1) Rule [3350] *5100* requires that no member shall effect a short sale *otherwise than on an exchange* for the account of a customer or for its own account in a Nasdaq National Market security at or below the current *national* best (inside) bid when the current *national* best (inside) bid [as displayed by The Nasdaq Stock Market] is below the preceding best (inside) bid in the security. The Association has determined that in order to effect a ''legal'' short sale when the current best bid is lower than the preceding best bid the short sale must be executed at a price of at least 1/16th point above the current *national* inside bid when the current inside spread is 1/16th point or greater. The last sale report for such a trade would, therefore, be above the *national* inside bid by at least 1/16th of a point. If the current spread is less than 1/16th of a point, however, the short sale must be executed at a price equal to or greater than the current inside offer price.

(2) Moreover, the Association believes that requiring short sales to be a minimum increment of 1/16th point above the *national best* bid when the current spread is 1/16th or greater and equal to or greater than the offer when the current spread is less than 1/16th ensures that transactions are not effected at prices inconsistent with the underlying purpose of the Rule. It would be inconsistent with Rule [3350] *5100* for a member or customer to cause the inside spread for an issue to narrow when the current best bid is lower than the preceding best bid (e.g., lowering its offer to create an inside spread less than 1/16th) for the purpose of facilitating the execution of a short sale at a price less than 1/16th above the inside bid.

*(3) For Nasdaq National Market securities trading in decimals pursuant to the Decimals Implementation Plan for Equity and Options Markets, the Association has determined that in order to effect a ''legal'' short sale in such securities when the current bid is lower than the preceding bid the short sale must be executed at least $0.01*

*above the current inside bid. The last sale report for such a trade would, therefore, be above the inside bid by at least $0.01.*

(c) (1) No Change.

(2) For example, in instances where the current best bid is below the preceding best bid, if a market maker alone at the inside best bid were to lower its bid and then raise it to create an ''up bid'' for the purpose of facilitating a short sale, the Association would consider such activity to be a manipulative act and a violation of the Association's Short Sale Rule. The Association also would consider it a manipulative act and a violation of the Rule if a market maker with a long stock position were to raise its bid above the inside bid and then lower it to create a ''down bid'' for the purpose of precluding market participants from selling short. In addition, if a market maker agrees to an arrangement proposed by a member or a customer whereby the market maker raises its bid [in The Nasdaq Stock Market] in order to effect a short sale for the other party and is protected against any loss on the trade or on any other executions effected at its new bid price, the market maker would be deemed to be in violation of Rule [3350] *5100*. Similarly, a market maker would be deemed in violation of the Rule if it entered into an arrangement with a member or a customer whereby it used its exemption from the rule to sell short at the bid at successively lower prices, accumulating a short position, and subsequently offsetting those sales through a transaction at a prearranged price, for the purpose of avoiding compliance with the Rule, and with the understanding that the market maker would be guaranteed by the member or customer against losses on the trades.

(3) No Change.

* * * * *

The 4000 Series is replaced in its entirety by the following proposed rule language.

### *4000. NASD Alternative Display Facility*

### *4100. General*

*The NASD Alternative Display Facility is the facility to be operated by the NASD for members that effect trades in Nasdaq and CQS/CTA (''ADF-eligible'') securities otherwise than on an exchange. The NASD Alternative Display Facility will collect and disseminate quotations, compare trades, and collect and disseminate trade reports.*

### *4110. Use of NASD Alternative Display Facility Data Systems*

*NASD may at any time authorize the use of NASD's Alternative Display Facility data systems on a test basis for whatever studies it considers necessary and appropriate.*

### *4200. DEFINITIONS*

(a) *Unless the context requires otherwise, the terms used in the Rule 4000 through 6000 Series shall have the meanings below. Terms not specifically defined below shall have the meaning in NASD's By-Laws and Rules and SEC Rule 11Aa3–1.*

*(1) ''Act'' means the Securities Exchange Act of 1934.*

*(2) ''ADF-eligible security'' means a Nasdaq or CQS/CTA security.*

*(3) ''CQS/CTA security'' means a security that is eligible for inclusion in the CQ/CTA Plan as from time to time amended in accordance with the provisions of the Plan and with the approval of the SEC.*

*(4) ''Nasdaq'' means the registered national securities exchange and its facilities operated by The Nasdaq Stock Market, Inc.*

*(5) ''Nasdaq market maker'' shall have the meaning as defined in the Nasdaq rules.*

*(6) ''Nasdaq National Market'' or ''NNM'' is a distinct tier of the Nasdaq Stock Market comprised of securities that meet the requirements of and are authorized as a Nasdaq National Market Security.*

*(7) ''Nasdaq National Market security'' or ''NNM security'' shall have the meaning as defined in the Nasdaq rules.*

*(8) ''Nasdaq security'' means a security that is listed on the Nasdaq Stock Exchange.*

*(9) ''Nasdaq SmallCap Market'' or ''SCM'' is a distinct tier of The Nasdaq Stock Market compromised of securities that meet the requirements of and are authorized as a Nasdaq SmallCap Security.*

*(10) ''Nasdaq SmallCap Market security'' shall have the meaning as defined in the Nasdaq rules.*

*(11) ''Non-Registered Member'' means a member of NASD that is not a Registered Market Maker or a Registered ECN.*

*(12) ''Normal unit of trading'' means 100 shares of a security unless, with respect to a particular security, the market where the security is listed determines that a normal unit of trading shall constitute other than 100 shares. If a normal unit of trading is other than 100 shares, a special identifier shall be appended to the issuer's symbol.*

*(13) ''Otherwise than on an exchange'' means a trade effected by an NASD member otherwise than on or through a national securities exchange. The determination of what constitutes a trade ''on or through'' a particular national securities exchange shall be determined by that exchange in accordance with all applicable statutes, rules and regulations, and with any necessary SEC approval.*

*(14) ''Registered ECN'' means a member of NASD that is an electronic communications network (''ECN'') that elects to display orders in the NASD Alternative Display Facility. A member is a Registered ECN in only those designated securities for which it is registered with NASD. A member shall cease being a Registered ECN in a designated security when it has withdrawn or voluntarily terminated its quotations in that security or when its quotations have been suspended or terminated by action of NASD.*

*(15) ''Registered Market Maker'' means a member of NASD that is registered as an NASD market maker in a particular designated security and, with respect to that security, holds itself out (by entering quotations in the NASD Alternative Display Facility) as being willing to buy and sell such security for its own account on a regular and continuous basis. A member is a Registered Market Maker in only those designated securities for which it is registered as an NASD market maker. A member shall cease being a Registered Market Maker in a designated security when it has withdrawn or voluntarily terminated its quotations in that security or when its quotations have been suspended or terminated by action of NASD.*

*(16) ''SEC Rule 100,'' ''SEC Rule 101,'' ''SEC Rule 103,'' and ''SEC Rule 104'' mean the rules adopted by the Commission under Regulation M, and any amendments thereto.*

*(17) ''Stabilizing bid'' means the terms ''stabilizing'' or to ''stabilize'' as defined in SEC Rule 100.*

*(18) ''Underwriting Activity Report'' is a report provided by the Corporate Financing Department of NASD Regulation, Inc. in connection with a distribution of securities subject to SEC Rule 101 pursuant to NASD Rule 2710(b)(11) and includes forms that are submitted by members to comply with their notification obligations under Rules 4614, 4619, and 4623.*

*(b) For purposes of Rules 4619, and 4623, the following terms shall have the meanings as defined in SEC Rule 100: ''affiliated purchaser,'' ''distribution,'' ''distribution participant,'' ''independent bid,'' ''net purchases,''*

*''passive market maker,'' ''penalty bid,'' ''reference security,'' ''restricted period,'' ''subject security,'' and ''syndicate covering transaction.''*

*Selected NASD Notices to Members: 94–70, 95–64, 95–82.*

***4300. Quote and Order Access Requirements***

*(a) To ensure that NASD Market Participants comply with their quote and order access obligations as defined below, for each security in which they elect to display a bid and offer (for Registered Market Makers), or a bid or offer (for Registered ECNs), in the Alternative Display Facility, NASD Market Participants must:*

*(1) Provide other NASD Market Participants direct electronic access, as defined below; and*

*(2) Provide NASD member broker-dealers that are not NASD Market Participants direct electronic access or allow for indirect electronic access, as defined below. Indirect electronic access must be readily available to broker-dealers seeking access, otherwise the NASD Market Participant must provide direct electronic access. In any event, an NASD Market Participant is prohibited from (A) in any way directly or indirectly influencing or prescribing the prices that their customer broker-dealer may choose to impose for providing indirect access; and (B) precluding or discouraging indirect electronic access, including through the imposition of discriminatory pricing or quality of service with regard to a broker-dealer that is providing indirect electronic access.*

*(b) Subject to the terms and conditions contained herein, all NASD Market Participants that display quotations in the NASD Alternative Display Facility must record each item of information described in paragraphs (b)(1) and (2) of this Rule for all orders they receive via direct or indirect electronic access, and report this information to the NASD as specified below.*

*(1) NASD Market Participants must record the following information for every order they receive via direct or indirect electronic access during the trading day:*

*(A) Unique Order Identifier*
*(B) Order Entry Firm (OEID)*
*(C) Order Side (Buy/Sell)*
*(D) Order Quantity*
*(E) Issue Identifier*
*(F) Order Price*
*(G) Order Price Modifier (i.e. .N)*
*(H) Time In Force (i.e. 3 minutes, day, etc.)*
*(I) Order Date*
*(J) Order Time (including seconds)*
*(K) Minimal Acceptable Quantity (i.e. C1, M1, AON, etc.)*
*(L) Market Making Firm (MMID)*

*The information described in paragraphs (A) through (L) must be reported to the NASD within 10 seconds of receipt of the order.*

*(2) In addition to the information previously provided pursuant to paragraph (b)(1), NASD Market Participants must record the following information, as applicable, for every order that has been acted upon or responded to:*

*(A) Unique Order Identifier (as provided in paragraph (b)(1)(A))*
*(B) Order Response (i.e. E=Execute, D=Decline, X=Cancel, T=timed out, P=partial, etc.)*
*(C) Order Response Time (including seconds)*
*(D) Partial Quantity*
*(E) Counter Price*
*(F) Total Execution Quantity*
*(G) Execution Price*

*The information described in paragraphs (A) through (G) must be reported to the NASD within 10 seconds of any response to or action taken regarding an order.*

*(3) Maintaining and Preserving Records*

*(A) In addition to submitting the information described herein to the NASD, each member shall maintain and preserve records of the information required to be recorded under this Rule for the period of time and accessibility specified in SEC Rule 17a–4(b).*

*(B) The records required to be maintained and preserved under this Rule may be immediately produced or reproduced on ''micrographic media'' as defined in SEC Rule 17a–4(f)(1)(i) or by means of ''electronic storage media'' as defined in SEC Rule 17a–4(f)(1)(ii) that meet the conditions set forth in SEC Rule 17a–4(f) and may be maintained and preserved for the required time in that form.*

*(4) Orders Not Required To Be Recorded*

*The recording and reporting requirements contained in paragraphs (a) and (b) of this Rule shall not apply to orders received via ITS or any system operated by a national securities exchange or national securities association.*

*(5) Method of Transmitting Data*

*Members shall transmit this information in such form as prescribed by the Association.*

*(6) Reporting Agent Agreements*

*(A) ''Reporting Agent'' shall mean a third party that enters into any agreement with a member pursuant to which such third party agrees to fulfill such member's obligations under this Rule.*

*(B) Any member may enter into an agreement with a Reporting Agent pursuant to which the Reporting Agent agrees to fulfill the obligations of such member under this Rule. Any such agreement shall be evidenced in writing, which shall specify the respective functions and responsibilities of each party to the agreement that are required to effect full compliance with the requirements of this Rule.*

*(C) All written documents evidencing an agreement described in paragraph (6)(B) shall be maintained by each party to the agreement.*

*(D) Each member remains responsible for compliance with the requirements of this Rule, notwithstanding the existence of an agreement described in this paragraph.*

*(7) Withdrawal of Quotations*

*If an NASD Market Participant knows or has reason to believe that it or its Reporting Agent is not complying with the requirements of this Rule, the member must withdraw its quotations from the NASD Alternative Display Facility until such time that the member is satisfied that its order information is being properly recorded and reported.*

*(c) NASD Market Participants are required to specify as part of their NASD Alternative Display Facility Workstation Subscriber Agreement the method and terms by which they will comply with the requirements of this Rule. NASD Regulation staff will not approve a Market Participant's Subscriber Agreement unless the method and terms provided by the Market Participant are in compliance with this Rule.*

*(d) Definitions*

*(1) Customer broker-dealer is any broker-dealer that has, or seeks to have, an ongoing relationship with a Market Participant, including an ECN subscriber, for the purposes of executing securities transactions.*

*(2) Direct electronic access means the ability to deliver an order for execution directly against an individual NASD Market Participant's best bid and offer subject to quote and order access obligations, as defined herein, without the need for voice communication, with the equivalent speed, reliability, availability, and cost, as are made available to the NASD Market Participant's own customer broker-dealers or other active customers or subscribers.*

*(3) Indirect electronic access means the ability to route an order through*

*customer broker-dealers of an NASD Market Participant that are not affiliates of the NASD Market Participant, for execution against the NASD Market Participant's best bid and offer subject to quote and order access obligations, without the need for voice communication, with equivalent speed, reliability, availability, and cost, as are made available to the Market Participant's customer broker-dealer providing the indirect access or other active customers or subscribers. The NASD Market Participant's customer broker-dealers providing indirect electronic access shall remain responsible for all orders routed through them as though the orders were the firms' own orders.*

*(4) NASD Market Participant means (a) an NASD Registered Market Maker,(b) an ATS, (c) or an NASD Registered ECN.*

*(5) Best bid and offer for purposes of this Rule includes the best-priced buy and sell orders of an NASD Registered ECN.*

*(6) Quote and Order Access Obligations include the requirements under this Rule and the firm quote obligations under Rule 11Ac1–1 under the Act, the standards under Rule 11Ac1–1(c)(5)(ii)(A)(2) under the Act, Sections 301(b)(3) through (5) of Regulation ATS and other order access-related regulatory requirements for ATSs, ECNs and market makers. Obligations under this Rule include providing the ability to send or receive Trade-or-Move messages, identifiable as such, as required by Rule 4613(d) and providing access to any reserved size orders as required by Rule 4623(c).*

* * * * *

***4600. TRADING IN NASDAQ SECURITIES***

***4610. Registration and Other Requirements***

***4611. Registration as a Market Maker***

*(a) Quotations and quotation sizes in Nasdaq securities may be entered into the NASD Alternative Display Facility only by a Registered Market Maker or other entity approved by NASD to function in a market-making capacity.*

*(b) An NASD member seeking registration as a market maker shall file an application with NASD. The application shall certify the member's good standing with NASD and shall demonstrate compliance with the net capital and other financial responsibility provisions of the Act. It shall be sufficient to obtain registration as a market maker for a member to demonstrate proof that it is a registered Nasdaq market maker in good standing. A member's registration as a market maker shall become effective upon receipt by the member of notice of approval of registration from NASD.*

*(c) A market maker may become registered in an issue by entering a registration request via an NASD terminal or other NASD approved electronic interface with NASD's systems or by contacting NASD Alternative Display Facility Operations. If the requirements of paragraph (b) above are satisfied, registration shall become effective on the day the registration request is entered. It shall be sufficient to obtain registration in an issue for a member to demonstrate proof that it is currently registered in that issue as a Nasdaq market maker and is in good standing.*

*(d) A market maker's registration in an issue shall be terminated if the market maker fails to enter quotations in the issue within five (5) business days after the market maker's registration in the issue becomes effective.*

*Selected NASD Notices to Members: 93–24, 94–68, 94–83.*

*4612. Reserved*

***4613. Character of Quotations***

*(a) Two-Sided Quotations*

*(1) For each Nasdaq security for which a member is a Registered Market Maker, the member shall be willing to buy and sell such security for its own account on a continuous basis and shall enter and maintain two-sided quotations through the NASD Alternative Display Facility, subject to the procedures for excused withdrawal set forth in Rule 4619.*

*(A) A Registered Market Maker in a security listed on Nasdaq must display a quotation size for at least one normal unit of trading (or a larger multiple thereof) when it is not displaying a limit order in compliance with SEC Rule 11Ac1–4, provided, however, that a Registered Market Maker may augment its displayed quotation size to display limit orders priced at the market maker's quotation.*

*(B) Minimum Price Variation for Decimal-based Quotations*

*The minimum quotation increment for securities authorized for decimal pricing as part of the SEC-approved Decimals Implementation Plan for the Equities and Options Markets shall be $0.01. Quotations failing to meet this standard shall be rejected.*

*(b) Firm Quotations*

*(1) A Registered Market Maker that receives an offer to buy or sell from another NASD member shall execute a transaction for at least a normal unit of trading at its displayed quotations as disseminated through the NASD Alternative Display Facility at the time of receipt of any such offer. If a Registered Market Maker displays a quotation for a size greater than a normal unit of trading, it shall, upon receipt of an offer to buy or sell from another NASD member, execute a transaction at least at the size displayed.*

*(2) If a Registered Market Maker, upon receipt of an offer to buy or sell from another NASD member in any amount that is at least one normal unit of trading greater than its published quotation size as disseminated through the NASD Alternative Display Facility at the time of receipt of any such offer, executes a transaction in an amount of shares less than the size of the offer, then such Registered Market Maker shall, immediately after such execution, display a revised quotation at a price that is inferior to its previous published quotation. The failure of a Registered Market Maker to execute the offer in an amount greater than its published quotation size shall not constitute a violation of subparagraph (b)(1) of this rule.*

*(c) Quotations Reasonably Related to the Market*

*A Registered Market Maker shall enter and maintain quotations that are reasonably related to the prevailing market. In the event it appears that a Registered Market Maker's quotations are no longer reasonably related to the prevailing market, NASD may require the market maker to re-enter its quotations. If a Registered Market Maker whose quotations are no longer reasonably related to the prevailing market fails to re-enter its quotations, NASD may suspend the market maker's quotations in one or all securities.*

*(1) In the event that a Registered Market Maker's ability to enter or update quotations is impaired, the Registered Market Maker shall immediately contact NASD Alternative Display Facility Operations to request the withdrawal of its quotations.*

(2) In the event that a Registered Market Maker's ability to enter or update quotations is impaired and the Registered Market Maker elects to continue to participate through the NASD Alternative Display Facility, the Registered Market shall execute an offer to buy or sell received from another NASD member at its quotations as disseminated through the NASD Alternative Display Facility.

*(d) Locked and Crossed Markets*

*(1) A Registered Market Maker shall not, except under extraordinary circumstances, enter or maintain quotations through the NASD Alternative Display Facility during normal business hours if:*

*(A) the bid quotation entered is equal to (''lock'') or greater than (''cross'') the asked quotation of another market maker entering quotations in the same security; or*

*(B) the asked quotation is equal to (''lock'') or less than (''cross'') the bid quotation of another market maker entering quotations in the same security.*

*(2) Obligations Regarding Locked/Crossed Market Conditions Prior to Market Opening*

*(A) Locked/Crossed Market Prior to 9:20 a.m.—For locks/crosses that occur prior to 9:20 a.m. Eastern Time, a Registered Market Maker that is a party to a lock/cross because the Registered Market Maker either has entered a bid (ask) quotation that locks/crosses another market maker's quotation(s) or has had its quotation(s) locked/crossed by another market maker (''party to a lock/cross'') may, beginning at 9:20 a.m. Eastern Time, send a message, making use of direct electronic access in accordance with Rule 4300, of any size, that is at the receiving market maker's quoted price (''Trade-or-Move Message''). Any Registered Market Maker that receives a Trade-or-Move Message at or after 9:20 a.m. Eastern Time, and that is a party to a lock/cross, must within 30 seconds of receiving such message either: fill the incoming Trade-or-Move Message for the full size of the message; or move its bid down (offer up) by a quotation increment that unlocks/uncrosses the market.*

*(B) Locked/Crossed Market Between 9:20 and 9:29:59 a.m.—If a Registered Market Maker locks or crosses the market between 9:20 and 9:29:59 a.m. Eastern Time, the Registered Market Maker must immediately send, making use of direct electronic access in accordance with Rule 4300, to the market maker whose quotes it is locking or crossing a Trade-or-Move message that is at the receiving market maker's quoted price and that is for at least 5,000 shares (in instances where there are multiple market makers to a lock/cross, the locking/crossing market maker must send a message to each party to the lock/cross and the aggregate size of all such messages must be at least 5,000 shares); provided, however, that if a market participant is representing an agency order, the market participant shall be required to send a Trade-or-Move Message(s) in an amount equal to the agency order, even if that order is less than 5,000 shares. A Registered Market Maker that receives a Trade-or-Move Message during this period and that is a party to a lock/cross, must within 30 seconds of receiving such message either: fill the incoming Trade-or-Move Message for the full size of the message; or move its bid down (offer up) by a quotation increment that unlocks/uncrosses the market.*

*(C) A Registered Market Maker that sends a Trade-or-Move Message pursuant to of this rule must append to the message a symbol indicating that it is a Trade-or-Move Message.*

*(D) For the purposes of this rule ''agency order'' shall mean an order(s) that is for the benefit of the account of a natural person executing securities transactions with or through or receiving investment banking services from a broker/dealer, or for the benefit of an ''institutional account'' as defined in NASD Rule 3110. An agency order shall not include an order(s) that is for the benefit of a market maker in the security at issue, but shall include an order(s) that is for the benefit of a broker/dealer that is not a market maker in the security at issue.*

*(3) A Registered Market Maker, prior to entering a quotation that locks or crosses another quotation, must make reasonable efforts to avoid such locked or crossed market by executing transactions with all market makers whose quotations would be locked or crossed. Reasonable efforts shall include making use of direct electronic access in accordance with Rule 4300. Pursuant to the provisions of paragraph (b) of this Rule, a Registered Market Maker whose quotations are causing a locked or crossed market is required to execute transactions at its quotations as displayed through the NASD Alternative Display Facility at the time of receipt of any order.*

*(4) For purposes of this Rule 4613(d), the term ''Registered Market Maker'' shall include:*

*(A) any NASD member that enters into an ECN, as that term is defined in SEC Rule 11Ac1–1(a)(8), a order that is displayed through the NASD Alternative Display Facility;*

*(B) any NASD member that operates the ECN when the order being displayed has been entered by a person or entity that is not an NASD member;*

*(C) any NASD member that enters into an ATS, as that term is defined in SEC Regulation ATS, a priced order that is displayed through the NASD Alternative Display Facility; and*

*(D) any NASD member that operates the ATS when the priced order being displayed has been entered by a person or entity that is not an NASD member.*

*(e) Other Quotation Obligations*

*(1) Members that display priced quotations on a real-time basis for Nasdaq securities in two or more market centers that permit quotation updates on a real-time basis must display the same priced quotations for the security in each market center.*

*(2) A member that is registered as a market maker in a Nasdaq security shall be obligated to have available in close proximity to the NASD Alternative Display Facility terminal at which it makes a market in a Nasdaq security a quotation service that disseminates the bid price and offer price then being furnished by or on behalf of national securities exchanges and other market makers trading and quoting that Nasdaq security.*

*Selected NASD Notices to Members: 91–37, 93–2, 93–43, 99–61.*

***IM–4613. Autoquote Policy***

*(a) General Prohibition—NASD bans the automated update of quotations by market makers through the NASD Alternative Display Facility. Except as provided below, this policy prohibits systems known as ''autoquote'' systems from effecting automated quote updates or tracking of inside quotations through the NASD Alternative Display Facility. This ban is necessary to offset the negative impact on the capacity and operation of the NASD Alternative Display Facility caused by certain autoquote techniques that track changes to the inside quotation and automatically react by generating another quote to keep the market maker's quote away from the best market.*

*(b) Exceptions to the General Prohibition—Automated updating of quotations is permitted when: (1) the update is in response to an execution in the security by that firm (such as execution of an order that partially fills a market maker's quotation size), and is in compliance with Rule 4613(b)(2); (2) it requires a physical entry (such as a manual entry to the market maker's internal system which then automatically forwards the update to Nasdaq); or (3) the update is to reflect the receipt, execution, or cancellation of a customer limit order. elected NASD Notices to Members: 99–61.*

*4614. Reserved*

*4615. Reserved*

*4616. Reserved*

***4617. Normal Business Hours***

*A Registered Market Maker shall be open for business as of 9:30 a.m.*

*Eastern Time and shall close no earlier than 4:00 p.m. Eastern Time. An NASD Registered Market Maker may remain open for business on a voluntary basis for any period of time between 4:00 p.m. Eastern time and 6:30 p.m. Eastern Time. Registered Market Makers whose quotes are open after 4:00 p.m. Eastern Time shall be obligated to comply, while their quotes are open, with all NASD Rules that are not by their express terms, or by an official interpretation of NASD, inapplicable to any part of the 4:00 p.m. to 6:30 p.m. Eastern Time period.*

*4618. Reserved*

***4619. Withdrawal of Quotations and Passive Market Making***

*(a) A Registered Market Maker that wishes to withdraw quotations in a security or have its quotations identified as the quotations of a passive market maker shall contact NASD Alternative Display Facility Operations to obtain excused withdrawal status prior to withdrawing its quotations or identification as a passive market maker. Withdrawals of quotations or identifications of quotations as those of a passive market maker shall be granted by NASD Alternative Display Facility Operations only upon satisfying one of the conditions specified in this Rule.*

*(b) Excused withdrawal status based on circumstances beyond the market maker's control may be granted for up to five (5) business days, unless extended by NASD Alternative Display Facility Operations. Excused withdrawal status based on demonstrated legal or regulatory requirements, supported by appropriate documentation and accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon notification, be granted for not more than sixty (60) days (unless such request is required to be made pursuant to paragraph (d) below). Excused withdrawal status based on religious holidays may be granted only if notice is received by NASD one business day in advance and is approved by NASD. Excused withdrawal status based on vacation may be granted only if:*

*(1) The request for withdrawal is received by NASD one business day in advance, and is approved by NASD;*

*(2) the request includes a list of the securities for which withdrawal is requested; and*

*(c) Excused withdrawal status may be granted to a Registered Market Maker that has withdrawn from an issue prior to the public announcement of a merger or acquisition and wishes to re-register in the issue pursuant to the same-day registration procedures contained in Rule 4611, above, provided the Registered Market Maker has remained registered in one of the affected issues. The withdrawal of quotations because of pending news, a sudden influx of orders or price changes, or to effect transactions with competitors shall not constitute acceptable reasons for granting excused withdrawal status; or*

*(d) Excused withdrawal status may be granted to a member that experiences a documented problem or failure impacting the operation or utilization of any automated system operated by or on behalf of the firm (chronic system failures within the control of the member will not constitute a problem or failure impacting a firm's automated system).*

*(e) Excused withdrawal status may be granted to a Registered Market Maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency, thereby terminating its registration as a Registered Market Maker; provided however, that if NASD finds that the Registered Market Maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused pursuant to Rule 4620.*

*(f) Excused withdrawal status or passive market maker status may be granted to a Registered Market Maker that is a distribution participant (or, in the case of excused withdrawal status, an affiliated purchaser) in order to comply with SEC Rules 101, 103, or 104 under the Act on the following conditions:*

*(1) A member acting as a manager (or in a similar capacity) of a distribution of a security that is a subject security or reference security under Rule 101 and any member that is a distribution participant or an affiliated purchaser in such a distribution that does not have a manager shall provide written notice to NASD Alternative Display Facility Operations and the Market Regulation Department of NASD Regulation, Inc. no later than the business day prior to the first entire trading session of the one-day or five-day restricted period under SEC Rule 101, unless later notification is necessary under the specific circumstances.*

*(A) The notice required by subparagraph (f)(1) of this Rule shall be provided by submitting a completed Underwriting Activity Report that includes a request on behalf of each market maker that is a distribution participant or an affiliated purchaser to withdraw the market maker's quotations, or that includes a request on behalf of each market maker that is a distribution participant (or an affiliated purchaser of a distribution participant) that its quotations be identified as those of a passive market maker and includes the contemplated date and time of the commencement of the restricted period.*

*(B) The managing underwriter shall advise each Registered Market Maker that it has been identified as a distribution participant or an affiliated purchaser to NASD Alternative Display Facility Operations and that its quotations will be automatically withdrawn or identified as passive market maker quotations, unless a market maker that is a distribution participant (or an affiliated purchaser of a distribution participant) notifies NASD Alternative Display Facility Operations as required by subparagraph (f)(2), below.*

*(2) A Registered Market Maker that has been identified to NASD Alternative Display Facility Operations as a distribution participant (or an affiliated purchaser of a distribution participant) shall promptly notify NASD Alternative Display Facility Operations and the manager of its intention not to participate in the prospective distribution or not to act as a passive market maker in order to avoid having its quotations withdrawn or identified as the quotations of a passive market maker.*

*(3) If a Registered Market Maker that is a distribution participant withdraws its quotations in a Nasdaq security in order to comply with the net purchases limitation of SEC Rule 103 or with any other provision of SEC Rules 101, 103, or 104 and promptly notifies NASD Alternative Display Facility Operations of its action, the withdrawal shall be deemed an excused withdrawal. Nothing in this subparagraph shall prohibit NASD from taking such action as is necessary under the circumstances against a member and its associated persons for failure to contact NASD Alternative Display Facility Operations to obtain an excused withdrawal as required by subparagraphs (a) of this Rule.*

*(4) The quotations of a passive market maker shall be identified on NASD Alternative Display Facility Data Systems as those of a passive market maker.*

*(5) A member acting as a manager (or in a similar capacity) of a distribution subject to subparagraph (f)(1) of this Rule shall submit a request to NASD Alternative Display Facility Operations and the Market Regulation Department of NASD Regulation, Inc. to rescind the excused withdrawal status or passive market making status of distribution*

*participants and affiliated purchasers, which request shall include the date and time of the pricing of the offering, the offering price, and the time the offering terminated, and, if not in writing, shall be confirmed in writing no later than the close of business the day the offering terminates. The request referenced in this subparagraph may be submitted on the Underwriting Activity Report.*

*(g) The NASD Alternative Display Facility Operations Review Committee shall have jurisdiction over proceedings brought by market makers seeking review of a denial of an excused withdrawal pursuant to this Rule, or the conditions imposed on their reentry.* Selected NASD Notices to Members: 88–69, 89–15, 93–29, 93–41.

***4620. Voluntary Termination of Registration***

*A Registered Market Maker may voluntarily terminate its registration in a security by (1) withdrawing its quotations from the NASD Alternative Display Facility and not re-entering its quotations for five (5) minutes or (2) failing to re-enter quotations within thirty (30) minutes of the end of a trading halt. A Registered Market Maker that voluntarily terminates its registration in a security may not re-register as a market maker in that security for twenty (20) business days, absent an excused withdrawal specified in Rule 4619. Withdrawal from participation as a Registered Market Maker in the NASD Alternative Display Facility shall constitute termination of registration as a market maker in that security for purposes of this Rule; provided, however, that a Registered Market Maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and thereby terminates its registration as a market maker in Nasdaq securities may register as a market maker at any time after a clearing arrangement has been reestablished.*

***4621. Suspension and Termination of Quotations by NASD Action***

*NASD may, pursuant to the procedures set forth in the Rule 9000 Series, suspend, condition, limit, prohibit or terminate a Registered Market Maker's authority to enter quotations in one or more authorized securities for violations of applicable requirements or prohibitions.*

***4622. Termination of NASD Alternative Display Facility Data System Service***

*NASD may, upon notice, terminate NASD Alternative Display Facility Data System service in the event that a Registered Market Maker fails to qualify under specified standards of eligibility or fails to pay promptly for services rendered by NASD. Selected NASD Notices to Members: 88–43.*

***4623. Alternative Trading Systems***

*(a) NASD may provide a means to permit alternative trading systems (''ATSs''), as such term is defined in Regulation ATS, and electronic communications networks (''ECNs''), as such term is defined in SEC Rule 11Ac1–1(a)(8), to comply with the display requirements of SEC Rule 301(b)(3) and the terms of the ECN display alternative provided for in SEC Rule 11Ac1–1(c)(5)(ii)(A) and (B) (''ECN display alternatives''). NASD will not facilitate compliance with access requirements, which are the responsibility of Market Participants under Rule 4300.*

*(b) An ATS or ECN that seeks to use the NASD-provided means to comply with SEC Rule 301(b)(3), the ECN display alternatives shall:*

*(1) Demonstrate to NASD that it is in compliance with Regulation ATS or that it qualifies as an ECN meeting the definition in the SEC Rule;*

*(2) be registered as an NASD member;*

*(3) enter into and comply with the terms of an NASD Alternative Display Facility Workstation Subscriber Agreement, as amended for ATSs and ECNs;*

*(4) agree to provide for NASD's dissemination in the quotation data made available to quotation vendors the prices and sizes of NASD Registered Market Maker orders (and orders from other subscribers of the ATS or ECN, if the ATS or ECN so chooses or is required by SEC Rule 301(b)(3) to display a subscriber's order in the NASD Alternative Display Facility), at the highest buy price and the lowest sell price for each Nasdaq security entered in and widely disseminated by the ATS or ECN; and prior to entering such prices and sizes, register with NASD Alternative Display Facility Operations as an ATS or ECN; and*

*(5) comply with Rule 4300.*

*(c) When an NASD member attempts to access electronically an ATS or ECN-displayed order by sending an order that is larger than the ATS's or ECN's Nasdaq-displayed size and the ATS or ECN is displaying the order on a reserved size basis, the NASD member that operates the ATS or ECN shall execute such delivered order:*

*(1) Up to the size of the delivered order, if the ATS or ECN order (including the reserved size and displayed portions) is the same size or larger than the NASD-delivered order; or*

*(2) up to the size of the ATS or ECN order (including the reserved size and displayed portions), if the delivered order is the same size or larger than the ATS or ECN order (including the reserved size and displayed portions).*

*No ATS or ECN operating through the NASD Alternative Display Facility pursuant to this Rule is permitted to provide a reserved-size function unless the size of the order displayed through the NASD Alternative Display Facility is 100 shares or greater. For purposes of this Rule, the term ''reserved size'' shall mean that a customer entering an order into an ATS or ECN has authorized the ATS or ECN to display publicly part of the full size of the customer's order with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part as the displayed part is executed.*

*4624. Reserved*

***4625. Regulatory Cooperation***

*(a) The NASD may enter into agreements with other self-regulatory organizations, markets, associations and other entities that provide for the exchange of information and other forms of mutual assistance for regulatory purposes.*

*(b) No member or associated person shall refuse a request to appear and testify before, or provide documents or other information to, another self-regulatory organization, market, association or other entity with which NASD has entered into an agreement pursuant to paragraph (a) of this Rule, provided that the request is made in connection with an investigation or proceeding covered by the agreement with NASD. The requirements of this paragraph (b) shall apply irrespective of whether the NASD has initiated its own investigation or proceeding.*

*(c) Whenever a member or associated person responds to a request pursuant to this Rule, the member or associated person shall have all the same rights and obligations that would be accorded if the request had been made pursuant to Rule 8210.*

***4630. Reporting Transactions in Securities Listed on Nasdaq***

*4631. Reserved*

*4632. Reserved*

***4633. Transactions Reported by Members***

*(a) General*

*(1) This Rule governs the reporting of trades through the NASD's Trade Reporting and Comparison Service (''TRACS'') in Nasdaq securities effected otherwise than on an exchange.*

*(2) All times referenced in this Rule are Eastern time.*

*(3) For Purposes of this Rule, the term ''Reporting NASD Member'' or ''Reporting Member'' shall mean an NASD member with the trade reporting obligation as set forth in Rule 4633(d).*

*(4) For purposes of this Rule, the term ''Non-Reporting NASD Member'' or ''Non-Reporting Member'' shall mean the contra side of a trade reported by a Reporting Member.*

*(5) For purposes of this Rule, the term ''normal market hours'' means from 9:30 a.m. to 4:00 p.m.*

*(6) Times in trade reports shall be expressed in hours, minutes, and seconds according to the 24 hour clock (e.g., a trade executed at 1:30:45 p.m. Eastern Time shall be reported as executed at 13:30:45). All times referenced in this Rule are Eastern Time.*

*(7) Participation in the trade reporting function of TRACS is mandatory for all members that have trade reporting obligations under this Rule. Participation in the trade reporting function of TRACS is conditioned upon (a) execution of, and continuing compliance with, a TRACS trade reporting Participant Application Agreement and (b) maintenance of the physical security of the equipment on the premises of the member to prevent unauthorized entry of information into the trade reporting function of TRACS.*

*(b) Normal Market Hours*

*Reporting NASD Members shall transmit last sale reports in Nasdaq securities effected otherwise than on an exchange to TRACS within 90 seconds after execution. Transactions not reported within 90 seconds after execution shall be designated as late and such trade reports must include the time of execution.*

*(c) Outside Normal Market Hours*

*Transactions in Nasdaq securities effected otherwise than on an exchange outside normal market hours shall be reported by members to TRACS as set out below.*

*(1) For transactions effected otherwise than on an exchange between the hours of 8:00 a.m. and 9:30 a.m. and 4:00 p.m. and 6:30 p.m.,*

*(A) A Reporting NASD Member shall transmit last sale reports to TRACS within 90 seconds after execution. Such last sale reports shall be designated as ''.T'' trades to denote their execution outside normal market hours. Transactions not reported within 90 seconds must include the time of execution on the trade report.*

*(2) For transactions effected otherwise than on an exchange between the hours of midnight and 8:00 a.m.,*

*(A) A Reporting NASD Member shall transmit last sale reports to TRACS between 8:00 a.m. and 9:30 a.m. on trade date. Such last sale reports shall be designated as ''.T'' trades, to denote their execution outside normal market hours, and must include the time of execution.*

*(3) For securities transactions effected otherwise than on an exchange between the hours of 6:30 p.m. and 12:00 p.m.*

*(A) A Reporting NASD Member shall transmit last sale reports to TRACS on the next business day (T+1) between 8:00 a.m. and 6:30 p.m. Such last sale reports shall be designated ''as/of'' trades, to denote their execution on a prior day, and must include the time of execution.*

*(d) Determining Which Party Reports a Transaction*

*(1) For transactions between two Registered Market Makers or Registered ECNs, the Registered Market Maker or ECN representing the sell side shall report the transaction.*

*(2) For transactions between a Registered Market Maker or Registered ECN and a Non-Registered Member, the Registered Market Maker or ECN shall report the transaction.*

*(3) For transactions between two Non-Registered Members, the Non-Registered Member representing the sell side shall report the transaction.*

(4) For transactions between a member and a customer, the member shall report the transaction.

*(5) For transactions between a member and a broker-dealer that is not a member of NASD, the member shall report the transaction.*

*(6) For all transactions between an NASD member and an NASD member that is also a member of Nasdaq or another national securities exchange, where the reporting party has a choice of reporting venues and chooses not to report to Nasdaq or another national securities exchange, the reporting party described in (1) through (5) above shall report the transaction to the NASD.*

*(e) Information To Be Reported—Two Party Trade Reports*

*(1) A two party trade report is a last sale report that denotes a trade between one Reporting NASD member and one Non-Reporting Member. The Reporting NASD Member is denoted as the (''MMID'') side of the trade report and the Non-Reporting Member is denoted as the (''OEID'') side of the report.*

*(2) Each Two Party Last Sale Report Submitted by a Reporting NASD Member Should Contain:*

*(A) Security identification symbol (SECID);*

*(B) Number of shares or bonds;*

*(C) Price of the transaction as required by paragraph (h) below;*

*(D) A designated symbol denoting whether the transaction, from the Reporting NASD Member's perspective, is a buy, sell, sell short, sell short exempt, or cross;*

*(E) If known, a designated symbol denoting whether the transaction, from the perspective of the Non-Reporting Member, is a buy, sell, sell short, or sell short exempt;*

*(F) A designated symbol denoting whether the transaction, from the perspective of the Reporting Member, is a principal, riskless principal, or agent;*

*(G) If known, a designated symbol denoting whether the transaction, from the perspective of the Non-Reporting Member, is a principal, riskless principal, or agent;*

*(H) For any transaction in an order for which a member has recording and reporting obligations under NASD Rules 6954 and 6955, the trade report must include:*

*(i) An order identifier, meeting such parameters as may be prescribed by the NASD, assigned to the order that uniquely identifies the order for the date it was received (see Rule 6954(b)(1));*

*(ii) The time of execution. This information must be reported regardless of the period of time between execution of the trade and the NASD report.*

*(I) Execution time for any transaction not reported within 90 seconds of execution;*

*(J) The market participant identifier of the Reporting Member and the Non-Reporting Member;*

*(K) Reporting Member clearing broker;*

*(L) Reporting Member Executing Broker in case of a ''give up;''*

*(M) Non-Reporting Member Executing Broker;*

*(N) Non-Reporting Member introducing broker in case of a ''give up;''*

*(O) Non-Reporting Member clearing broker;*

*(P) A designated symbol denoting whether the trade report should be published;*

*(Q) A designated symbol denoting whether the trade report should be compared in TRACS;*

*(R) If the contra side to the trade report is a customer of the Reporting Member, the Reporting Member shall denote that the trade is an internalized trade with the designated symbol;*

*(S) If the contra side to the trade report is a Non-NASD member, the Reporting Member shall indicate with the designated symbol that the contra side is a non-member.*

*(T) For two party trade reports submitted pursuant to an Automated Give Up (''AGU'') arrangement or a Qualified Service Representative (''QSR'') Agreement, disclosure of the information set forth in subparagraphs (e) (2) (E) and (G) is mandatory.*

*(f) Information To Be Reported—Three Party Trade Reports*

*(1) A three party trade report is a single last sale trade report that denotes one Reporting Member and two contra parties. The Reporting Member is denoted as the MMID side of the trade report and the two non-reporting sides are denoted as the OEID side of the trade report. In a three party report, the Reporting Member is the buyer to one OEID and the seller to the other OEID. Registered ECNs shall only submit three party trade reports. Riskless principal trades may be submitted by reporting members as three party trade reports.*

*(2) Each Three Party Trade Report Submitted by a Reporting Member shall contain the following information:*

*Transaction Information*

*(A) Security Identification Symbol (SECID);*

*(B) Number of shares or bonds;*

*(C) Price of the transaction as required by paragraph (h) below;*

*(D) Execution time for any transaction not reported within 90 seconds of execution;*

*(E) The market participant identifier of the Reporting Member and the two Non-Reporting Members;*

*(F) A designated symbol denoting whether the trade should be published;*

*(G) For any transaction in an order for which a member has recording and reporting obligations under NASD Rules 6954 and 6955, the trade report must include:*

*(i) An order identifier, meeting such parameters as may be prescribed by the NASD, assigned to the order that uniquely identifies the order for the date it was received (see Rule 6954(b)(1)). This order number must associate both the buy side and sell side OATS Execution Reports to the TRACS report;*

*(ii) The time of execution. This information must be reported regardless of the period of time between execution of the trade and the NASD report.*

*MMID Side*

*(H) All three party trade reports from ECNs must be marked as agency cross transactions;*

*(I) All three party trade reports from Non-ECNs must be denoted as riskless principal trade reports and shall include a designated symbol denoting whether the trade between the non-ECN and the buy-side OEID is a sell, sell short, or sell short exempt transaction;*

*(J) Reporting Member clearing broker;*

*(K) Reporting Member Executing Broker in the case of a ''give up'';*

*Buy Side OEID*

*(L) Buy Side OEID executing broker;*

*(M) Buy Side OEID introducing broker in case of a ''give up'';*

*(N) Buy Side OEID clearing broker;*

*(O) If known, a designated symbol denoting whether the trade, from the Buy Side OEID's perspective, is as principal, riskless principal, or agent;*

*(P) If the Buy Side OEID is a customer of the Reporting Member, the Reporting Member shall denote that the trade is an internalized trade with the designated symbol;*

*(Q) If the Buy Side OEID is a non-NASD member, the Reporting Member shall indicate with the designated symbol that the buy side OEID is a non-member;*

*(R) A designated symbol denoting whether the trade between the MMID and the Buy Side OEID shall be compared in TRACS;*

*Sell Side OEID*

*(S) Sell Side OEID executing broker;*

*(T) Sell Side OEID introducing broker in case of a ''give up'';*

*(U) Sell Side OEID clearing broker;*

*(V) If known, a designated symbol denoting whether the trade, from the Sell Side OEID's perspective, is as principal, riskless principal, or agent;*

*(W) If known, a symbol denoting whether the trade, from the Sell Side OEID's perspective, is a sell, sell short, or sell short exempt transaction;*

*(X) If the Sell Side OEID is a customer of the Reporting Member, the Reporting Member shall denote that the trade is an internalized trade with the designated symbol;*

*(Y) If the Sell Side OEID is a non-NASD Member, the Reporting Member shall indicate with the designated symbol that the buy side OEID is a non-member;*

*(Z) A designated symbol denoting whether the trade between the MMID and the Sell Side OEID shall be compared in TRACS;*

*(AA) If the transactions between the Buy Side OEID and the Reporting Member is reported pursuant to an AGU arrangement or a QSR agreement, disclosure of the information set forth in subparagraph (f) (2) (O) is mandatory; and*

*(BB) If the transaction between the Sell Side OEID and the Reporting Member is reported pursuant to an AGU arrangement or a QSR agreement, disclosure of the information set forth in subparagraphs (f) (2) (V) and (W) is mandatory.*

*(g) Trade Report Modifiers*

*(1) Reporting Members shall append the following trade report modifiers to a last sale report if applicable:*

*(A) .SLD, if the trade is executed during normal market hours and it is reported later than 90 seconds after execution;*

*(B) .PRP, if the trade reflects a price different from the current market when the execution is based on a prior reference point in time during normal market hours, which time shall be denoted in the trade report;*

*(C) .B, if the trade is executed during market hours and is an aggregation of transaction reports meeting the conditions set forth in paragraph (h) below;*

*(D) .SB, if the trade is executed during market hours and is a .B trade that is reported later than 90 seconds after execution;*

*(E) .SNN, if the trade is a Seller's Option Trade, .NN denotes the number of days for delivery;*

*(F) .C, if the trade is a Cash Trade;*

*(G) .ND, if the trade is a Next Day Trade;*

*(H) .W, if the trade occurs at a price based on an average weighting or another special pricing formula;*

*(I) .T, if the trade is executed outside of normal market hours;*

*(J) .O, if the trade is priced beyond certain price validation parameters as established by the NASD; and*

*(K) Any other trade report modifier approved for use by the Securities and Exchange Commission.*

*(2) It will be a violation of this Rule for a Reporting Member to fail to append a required trade modifier or to append a modifier that is not required.*

*(3) A Reporting Member shall not append a .O modifier to a trade report unless the trade price is beyond certain price validation parameters as established by the NASD.*

*(4) The Association seeks to emphasize the obligations of members*

*to report securities transactions within 90 seconds after execution. All reportable transactions not reported within 90 seconds after execution shall be reported as late, and the Association routinely monitors members' compliance with the 90 second requirement. If the Association finds a pattern or practice of unexcused late reporting, that is, repeated reports of executions after 90 seconds without reasonable justification or exceptional circumstances, the member may be found to be in violation of Rule 2110. Exceptional circumstances will be determined on a case by case basis and may include instances of system failure by a member or service bureau, or unusual market conditions, such as extreme volatility in a security, or in the market as a whole. Timely reporting of all transactions is necessary and appropriate for the fair and orderly operation of the Association's marketplace, and the Association will view noncompliance as a rule violation.*

*(h) Procedures for Reporting Price and Volume*

*(1) Members that are required to report transactions pursuant to paragraph (d) above shall transmit last sale reports in the following manner:*

*(A) For agency transactions, report the number of shares (or bonds) and the price excluding the commission charged.*

*Example:*

*SELL as agent 100 shares at 40 less a commission of $12.50;*

*REPORT 100 shares at 40.*

*(B) For dual agency transactions, report the number of shares (or bonds) only once, and report the price excluding the commission charged.*

*Example:*

*SELL as agent 100 shares at 40 less a commission of $12.50;*

BUY as agent 100 shares at 40 plus a commission of $12.50;

*REPORT 100 shares at 40.*

*(C) (i) For principal transactions, except as provided below, report each purchase and sale transaction separately and report the number of shares (or bonds) and the price. For principal transactions that are executed at a price that includes a mark-up, mark-down or service charge, the price reported shall exclude the mark-up, mark-down or service charge. Such reported price shall be reasonably related to the prevailing market, taking into consideration all relevant circumstances including, but not limited to, market conditions with respect to the security, the number of shares (or bonds) involved in the transaction, the published bids and offers with size at the time of the execution (including the reporting firm's own quotation), the cost of execution and the expenses involved in clearing the transaction.*

*Example:*

*BUY as principal 100 shares from another member at 40 (no mark-down included);*

*REPORT 100 shares at 40.*

*Example:*

*BUY as principal 100 shares from a customer at 39.85 which includes a .15 mark-down from prevailing market at 40;*

*REPORT 100 shares at 40.*

*Example:*

*SELL as principal 100 shares to a customer at 40.15, which includes a .15 mark-up from the prevailing market of 40;*

*REPORT 100 shares at 40.*

*Example:*

*BUY as principal 10,000 shares from a customer at 39.75, which includes a .25 mark-down or service charge from the prevailing market of 40;*

*REPORT 10,000 shares at 40.*

*(ii) Exception: A ''riskless'' principal transaction in which a member after having received an order to buy a security, purchases the security as principal at the same price to satisfy the order to buy or, after having received an order to sell, sells the security as principal at the same price to satisfy the order to sell, shall be reported as one three party transaction, excluding the mark-up or mark-down, commission-equivalent, or other fee. Alternatively, a member may report a riskless principal transaction by submitting the following report(s) to the NASD:*

*a. The member with the obligation to report the transaction pursuant to paragraph (d) above must submit a last sale report for the initial leg of the transaction.*

*b. Regardless of whether a member has a reporting obligation pursuant to paragraph (d) above, the firm must submit, for the offsetting, ''riskless'' portion of the transaction, either:*

*1. a clearing-only report with a capacity indicator of ''riskless principal,'' if a clearing report is necessary to clear the transaction; or*

*2. a non-tape, non-clearing report with a capacity indicator of ''riskless principal,'' if a clearing report is not necessary to clear the transaction.*

*Example:*

*SELL as a principal 100 shares to another member at 40 to fill an existing order;*

*BUY as principal 100 shares from a customer at 40 minus a mark-down of $12.50;*

*REPORT 100 shares at 40 by submitting to the NASD either a single trade report marked with a ''riskless principal'' capacity indicator or by submitting the following reports:*

*3. where required by this Rule, a tape report marked with a ''principal'' capacity indicator; and*

*4. either a non-tape, non-clearing report or a clearing-only report marked with a ''riskless principal'' capacity indicator.*

*(D) For transactions that are executed at a price different from the current market when the execution is based on a prior reference point in time, members shall append to the transaction report a trade report modifier designated by NASD and shall include in the transaction report the prior reference time.*

*Example:*

*At 9:45 a.m., a member discovers that a customer's order to BUY 100 shares at the opening price has not been executed. The member executes the customer's order at 9:45 a.m. at the opening price (40). Current market is 41.*

*REPORT 100 shares at 40 and append the .PRP modifier with the time 9:30.*

*(i) Aggregation of Transaction Reports*

*(1) Under the following conditions, individual executions of orders in a security at the same price may be aggregated, for transaction reporting purposes, into a single transaction report. Individual transactions in convertible debt securities cannot be aggregated pursuant to this paragraph.*

*(A) Orders received prior to the opening of the reporting member's market in the security and simultaneously executed at the opening. Also, orders received during a trading or quotation halt in the security and executed simultaneously when trading or quotations resume. In no event shall a member delay its opening or resumption of quotations for the purpose of aggregating transactions.*

*Example:*

*A firm receives, prior to its market opening, several market orders to sell which total 10,000 shares. All such orders are simultaneously executed at the opening at a reported price of 40.*

*REPORT 10,000 shares at 40.*

*(B) Simultaneous executions by the member of customer transactions at the same price, e.g., a number of limit orders being executed at the same time when a limit price has been reached.*

*Example:*

*A firm has several customer limit orders to sell which total 10,000 shares at a limit price of 40. That price is reached and all such orders are executed simultaneously.*

*REPORT 10,000 shares at 40.*

*(C) Orders relayed to the trading department of the reporting member for*

*simultaneous execution at the same price.*

*Example:*

*A firm purchases a block of 50,000 shares from an institution at a reported price of 40.*

*REPORT 50,000 at 40.*

*Subsequently, one of the firm's branch offices transmits to the firm's trading department for execution customer buy orders in the security totaling 12,500 shares at a reported price of 40.*

*REPORT 12,500 at 40.*

*Subsequently, another branch office transmits to the firm's trading department for execution customer buy orders totaling 15,000 shares in the security at a reported price of 40.*

*REPORT 15,000 at 40.*

*Example:*

*Due to a major change in market conditions, a firm's trading department receives from a branch office for execution customer market orders to sell totaling 10,000 shares. All are executed at a reported price of 40.*

*REPORT 10,000 at 40.*

*(D) Orders received or initiated by the reporting member that are impractical to report individually and are executed at the same price within 60 seconds of execution of the initial transaction; provided however, that no individual order of 10,000 shares or more may be aggregated in a transaction report and that the aggregated transaction report shall be made within 90 seconds of the initial execution reported therein. Furthermore, it is not permissible for a member to withhold reporting a trade in anticipation of aggregating the transaction with other transactions. The limitation on aggregating individual orders of 10,000 shares or more for a particular security shall not apply on the first day of secondary market trading of an IPO for that security.*

*Examples:*

*A reporting member receives and executes the following orders at the following times and desires to aggregate reports to the maximum extent permitted under this Rule.*

*First Example*

*11:01:00 500 shares at 40*
*11:01:05 500 shares at 40*
*11:01:10 9,000 shares at 40*
*11:01:15 500 shares at 40*

*REPORT 10,500 shares at 40 within ninety seconds of 11:01.*

*Second Example*

*11:01:00 100 shares at 40*
*11:01:10 11,000 shares at 40*
*11:01:30 300 shares at 40*

*REPORT 400 shares within ninety seconds of 11:01 and 11,000 shares within ninety seconds of 11:01:10 (individual transactions of 10,000 shares or more must be reported separately).*

*Third Example*

*11:01:00 100 shares at 40*
*11:01:15 500 shares at 40*
*11:01:30 200 shares at 40*
*11:02:30 400 shares at 40*

*REPORT 800 shares at 40 within ninety seconds of 11:01 and 400 shares at 40 within ninety seconds of 11:02:30 (the last trade is not within sixty seconds of the first and must, therefore, be reported separately).*

*(2) The reporting member shall identify aggregated transaction reports and order tickets of aggregated trades in a manner directed by Nasdaq.*

*(j) Reporting Transactions on Form T*

*All Reporting NASD Members required (or that elect) to report transactions to the NASD shall report, as soon as practicable to NASD Regulation's Market Regulation Department on Form T, last sale reports of transactions in designated securities for which electronic submission into the NASD is not possible (e.g., the ticker symbol for the security is no longer available, a market participant identifier is no longer active, or the NASD will not accept the date of execution because the NASD Alternative Display Facility was closed on that date). Transactions that can be reported into the NASD, whether on trade date or on a subsequent date on an ''as of'' basis (T+N), shall not be reported on Form T.*

*(k) Trade Tickets*

*All trade tickets for transactions in Nasdaq securities shall be time-stamped at the time of execution.*

*(l) Special Trade Indicator*

*A Reporting Member shall append the designated symbol for special trades, step out trades, reversals, and as-of trades.*

*(m) Clearing Indicators*

*A Reporting Member shall use a designated symbol to denote whether the trade is to be: (i) compared in TRACS; (ii) not compared in TRACS; (iii) compared in TRACS pursuant to an Automatic Give Up Agreement (''AGU''); or (iv) not compared in TRACS, but locked in pursuant to a Qualified Service Representation Agreement (''QSR'').*

*(n) Transactions Not To Be Reported To NASD*

*The following types of transactions effected by NASD members otherwise than on an exchange shall not be reported to TRACS for publication:*

*(1) Odd-lot transactions;*

*(2) transactions that are part of a primary distribution by an issuer or of a registered secondary distribution (other than ''shelf distributions'') or of an unregistered secondary distribution;*

*(3) transactions made in reliance on Section 4(2) of the Securities Act of 1933;*

*(4) transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security (e.g., to enable the seller to make a gift);*

*(5) purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the current market.*

*(o) Dissemination of Transaction Reports in Convertible Debt Securities*

*For surveillance purposes, NASD will collect and process trade reports for all transactions in convertible debt securities listed on Nasdaq and effected through the NASD Alternative Display Facility. On a real-time basis, NASD will disseminate to members and the public through NASD, and through securities information processors, transactions in convertible debt securities reported to it equaling 99 bonds or less. Selected NASD Notices to Members: 83–1, 87–85, 93–9, 93–25, 93–83, 94–71, 98–82, 99–65, 99–66.*

* * * * *

**5000. [OTHER NASDAQ AND NASD MARKETS] TRADING OTHERWISE THAN ON AN EXCHANGE**

**[5100. NASDAQ INTERNATIONAL SERVICE RULES]**

**[5101. Applicability]**

[(a) These Rules shall be known as the ''International Rules'' and govern operation of the Nasdaq International Service (''Nasdaq International'' or ''Service''), as well as the obligations, access to and use of the Service by the following parties: broker/dealers admitted to membership in the Association (collectively, ''Association members''); associated persons of such Association members; and any non-member broker/dealer having the status of an approved affiliate. Unless otherwise indicated, the requirements of the International Rules are in addition to those contained in the By-Laws and other Rules of the Association.]

[(b) Rules 5106, 5108, 5109, and 5112 of the International Rules establish requirements that apply exclusively to

participation in the Service during the European Session. As such, these provisions of the International Rules supersede the Rule 2870, 4640, 6300 and 6600 Series: and Rules 6410, 6420 and 6450. Non-compliance with any applicable requirement will subject the Association member and/or its associated person(s) to regulatory action under the Association's Code of Procedure, the Rule 9000 Series.]

[(c) Unless otherwise indicated within a particular provision of the International Rules, all procedures, requirements, and prohibitions shall apply with equal force to Association members, their associated persons, and approved affiliates that participate in the Service.]

**[5102. Definitions]**

[Unless the context otherwise requires, or unless defined in the International Rules, the terms used herein shall retain their present meanings as defined in the By-Laws and other Rules of the Association.]

[(a) ''Approved affiliate'' means a broker/dealer that meets all of the following requirements:]

[(1) it is not admitted to membership in the Association or any registered national securities exchange;]

[(2) it is authorized to conduct securities business in the United Kingdom in accord with all applicable provisions of the Financial Services Act of 1986;]

[(3) it controls, is controlled by, or is under common control with an Association member (hereinafter referred to as a ''control relationship''); and]

[(4) it has been approved by the Association to participate as a Service market maker, in an agency capacity, on behalf of the Association member with whom it has a control relationship.]

[(b) ''Domestic Session'' refers to the market session operated by the Association between the hours of 9:30 a.m. and 4:00 p.m. Eastern Time on each U.S. business day.]

*[(c) ''European-only market maker''* means a broker/dealer that is registered with the Association to make markets in one or more qualified securities in the SERVICE, but is not registered in the same security(ies) for purposes of making a market during the Domestic Session.]

[(d) European Session refers to the market session supported by the Service during the hours specified in Rule 5103.]

[(e) ''International market maker'' means a broker/dealer that is registered with the Association to make markets in one or more qualified securities in the SERVICE and is also registered with the Association to make markets in the same security(ies) during the Domestic Session.]

[(f) The terms ''Nasdaq International'' and ''Service refer to an extension of the basic automation capabilities that support Association members' market making in the Nasdaq National Market (NNM), and exchange-listed securities to the business hours fixed by Rule 5103.]

[(g) ''Non-NNM security'' means every qualified security in the subset defined by Rule 5104(b).]

[(h) Qualified security'' means any security that satisfies the requirements contained in Rule 5104.]

[(i) ''Service market maker'' includes any Association member that is registered as a European-only or International market maker in one or more qualified securities, and any approved affiliate registered as a European-only market maker in one or more qualified securities.]

**[5103. Normal Business Hours]**

[The Nasdaq International market session (hereinafter referred to as the ''European Session'') will run from 3:30 a.m. to 9:00 a.m. Eastern Time on each business day in the U.S.; pre-opening procedures will commence at 2:30 a.m. Eastern Time. Appropriate adjustments will be made in the event that the U.S. and the U.K. move to (or from) daylight-saving time on different dates. All times referenced in the International Rules relate to the Eastern Time zone of the U.S.]

**[5104. Qualified Securities]**

[The Association deems the following classes of securities qualified for inclusion in Nasdaq International:]

[(a) any Nasdaq security that is designated an NNM security;]

[(b) any non-Canadian, foreign security or ADR that is included in Nasdaq but not designated an NNM security; and]

[(c) any equity security that is listed on a registered national securities exchange.]

[Inclusion of a qualified security in Nasdaq International requires a market making commitment by one or more broker/dealers that participate as Service market makers.]

**[5105. Access]**

[(a) Access to the market making capabilities provided by Nasdaq International is restricted to broker/dealers that are either Association members or approved affiliates and that have all equipment and communication lines specified by the Association for receipt of Nasdaq Workstation Service. Additionally, Association members that participate as Service market makers, either directly or through the agency of an approved affiliate, must satisfy the same financial and operational requirements applicable to market makers in Nasdaq securities and/or exchange-listed securities traded off-board during the Domestic Session.]

[(b) Association members that utilize Nasdaq Workstation units to receive Level 2 Nasdaq Service during the Domestic Session can also receive real-time quotation information entered by Service market makers. Similar access terms will be provided to non-member, Level 2 subscribers utilizing Nasdaq Workstation units.]

**[5106. Requirements Applicable to Market Makers]**

**[(a) Service Market Maker]**

[Association members and approved affiliates can function as Service market makers by registering with the Association in one or more qualified securities. Two classifications of market makers are authorized: (1) European-only and (2) International. Association members can register in either capacity in any qualified security; approved affiliates are limited to European-only registration. At the time of registration, a Service market maker must select one of the following time periods to define its daily market making commitment, on a security-by-security basis: 3:30 a.m. to 9:00 a.m.; 5:30 a.m. to 9:00 a.m., and 7:30 a.m. to 9:00 a.m. Every Service market maker must fulfill the market making obligations specified below in each of its registered securities while participating in the European Session. Based on experience gained with Service market makers' use of the multiple openings, the Association may determine to alter the specified times by up to one hour or to eliminate an opening altogether.]

**[(b) Market Maker Obligations]**

[The following requirements and procedures govern a broker/dealer's participation in Nasdaq International as a Service market maker.]

[(1) Registration]

[(A) Quotations and quotation size may be entered into the Service only by a Service market maker.]

[(B) To function as a Service market maker, an Association member must initially obtain registration as a European-only or International market maker by filing an application with the Association. The application shall certify the Association member's good standing with the Association,

demonstrate compliance with the net capital and other financial responsibility provisions of the Act and the rules thereunder, and specify the qualified security(ies) in which the member is seeking to register as a European-only or International market maker. Initial registration as a Service market maker shall become effective upon the member's receipt of the Association's notice approving such registration.]

[(C) For an approved affiliate to function as a Service market maker, it must initially obtain registration as a European-only market maker by filing an application with the Association. Such application must be co-signed by a registered principal of the Association member for whom the approved affiliate will act as agent. The application shall certify the following: the Association member's good standing with the Association; the approved affiliate's authorization to conduct securities business in the United Kingdom in accord with all applicable provisions of the Financial Services Act of 1986; and the Association member's ability to comply and its assumption of compliance with the net capital and other financial responsibility requirements of the Act and the rules thereunder in respect of the approved affiliate's market making in the Service as agent for the Association member. The application shall also specify the qualified security(ies) in which the approved affiliate is seeking to register as a European-only market maker. Initial registration as a Service market maker shall become effective upon the approved affiliate's receipt of the Association's notice approving such registration.]

[(D) A Service market maker may become registered in a newly qualified security by telephoning Market Operations. If registration is requested within five (5) business days after the issue becomes qualified, registration shall take effect at the time the request is entered.]

[(E) A Service market maker may register in additional qualified securities by entering a registration request via its Nasdaq Workstation unit authorized for receipt of the Service. If registration is requested respecting a security that has been a qualified security for more than five (5) days, and the requirements of either subparagraph (B) or (C) above are satisfied, registration shall take effect on the day after the registration request is entered.]

[(F) Registration in a qualified security shall be terminated by the Association if the Service market maker fails to enter quotations in that security within five (5) business days after its registration in that security first became effective.]

[(2) Normal Business Hours]

[Service market makers must be open for business, on each U.S. business day, during the time periods established by their registration in one or more qualified securities. By virtue of the multiple openings feature, a Service market maker would have the flexibility, for example, to register and quote markets in some securities during the 5:30 a.m. to 9:00 a.m. segment and others during the 7:30 a.m. to 9:00 a.m. segment. This flexibility is equally available to Association members and approved affiliates that participate as Service market makers. Appropriate adjustments will be made in the event that the U.S. and U.K. move to (or from) daylight savings time on different dates.]

[(3) Character of Quotations]

[(A) For each security in which an Association member has registered as a Service market maker, it shall be willing to buy and sell such security for its own account on a continuous basis and shall enter and maintain two-sided quotations in the Service during the hours specified above in subparagraph (2), above, subject to the procedures for excused withdrawal set forth in subparagraph (4) below. An approved affiliate registered as a Service market maker shall assume identical obligations in each of its registered securities. Purchases and sales effected to fulfill those obligations shall be deemed to be made for the account of the Association member on whose behalf the approved affiliate acts as agent.]

[(B) A Service market maker that receives an offer to buy or sell from another Association member or approved affiliate shall execute a transaction for at least a normal unit of trading at its displayed quotations as disseminated through the Service at the time of receipt of any such offer. If a Service market maker displays a quotation for a size greater than a normal unit of trading, it shall, upon receipt of an offer to buy or sell from another Association member or approved affiliate, execute a transaction at least at the size displayed.]

[(C) A Service market maker shall enter and maintain quotations that are reasonably related to the prevailing market. If it appears that such market maker's quotations are no longer reasonably related to the prevailing market, the Association may require the firm to re-enter its quotations. However, if that Service market maker fails to re-enter its quotations, the Association may suspend the market maker's quotations in one or all of the qualified securities in which it is registered.]

[(D) If a Service market maker's ability to enter or update quotations is impaired, the market maker shall immediately contact Market Operations to request the withdrawal of its quotations.] [(E) If a Service market maker's ability to enter or update quotations is impaired and it elects to remain in the Service, the market maker shall execute an offer to buy or sell received from another Association member or approved affiliate at its quotations as disseminated through the Service.]

[(F) A Service market maker should refrain from entering quotations into the Service that exceed the guidelines for maximum allowable spreads set forth below:]

SPREAD GUIDELINES

| Average spread | Maximum allowable spread |
|---|---|
| 1/8 or less | 1/4 |
| 1/4 | 1/2 |
| 3/8 | 3/4 |
| 1/2 | 1 |
| 5/8 | 1 |
| 3/4 | 1 1/2 |
| 7/8 | 1 1/2 |
| 1 | 1 1/2 |
| 1 1/8 | 1 5/8 |
| 1 1/4 | 1 3/4 |
| 1 3/8 | 1 7/8 |
| 1 1/2 | 2 |
| 1 5/8 | 2 |
| 1 3/4 | 3 |
| 1 7/8 | 3 |
| 2 | 3 |
| 2 1/8 | 3 |
| 2 1/4 | 3 |
| 2 3/8 | 3 |
| 2 1/2 | 3 |
| 2 5/8 | 4 |
| 2 3/4 | 4 |
| 2 7/8 | 4 |

[For an average spread of 3 or more, the maximum allowable spread is 125 percent of the average spread rounded to the next highest whole number.]

[The Association regards these spread parameters as guidelines rather than absolute requirements. Nonetheless, the Association will continuously monitor the quotation spreads of every Service market maker and consider taking regulatory action upon finding a pattern of excessive spreads disseminated during European Sessions. A pattern of excessive spreads will be deemed to exist where a Service market maker exceeds the applicable guideline on five

or more occasions in the same qualified security during a calendar month or exceeds the applicable guideline respecting at least 10% of its quotation updates entered into the Service during a calendar month.]

[(G) A Service market maker shall not, except under extraordinary circumstances, enter or maintain quotations in the Service during the European Session if: the bid quotation entered is equal to or greater than the asked quotation of another Service market maker displaying quotations in the same qualified security; or the asked quotation is equal to or less than the bid quotation of another Service market maker displaying quotations in the same qualified security.]

[(H) A Service market maker shall, prior to entering a quotation that locks or crosses another quotation, make reasonable efforts to avoid such locked or crossed market by executing transactions with all Service market makers whose quotations would be locked or crossed. A Service market maker whose quotations are causing a locked or crossed market is required to execute transactions at its quotations as displayed through the Service at the time of receipt of any order.]

[(4) Withdrawal of Quotations]

[(A) A Service market maker that wishes to withdraw its quotations in a qualified security shall contact Market Operations to obtain excused withdrawal status prior to effecting withdrawal. Excused withdrawals shall be granted by Market Operations only upon the demonstration of the existence of one of the circumstances set forth in subparagraphs (B) and (C) below.]

[(B) Excused withdrawal status based on physical circumstances beyond the Service market maker's control may be granted for up to five (5) business days, unless extended by Market Operations. Excused withdrawal status based on demonstrated legal or regulatory requirements, supported by appropriate documentation and accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon written request, be granted for not more than sixty (60) days. Excused withdrawal status based on religious holidays or national holidays in the U.K. may be granted only if the request is received by the Association five (5) business days in advance and is approved by the Association. Excused withdrawal status based on vacation may be granted only if: the request for withdrawal is received by the Association twenty (20) business days in advance, and is approved by the Association; the request includes a list of the securities for which withdrawal is requested; and the request is made by a Service market maker with three (3) or fewer Nasdaq Workstation units authorized for market making in the Service. The following shall not constitute acceptable reasons for granting excused withdrawal status: pending news, a sudden influx of orders or price changes, or the desire to effect transactions with competitors.]

[(C) Excused withdrawal status may be granted to a Service market maker that fails to maintain a clearing arrangement with a registered clearing agency or with another party that is a member of such an agency and is therefore withdrawn from participation in the Association's Automated Confirmation Transaction Service. However, if the Association finds that the Service market maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be deemed a voluntary termination pursuant to subparagraph (5) below.]

**[(5) Voluntary Termination of Registration]**

[A Service market maker may voluntarily terminate its registration in a qualified security by withdrawing its quotations in that security from the Service. A market maker that voluntarily terminates its registration in a qualified security may re-register to quote that security in the Service in accord with procedures contained in paragraph (b)(1)(E) above. Nonetheless, if an International market maker voluntarily terminates both the domestic and European components of its registration in a qualified security that is included in Nasdaq (qualified Nasdaq security), this Association member cannot re-register to quote that qualified Nasdaq security during the Domestic Session until twenty (20) business days have elapsed. This waiting period would not apply where an International market maker in a qualified Nasdaq security had terminated the European component of its registration but maintained the domestic component.]

**[(6) Stabilizing Bids]**

[(A) A Service market maker may enter a stabilizing bid in the Service for a qualified Nasdaq security, which bid will be identified with the appropriate identifier on the quotation display. Only one market maker in an issue may enter a stabilizing bid. A stabilizing bid will not be displayed unless one market maker in addition to the market maker entering the stabilizing bid is registered in the issue and enters quotations during the European Session.]

[(B) A stabilizing bid, a pre-effective stabilizing bid, or a penalty bid may be entered into the Service. A stabilizing bid must be available for all freely tradeable outstanding securities of the same class being offered.]

**[(C) Notice to the Association]**

[(i) A Service market maker that wishes to enter a stabilizing bid shall so notify Market Operations in writing prior to the first day on which the stabilizing bid is to appear in the Service. The notice shall include: the name of the qualified Nasdaq security and its Nasdaq symbol; the date on which the security's registration will become effective, if it is already quoted in the Service; whether the stabilizing bid will be a penalty bid or a penalty-free bid; and a copy of the preliminary prospectus or shelf registration statement, unless the Association determines otherwise.]

[(ii) In the case of a pre-effective stabilizing bid, the notice shall include: the name of the qualified Nasdaq security and its Nasdaq symbol; the contemplated effective date of the offering; whether it is contemplated that the pre-effective stabilizing bid will be converted to a stabilizing bid and, if so, whether the stabilizing bid will be a penalty bid or a penalty-free bid; and a copy of the preliminary prospectus, unless the Association determines otherwise.]

[(iii) A service market maker that has provided the written notice prescribed above shall also contact Market Operations for authorization on the day the market maker wishes to enter the stabilizing bid into the Service.]

[(D) A Service market maker shall not enter a stabilizing bid at the same time that it is quoting any other bid or offer in the qualified Nasdaq security.]

[(E) A Service market maker entering a stabilizing bid shall report all purchases made on the stabilizing bid and enter ''zero volume'' for sales during the period in which the stabilizing bid is in effect.]

**[5107. Automated Submission of Trading Data]**

[Reserved for Future Use. Redesignated as 8212 by SR–NASD–97–81 eff. Jan. 16, 1998.]

**[5108. Reports]**

[Every Association member and approved affiliate that functions as a Service market maker shall submit the following reports to the Association at the frequency specified:]

[(a) A Service market maker shall report each business day any data relating to qualified securities quoted in the Service as the Association shall require.]

[(b) A Service market maker shall report monthly such data on qualified securities that are quoted in the Service as the Association shall require.]

[(c) A Service market maker shall make such other reports as the Association may prescribe from time to time.]

**[5109. Clearance and Settlement of International Transactions]**

[(a) Association members and approved affiliates that effect international transactions must clear and settle all such transactions through a clearing agency registered with the Commission that uses a continuous net settlement system. This requirement may be satisfied through direct participation in a suitable clearing agency or through a clearing arrangement with another party.]

[(b) For purposes of this Rule, the term ''international transaction'' means every transaction having the following three characteristics: (1) the transaction involves a qualified security quoted in the Service by at least one registered market maker; (2) the transaction is consummated during the hours of the European Session between two Association members, two approved affiliates, or an Association member and an approved affiliate; and (3) the transaction involves at least one Association member (acting in a principal or agency capacity) that is registered as a European-only or International market maker in any qualified security, or alternatively, at least one approved affiliate (acting in a principal or agency capacity) that is registered as a European-only market maker in any qualified security.]

[(c) Participation in the Automated Confirmation Transaction Service is mandatory for self-clearing Association members participating in the Service directly or through an approved affiliate.]

**[5110. Suspension and Termination of Quotations by Association Action]**

[The Association may, pursuant to the procedures set forth in the Association Code of Procedure, the Rule 9000 Series, suspend, condition, limit, prohibit or terminate a Service market maker's authority to enter quotations in one or more qualified securities for violations of the applicable requirements or prohibitions contained in the By-Laws or Rules of the Association.]

**[5111. Termination of Access]**

[The Association may, upon notice, terminate access to Nasdaq International in the event that a Service market maker fails to qualify under specified standards of eligibility for Association membership or participation in the Service, or fails to pay promptly for services rendered by the Association or its subsidiaries.]

**[5112. Transaction Reporting Requirements]**

[During the European Session, broker/dealers registered as International or European-only market makers shall observe the following requirements for reporting transaction information to the Association on qualified securities quoted in Nasdaq International:]

**[(a) Definitions]**

[(1) ''International Participant'' includes any Association member registered as an International or European-only market maker in at least one qualified security, and any approved affiliate registered as a European-only market maker in at least one qualified security.]

[(2) ''Reportable transaction'' means any round-lot or mixed-lot transaction in a Service security effected during the European Session with an International Participant being on one or both sides. The following are not deemed to be reportable transactions:]

[(A) transactions which are part of a primary distribution by an issuer or of a registered secondary distribution (other than shelf registrations) or of an unregistered secondary distribution; ]

[(B) transactions executed on and reported to a securities exchange domiciled outside the U.S.; ]

[(C) transactions made in reliance on Section 4(2) of the Securities Act of 1933; ]

[(D) transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for a Service security, e.g., to enable the seller to make a gift; and ]

[(E) purchases or sales of Service securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a preestablished consideration unrelated to the current market.]

[(3) ''Service security'' means any qualified security that is quoted in Nasdaq International by at least one registered market maker.]

[(4) ''Trade report'' refers to the entry of the following elements of information for each reportable trans security symbol, price (exclusive of commission, mark-up, or mark-down), volume, and a symbol indicating whether the transaction is a buy, sell or cross.]

**[(b) Timely Trade Reports]**

[International Participants shall enter trade reports on all reportable transactions within three minutes of execution via a Nasdaq Workstation unit authorized for receipt of Nasdaq International or through a CTCI. Trade reports not submitted within three minutes of execution shall be designated as late by addition of the ''SLD'' indicator. A pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Rule 2110 of the Association's Rules.]

**[(c) Obligation To Submit Trade Reports on Reportable Transactions]**

[(1) In transactions between two International Participants that are both Service market makers in the affected Service security, only the party representing the sell side shall report.]

[(2) In transactions between two International Participants where only one is a Service market maker in the affected Service security, the latter party shall report.]

[(3) In transactions between two International Participants where neither is a Service market maker in the affected Service security, only the party representing the sell side shall report.]

[(4) In transactions between an International Participant and a non-member (other than an approved affiliate), the International Participant shall report. Where an International Participant acts as a dual agent in a reportable transaction, it shall be reported only once by the International Participant.]

[(5) In transactions between an International Participant and another Association member that is not an International Participant, only the International Participant shall report.]

**[(d) Aggregation of Trade Reports]**

[(1) The following procedures and requirements apply exclusively to an International Participant registered as a Service market maker in a particular Service security.]

[(2) Under the following conditions, individual trade reports in a Service security at the same price may be aggregated into a single trade report by a Service market maker in that security:]

[(A) orders received prior to opening of the European Session and

simultaneously executed at the opening;]

[(B) orders received during a trading halt and executed simultaneously when trading resumes;]

[(C) orders relayed to the trading department of the Service market maker for simultaneous execution at the same price;]

[(D) simultaneous executions by the Service market maker of customer transactions at the same price, e.g., multiple limit orders being executed at the same time when a limit price has been reached; or]

[(E) orders received or initiated by the Service market maker that are impractical to report individually and are executed at the same price within two minutes of execution of the initial transaction; provided, however, that no individual order of 10,000 shares or more may be aggregated in a trade report and that the aggregated trade report shall be made within three minutes of the initial execution reported therein.]

[(3) In no instance shall a Service market maker delay entry of its opening quotations or resumption of trading in a Service security for the purpose of aggregating trade reports. Further, a Service market maker is prohibited from withholding a trade report in anticipation of aggregating the transaction with others.]

[(4) A Service market maker shall identify aggregated trade reports and the underlying order tickets in a manner prescribed by the Association.]

**[(e) Time Stamping of Transactions]**

[All trade tickets for reportable transactions shall be time-stamped at the time of execution. Association members and approved affiliates that utilize screen-based systems for executing transactions shall satisfy this requirement by ensuring that such a system assigns an appropriate execution time to each reportable transaction.]

**[(f) Weekly Reports]**

[International Participants shall submit trade reports weekly respecting Service securities in the following circumstances:]

[(1) European-only market makers. Transactions in Service securities executed outside hours of the European Session;]

[(2) International market makers. Transactions in Service securities executed outside the hours of both the European Session and the Domestic Session;]

[(3) European-only and International Market Makers. Transactions in Service securities that were effected during the European Session and were omitted inadvertently from reported volume during the preceding week's European Sessions.]

**[5113. Audit Trail Requirements]**

[All existing requirements for submitting audit trail information to the Association, either directly or through a registered clearing agency, shall extend to Association members'/approved affiliates' participation in Nasdaq International. The applicable requirements were published in NASD Notices to Members 84–55 (October 15, 1984), 85–24 (April 12, 1985), and 85–72 (October 30, 1985), which notices are hereby incorporated by reference.]

* * * * *

***5200. Trading Halts***

**(a) Authority To Initiate Halts in Trading Otherwise Than on an Exchange**

*NASD, pursuant to the procedures set forth in paragraph(b):*

*(1) shall halt trading otherwise than on an exchange an ADF-eligible security whenever any market eligible to trade that security imposes a trading halt, or suspends the listing, in order to:*

(A) *Permit dissemination of material news;*

(B) *obtain information from the issuer relating to material news;*

(C) *obtain information relating to the issuer's ability to meet listing qualification requirements; or*

(D) *obtain any other information that is necessary to protect investors and the public interest.*

(2) *shall halt trading otherwise than on an exchange in an American Depository Receipt (''ADR'') listed on a national securities exchange, when the security underlying the ADR is listed on or registered with a national or foreign securities exchange or market, and the national or foreign securities exchange or market, or regulatory authority overseeing such exchange or market, halts trading in such security for regulatory reasons.*

(3) *shall halt all trading through the NASD Alternative Display Facility (a) whenever the NASD Alternative Display Facility is unable to transmit real-time quotation or trade reporting information to the applicable Securities Information Processor, or (b) whenever a market-wide trading halt is in effect under circuit breaker rules of a primary exchange.*

(4) *may, in its discretion, halt all trading otherwise than on an exchange in a security listed on a national securities exchange when (i) a national securities exchange imposes a trading halt in that security because of an order imbalance or influx (''operational trading halt''), or (ii) when the security is a derivative or component of a security listed on a national securities exchange and a national securities exchange imposes an operational trading halt in that security. In the event that the NASD, in its discretion, chooses not to halt trading otherwise than on an exchange in a security when the conditions of this paragraph exist, NASD members may continue to conduct trading in such security during the period of any such halt and shall continue to report all last sale prices reflecting transactions in such security.*

*Members shall promptly notify NASD whenever they have knowledge of any matter related to a security or the issuer thereof that has not been adequately disclosed to the public or where they have knowledge of a regulatory problem relating to such security.*

*(b) Commencement and Termination of a Trading Halt*

(1) *In the event NASD determines that a basis exists under Rule 5200(a) to initiate a trading halt, the commencement of the trading halt will be effective simultaneously with appropriate notice via an administrative message.*

(2) *Trading in a halted security shall resume upon notice via an administrative message that a trading halt is no longer in effect.*

*(c) Authority To Initiate Trading and Quotation Halts in Non-Exchange-Listed Foreign Securities*

*In circumstances in which it is necessary to protect investors and the public interest, NASD Regulation may direct members, pursuant to the procedures set forth in paragraph (d), to halt trading and quotations in a quotation medium other than an exchange or the NASD Alternative Display Facility of an American Depository Receipt (''OTC ADR'') or a security (''OTC Security'') that is traded in the OTC market and that is not otherwise listed on a national securities exchange or included in the OTC Bulletin Board Service (''OTCBB'') when the OTC Security or the security underlying the OTC ADR is listed on or registered with a foreign securities exchange or market, and the foreign securities exchange, market, or regulatory authority overseeing such issuer, exchange or market halts trading in such security for regulatory reasons (''Foreign Regulatory Halt''); provided, however, that NASD Regulation will not impose a trading and quotation halt if the Foreign Regulatory Halt was imposed solely for the dissemination of*

*material news, a regulatory filing deficiency, or operational reasons.*

*(d) Procedure for Initiating a Trading and Quotation Halt*

(1) *For a halt initiated under subparagraph (c) of this rule, NASD Regulation will promptly evaluate information received from a foreign securities exchange or market on which the OTC Security or the security underlying the OTC ADR is listed or registered or from a foreign regulatory authority overseeing such issuer, exchange, or market about a Foreign Regulatory Halt and determine whether a trading and quotation halt in the OTC Security is appropriate.*

(2) *Should NASD Regulation determine that a basis exists under this Rule for initiating a trading and quotation halt, NASD Regulation shall disseminate appropriate public notice that a trading and quotation halt is in effect and the commencement of the trading halt will be effective simultaneously with appropriate public notice.*

(3) *Trading and quotations in the OTC market may resume when NASD Regulation determines that the basis for the halt no longer exists or when five business days have elapsed from the date NASD Regulation initiated the trading and quotation halt in the security, whichever occurs first. NASD Regulation shall disseminate appropriate public notice that a trading and quotation halt is no longer in effect.*

*Selected NASD Notices to Members: 88–46, 94–98.*

### *5300. Transactions Related to Initial Public Offerings*

*No member or person associated with a member shall execute or cause to be executed, directly or indirectly, an over-the-counter transaction in a security subject to an initial public offering until such security has first opened for trading on the national securities exchange listing the security, as indicated by the dissemination of an opening transaction in the security by the listing exchange via the Consolidated Tape or, for Nasdaq, the Nasdaq Tape.*

### [5200] *6500*. INTERMARKET TRADING SYSTEM[/COMPUTER ASSISTED EXECUTION SYSTEM]

### [5210] *6510*. Definitions

(a) The term ''ITS Participant Exchange'' shall mean a participant in the ITS Plan that is a national securities exchange.

(b) The term ''ITS Plan'' shall mean the plan agreed upon by the ITS participants, as from time to time amended in accordance with the provisions therein, and approved by the Commission pursuant to Section 11A(a)(3)(B) of the Act and SEC Rule 11Aa3–2 thereunder.

(c) The term ''ITS Security'' shall mean any security [which] *that* may be traded through the System by an ITS/*ADF*[CAES] Market Maker.

(d) The term ''ITS System'' shall mean the communications network and related equipment that links electronically the ITS Participant Exchanges and ITS/*ADF*[CAES] Market Makers as described in the Plan.

(e) The term ''ITS/*ADF*[CAES] Market'' Maker shall mean a member of the Association that is registered as a market maker with the Association for the purposes of participation in ITS [through CAES] with respect to one or more specified ITS securities in which [he] it is then actively registered. Registration as an ITS/*ADF*[CAES] Market Maker is [mandatory] *optional* for all registered CQS market makers in securities eligible for inclusion in the ITS/*ADF*[CAES] linkage.

(f) The term ''Participant Market'' shall mean the securities trading floor of each participating ITS Exchange and the markets of ITS/*ADF*[CAES] Market Makers in ITS securities.

(g) The term ''Pre-Opening Application'' shall mean the application of the System which permits a specialist or ITS/*ADF*[CAES] Market Maker who wishes to open [his] *its* market in an ITS Security to obtain pre-opening interests from other specialists and ITS/*ADF*[CAES] Market Makers.

(h) The term ''Previous Day's Consolidated Closing Price'' shall mean the last price at which a transaction in a security was reported by the consolidated last sale reporting system on the last previous day on which transactions were reported by such system; provided, however, that the ''previous day's consolidated closing price'' for all Network A or Network B eligible [S]securities shall be the last price at which a transaction in the stock was reported by the New York Stock Exchange, Inc. (NYSE) or the American Stock Exchange, Inc. (Amex), if, because of unusual market conditions, the NYSE or the Amex price is designated as such pursuant to the ITS plan.

(i) A ''Third Participating Market Center Trade-Through,'' as that term is used in this Rule, occurs whenever an ITS/*ADF*[CAES] Market Maker initiates the purchase of an ITS Security by sending a commitment to trade through the System and such commitment results in an execution at a price [which] *that* is higher than the price at which the security is being offered (or initiates the sale of such a security by sending a commitment to trade through the System and such commitment results in an execution at a price which is lower than the price at which the security is being bid for) at the time of the purchase (or sale) in another ITS participating market center as reflected by the offer (bid) then being displayed by [ITS/ CAES] Market Makers from such other market center. The member described in the foregoing sentence is referred to in this Rule as the ''member who initiated a third participating market center trade-through.'' [Amended eff. Nov. 24, 1989; Aug. 5, 1991; amended by SR–NASD–93–10 eff. Oct. 31, 1994; amended by SR–NASD–97–09 eff. May 30, 1997.] Selected Notices to Members: 94–81.

### [5220] *6520*. ITS/*ADF*[CAES] Registration

In order to participate in ITS, a market maker must be registered with the Association as an ITS/*ADF*[CAES] Market Maker in each security in which a market will be made in ITS. Such registration shall be conditioned upon the ITS/*ADF*[CAES] Market Maker's continuing compliance with the following requirements:

(a) Registration as a CQS market maker pursuant to Rule 6320 and compliance with the Rule 6300 Series;

(b) execution of an ITS/*ADF*[CAES] Market Maker application agreement with the Association at least two days prior to the requested date of registration;

(c) compliance with SEC Rule 15c3–1;

(d) compliance with the ITS Plan, SEC Rule 11Ac1–1 and all applicable Rules of the Association;

(e) the maintenance of continuous two-sided quotations in the absence of the grant of an excused withdrawal or a functional excused withdrawal by the Association. *Any registered ITS Market Maker (excluding ECNs) that participates in a pre-opening application process and does not enter and maintain continuous two-sided quotations in the security on that same trading day may not re-register to participate in ITS in such security for twenty (20) business days unless NASD Alternative Display Facility Operations grants an excused withdraw;*

(f) maintenance of the physical security of the equipment used to interface with the ITS System located on the premises of the ITS/*ADF*[CAES] Market Makers to prevent the unauthorized entry of communications into the ITS System; and

(g) acceptance and settlement of each ITS System trade that the ITS System

identifies as effected by such ITS/*ADF*[CAES] Market Maker, or if settlement is to be made through another clearing member, guarantee of the acceptance of settlement of such identified ITS System trade by the clearing member on the regularly scheduled settlement date.

**[5221] *6521*. Suspension or Revocation of ITS/*ADF*[CAES] Registration**

Failure by an ITS/*ADF*[CAES] Market Maker to comply with the ITS Plan or any of the rules identified herein shall subject such ITS/*ADF*[CAES] Market Maker to censure, fine, suspension or revocation of its registration as an ITS/*ADF*[CAES] Market Maker, or any other fitting penalty.

**[5230] *6530*. ITS Operations**

(a) All transactions effected through ITS shall be on a ''regular way'' basis. Each transaction effected through ITS shall be cleared and settled through a clearing agency registered with the Commission [which] *that* maintains facilities through which ITS transactions may be compared and settled.

(b) Any ''commitment to trade,'' which is transmitted by an ITS/*ADF*[CAES] Market Maker to another ITS participating market center through ITS, shall be firm and irrevocable for the period of *thirty (30) seconds*, [either] one minute or two minutes (specified in accordance with subparagraph (7) below) following transmission by the sender. All such commitments to trade shall, at a minimum:

(1) Include the number or symbol which identifies the ITS/*ADF*[CAES] Market Maker;

(2) direct the commitment to a particular participant market;

(3) specify the security which is the subject of the commitment;

(4) designate the commitment as either a commitment to buy or a commitment to sell;

(5) specify the amount of the security to be bought or sold, which amount shall be for one unit of trading or any multiple thereof;

(6) specify:

(A) A price equal to the offer or bid price then being furnished by the destination Participant Market, which price shall represent the price at or below which the security is to be bought or the price at or above which the security is to be sold, respectively;

(B) a price at the execution price in the case of a commitment to trade sent in compliance with the block trade rule; or

(C) that the commitment is a commitment to trade ''at the market;''

(7) specify [either] *thirty (30) seconds,* one minute or two minutes as the time period during which the commitment shall be irrevocable, but if the time period is not specified in the commitment, a two minute period shall be assumed. It should be noted that the period of time represented by these designations may be changed in the future by action of the ITS Operating Committee, whose decision as to the applicable period shall be binding upon ITS/*ADF*[CAES] Market Makers;

(8) designate the commitment ''short'' or ''short exempt'' whenever it is a commitment to sell which, if it should result in an execution in the receiving market, would result in a short sale to which the provisions of SEC Rule 10a–1(a) under the Act would apply.

(c) If a commitment to trade is directed to an ITS/*ADF*[CAES] Market Maker, and the execution of such commitment exhausts the size of the quotation being displayed by the ITS/*ADF*[CAES] Market Maker, then such ITS/*ADF*[CAES] Market Maker shall be placed in a functional excused withdrawal state pending the input of a new two-sided quotation with size into the Association's [Consolidated Quotation Service] *ADF*. The new two-sided quotation required of the ITS/*ADF*[CAES] Market Maker will be entered as promptly as possible into the Association's [Consolidated Quotation Service] *ADF*.

(d) Transactions in ITS securities executed [in CAES] by ITS/*ADF*[CAES] Market Makers or received through the ITS System and executed by an ITS/*ADF*[CAES] Market Maker are reported to the CTA Plan Processor [by the CAES System] at the price specified in the commitment or if executed at a better price, the execution price.

**[5240] *6540*. Pre-Opening Application—Opening by ITS/*ADF*[CAES] Market Maker**

The pre-opening application enables an ITS/*ADF*[CAES] Market Maker or ITS Participant Exchange in any participant market who wishes to open [his] *its* market in an ITS Security to obtain through the ITS System [or CAES], any pre-opening interest of an ITS Participant Exchange or other ITS/*ADF*[CAES] Market Makers registered in that security and/or market makers in other participant markets.

**(a) Notification Requirement—Applicable Price Change, Initial Notification**

(1) Whenever an ITS/*ADF*[CAES] Market Maker, in an opening transaction in any ITS/*ADF*[/CAES] Security, anticipates that the opening transaction will be at a price that represents a change from the security's previous day's consolidated closing price of more than the ''applicable price change'' (as defined below), [he] *its* shall notify the other Participant markets of the situation by sending a ''pre-opening notification'' through the System. Thereafter, the ITS/*ADF*[CAES] Market Maker shall not open the security in [his] *its* market until not less than three minutes after [his] *its* transmission of the pre-opening notification. The ''applicable price changes'' are:

| Security | Consolidated closing price | Applicable price change (more than) |
|---|---|---|
| Network A | Under $15 | 1/8 point. |
| | $15 or over | 1/4 point.[1] |
| Network B | Under $5 | 1/8 point. |
| | $5 or over | 1/4 point.[2] |
| For transactions involving securities trading in decimal-based increments, the ''applicable price changes'' are: | | |
| Network A | Under $15 | $0.10 |
| | $15 or over | $0.25[3] |
| Network B | Under $5 | $0.10 |
| | $5 or over | $0.25[4] |

(2) a pre-opening notification shall:

(A) be designated as a pre-opening notification (POA);

(B) identify the ITS/*ADF*[CAES] Market Maker and the security involved; and

(C) indicate the ''applicable price range'' by being formatted as a standardized pre-opening administrative message as follows:

POA MMID/XYZ

(3) The price range shall not exceed the ''applicable price range'' shown below:

| Security | Consolidated closing price | Applicable price change (more than) |
|---|---|---|
| Network A | Under $50 | ½ point. |
| | $50 or over | 1 point.[5] |
| Network B | Under $10 | ½ point. |
| | $10 or over | 1 point.[6] |

For transactions involving securities trading in decimal-based increments, the price range shall not exceed the ''applicable price range'' shown below:

| Security | Consolidated price | Price range |
|---|---|---|
| Network A | Under $50 | $0.50 |
| | $50 or over | $1.00[7] |
| Network B | Under $20 | $0.50 |
| | $10 or over | $1.00[8] |

[1] If the previous day's consolidated closing price of a Network A Eligible Security exceeded $100 dollars and the security does not underlie an individual stock option contract listed and currently trading on a national securities exchange the ''applicable price change'' is one dollar.

[2] If the previous day's consolidated closing price of a Network B Eligible Security exceeded $75 and the security is not a Portfolio Deposit Receipt, Index Funds Share, or Trust Issued Receipt, or does not underlie an individual stock option contract listed and currently trading on a national securities exchange the ''applicable price change'' is one dollar.

[3] If the previous day's consolidated closing price of a Network A Eligible Security exceeded $100 dollars and the security does not underlie an individual stock option contract listed and currently trading on a national securities exchange the ''applicable price change'' is one dollar.

[4] If the previous day's consolidated closing price of a Network B Eligible Security exceeded $75 and the security is not a Portfolio Deposit Receipt, Index Funds Share, or Trust Issued Receipt, or does not underlie an individual stock option contract listed and currently trading on a national securities exchange the ''applicable price change'' is one dollar.

[5] If the previous day's consolidated closing price of an ITS security exceeded $100 dollars and the Security does not underlie an individual stock option contract listed and currently trading on a national securities exchange the ''applicable price change'' is two dollars.

[6] If the previous day's consolidated closing price of a Network B Eligible Security exceeded $75 and the security is not a Portfolio Deposit Receipt, Index Fund[s] Share, or Trust Issued Receipt, or does not underlie an individual stock option contract listed and currently trading on a national securities exchange the ''applicable price change'' is two dollars.

[7] If the previous day's consolidated closing price of an ITS security exceeded $100 dollars and the Security does not underlie an individual stock option contract listed and currently trading on a national securities exchange the ''applicable price change'' is two dollars.

[8] If the previous day's consolidated closing price of a Network B Eligible Security exceeded $75 and the security is not a Portfolio Deposit Receipt, Index Fund[s] Share, or Trust Issued Receipt, or does not underlie an individual stock option contract listed and currently trading on a national securities exchange the ''applicable price change'' is two dollars.

The price range also shall not straddle the previous day's consolidated closing price, although it may include it as an endpoint (e.g., a ⅛–⅝ price range would be permissible if the previous day's consolidated closing price were ⅛ or ⅝, but not if the closing price were ¼, ⅜ or ⅛).

For transactions involving securities trading in decimal-based increments, the price range also shall not straddle the previous day's consolidated closing price, although it may include it as an endpoint (e.g., a 40.15—40.65 price range would be permissible if the previous day's consolidated closing price were 40.15—40.65, but not if the closing price were within the price range 40.16—40.64).

**(b) Subsequent Notifications**

If, after sending a pre-opening notification, the situation in an ITS/*ADF*[CAES] Market Maker's market changes [he] *it* may have to issue a subsequent pre-opening notification. The three situations requiring subsequent notifications are described below. Subsequent pre-opening notifications shall be standardized pre-opening administrative messages. After sending a subsequent notification, the ITS/*ADF*[CAES] Market Maker shall wait either (1) one minute or (2) until the balance of the original three-minute waiting period expires, whichever is longer, before opening [his] *its* market (i.e., if more than one minute of the initial waiting period has not yet expired at the time the subsequent notification is sent, the ITS/*ADF*[CAES] Market Maker must wait for the rest of the period to pass before opening [his] *its* market).

**(1) Increase or Decrease in Applicable Price Range**

Where, prior to the ITS/*ADF*[CAES] Market Maker's opening of [his] *its* market in the security, [his] *its* anticipated opening price shifts so that it (A) is outside of the price range specified in [his] *its* pre-opening notification but (B) still represents a change from the previous day's consolidated closing price of more than the applicable price change, [he] *it* shall issue a replacement pre-opening notification (an ''additional'' notification) through the system before opening [his] *its* market in the security. An additional notification contains the same kind of information as is required in an original pre-opening notification.

**(2) Shift to Within Applicable Price Change Parameter**

(A) The ITS/*ADF*[CAES] Market Maker shall, by issuing a ''cancellation'' notification through the system, notify the Participant market(s) of the receiving market maker(s) prior to opening the security if the price at which [he] *it* anticipates opening [his] *its* market shifts so that it (i) is outside of the price range specified in [his] *its* pre-opening notification but (ii) does not represent a change from the

previous day's consolidated closing price of more than the applicable price change.

(B) Notwithstanding the preceding sentence, in situations where the price range in an initial or additional notification includes price variations equal to or less than the applicable price change parameters, the ''cancellation'' notification signifies that the anticipated opening price (i) may or may not be outside of the price range specified in the pre-opening notification and (ii) does not represent a change from the previous day's consolidated closing price of more than the applicable price change.

Example: CTA close at 30. Pre–Opening Notification sent with any one of the following price ranges: 30–30½; 30⅛–30⅝; or 30¼–30¾. It is then determined that the stock will open at 29¾ or 29⅞. Under paragraph (b)(2)(A), the specialist ''shall'' send cancellation notification. If it is subsequently determined that stock will open at 30, 30⅛, or 30¼, the specialist need not reindicate stock pursuant to paragraph (b)(2)(B).

Example for Decimal-Based Securities: CTA close at 30. Pre-Opening Notification sent with a price range at or within the following range: 30.10–30.60. It is then determined that the stock will open at a price within the range of 29.75 to 29.99. Under paragraph (b)(2)(A), the specialist ''shall'' send cancellation notification. If it is subsequently determined that stock will open at a price within the range of 30–30.25, the specialist need not reindicate stock pursuant to paragraph (b)(2)(B).

**(3) Participation as Principal Precluded (''Second Look'')**

If a responding market maker who has shown in [his] *its* pre-opening response interest as a principal at a price better than the anticipated opening price would be precluded from participation as principal in the opening transaction (e.g., [his] *its* responding principal interest is to sell at a price ⅛ or more below the opening price established by paired agency orders), the ITS/*ADF*[CAES] Market Maker[s] shall send a ''second look'' notification through the System, notifying such responding market maker of the price and size at which [he] *it* could participate as principal (i.e., in the parenthetical example above, the total amount of the security that [he] *it* would have to sell at the ⅛-better price to permit the opening transaction to occur at that price).

For securities trading in decimal-based increments, if a responding market maker who has shown in [his] *its* pre-opening response interest as a principal at a price better than the anticipated opening price would be precluded from participation as principal in the opening transaction (e.g. [his] *its* responding principal interest is to sell at a price .01 or more below the opening price established by paired agency orders), the ITS/*ADF*[CAES] Market Maker[s] shall send a ''second look'' notification through the System, notifying such responding market maker of the .01 price and size at which [he] *it* could participate as principal (i.e., in the parenthetical example above, the total amount of the security that [he] *it* would have to sell at the .01 better price to permit the opening transaction to occur at that price).

**(c) Tape Indications**

If the CTA Plan or the Association's rules require[s] or permits that an ''indication of interest'' (i.e., an anticipated opening price range) in a security be furnished to the consolidated last sale reporting system prior to the opening of trading or the reopening of trading following a halt or suspension in trading in one or more ITS Securities, then the furnishing of an indication of interest in such situations shall, without any other additional action required of the ITS/*ADF*[CAES] Market Maker, (1) initiate the pre-opening process, and (2) if applicable, substitute for and satisfy the requirements of paragraphs (a), (b)(1), and (b)(2) (while the furnishing of an indication of interest to the consolidated last sale reporting system satisfies the notification requirements of this rule, an ITS/*ADF*[CAES] Market Maker should also transmit the indication through the System in the format of a standardized pre-opening administrative message). In any such situation, the ITS/*ADF*[/CAES] Market Maker shall not open or reopen the security until not less than three minutes after [his] *its* transmission of the opening or reopening indication of interest. For the purpose of paragraphs (b)(3), (d), (f), and (g) through (i), ''pre-opening notification'' includes an indication of interest furnished to the consolidated last sale reporting system.

**(d) Pre-Opening Responses—Decision on Opening Transaction**

Subject to paragraph (e), [I]if an ITS/*ADF*[CAES] Market Maker [who] *that* has issued a pre-opening notification receives ''pre-opening responses'' through the system containing ''obligations to trade'' from market makers in other Participant markets (''responding market makers''), [he] *it* shall combine those obligations with orders [he] *it* already holds in the security and, on the basis of this aggregated information, decide upon the opening transaction in the security. If the ITS/*ADF*[CAES] Market Maker has received more than one pre-opening response from a Participant market, [he] *it* shall include in such combination only those obligations to trade from such Participant market as are specified in the most recent response, whether or not the most recent response expressly cancels the preceding response(s). An original or revised response received after the ITS/*ADF*[CAES] Market Maker has effected [his] *its* opening transaction shall be to no effect.

**(e) Pre-Opening Responses From Open Markets**

(1) An ITS/*ADF*[CAES] Market Maker must accept only those pre-opening responses sent to the Association by market makers in other [p]*P*articipant markets prior to the opening of their markets for trading in the security. Following a halt or suspension in trading declared by the Association in an ITS Security, an ITS/*ADF*[CAES] Market Maker must accept only those pre-opening responses sent by market makers to the Association from other [p]*P*articipant markets that halted trading in the security contemporaneously with the Association and that had not resumed trading in the security at the time the pre-opening response was sent.

(2) In the event that one or more market makers from [p]*P*articipant markets that have already opened trading in a security or, with respect to a halt or suspension in trading, either did not halt trading in the security contemporaneously with the Association, or has already resumed trading in the security, respond to a pre-opening notification in that security, the ITS/*ADF*[CAES] Market Maker need not, but may in [his] its discretion, accept such responses for the purpose of inclusion in the opening or reopening transaction. In the event that a Participant market opens or, with respect to a halt or suspension in trading, resumes trading in a security subsequent to a market maker in the Participant market sending a pre-opening response but prior to the opening or reopening transaction in ITS/*ADF*[CAES], the market maker who sent the pre-opening response to the Association must confirm the pre-opening response by sending an administrative message through the [s]*S*ystem stating that the response remains valid. If the market maker fails to so confirm the pre-opening response, the ITS/*ADF*[CAES] Market Maker need

not, but may in [his] *its* discretion, accept the original response for the purpose of inclusion in the opening or reopening transaction.

**(f) Allocation of Imbalances**

Whenever pre-opening responses from one or more responding market makers include obligations to take or supply as principal more than 50 percent of the opening imbalance, the ITS/*ADF*[CAES] Market Maker may take or supply as principal 50 percent of the imbalance at the opening price, rounded up or down as may be necessary to avoid the allocation of odd lots. In any such case, where the pre-opening response is from more than one responding market maker, the ITS/*ADF*[CAES] Market Maker shall allocate the remaining imbalance (which may be greater than 50 percent if the ITS/*ADF*[CAES] Market Maker elects to take or supply less than 50 percent of the imbalance) among them in proportion to the amount each obligated [himself] *itself* to take or supply as principal at the opening price in [his] *its* pre-opening response, rounded up or down as may be necessary to avoid the allocation of odd lots. For the purpose of this paragraph, multiple responding market makers in the same ITS Security in the same Participant market shall be deemed to be a single responding market maker.

**(g) Treatment of Obligations To Trade**

In receiving a pre-opening response, an ITS/*ADF*[CAES] Market Maker shall accord to any obligation to trade as agent included in the response the same treatment as [he] *it* would to an order entrusted to [him]*it* as agent at the same time such obligation was received.

**(h) Responses Increasing the Imbalances**

An ITS/*ADF*[CAES] Market Maker shall not reject a pre-opening response that has the effect of further increasing the existing imbalance for that reason alone.

**(i) Reports of Participation**

Promptly following the opening in any security as to which an ITS/*ADF*[CAES] Market Maker issued a pre-opening notification, the ITS/*ADF*[/CAES] Market Maker shall report to each Participant responsible for a market in which one or more responding market makers are located (1) the amount of the security purchased and/or sold, if any, by the responding market maker(s) in the opening transaction and the price thereof, or (2) if the responding market maker(s)'s response included agency or principal interest at the opening price that did not participate in the opening transaction, the fact that such interest did not so participate.

[Amended eff. Aug. 5, 1991; Mar. 31, 1993; amended by SR–NASD–97–09 eff. May 30, 1997; amended by SR–NASD–00–46 eff. Aug. 28, 2000.]

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**[5250] *6550*. Pre-Opening Application—Openings on Other Participant Markets**

**(a) Pre-Opening Responses**

Whenever an ITS/*ADF*[CAES] Market Maker [who] *that* has received a pre-opening notification from another ITS/*ADF*[CAES] Market Maker or ITS Participant Exchange as provided in the ITS Plan in any ITS Security as to which [he] *it* is registered as an ITS/*ADF*[CAES] Market Maker wishes to participate in the opening of that security in the Participant market from which the pre-opening notification was issued, [he] *it* may do so by sending obligations to trade through the System to such Participant market in a pre-opening response. A pre-opening response shall be designated as a pre-opening response (POR), identify the security, and show the ITS/*ADF*[CAES] Market Maker's buy and/or sell[,] interest, (if any), both as principal for [his] *its* own account (''P'') and as agent for orders left with [him]*it* (''A''), at each price level within the price-range indicated in the pre-opening notification (e.g., 40⅜), reflected on a netted share basis.

For securities trading in decimal-based increments, whenever an ITS/*ADF*[CAES] Market Maker [who] *that* has received a pre-opening notification from another ITS/*ADF*[CAES] Market Maker or ITS Participant Exchange as provided in the ITS Plan in any ITS Security as to which [he] *it* is registered as an ITS/*ADF*[CAES] Market Maker wishes to participate in the opening of that security in the Participant market from which the pre-opening notification was issued, [he] *it* may do so by sending obligations to trade through the System to such Participant market in a pre-opening response. A pre-opening response shall be designated as a pre-opening response (POR), identify the security, and show the ITS/*ADF*[CAES] Market Maker's buy and/or sell[,] interest, (if any), both as principal for [his] *its* own account (''P'') and as agent for orders left with [him] *it* (''A''), at each price level within the price-range indicated in the pre-opening notification (e.g., 40.40 ), reflected on a netted share basis.

The pre-opening response shall be formatted as follows:

POR (MMID) BUY [SELL] A–P 40⅜

For securities trading in decimal-based increments the pre-opening response shall be:

POR (MMID) BUY (SELL) A–P 40.40

The response may also show market orders separately.

**(b) Revised Responses**

An ITS/*ADF*[CAES] Market Maker may cancel or modify [his] *its* pre-opening response by sending through the System a revised response that cancels the obligations to trade contained in [his] *its* original response and, if a modification is desired, that substitutes new obligations to trade stating the ITS/*ADF*[CAES] Market Maker's aggregate interest (i.e., [his] *its* interest reflected in the original response plus any additional interest and/or minus any withdrawn interest) at each price level. Each succeeding response, even if it fails to expressly cancel its predecessor response, shall supersede the predecessor response in its entirety. Any revised response shall be to no effect if received in the Participant market from which the pre-opening notification was issued after the security has opened in such Participant market.

**(c) Pre-Opening Notification From Other Markets**

No ITS/*ADF*[CAES] Market Maker, whether acting as principal or agent, shall send an obligation to trade, commitment to trade or order in any security through the System to any other [p]*P*articipant market[,] prior to the opening of trading in such security on such other market (or prior to the resumption of trading in such security on such other market following the initiation of a halt or suspension in trading in the security) until a pre-opening notification as to such security has been issued from such other market or a quotation has been disseminated from such other market pursuant to SEC Rule 11Ac1–1. No ITS/*ADF*[CAES] Market Maker that has opened for trading or, with respect to a halt or suspension of trading initiated by another Participant [M]*m*arket, did not halt trading in the security reasonably contemporaneously with the Participant [M]*m*arket or resumed trading during such trading halt or suspension, shall respond to a pre-opening notification.

**(d) Sole Means of Pre-Opening Routing**

Once a pre-opening notification as to any security is received by the ITS/*ADF*[CAES] Market Maker through the

System, the ITS/*ADF*[CAES] Market Maker[s] in such security shall submit obligations to trade that security as principal for [his] *its* own account to the market from which the pre-opening notification was issued only through the Pre-Opening Application and shall not send orders to trade that security for [his] *its* own account to such market for participation at the opening in that market by any other means. However, this restriction shall not apply to any order sent to such market by the ITS/*ADF*[CAES] Market Maker prior to the issuance of the pre-opening notification.

**(e) Duration of Obligations To Trade**

Responses to pre-opening notifications shall be voluntary, but each obligation to trade that an ITS/*ADF*[CAES] Market Maker includes in any pre-opening response, or in any modification of a pre-opening response, shall remain binding on [him] *it*, until the security has opened in the market from which the pre-opening notification was issued or until a cancellation or modification of such obligation has been received in such market, and until a subsequent cancellation or modification thereof has been received in such market.

**(f) Request for Participation Report**

The ITS Plan anticipates that an ITS/*ADF*[CAES] Market Maker [who] *that* has sent one or more obligations to trade in response to a pre-opening notification will request a report through the System as to [his] *its* participation if [he] *it* does not receive a report as required promptly following the opening. If, on or following trade date, [he] *it* does request a report through the System as to [his] *its* participation before 4:00 p.m. Eastern Time, and [he] *it* does not receive a response by 9:30 a.m. Eastern Time on the next trading day, [he] *it* need not accept a later report. If [he] *it* fails to so request a report, [he] *it* must accept a report until 4:00 p.m. Eastern Time on the third trading day following the trade date (i.e., on T+3). The Association does not intend this paragraph to relieve [him] *U the ITS/ASD Market Maker* of the obligation, when [he] it does not receive a report, to request a report as soon as [he] *it* reasonably should expect to have received it.

[Amended eff. Nov. 24, 1989; May 15, 1991; Aug. 5, 1991; amended by SR–NASD–97–09 eff. May 30, 1997; amended by SR–NASD–00–46 eff. Aug. 28, 2000.]

**[5260]*6560*. System Trade and Quotations**

**[5261]*6561*. [Obligation To Honor System Trades] *Obligation Before Issuing External ITS Commitments***

[If an ITS/CAES Market Maker or clearing member acting on his behalf is reported on the clearing tape (as adjusted) at the close of any trading day, or shown by the activity reports developed by CAES as constituting a side of a System trade, such ITS/CAES Market Maker or clearing member shall honor such trade on the scheduled settlement date.]

*Before formatting any order, bid or offer into an ITS commitment to trade and issuing such a commitment to another ITS participant market, a member registered as an ITS Market Maker in an ITS Security shall first exhaust all interest at or better than such order, bid or offer which is resident in the ADF*, and then expose for thirty seconds any remaining balance to all *ADF* Participants, whether or not registered in the ITS Security involved.

**[5262]*6562*. Trade-Throughs**

(a) A member registered as an ITS/*ADF*[CAES] Market Maker in an ITS/*ADF*[CAES] [s]*S*ecurity, shall avoid purchasing or selling such security, whether as principal or agent, at a price [which] *that* is lower than the bid or higher than the offer displayed from an ITS Participant Exchange or ITS/*ADF*[CAES] Market Maker (''trade-through''), unless the following conditions apply:

(1) The size of the bid or offer that is traded-through is for 100 shares;

(2) the ITS/*ADF*[CAES] Market Maker is unable to avoid the trade-through because of [the] *a* systems/equipment failure or malfunction;

(3) the transaction which constituted the trade-through is not a ''regular way'' contract;

(4) the bid or offer that is traded[-] through is being displayed from a [M]*m*arket [C]*c*enter whose members are relieved of their obligations under SEC Rule 11Ac1–1([C]*c*)(2) with respect to such bid or offer;

(5) the bid or offer that is traded[-] through has caused a locked or crossed market in the ITS Security;

(6) the commitment received by an ITS/*ADF*[CAES] Market Maker which caused the trade-through was originated by an ITS Participant Exchange;

(7) The transaction involves (A) purchases and sales effected by ITS/*ADF*[CAES] Market Makers participating in an opening (or reopening) transaction or (B) any ''Block Transaction'' as defined in the ITS/*ADF*[CAES] Rules; or

(8) In the case of a third participating market center trade-through, either:

(A) the ITS/*ADF*[CAES] Market Maker who initiated the trade-through (i) had sent a commitment to trade promptly following the trade-through that satisfies the bid or offer traded[-] through, and (ii) preceded the commitment with an administrative message stating that the commitment was in satisfaction of a third participating market center trade-through; or

(B) a complaint with respect to the trade-through was not received by the Association through the System from the aggrieved party promptly following the trade-through, and, in any event, within ten (10) minutes from the time the aggrieved party sent a complaint through the System to the ITS [p]*P*articipating [m]*M*arket [c]*C*enter that received the commitment to trade that caused the trade-through, which first complaint must have been received within five (5) minutes from the time the report of the transaction that constituted the trade-through was disseminated over the high speed line of the consolidated last sale reporting system.

(b) (1) If a trade-through occurs and a complaint is promptly received by the Association either through the ITS System from the appropriate ITS Participant Exchange whose member is the aggrieved party or from an ITS/*ADF*[CAES] Market Maker, then:

(A) If ITS/*ADF*[CAES] Market Makers are on both sides of a principal trade, the price of the transaction which constituted the trade-through shall be corrected, by agreement of the parties, to a price at which a trade-through would not have occurred and the price correction shall be reported through the consolidated last sale reporting system; otherwise (i) the initiating ITS/*ADF*[CAES] Market Maker shall satisfy, or cause to be satisfied, the bid or offer traded-through in its entirety at the price of such bid or offer or at the price that caused the trade-through (as determined in accordance with subparagraph (E) below, or, if the initiating ITS/*ADF*[CAES] Market Maker elects not to do so, (ii) the transaction shall be voided.

(B) If an ITS/*ADF*[CAES] Market Maker executed the transaction and the contra-side was not an ITS/*ADF*[CAES] Market Maker (i) the ITS/*ADF*[CAES] Market Maker registered in the security shall satisfy, or cause to be satisfied, the bid or offer traded-through in its entirety at the price of such bid or offer, or, if the ITS/*ADF*[CAES] Market Maker elects not to do so, (ii) the price of the transaction [which] *that* constituted the trade-through shall be corrected by the

ITS/*ADF*[CAES] Market Maker to a price at which a trade-through would not have occurred and the price correction shall be reported through the consolidated last sale reporting system.

(C) If ITS/*ADF*[CAES] Market Makers are on both sides of a trade and one or both are acting as agent, the price of the transaction which constituted the trade-through shall be corrected, by agreement of the parties, to a price at which a trade-through would not have occurred and the price correction shall be reported through the consolidated last sale reporting system; otherwise, the ITS/*ADF*[CAES] Market Maker that initiated the transaction shall satisfy, or cause to be satisfied, the bid or offer traded-through in its entirety at the price of such bid or offer.

(D) Whenever the provisions of subparagraphs (B) and (C) above apply, the customer's order or a portion thereof [which] *that* was executed in the transaction [which] *that* constituted the trade-through (whether such order or a portion thereof was executed by the member who initiated the trade-through or by the member on the contra-side of the transaction, or both) shall receive the price [which] *that* caused the trade-through, or the price at which the bid or offer traded-through was satisfied, if it was satisfied pursuant to subparagraph (B) above, or the adjusted price, if there was an adjustment pursuant to subparagraph (B) above, whichever price is most beneficial to the order or a portion thereof. Money differences resulting from the application of this paragraph shall be the liability of the member who initiated the trade-through.

(E) The price at which the bid or offer traded-through shall be satisfied shall be the price of such bid or offer except if (i) the transaction that constituted the trade-through was of ''block size'' but did not constitute a ''block trade'' (as those terms are defined in the Block Trade Rule) and (ii) the ITS/*ADF*[CAES] Market Maker who initiated the trade-through did not make every reasonable effort to satisfy, or cause to be satisfied, through the System the bid or offer traded-through at its price and in its entirety within two (2) minutes from the time the report of the transaction that constituted the trade-through was disseminated over the high speed line of the consolidated last sale reporting system. In the case of such exception, the price at which the bid or offer traded-through shall be satisfied shall be the price that caused the trade-through.

(2) Such complaint shall be considered promptly received when no more than five minutes expire from the time the report of the transaction was disseminated over the high speed line of the consolidated last sale reporting system, unless the transaction is between an ITS/*ADF*[CAES] Market Maker and another ITS/*ADF*[CAES] Market Maker or ITS Participant Exchange. In the latter case, the complaint must be received within ten minutes from the time the aggrieved party sent a complaint through the System to the ITS/*ADF*[CAES] Market Maker or ITS Participant Exchange that received the commitment to trade that caused the trade-through, which first complaint must have been received within five minutes from the time the report of the transaction was disseminated over the high speed line of the consolidated last sale reporting system.

(c) (1) The Association shall notify the ITS/*ADF*[CAES] Market Maker of any trade-through complaint received from an ITS Participant Exchange or ITS/*ADF*[CAES] Market Maker. Upon receipt of such notification, the ITS/*ADF*[CAES] Market Maker shall promptly respond to the complaining ITS Participant Exchange or ITS/*ADF*[CAES] Market Maker. Such response shall set forth either: (A) the conditions specified in paragraph (a) above, or (B) the corrective action to be taken under paragraph (b) above. If there is more than one ITS/*ADF*[CAES] Market Maker that is registered in the ITS Security and participating in the transaction, then the ITS/*ADF*[CAES] Market Maker that initiated the transaction will receive notification of the trade-through complaint.

(2) If it is ultimately determined that an ITS/*ADF*[CAES] Market Maker has engaged in a trade-through but has not taken corrective action required by paragraph (b) above, then the ITS/*ADF*[CAES] Market Maker shall be liable for the lesser of (A) the actual loss proximately caused by the trade-through and suffered by the aggrieved party, or (B) the loss proximately caused by the trade-through which would have been suffered by the aggrieved party had [he] *it* purchased or sold the security subject to the trade-through in order to mitigate [his] *its* loss and had such purchase or sale been effected at the ''loss basis price.'' For purposes of this subparagraph the ''loss basis price'' shall be the price of the next transaction, as reported by the high speed line of the consolidated last sale reporting system in the security in question, after one hour has elapsed from the time the complaint is received (or, if the complaint is so received within the last hour in which transactions are reported on the high speed line of the consolidated last sale reporting system on any day, then the price of the opening transaction in such security reported on such high speed line on the next day on which the security is traded).

(3) Any ITS/*ADF*[CAES] Market Maker that becomes the subject of a trade-through by another ITS Participant Exchange or ITS/*ADF*[CAES] Market Maker may take whatever steps [are] necessary to mitigate any potential loss resulting from the trade-through of his bid or offer. Such action shall be promptly communicated to the offending ITS Participant market.

(4) The provisions of this trade-through rule shall not apply in respect to any Participant Exchange [which] *that* does not have in effect a similar rule imposing similar obligations and responsibilities.

(5) If a complaint of a purported trade-through is received by the Association and the complained-of transaction resulted from an ITS/*ADF*[CAES] Market Maker's execution of a commitment to trade received from another ITS/*ADF*[CAES] Market Maker or ITS Participant Exchange, the ITS/*ADF*[CAES] Market Maker should, if circumstances permit, make reasonable efforts to notify the complaining party, as promptly as practicable following receipt of the complaint, (A) that the transaction was not initiated by the ITS/*ADF*[CAES] Market Maker and (B) [of] the identity of the ITS/*ADF*[CAES] Market Maker or ITS Participant Exchange that originated the commitment. Neither compliance nor non-compliance with the preceding sentence shall be the basis for any liability of the ITS/*ADF*[CAES] Market Maker for any loss associated with the complained-of transaction.

**[5263]*6563*. Locked or Crossed Markets**

(a) A member registered as an ITS/*ADF*[CAES] Market Maker in an ITS/*ADF*[CAES] Security that makes a bid (offer) for such security at a price [which] *that* equals the offering (bid) price at that time from an ITS Participant Exchange or ITS/*ADF*[CAES] Market Maker has created what is referred to in this [r]*R*ule as a ''locked market.''

(b) A member registered as an ITS/*ADF*[CAES] Market Maker in an ITS/*ADF*[CAES] Security that makes a bid (offer) for such security at a price [which] *that* exceeds (is less than) the offering (bid) price at that time from an ITS Participant Exchange or ITS/*ADF*[CAES] Market Maker has created what is referred to in this [r]*R*ule as a ''crossed market.''

(c) An ITS/*ADF*[CAES] Market Maker [who] *that* makes a bid or offer and in

so doing creates a locked or crossed market with another ITS Participant or ITS/*ADF*[CAES] Market Maker shall promptly send to such other ITS Participant Exchange or ITS/*ADF*[CAES] Market Maker a commitment to trade seeking either the bid or offer [which] *that* was locked or crossed, unless excused by operation of paragraph (d) below. Such commitment shall be for either the number of shares [he] *it* has bid for (offered) or the number of shares offered (bid for) on the ITS Participant Exchange or by the ITS/*ADF*[CAES] Market Maker, whichever is less.

(d) The provisions of paragraph (c) above shall not apply when:

(1) The bid or offer in the ITS Participating [m]*M*arket [c]*C*enter is for 100 shares;

(2) the issuance of the commitment to trade referred to above would be prohibited by SEC Rule 10a–1 under the Act;

(3) the ITS/*ADF*[CAES] Market Maker [who] *that* causes a locked or crossed market is unable to comply with the provisions of paragraph (c) above because of a systems/equipment failure or malfunction;

(4) the bid or offer that causes the locked or crossed market is not for a ''regular way'' contract;

(5) the locked or crossed market occurs at a time when, with respect to the ITS Security [which] *that* is the subject of the locked or crossed market, members of the ITS [p]*P*articipating [m]*M*arket [c]*C*enter to which the commitment to trade would be sent pursuant to paragraph (c) above are relieved of their obligations under SEC Rule 11Ac1–1(c)(2);

(6) the transaction involves (A) purchases and sales effected by ITS/[CAES]*ADF* Market Maker[']s participating in an opening or (reopening) transaction or (B) any ''Block Transaction'' as defined in the ITS[/CAES] Rules.

**[5264] *6564*. Block Transactions**

(a) An ITS/*ADF*[CAES] Market Maker [who] *that* executes a ''block transaction'' in an ITS[/CAES] [s]*S*ecurity in which [he] *it* is registered as an ITS/*ADF*[CAES] Market Maker at an execution price outside the best quotation for the security displayed by any ITS [p]*P*articipant market or other ITS/*ADF*[CAES] Market Maker, shall, upon executing the block trade, send to each other [p]*P*articipant market and each ITS/*ADF*[CAES] Market Maker displaying a bid or offer (as the case may be) superior to the execution price, a commitment to trade, at the execution price, to satisfy the number of shares displayed in that [p]*P*articipant market's bid or offer.

(b) For purposes of this Rule, a block transaction shall be a trade that:

(1) Involves 10,000 or more shares of a common stock traded through ITS (an ''ITS Security'') or a quantity of any such security having a market value of $200,000 or more (''block size'');

(2) is effected at a price outside the bid or offer displayed from another ITS [p]*P*articipating [m]*M*arket [c]*C*enter; and

(3) involves either:

(A) a cross of block size (where the member represents all of one side of the transaction and all or a portion of the other side); or

(B) any other transaction of block size (i.e., in which the ITS/*ADF*[CAES] Market Maker represents an order of block size on one side of the transaction only) that is not the result of an execution at the current bid or offer of the ITS/*ADF*[CAES] Market Maker.

Contemporaneous transactions at the same price filling an order or orders then or theretofore represented by the ITS/*ADF*[CAES] Market Maker (including transactions resulting from commitments to trade sent by the ITS/*ADF*[CAES] Market Maker pursuant to paragraph (a) above) shall be deemed to constitute a single transaction for the purpose of this definition.

(c) A ''current bid or offer'' of the ITS/*ADF*[CAES] Market Maker, as that term is used in paragraph (b)(3)(B) above, means the price of the current quotation displayed by the ITS/*ADF*[CAES] Market Maker established independently of the order to buy or sell.

(d) A ''bid or offer'' displayed from another ITS [p]*P*articipating [m]*M*arket [c]*C*enter (or any derivative phrase), as that term is used in this Rule, means the current quotations from another ITS [p]*P*articipating [m]*M*arket [c]*C*enter displayed to the ITS/*ADF*[CAES] Market Maker as required by the ITS Plan, and does not include ''away-from-the-market'' limit orders or other interests that may be represented in such other ITS [p]*P*articipating [m]*M*arket [c]*C*enter.

(e) Inapplicability. Paragraph (a) above shall not apply under the following conditions:

(1) The size of the better priced bid or offer displayed by another ITS [p]*P*articipating [m]*M*arket [c]*C*enter was for 100 shares;

(2) the ITS/*ADF*[CAES] Market Maker representing the block-size order(s) made every reasonable effort to satisfy through ITS a better-priced bid or offer displayed by another ITS [p]*P*articipating [m]*M*arket [c]*C*enter but was unable to because of a systems/equipment failure or malfunction;

(3) the block trade was not a ''regular way'' contract;

(4) the bid or offer that is traded through is being displayed from a [m]*M*arket [c]*C*enter whose members are relieved of their obligations under SEC Rule 11Ac1–1(c)(2) with respect to such bid or offer;

(5) the bid or offer that is traded through has caused a locked or crossed market in the ITS Security;

(6) the better priced bid or offer was being displayed from an ITS [p]*P*articipating [m]*M*arket [c]*C*enter whose members were relieved of their obligations with respect to such bid or offer under SEC Rule 11Ac 1–1(c)(2) pursuant to the ''unusual market'' exception to SEC Rule 11Ac1–1(b)(3); or

(7) the better priced bid or offer had caused a ''locked or crossed market[,]'' in the ITS Security that was the subject of the block trade.

**[5265. Authority To Cancel or Adjust Transactions]**

[(a) In circumstances in which the Association deems it necessary to maintain a fair and orderly market and to protect investors and the public interest, the Association may, pursuant to the procedures set forth in Rule 11890 of the Uniform Practice Code, declare any transaction arising out of the use or operation of the ITS[/CAES] System, null and void on the grounds that one or more of the terms of the transaction are clearly erroneous; and the Association may reallocate stock between ITS[/CAES] Market Makers to correct an erroneous transaction.]

[(b) For purposes of this Rule, the terms of the transaction are clearly erroneous when there is an obvious error in any term, such as price, number of shares or other unit of trading, identification of the security, or if a specific commitment to trade has been executed with the wrong ITS/CAES Market Maker.]

**[5300]*6700*. THE PORTAL® MARKET**

**[5310]*6710*. Definitions**

For purposes of the PORTAL® Market Rules, unless the context requires otherwise:

(a) ''Association'' means the National Association of Securities Dealers, Inc. (Association) or its wholly owned subsidiary, *NASD Regulation, Inc.* [The Nasdaq Stock Market, Inc.,] as determined by the Association.

(a) through (aa) No Change.

**[5320]*6720.* Requirements Applicable to PORTAL Securities**

**[5321]*6721.* Application for Designation**

(a) Application for designation as a PORTAL security shall be in the form required by the Association and shall be filed by a PORTAL participant. Applications may be made with or without the concurrence of the issuer. The application shall demonstrate to the satisfaction of the Association that the security meets or exceeds the qualification requirements set forth in Rule 5322.

(b) Designation of a security as a PORTAL security shall be declared effective within a reasonable time after determination of qualification. The effective date of designation as a PORTAL security shall be determined by the Association giving due regard to the requirements of the PORTAL Market.

**[5322]*6722.* Qualification Requirements for PORTAL Securities**

(a) To qualify for initial designation and continued designation in the PORTAL Market, a security shall:

(1) be:

(A) a restricted security, as defined in SEC Rule 144(a)(3) under the Securities Act; or

(B) a security that upon issuance and continually thereafter only can be sold pursuant to Regulation S under the Securities Act, SEC Rule 144A, or SEC Rule 144 under the Securities Act, or in a transaction exempt from the registration requirements of the Securities Act pursuant to Section 4 thereof and not involving any public offering;

provided, however, that if the security is a depositary receipt, the underlying security shall also be a security that meets the criteria set forth in subparagraphs (A) or (B) hereof;

(2) be eligible to be sold pursuant to SEC Rule 144A under the Securities Act;

(3) be in negotiable form and not subject to any restriction, condition or requirement that would impose an unreasonable burden on any PORTAL participant;

(4) be assigned a CUSIP or CINS security identification number that is different from any identification number assigned to any unrestricted securities of the same class [which] *that* do not satisfy paragraph (a)(1)(B); or, if issued in physical certificate form to investors, have a legend placed on each certificate stating that the securities have not been registered under the Securities Act and cannot be resold without registration under the Securities Act or an exemption therefrom; and

(5) satisfy such additional criteria or requirements as the Association may prescribe.

(b) Notwithstanding the provisions of paragraph (a)(1)(B) of this Rule, if a PORTAL security is sold pursuant to the provisions of Rule 144, including Rule 144(k), it will thereby cease being a PORTAL security and it must be assigned a CUSIP or CINS security identification number that is different from the identification number assigned to a PORTAL security of the same class.

**[5323]*6723.* Suspension or Termination of a PORTAL Security Designation**

(a) The Association may, in its discretion, suspend or terminate designation as a PORTAL security if it determines that:

(1) The security is not in compliance with the requirements of the PORTAL Rules;

(2) a holder or prospective purchaser that requested issuer information pursuant to SEC Rule 144A(d)(4) did not receive the information;

(3) any application or other document relative to such securities submitted to the Association contained an untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein not misleading; or

(4) failure to withdraw designation of such securities would for any reason be detrimental to the interests and welfare of PORTAL participants or the Association.

(b) The Association will promptly notify PORTAL participants of the suspension or termination of a security's designation as a PORTAL security. Such notification may be made through the facilities of the PORTAL Market. Suspension or termination shall become effective in accordance with the terms of notice by the Association. The Association also will promptly notify The Depository Trust Company of the suspension or termination.

(c) Notwithstanding the suspension or termination of designation of a security as a PORTAL security, such security shall remain subject to all rules of the Association applicable to the PORTAL Market until the security is sold in accordance with the terms of notice by the Association of the suspension or termination.

**[5324]*6724.* PORTAL Entry Fees**

When a PORTAL participant submits an application for designation of any class of securities as a PORTAL security, it shall pay to the Association a filing fee of $2,000.00 for an application covering a security or group of identifiable securities issuable as part of a single private placement covered by the same offering documents, plus $200.00 per assigned security symbol that is in addition to the first symbol assigned.

**[5330]*6730.* Requirements Applicable to Members of the Association**

**[5331]*6731.* Limitations on Transactions in PORTAL Securities**

(a) No member shall sell a PORTAL security unless:

(1) The sale is to:

(A) an investor or member that the member reasonably believes is a ''qualified institutional buyer'' in a transaction exempt from registration under the Securities Act by reason of compliance with Rule 144A;

(B) an investor or member in a transaction that is exempt from registration under the Securities Act by reason of compliance with an applicable exemption under the Securities Act other than Rule 144A; or

(C) a member acting as an agent in a transaction that the member acting as agent determines is in compliance with subparagraphs (A) or (B) hereof, and the selling member determines is exempt from registration under the Securities Act by reason of compliance with SEC Rule 144A or an applicable exemption under the Securities Act other than SEC Rule 144A; and

(2) the member maintains in its files information demonstrating that the transaction is in compliance with Rule 144A or with any other applicable exemption from registration under the Securities Act.

**[5332]*6732.* Reporting Debt and Equity Transactions in PORTAL Securities**

(a) A transaction in a PORTAL security in which a PORTAL dealer or PORTAL broker participates shall be reported to the PORTAL Market system in a PORTAL transaction report complying with Rule [5334] *6734* by:

(1) The seller, if each party in the transaction is either a PORTAL dealer or a PORTAL broker;

(2) the PORTAL dealer or PORTAL broker participating in the transaction, if only one party in the transaction is a PORTAL dealer or PORTAL broker; provided, however, that with respect to transactions that are part of the initial offering by or on behalf of the issuer or an affiliate thereof, a PORTAL dealer or PORTAL broker may comply with its obligation to submit a PORTAL transaction report by submitting, instead, a PORTAL surveillance report [which] *that* reports such transaction to

the Market Regulation Department of the Association as set forth in Rule [5336] ***6736.***

(b) A transaction in a PORTAL security in which a member participates, but in which no PORTAL dealer or PORTAL broker participates, shall be reported to the Market Regulation Department of the Association in a PORTAL non-participant report complying with Rule [5335] ***6735*** by:

(1) The seller, if each party in the transaction is a member; or

(2) The member, if only one party in the transaction is a member.

(c) The member responsible for submitting a PORTAL transaction report shall also submit to the Market Regulation Department of the Association a PORTAL surveillance report as set forth in Rule [5336] ***6736.***

(d) The reporting requirements of this Rule shall apply to any transaction in a PORTAL security, including transactions in reliance on SEC Rule 144 and sales to or purchases from a non-U.S. securities market.

[Rule [5332] ***6732*** will not be effective until a date is announced by the NASD.]

**[5333]*6733*. PORTAL Settlement**

(a) Transactions in the PORTAL Market where the PORTAL dealer or PORTAL broker that enters the PORTAL transaction report in the PORTAL Market system designates settlement in the PORTAL clearance and depository systems will settle five (5) business days after the date of the execution of the transaction, except as otherwise agreed between the PORTAL participants, in any currency accepted by the PORTAL depository organization.

(b) PORTAL securities and funds will be transferred on the books of the PORTAL depository system upon receipt from the PORTAL clearing system of the necessary settlement instructions designating settlement in the PORTAL clearance and depository systems from the PORTAL transaction report entered in the PORTAL Market system by the appropriate PORTAL dealer or PORTAL broker and subject to the purchaser meeting the requirements of the relevant PORTAL depository organization concerning deposit and availability of funds in accordance with the depository organization's procedures.

(c) PORTAL dealers and PORTAL brokers that settle a PORTAL transaction outside the PORTAL clearance and depository systems assume responsibility for the prompt settlement of the transaction in accordance with the protocols of the settlement method used and the transaction will not be compared in the PORTAL Market.

**[5334]*6734*. PORTAL Transaction Reports**

(a) Each PORTAL transaction report shall include: whether the report should be forwarded to the PORTAL depository and clearance systems for the clearance and settlement of the transaction; if the PORTAL depository and clearance system is to be used, the identity of the account where the transaction is to be settled; if the PORTAL depository and clearance system is not to be used and the contra-party is an Association member, the identity of the Association member that is the contra-party; whether the transaction is on an agency or principal basis; whether the transaction is a purchase or sale; whether a sale is a ''short'' sale; the quantity of the security; the price of the security expressed in the currency in which the security was quoted in the PORTAL Market; and such additional information as the Association may require.

(b) PORTAL transaction reports shall be entered within 15 minutes after execution of the transaction during hours that the PORTAL Market system accepts PORTAL transaction reports. The PORTAL Market system shall accept PORTAL transaction reports from 8:30 a.m. Eastern Time to 6:30 p.m. Eastern Time. If a transaction is executed during hours that the PORTAL Market system does not accept PORTAL transaction reports, the PORTAL transaction report shall be entered between 8:30 a.m. Eastern Time and 9:30 a.m. Eastern Time when the PORTAL Market system is next open, with the trade date [of] the date of execution of the transaction. The Association, in its discretion, will establish hours for and additional time limitations on the entry of PORTAL transaction reports.

(c) Modification, correction or cancellation of a PORTAL transaction report must be entered in the PORTAL Market system.

(d) The Association will not disseminate PORTAL transaction reports that are entered in the PORTAL Market system between 8:30 a.m. Eastern Time and 9:30 a.m. Eastern Time, and between 4:00 p.m. Eastern Time and 6:30 p.m. Eastern Time. The Association shall, however, display daily aggregate volume of transactions effected pursuant to SEC Rule 144A, including the volume of transactions that are entered in the PORTAL Market system between 8:30 a.m. Eastern Time and 6:30 p.m. Eastern Time.

[Rule [5334] *6734* will not be effective until a date is announced by the NASD.]

**[5335]*6735*. PORTAL Non-Participant Report**

(a) Each PORTAL non-participant report shall include: whether the transaction is on an agency or principal basis, whether the transaction is a purchase or sale; whether a sale is a ''short'' sale; the quantity of the security; the price of the security expressed in the currency in which the security was quoted in the PORTAL Market; a representation as to whether the buyer was a ''qualified institutional buyer'' under Rule 144A, a ''non-qualified institutional buyer'' institution, or an individual investor; and such additional information as the Association may require.

(b) PORTAL non-participant reports shall be submitted to the Market Regulation Department of the Association no later than the fifth day of the month following the month in which the transaction was effected.

(c) Modification, correction, or cancellation of a PORTAL non-participant report must be submitted in the manner specified by the Association.

[Rule [5335] *6735* will not be effective until a date is announced by the NASD.]

Selected Notices to Members: 95–34.

**[5336] *6736*. PORTAL Surveillance Report**

(a) Each PORTAL dealer or PORTAL broker shall submit to the Market Regulation Department of the Association, no later than the fifth day of each month, a PORTAL surveillance report [which] *that* reports every transaction effected during the preceding month (including transactions that are part of the initial offering by or on behalf of the issuer or an affiliate thereof) for which the PORTAL dealer or PORTAL broker was required to submit a PORTAL transaction report under Rule [5332] *6732,* including transactions that are part of the initial offering by or on behalf of the issuer or an affiliate thereof; provided, however, that a member shall not be required to submit a PORTAL surveillance report with respect to any transaction for which the member was not required to submit a PORTAL transaction report.

(b) The PORTAL surveillance report shall be submitted in the manner specified by the Association and shall include for each transaction reported: a representation as to whether the buyer was a ''qualified institutional buyer'' under Rule 144A, a ''non-qualified

institutional buyer'' institution, or an individual investor; the information required under Rule [5334] *6734;* and such additional information as the Association may require.

(c) Modification, correction, or cancellation of a PORTAL surveillance report must be submitted in the manner specified by the Association.

[Rule [5336] *6736* will not be effective until a date is announced by the NASD.]

**[5337]*6737.* Comparison of PORTAL Transaction Reports Entered in the PORTAL Market System**

Each PORTAL dealer and PORTAL broker that executes a purchase transaction in a PORTAL security with another PORTAL dealer or PORTAL broker shall, within 30 minutes after execution of a transaction for which a report is entered into the PORTAL Market system that designates settlement in the PORTAL clearance and depository system:

(a) Accept a PORTAL transaction report entered by the seller by entering in the PORTAL Market system a matching PORTAL comparison report with the same terms as the seller's PORTAL transaction report;

(b) reject a PORTAL transaction report entered by the seller by entering a PORTAL comparison report in the PORTAL Market system with different terms than those included in the seller's PORTAL transaction report; or

(c) enter an affirmation or rejection in the PORTAL Market system with respect to the PORTAL transaction report entered by the seller.

**[5338]*6738.* Registration Requirements for PORTAL Dealers**

(a) A member of the Association that registers as a PORTAL dealer shall also be registered as a PORTAL qualified investor.

(b) To register as a PORTAL dealer, a member shall:

(1) Execute a participation agreement;

(2) demonstrate to the satisfaction of the Association that it is eligible to purchase securities under the financial criteria of SEC Rule 144A as it applies to a dealer registered under Section 15 of the Exchange Act by submission of the member's most recent Audited Financial Statements filed with the SEC pursuant to SEC Rule 17a–5(d) under the Exchange Act, with the supporting schedules required pursuant to subparagraph (3) thereof, and any other information that the Association, in its discretion, may require to be submitted to the Association;

(3) be a member of the Association and qualified to do business as a general securities firm; and

(4) agree to comply with the requirements of the PORTAL Rules, including the filing of such documents and the payment of such fees as may be required by the Association.

**[5339]*6739.* Registration Requirements for PORTAL Brokers**

To register as a PORTAL broker a member shall comply with Rule [5338] *6738*(b)(1), (b)(3), and (b)(4).

**[5340]*6740.* Continuing Requirements for PORTAL Dealers and PORTAL Brokers**

(a) For a PORTAL dealer to continue to be eligible to participate as a PORTAL dealer in the PORTAL Market, the PORTAL dealer shall demonstrate to the satisfaction of the Association that it continues to be eligible to purchase securities under the financial criteria of SEC Rule 144A as it applies to a dealer registered under Section 15 of the Exchange Act by submitting to the Association, concurrent with the dealer's SEC filing, the dealer's Audited Financial Statements filed with the SEC pursuant to SEC Rule 17a-5(d) under the Exchange Act, with the supporting schedules required pursuant to subparagraph (3) thereof, and any other information that the Association, in its discretion, may require to be submitted to the Association.

(b) The Association may suspend or terminate the registration of a PORTAL dealer or PORTAL broker if:

(1) It fails to comply with any requirement of the PORTAL Rules with respect to any PORTAL security;

(2) any application or other document submitted by or on behalf of it contained an untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein not misleading; or

(3) it fails to file any documents or to pay any fee as may be required by the Association.

(c) Nothing in paragraph (b) shall prohibit the Association from taking such other action as it deems necessary under the circumstances against a PORTAL dealer or a PORTAL broker for violations of the requirements of the PORTAL Rules, any other rule or regulation of the Association, or any rule or regulation of the SEC.

**[5350]*6750.* Requirements Applicable to PORTAL Qualified Investors**

**[5351]*6751.* Registration Requirements for PORTAL Qualified Investors**

(a) No investor other than a dealer registered under Section 15 of the Exchange Act shall subscribe to PORTAL Market information directly through the PORTAL Market system or indirectly through a third-party distributor unless:

(1) The investor executes a subscriber agreement;

(2) a PORTAL dealer represents to the Association that it reasonably believes that the investor is a ''qualified institutional buyer'' under SEC Rule 144A; or

(3) the investor demonstrates to the satisfaction of the Association that it is a ''qualified institutional buyer'' under SEC Rule 144A; or

(4) the Association reasonably believes that the investor is a ''qualified buyer'' under SEC Rule 144A.

(b) The Association may classify PORTAL qualified investors in such manner as it deems advisable for the purpose of conforming with SEC Rule 144A.

(c) A PORTAL dealer that submits a representation to the Association pursuant to paragraph (a)(2) shall maintain in its files the basis for its representation that it reasonably believes that the investor satisfies the ''qualified institutional buyer'' requirements of SEC Rule 144A.

(d) No member of the Association may register as a PORTAL qualified investor unless the member is also registered as a PORTAL dealer.

**[5352]*6752.* Continuing Requirements for PORTAL Qualified Investors**

(a) For an investor other than a dealer registered under Section 15 of the Exchange Act, to continue to be eligible to subscribe to PORTAL Market information:

(1) A PORTAL dealer shall represent annually to the Association that it reasonably believes that the investor is a ''qualified institutional buyer'' under SEC Rule 144A; or

(2) the investor shall demonstrate to the satisfaction of the Association or the Association shall form a reasonable belief that the investor is a ''qualified institutional buyer'' under SEC Rule 144A.

(b) A PORTAL dealer that submits a representation to the Association pursuant to paragraph (a)(1) shall maintain in its files the basis for its representation that it reasonably believes that an investor satisfied the ''qualified institutional buyer'' requirements of SEC Rule 144A.

**[5353]*6753.* Suspension or Termination of the Registration of a PORTAL Qualified Investor**

(a) The Association shall suspend or terminate the registration of a PORTAL qualified investor if:

(1) Any application or document submitted by or on behalf of the

PORTAL qualified investor contained an untrue statement of material fact or omitted to state a material fact necessary to make the statements therein not misleading; or

(2) the investor fails to comply with any requirements of the PORTAL Rules, or to file any documents or to pay any fee as may be required by the Association.

(b) Nothing in paragraph (a) shall prohibit the Association from taking such action as it deems necessary under the circumstances against a PORTAL qualified investor that is also a member of the Association for violations of the requirements of the PORTAL Rules, any other rule or regulation of the Association, or any rule or regulation of the SEC.

**[5360]*6760.* Denial, Suspension or Termination Procedures**

A determination by the Association to deny, suspend or terminate the designation of a PORTAL security or registration of a PORTAL participant may be reviewed upon application by the aggrieved person pursuant to the provisions of the Rule [4800] *9700* Series.

**[5370]*6770.* PORTAL Market Transactions**

**[5371]*6771.* Normal PORTAL Market Hours of Operation**

The PORTAL Market shall be open for business from 9:30 a.m. Eastern Time to 4:00 p.m. Eastern Time, or as otherwise determined by the Association.

**[5372]*6772.* PORTAL Quotations**

The PORTAL Market will accept prices and quotations from PORTAL dealers and PORTAL brokers that are one- or two-sided, firm or indicative.

**[5373]*6773.* PORTAL Contracts**

The existence and terms of each PORTAL contract shall be conclusively established by a compared PORTAL transaction report pertaining to the underlying transaction in a PORTAL security. Notwithstanding the foregoing, the parties to any PORTAL contract may modify or correct the terms of any transaction in a PORTAL security in a manner consistent with the rules of the PORTAL Market.

**[5374]*6774.* PORTAL Fees**

PORTAL participants shall pay to the Association a fee for PORTAL transactions or such other fees as determined by the Association, including those set forth in Rule [5324] *6724.* The Board of Governors shall have the power to impose, alter, or amend such fees from time to time pursuant to Article VI, Section 1 of the By-Laws.

**[5375]*6775.* ''When, As and If Issued'' Trading**

PORTAL securities that are of a new issue of securities, primary or secondary, may trade ''when, as and if issued'' in the PORTAL Market subsequent to effectiveness of the designation of the securities as PORTAL securities, provided; however, that the lead manager shall:

(a) Establish a settlement date for the securities based on their anticipated availability; and

(b) in the event of any subsequent delay in the established settlement date, shall enter in the PORTAL Market a corrected PORTAL transaction report designating a substitute date for settlement and cancel the existing PORTAL transaction report.

**[5376]*6776.* ''Short'' Sales**

(a) ''Short'' sale transactions in PORTAL securities may be entered in the PORTAL Market. ''Short'' sale transactions shall be identified as such in the PORTAL transaction report.

(b) The settlement date for ''short'' sales in PORTAL securities shall be negotiated by the parties.

(c) The provisions of Rule [3370] *5100 and IM–5100* that relate to ''short'' sale transactions are applicable to transactions in PORTAL securities.

(d) The Association may adopt such restrictions on ''short'' sales, and the borrowing and return of securities, as it may deem necessary to prevent violation of the registration requirements of the Securities Act in connection with the transactions in the PORTAL Market.

**[5377]*6777.* Stabilizing Bids**

(a) A PORTAL dealer may enter a stabilizing bid in the PORTAL Market subject to compliance with SEC Rules 10b-6 and 10b-7 under the Exchange Act, which bid shall be identified in the PORTAL Market. When a stabilizing bid is entered, it shall be available for all outstanding securities in the PORTAL Market of the same class being offered.

(b) A PORTAL dealer shall notify the Association in writing prior to the first day in which the stabilizing bid is to appear in the PORTAL Market. The notice shall include:

(1) The name of the security and its PORTAL symbol;

(2) the date on which the distribution of the security will commence; and

(3) a copy of any offering document related to the distribution.

The PORTAL dealer shall contact the Association for authorization on the day that the dealer wishes to enter the stabilizing bid.

(c) A PORTAL dealer shall not enter a stabilizing bid at the same time it is quoting any other bid or offer in the issue.

**[5378]*6778.* Partial Delivery**

A PORTAL qualified investor is required to accept a partial delivery on any PORTAL contract due, provided the portion remaining undelivered is not an amount that includes an odd-lot [which] *that* was not part of the original transaction.

**[5379]*6779.* Close-out Procedures—''Buying-In''**

A PORTAL contract [which] *that* has not been completed by the seller according to its terms may be closed by the buyer not sooner than the third business day following the date delivery was due, in accordance with the following procedure:

(a) Notice of ''Buy-In''

(1) Written notice of ''buy-in'' shall be delivered to the seller at the seller's office not later than 12 noon, the seller's local time, two business days preceding the execution of the proposed ''buy-in.''

(2) For purposes of this provision, written notice shall include an electronic notice through a medium that provides for an immediate return receipt capability. Such electronic media shall include but not be limited to facsimile transmission and a computerized network facility.

(b) Information Contained in the ''Buy-In'' Notice

(1) Every notice of ''buy-in'' shall state the date of the PORTAL contract to be closed, the quantity and contract price of the PORTAL securities covered by said contract, the settlement date of said PORTAL contract and any other information deemed necessary to properly identify the PORTAL contract to be closed. Such notice shall state further that unless delivery is effected at or before a certain specified time, which may not be prior to 2:30 p.m. Eastern Time, the PORTAL security may be ''bought-in'' on the date specified for the account of the seller.

(2) Notice may be redelivered immediately to another PORTAL dealer or PORTAL broker from whom the securities involved are due in the form of a re-transmitted notice (re-transmit). Re-transmitted notice of buy-in must be delivered to subsequent PORTAL dealers or PORTAL brokers not later than one business day preceding the time and date of execution of the proposed buy-in.

(c) Seller's Failure to Deliver After Receipt of Notice

On failure of the seller to effect delivery in accordance with the ''buy-in'' notice, or to obtain a stay as hereinafter provided, the buyer may close the PORTAL contract by purchasing all or part of the PORTAL securities necessary to satisfy the amount requested in the ''buy-in'' notice. Securities delivered subsequent to the receipt of the ''buy-in'' notice should be considered as delivered pursuant to the ''buy-in'' notice. Delivery of the requisite amount of securities as stated in the ''buy-in'' notice or execution will also operate to close-out all PORTAL contracts covered under re-transmitted notices of buy-in issued pursuant to the original notice of buy-in. A ''buy-in'' may be executed by a PORTAL dealer from its long position and/or from customers' accounts maintained with such PORTAL dealer. In all cases, PORTAL dealers must be prepared to defend the price at which the ''buy-in'' is executed relative to the current market at the time of the ''buy-in''.

(d) ''Buy-In'' Not Completed

In the event that a ''buy-in'' is not completed pursuant to the provisions of paragraph (b) hereof on the day specified in the notice of ''buy-in,'' or as such date may be extended pursuant to the provisions of paragraph (f) hereof, said notice shall expire at the close of business on the day specified in the notice of buy-in.

(e) Partial Delivery by Seller

Prior to the closing of a PORTAL contract on which a ''buy-in'' notice has been given, the buyer shall accept any portion of the PORTAL securities called for by the PORTAL contract, provided the portion remaining undelivered at the time the buyer proposes to execute the ''buy-in'' is not an amount which includes an odd-lot [which] *that* was not part of the original transaction.

(f) Securities in Transit

If prior to the closing of a PORTAL contract on which a ''buy-in'' notice has been given, the buyer receives from the seller written or comparable electronic notice stating that the securities are: (1) In transfer; (2) in transit; (3) are being shipped that day; or (4) are due from a depository and giving the certificate numbers, except for those securities due from the depository, then the buyer must extend the execution date of the ''buy-in'' for a period of seven (7) calendar days from the date delivery was due under the ''buy-in.''

(g) Notice of Executed ''Buy-In''

The party executing the ''buy-in'' shall immediately upon execution, but not later than the close of business, local time where the seller maintains its office, notify the PORTAL dealer or PORTAL broker for whose account the securities were bought as to the quantity purchased and the price paid. Such notification should be in written or electronic form having immediate receipt capabilities. If this written media is not available, the telephone shall be used for the purpose of same day notification, and written or similar electronic notification having next day receipt capabilities must also be sent out simultaneously. In either case, formal confirmation of purchase along with a billing or payment (depending upon which is applicable) should be forwarded as promptly as possible after the execution of the buy-in. Notification of the execution of a ''buy-in'' shall be given to succeeding broker/dealers to whom a re-transmitted notice was issued pursuant to paragraph (b) using the same procedures stated herein. If a re-transmitted ''buy-in'' is executed, it will operate to close-out all contracts covered under the re-transmitted notices.

(h) ''Close-Out'' under Association or Exchange Rulings

(1) When a national securities exchange makes a ruling that all open contracts with a particular member, who is also a PORTAL dealer or PORTAL broker, should be closed-out immediately (or any similar ruling), PORTAL dealers and PORTAL brokers may close-out contracts as directed by the exchange.

(2) When the Association issues notification that all open contracts with the PORTAL dealer or PORTAL broker in question should be closed-out immediately, PORTAL dealers or PORTAL brokers may close-out contracts as directed by the Association.

(3) Within the meaning of this section, to close-out immediately shall mean that (A) ''buy-ins'' may be executed without prior notice of intent to ''buy-in'' and (B) ''sell-outs'' may be executed without making prior delivery of the securities called for.

(4) All close-outs executed pursuant to the provisions of this subparagraph shall be executed for the account and liability of the PORTAL dealer or PORTAL broker in question. Notification of all close-outs shall immediately be sent to such PORTAL dealer or PORTAL broker.

(i) Failure to Deliver and Liability Notice Procedures

(1) If a contract is for warrants, rights, convertible securities or other securities [which] *that* (A) have been called for redemption; (B) are due to expire by their terms; (C) are the subject of a tender or exchange offer; or (D) are subject to other expiring events such as the record date for the underlying security and the last day on which the securities must be delivered or surrendered (the ''expiration date'') is the settlement date of the contract or any later day, the receiving member may deliver a Liability Notice to the delivering member as an alternative to the close-out procedures set forth in paragraphs (a) through (g) of this Rule. Such Notice must be issued using written or comparable electronic media having immediate receipt capabilities no later than one business day prior to the latest time and date of the offer or other event in order to obtain the protection provided by this provision.

(2) If the delivering PORTAL dealer or PORTAL broker fails to deliver the securities on the expiration date, the delivering PORTAL dealer or PORTAL broker shall be liable for any damages [which] *that* may accrue thereby. A Liability Notice delivered in accordance with this provision shall serve as notification by the receiving member of the existence of a claim for damages. All claims for such damages shall be made promptly.

(3) If the above procedures are not utilized, contracts may be ''bought-in'' without prior notice, after normal delivery hours established in the community where the buyer maintains its office, on the expiration date. Such buy-in execution shall be for the account and risk of the defaulting PORTAL dealer or PORTAL broker.

(j) Information on Notices

Notices of ''buy-in'' and ''re-transmitted buy-in'' shall include all information contained in the sample forms prescribed by the Association.

(k) ''Buy-In'' Desk Required

PORTAL dealers or PORTAL brokers shall have a ''buy-in'' section or desk adequately staffed to process and research all ''buy-ins'' during normal business hours.

(l) ''Buy-In'' of Accrued Securities

Securities in the form of stock, rights or warrants [which] *that* accrue to a purchaser shall be deemed due and deliverable to the purchaser on the payable date. Any such securities remaining undelivered at that time shall

be subject to the ''buy-in'' procedures as provided in this Rule.

**[5380]*6780.* Close-Out Procedures—''Selling-Out''**

A contract [which] *that* has not been completed by the buyer according to its terms may be closed by the seller in accordance with the following procedures:

(a) Conditions Permitting ''Sell-Out''

Upon failure of the buyer to accept delivery in accordance with the terms of the contract, and lacking a properly executed Reclamation Form, the seller may, without notice, ''sell-out'' in the PORTAL Market and for the account and liability of the party in default all or any part of the securities due or deliverable under the contract.

(b) Notice of ''Sell-Out''

The party executing a ''sell-out'' as prescribed above shall, as promptly as possible on the day of execution, by written or comparable electronic notice, notify the PORTAL dealer or PORTAL broker for whose account and risk such securities were sold of the quantity sold and the price received, and shall promptly mail or deliver formal confirmation of such sale.

**[5390]*6790.* Miscellaneous**

**[5391]*6791.* Arbitration**

The facilities of [the Association's Arbitration Department] *NASD Dispute Resolution, Inc.,* and the procedures of the Code of Arbitration Procedure shall be available to PORTAL participants to resolve disputes arising from PORTAL transactions and transfers or activities related thereto.

**[5392]*6792.* Rules of the Association**

(a) The following Rules of the Association and Interpretative Material thereunder are specifically applicable to transactions and business activities relating to the PORTAL Market:

(1) Rules 0113, 0114, 0115, 2110, 2120, 2230, 2240, 2250, 2260, 2270, 2310, 2410, 2420, 2430, 2440, 2510, 2760, 2770, 2780, 3010, 3120, 3310, 3320, 3330, 3370, and 8210;

(2) the Rule 8100 and 8300 Series; and

(3) IM–2310–2, IM–2420–1, IM–2440, IM–3310, and IM–3320.

(b) The following Rules of the Association and Interpretative Material thereunder are specifically applicable to transactions and business activities relating to the PORTAL Market, with the exceptions specified below:

(1) Rule 2320, except for paragraph (g), which requires that a member obtain quotations from three dealers to determine the best inter-dealer market for the subject security;

(2) Rule 2330, except for paragraph (d); and

(3) Rule 3110, except paragraph (b)(2).

(c) The following Rules of the Association are applicable to members and persons associated with members regardless of the member's participation in transactions in the PORTAL Market:

(1) Rules 0111, 0112, 0120, and 0121.

(2) Rules 2210, 3020, 3030, 3040, 3050, 3060, 3130, 3140, and 3340.

(d) The following Rules of the Association and Interpretative Material thereunder are not applicable to transactions and business activities relating to the PORTAL Market:

(1) Rules 1130, 2450, 2520, 2710, 2730, 2740, 2750, 2810, 2820, 2830, 2860, 3210, and 3360; and

(2) IM–2110–1.

* * * * *

***5400. Clearance and Settlement***

*(a) A market maker shall clear and settle transactions effected otherwise than on an exchange in ADF-eligible securities that are eligible for net settlement through the facilities of a registered clearing agency that uses a continuous net settlement system. This requirement may be satisfied by direct participation, use of direct clearing services, or by entry into a correspondent clearing arrangement with another member that clears trades through such an agency.*

(b) Notwithstanding paragraph (a), transactions in listed securities may be settled ''ex-clearing'' provided that both parties to the transaction agree.

*Selected NASD Notices to Members: 94–73.*

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**6000. NASD SYSTEMS AND PROGRAMS**

The 6100 Series is replaced in its entirety by the following proposed rule language:

***6100. TRACS TRADE COMPARISON SERVICE***

***6110. Definitions***

*(a) The term ''Browse'' shall mean the function of TRACS that permits a Participant to review (or query) for trades in the system identifying the Participant as a party to the transaction, subject to the specific uses contained in the TRACS Users Guide.*

*(b) The term ''Clearing Broker/Dealer'' or ''Clearing Broker'' shall mean the member firm that has been identified in the TRACS system as principal for clearing and settling a trade, whether for its own account or for a correspondent firm.*

*(c) The term ''Correspondent Executing Broker/Dealer'' or ''Correspondent Executing Broker'' shall mean the member firm that has been identified in the TRACS system as having a correspondent relationship with a clearing firm whereby it executes trades and the clearing function is the responsibility of the clearing firm.*

*(d) The term ''Introducing Broker/Dealer'' or ''introducing broker'' shall mean the member firm that has been identified in the TRACS system as a party to the transaction, but does not execute or clear trades.*

*(e) The term ''Participant'' shall mean any member of NASD in good standing that uses the TRACS system as an NASD Registered Market Maker or CQS Market Maker according to the requirements of Rule 4611 or Rule 6320, an ECN registered in accordance with Rule 4623, an Order Entry Firm, or a clearing broker/dealer, correspondent executing broker/dealer, or introducing broker/dealer.*

*(f) The terms ''Participant,'' ''TRACS Order Entry Firm,'' ''correspondent executing broker/dealer,'' ''correspondent executing broker,'' ''introducing broker/dealer,'' ''introducing broker,'' ''clearing broker/dealer,'' and ''clearing broker'' shall also include, where appropriate, the Non-Member Clearing Organizations listed in Rule 6120(a)(5) below and their qualifying members.*

*(g) The term ''Parties to the Transaction'' shall mean the executing brokers, introducing brokers and clearing brokers, if any.*

*(h) The term ''Reportable TRACS Transaction'' shall mean those transactions in a TRACS eligible security that are required to be submitted to NASD pursuant to the Rule 4630, 6400, and 6620 Series. The term shall also include transactions in TRACS eligible securities that are for less than one round lot, and those transactions that are to be compared and locked-in for settlement.*

*(i) The term ''Reporting Party'' shall mean the TRACS Participant that is required to input the trade information, according to the requirements in NASD Rule 4633.*

*(j) The term ''Trade Reporting and Comparison Service'' or ''TRACS'' shall mean the automated system owned and operated by NASD that reports trades and compares trade information entered by TRACS participants and submits ''locked-in'' trades to Depository Trust Clearing Corporation (DTCC) for clearance and settlement; transmits reports of the transactions automatically to the Securities Information Processor, if required, for dissemination to the*

*public and the industry; and provides participants with monitoring capabilities to facilitate participation in a ''locked-in'' trading environment.*

*(k) The term ''TRACS ECN'' shall mean a member of NASD that is an electronic communications network (''ECN'') that elects to display orders in the NASD Alternative Display Facility pursuant to Rule 4623 and is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member. This term shall also include an NASD member that is an alternative trading system (''ATS'') that displays orders in the NASD Alternative Display Facility pursuant to Rule 4623 and is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member.*

*(l) The term ''TRACS Eligible Security'' shall mean all Nasdaq securities, all Consolidated Quotation Service (CQS) securities traded pursuant to unlisted trading privileges, all non-exchange-listed securities as defined in the Rule 6600 series, and all Direct Participation Programs as defined in the Rule 6900 series.*

*(m) The term ''TRACS Market Maker'' shall mean a member of NASD that is registered as an NASD or CQS Market Maker and is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member.*

*(n) The term ''TRACS Order Entry Firm'' shall mean a member of NASD that is a firm that executes orders but does not act as a market maker in the instant transaction and is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member.*

***6120. Participation in TRACS Trade Comparison Feature by Participants in the NASD Alternative Display Facility***

*The following Rules 6120 through 6190 apply to members that effect transactions in ADF-eligible securities otherwise than on an exchange.*

*(a) Mandatory Participation for Clearing Agency Members*

*(1) Participation in TRACS trade comparison feature is mandatory for any NASD member that effects transactions in ADF-eligible securities otherwise than on an exchange that are not locked-in and sent directly to Deposit Trust Clearing Corporation (''DTCC'') by that member. All members, whether or not they must participate in the TRACS trade comparison feature, must comply with the trade reporting requirements described in Rule 4633.*

*(2) Participation in the TRACS trade comparison feature as a Market Maker shall be conditioned upon the TRACS Market Maker's initial and continuing compliance with the following requirements:*

*(A) Execution of, and continuing compliance with, a TRACS trade comparison Participant Application Agreement;*

*(B) membership in, or maintenance of, an effective clearing arrangement with a member of a clearing agency registered pursuant to the Act;*

*(C) registration as an NASD Market Maker or ECN for Nasdaq or CQS securities pursuant to Rule 4611 or Rule 6320, if applicable, and compliance with all applicable rules and operating procedures of NASD and the Commission;*

*(D) maintenance of the physical security of the equipment located on the premises of the TRACS Market Maker to prevent unauthorized entry of information into the TRACS trade comparison feature; and*

*(E) acceptance and settlement of each trade that the TRACS trade comparison feature identifies as having been effected by such TRACS Market Maker, or if settlement is to be made through a clearing member, guarantee or the acceptance and settlement of each TRACS identified trade by the clearing member on the regularly scheduled settlement date.*

*(3) Participation in the TRACS trade comparison feature as an Order Entry Firm shall be conditioned upon the Order Entry Firm's initial and continuing compliance with the following requirements:*

*(A) Execution of, and continuing compliance with, a TRACS trade comparison Participant Application Agreement;*

*(B) membership in, or maintenance of, an effective clearing arrangement with a member of a clearing agency registered pursuant to the Act;*

*(C) compliance with all applicable rules and operating procedures of NASD and the Commission;*

*(D) maintenance of the physical security of the equipment located on the premises of the TRACS Order Entry Firm to prevent the unauthorized entry of information into the TRACS trade comparison feature; and*

*(E) acceptance and settlement of each trade that the TRACS trade comparison feature identifies as having been effected by such TRACS Order Entry Firm, or if settlement is to be made through a clearing member, guarantee of the acceptance and settlement of each TRACS identified trade by the clearing member on the regularly scheduled settlement date.*

*(4) Participation in the TRACS trade comparison feature as a Clearing Broker shall be conditioned upon the Clearing Broker's initial and continuing compliance with the following requirements:*

*(A) Execution of, and continuing compliance with, a TRACS trade comparison Participant Application Agreement;*

*(B) membership in a clearing agency registered pursuant to the Act;*

*(C) compliance with all applicable rules and operating procedures of NASD and the Commission;*

*(D) maintenance of the physical security of the equipment located on the premises of the TRACS Clearing Broker to prevent the unauthorized entry of information into the TRACS trade comparison feature; and*

*(E) acceptance and settlement of each trade that the TRACS trade comparison feature identifies as having been effected by itself or any of its correspondents on the regularly scheduled settlement date.*

*(5) Participation in the TRACS trade comparison feature as an ECN shall be conditioned upon the ECN's initial and continuing compliance with the following requirements:*

*(A) execution of, and continuing compliance with, a TRACS trade comparison Participant Application Agreement;*

*(B) membership in, or maintenance of an effective clearing arrangement with a member of, a clearing agency registered pursuant to the Act;*

*(C) compliance with all applicable rules and operating procedures of NASD and the Commission;*

*(D) maintenance of the physical security of the equipment located on the premises of the ECN to prevent the unauthorized entry of information into the TRACS trade comparison feature; and*

*(E) acceptance and settlement of each trade that the TRACS trade comparison feature identifies as having been effected by such TRACS ECN, or if settlement is to be made through a clearing member, guarantee of the acceptance and settlement of each TRACS identified trade by the clearing member on the regularly scheduled settlement date.*

*(6) Each TRACS trade comparison Participant shall be obligated to inform NASD of non-compliance with any of the participation requirements set forth above.*

*(b) Participant Obligations in TRACS*

*(1) Access to TRACS*

*Upon execution and receipt by NASD of the TRACS trade comparison Participant Application Agreement, a TRACS trade comparison Participant may commence input and validation of trade information in TRACS eligible securities. TRACS trade comparison Participants may access the service via NASD terminals or Workstations or through computer interface during the hours of operation specified in the TRACS Users Guide. Prior to such input, all TRACS comparison Participants, including those that have trade report information submitted to NASD by any third party, must obtain from NASD a unique identifying Market Participant Symbol (''MMID'' or ''MPID''), and use that identifier for trade reporting and audit trail purposes.*

*(2) Market Maker Obligations*

*(A) TRACS Market Makers shall commence participation in the TRACS trade comparison feature by initially contacting the TRACS Operation Center to verify authorization for submitting trade data to the TRACS system for TRACS eligible securities.*

*(B) A TRACS Market Maker that is a self-clearing firm shall be obligated to accept and clear each trade that the TRACS trade comparison feature identifies as having been effected by that Market Maker.*

*(C) A TRACS Market Maker that is an introducing broker or a correspondent executing broker shall identify its clearing broker when it becomes an TRACS trade comparison participant and notify the TRACS Operation Center if its clearing broker is to be changed; this will necessitate execution of a revised TRACS trade comparison Participant Application Agreement.*

*(D) If at any time a TRACS Market Maker fails to maintain a clearing arrangement, it shall be removed from the TRACS trade comparison feature, and be precluded from participation as a Market Maker in Nasdaq and CQS securities pursuant to the requirements of 6300 Series until such time as a clearing arrangement is reestablished and notice of such arrangement, with an amended TRACS trade comparison Participant Application Agreement, is filed with NASD. If, however, the NASD finds that the TRACS Market Maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused pursuant to Rule 4619.*

*(3) Order Entry Firm Obligations*

*(A) TRACS Order Entry Firms shall commence participation in the TRACS trade comparison feature by initially contacting the TRACS Operation Center to verify authorization for submitting trade data to the TRACS system for TRACS eligible securities.*

*(B) A TRACS Order Entry Firm that is a self-clearing firm shall be obligated to accept and clear each trade that the TRACS trade comparison feature identifies as having been effected by the Order Entry Firm.*

*(C) A TRACS Order Entry Firm that is an introducing broker or a correspondent executing broker shall identify its clearing broker when it becomes a TRACS trade comparison Participant and notify the TRACS Operations Center if its clearing broker is to be changed; this change will necessitate execution of a revised TRACS trade comparison Participant Application Agreement.*

*(D) If at any time a TRACS Order Entry Firm fails to maintain a clearing arrangement, it shall be removed from the TRACS trade comparison feature until such time as a clearing arrangement is reestablished, and notice of such arrangement, with an amended TRACS trade comparison Participant Application Agreement, is filed with NASD.*

*(4) Clearing Broker Obligation*

*TRACS clearing brokers shall be obligated to accept and clear as a party to the transaction each trade that the system identifies as having been effected by itself or any of its correspondent executing brokers. Clearing brokers may cease to act as principal for a correspondent executing broker at any time provided that notification has been given to, received and acknowledged by the TRACS Operations Center and affirmative action has been completed by the Center to remove the clearing broker from the TRACS trade comparison feature for that correspondent executing broker. The clearing broker's obligation to accept and clear trades for its correspondents shall not cease prior to the completion of all of the steps detailed in this subparagraph (4).*

*(5) ECN Obligations*

*(A) TRACS ECNs shall commence participation in the TRACS trade comparison feature by initially contacting the TRACS Operations Center to verify authorization for submitting trade data to the TRACS trade comparison feature for TRACS eligible securities.*

*(B) A TRACS ECN that is a self-clearing firm shall be obligated to accept and clear each trade that the TRACS trade comparison feature identifies as having been effected by the ECN.*

*(C) A TRACS ECN that is an introducing broker or a correspondent executing broker shall identify its clearing broker when it becomes a TRACS trade comparison Participant and notify the TRACS Operations Center if its clearing broker is to be changed; this change will necessitate execution of a revised TRACS trade comparison Participant Application Agreement.*

*(D) If at any time a TRACS ECN fails to maintain a clearing arrangement, it shall be removed from the TRACS trade comparison feature until such time as a clearing arrangement is reestablished, and notice of such arrangement, with an amended TRACS trade comparison Participant Application Agreement, is filed with NASD.*

*Selected NASD Notices to Members: Notice to Members 98–82.*

***6130. Trade Report Input***

*(a) Reportable TRACS Transactions*

*A member choosing to submit a trade to the NASD for comparison shall report the trade to TRACS. TRACS will also process trades that are submitted on an automatic locked-in basis for transmission to NSCC. All trades that are reportable transactions pursuant to NASD Rule 4633 will be transmitted to the applicable securities information processor; however, only those trades that are subject to regular way settlement and are not already locked-in trades will be compared and locked-in through TRACS. Trades that are reported as other than regular way settlement (i.e., Cash, Next-Day, Seller's Option) will not be compared in TRACS or reported to DTCC. All transactions in Direct Participation Program securities shall be reported to TRACS pursuant to the Rule 6900 Series as set forth therein.*

*(b) When and How Trade Reports Are Submitted to TRACS*

*(1) TRACS trade comparison Participants who are Reporting Members that choose to submit a trade for comparison shall transmit to TRACS the information required by Rule 4633 (e) or (f), as applicable, within 90 seconds of execution.*

*(2) A TRACS trade comparison Participant who is a Non-Reporting Member to a transaction shall, within twenty (20) minutes after execution accept (or decline, if applicable) a transaction submitted by the Reporting*

*Member for comparison through TRACS. A Non-Reporting Member has an obligation to ensure that the information that it transmits or accepts in TRACS is timely, accurate and complete. Therefore, if a Non-Reporting Member accepts a transaction in TRACS transmitted by the Reporting Member for comparison through TRACS, then the Non-Reporting Member shall be deemed to have adopted all of the data elements required by Rule 4633(e) or (f), as applicable, concerning the Non-Reporting Member's side of the transaction, absent any subsequent modification of the trade through TRACS.*

*(3) Trades not required to be reported for public dissemination may still be compared and locked-in through TRACS.*

*(4) Reporting NASD Members may conduct the following functions in TRACS pursuant to TRACS specifications established by the NASD: (i) MMID Trade Entry; (ii) Trade Cancellation; and (iii) Trade Break.*

*(5) Non-Reporting NASD Members may conduct the following functions in TRACS pursuant to TRACS specifications established by the NASD: (i) Trade Accept; (ii) Trade Decline; and (iii) Trade Break.*

*(6) If a TRACS Report from a Reporting Member did not include a necessary OATS order number for OATS/TRACS matching from the Non-Reporting Member's perspective, the Non-Reporting Member shall submit a non-published TRACS Report to compare the trades.*

*(7) A party entering a trade report into the TRACS trade comparison feature shall use a designated symbol to denote whether the party is submitting the trade report as the Reporting Member or the Non-Reporting Member.*

***6140. TRACS Processing***

*Locked-in trades may be determined through the TRACS trade comparison feature through one of the following methods:*

*(a) Trade Acceptance*

*The reporting party enters its version of the trade into the system and the contra party reviews the trade report and accepts or declines the trade. An acceptance results in a locked-in trade; a declined trade report is purged from the TRACS system at the end of trade date processing;*

*(b) Aggregate Volume Match*

*A batch type comparison will be run at the end of trade date and will aggregate volume of previously entered uncompared trade reports (if all other matching fields agree) in order to effect matching;*

*(c) T+N Trade Processing*

*T+N entries may be submitted until 5:15 p.m. each business day. At the end of daily matching, all declined trade entries will be purged from the TRACS system. TRACS will not purge any open trade (i.e. unmatched or unaccepted) at the end of its entry day, but will carry-over such trades to the next business day for continued comparison and reconciliation. TRACS will automatically lock in and submit to NSCC as such any carried-over T to T+21 (calendar day) trade if it remains open as of 2:30 p.m. on the next business day. TRACS will not automatically lock in T+22 (calendar day) or older open ''as-of'' trades that were carried-over from the previous business day; these trades will be purged by TRACS at the end of the carry-over day if such trades remain open. Members may re-submit these T+22 or older ''as-of'' trades into TRACS on the next business day for continued comparison and reconciliation for up to one calendar year.*

*Selected NASD Notices to Members 94–73.*

*6150. Reserved*

***6160. Obligation to Honor Trades***

*If a TRACS trade comparison Participant is reported by TRACS as a party to a trade that has been treated as locked-in and sent to DTCC, notwithstanding any other agreement to the contrary, that party shall be obligated to act as a principal to the trade and shall honor such trade on the scheduled settlement date.*

***6170. Audit Trail Requirements***

*The data elements specified in Rule 6130(b) are critical to NASD's compilation of a transaction audit trail for regulatory purposes. As such, all member firms using the TRACS Service have an ongoing obligation to input Rule 6130(b) information accurately and completely.*

*6180. Reserved*

***6190. Termination of TRACS Service***

*NASD may, upon notice, terminate TRACS service as to a Participant in the event that a TRACS Participant fails to abide by any of the rules or operating procedures of the TRACS service or NASD, or fails to honor contractual agreements entered into with NASD or its subsidiaries, or fails to pay promptly for services rendered by the TRACS Service.*

* * * * *

6200. To be replaced in its entirety by SR–NASD–99–65, which currently is expected to be effective on February 1, 2002.

* * * * *

The 6300 through 6500 Series are replaced in their entirety by the following proposed rule language.

***6300. CONSOLIDATED QUOTATIONS SERVICE (CQS)***

***6310. General***

*The Rule 6300 through 6500 Series govern trading by members in CQS/CTA securities otherwise than on an exchange.*

***6320. Registration as a CQS Market Maker***

*(a) Quotations and quotation sizes in reported securities may be entered into the Consolidated Quotations Service (CQS) through the NASD Alternative Display Facility only by an NASD member registered with it as a CQS market maker.*

*(b) An NASD member, including an operator of an ECN/ATS seeking registration as a CQS market maker, shall file an application with NASD. The application shall certify the member's good standing with NASD and shall demonstrate compliance with the net capital and other financial responsibility provisions of the Act. A member's registration as a CQS market maker shall become effective upon receipt by the member of notice of approval of registration by NASD. It shall be sufficient to obtain registration as a CQS market maker with NASD for a member to demonstrate proof that it is a registered CQS market maker with Nasdaq in good standing.*

*(c) A CQS market maker registered in a reported security may become registered in additional reported securities by entering a registration request via an NASD Alternative Display Facility terminal. Registration shall become effective at the time the registration request is entered.*

*(d) An NASD member that becomes registered as a CQS market maker in an issue shall enter quotations in the issue on the effective date of the issue's authorization. If quotations are not entered on the effective date of authorization and the CQS market maker remains inactive in the issue for five (5) business days, the CQS market maker's registration in the issue will be terminated.*

*(e) Any CQS market makers registered in reported securities that are eligible*

*for inclusion in the Intermarket Trading System (ITS) may be registered as market makers in ITS and, if they so choose, shall be subject to the Rule 6500 Series.*

***6330. Obligations of CQS Market Makers***

*(a) Pursuant to SEC Rule 11Ac1–1, a CQS market maker's quotations in reported securities are required to be firm for the size displayed or, if no size is displayed, for a normal unit of trading. If a market maker displays quotations in a reported security in both a national securities exchange and NASD's CQS System, the market maker shall maintain identical quotations in each system.*

*(b) A CQS market maker's quotation must be at least one normal unit of trading.*

*(c) A CQS market maker shall be obligated to have available in close proximity to the NASD Alternative Display Facility terminal at which it makes a market in a CQS security a quotation service that disseminates the bid price and offer price then being furnished by or on behalf of other national securities exchanges and CQS market makers trading and quoting that CQS security.*

*(d) Computer-Generated Quotations*

*(1) General Prohibition—Except as provided below, this Rule prohibits the automatic updating or tracking of inside quotations in CQS by computer-generated quote systems. This ban is necessary to offset the negative impact on the capacity and operation of NASD systems regarding certain systems that track changes to the inside quotation and automatically react by generating another quote to keep the market maker's quote away from the best market, without any cognizable human intervention.*

*(2) Exceptions to the General Prohibition—Automated updating of quotations is permitted when:*

*(A) The update is in response to an execution in the security by that firm (such as execution of an order that partially fills a market maker's quotation size);*

*(B) it requires a physical, cognizable entry (such as a manual entry to the market maker's internal system which then automatically forwards the update to the NASD system);*

*(C) the update is to reflect the receipt, execution, or cancellation of a customer limit order;*

*(D) it is used to expose a customer's market or marketable limit order for price improvement opportunities; or*

*(E) it is used to equal or improve either or both sides of the national best bid or offer (''NBBO''), or add size to the NBBO.*

*(e) Minimum Price Variation for Decimal-Based Quotations*

*(1) The minimum quotation increment for securities authorized for decimal pricing as part of the SEC-approved Decimals Implementation Plan for the Equities and Options Markets shall be $0.01.*

*(f) Members that display priced quotations on a real-time basis for CQS securities in two or more market centers that permit quotation updates on a real-time basis must display the same priced quotations for the security in each market center.*

*Cross Reference—IM–4613, Autoquote Policy*

***6340. Normal Business Hours***

*A CQS market maker shall be open for business as of 9:30 a.m. Eastern Time and shall close no earlier than 4:00 p.m. Eastern Time. An NASD market maker may remain open for business on a voluntary basis for any period of time between 4:00 p.m. Eastern time and 6:30 p.m. Eastern Time. A CQS market maker whose quotes are open after 4:00 p.m. Eastern Time shall be obligated to comply, while their quotes are open, with all NASD Rules that are not by their express terms, or by an official interpretation of NASD, inapplicable to any part of the 4:00 p.m. to 6:30 p.m. Eastern Time period.*

***6350. Withdrawal of Quotations***

*(a) Any registered CQS market maker (excluding ECNs) that initiates a pre-opening application and does not enter and maintain continuous two-sided quotations in the security on the same trading day may not re-register to enter quotations in such security for twenty (20) business days unless NASD Alternative Display Facility Operations grants an excused withdrawal.*

*(b) A CQS market maker that wishes to withdraw quotations in a reported security shall contact NASD Alternative Display Facility Operations to obtain excused withdrawal status prior to withdrawing its quotations. Excused withdrawal status based on illness, vacations or physical circumstances beyond the CQS market maker's control may be granted for up to five (5) business days, unless extended by NASD Alternative Display Facility Operations. Excused withdrawal status based on investment activity or advice of legal counsel, accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon written request, be granted for not more than sixty (60) days. The withdrawal of quotations because of pending news, a sudden influx of orders or price changes, or to effect transactions with competitors shall not normally constitute acceptable reasons for granting excused withdrawal status, unless NASD has initiated a trading halt for ITS Market Makers in the security, pursuant to Rule 5200.*

***6360. Voluntary Termination of Registration***

*A CQS market maker may voluntarily terminate its registration in a reported security by withdrawing its quotations from the NASD Alternative Display Facility. A CQS market maker that voluntarily terminates its registration in a reported security may not, however, re-register as a CQS market maker in that security for two (2) business days.*

***6370. Suspension and Termination of Quotations by NASD Action***

*NASD may, pursuant to the procedures set forth in NASD's Code of Procedure as set forth in the Rule 9000 Series, suspend, condition, limit, prohibit or terminate a CQS market maker's authority to enter quotations in one or more reported securities for violations of the applicable requirements or prohibitions of the Rule 4000, 5000 and 6300 Series. Selected NASD Notices to Members: 94–81.*

***6400. REPORTING TRANSACTIONS IN CTA-ELIGIBLE SECURITIES***

*The provisions of this Rule 6400 Series shall apply to all transactions effected by members otherwise than on an exchange in securities listed on an exchange (other than Nasdaq) that are required to be reported to the Consolidated Tape (''eligible securities''), as provided in the Plan filed by NASD pursuant to SEC Rule 11Aa3–1 under the Act (''Plan''). Rule 6420 shall not apply to transactions executed through the Intermarket Trading System by market makers registered as CQS market makers.*

*Selected NASD Notices to Members:* 94–81.

***6410. Definitions***

*(a) Unless the context requires otherwise, terms used herein shall have the meaning below. Terms not specifically defined below shall have the meaning in the By-Laws and NASD Rules, SEC Rule 11Aa3–1 and the Plan.*

*(b) ''Consolidated Tape'' means the consolidated transaction reporting system for the dissemination of last sale reports in eligible securities required to be reported pursuant to the Plan.*

*(c) ''Eligible securities'' means all common stocks, preferred stocks, long-term warrants, and rights entitling the holder to acquire an eligible security, listed or admitted to unlisted trading privileges on the American Stock Exchange or the New York Stock Exchange, and securities listed on regional stock exchanges, which substantially meet the original listing requirements of the New York Stock Exchange or the American Stock Exchange. A list of eligible securities listed on regional stock exchanges is contained in Rule 6450. An updated list of eligible securities will be provided to members from time to time.*

*(d) ''Initial Public Offering''—a security is subject to an ''initial public offering'' if: (1) the offering of the security is registered under the Securities Act of 1933; and (2) the issuer of the security, immediately prior to filing the registration statement with respect to such offering, was not subject to the reporting requirements of Section 13 or 15(d) of the Act.*

*(e) ''Non-Registered Member'' shall have the meaning as defined in NASD Rule 4200.*

*(f) ''Transaction effected through the NASD Alternative Display Facility'' shall have the meaning as defined in Rule 4100.*

*(g) ''Registered Member'' means a member of NASD that is registered as a CQS market maker, pursuant to Rule 6320, in a particular eligible security. A member is a Registered Member in only those eligible securities for which it has registered as a CQS market maker. A member shall cease being a Registered Member in an eligible security when it has withdrawn or voluntarily terminated its quotations in that security or when its quotations have been suspended or terminated by action of NASD.*

*(h) ''Registered ECN'' means a member of NASD that is an electronic communications network (''ECN'') that has chosen to register with NASD and meets the terms of registration set forth in the NASD-provided agreement. A member is a Registered ECN in only those eligible securities for which it is registered with NASD. A member shall cease being a Registered ECN in an eligible security when it has withdrawn or voluntarily terminated its quotations in that security or when its quotations have been suspended or terminated by action of NASD. The term ''Registered ECN'' shall also include NASD members that are alternative trading systems (''ATS''), subject to SEC Regulation ATS, that comply with the requirements of this paragraph.*

***6420. Transaction Reporting***

*(a) General*

*(1) This Rule governs the reporting of trades in eligible securities through the NASD's Trade Reporting and Comparison Service (''TRACS'').*

*(2) All times referenced in this Rule are Eastern time.*

*(3) For Purposes of this Rule, the term ''Reporting NASD Member'' or ''Reporting Member'' shall mean an NASD member with the trade reporting obligation as set forth in Rule 6420(c).*

*(4) For purposes of this Rule, the term ''Non-Reporting NASD Member'' or ''Non-Reporting Member'' shall mean the contra side of a trade reported by a Reporting Member.*

*(5) For purposes of this Rule, the term ''normal market hours'' means from 9:30 a.m. to 4:00 p.m. All times referenced in this Rule are Eastern Time.*

*(b) When and How Transactions are Reported*

*(1) Reporting NASD Members shall transmit to TRACS, within 90 seconds after execution, last sale reports of transactions in eligible securities effected by members otherwise than on an exchange during the trading hours of the Consolidated Tape. Transactions not reported within 90 seconds after execution shall be designated as late and such trade reports must include the time of execution. Reporting NASD Members shall also transmit to TRACS, within 90 seconds after execution, last sale reports of transactions in eligible securities effected by members otherwise than on an exchange between 4:00 p.m. and 6:30 p.m.; trades executed and reported after 4:00 p.m. shall be designated as ''.T'' trades to denote their execution outside normal market hours. Transactions not reported within 90 seconds after execution must include the time of execution on the trade report.*

*(2) (A) Reporting NASD Members shall report transactions in eligible securities effected otherwise than on an exchange outside the hours of 9:30 a.m. and 6:30 p.m. Eastern Time as follows:*

*(i) By transmitting the individual trade reports to TRACS on the next business day (T+1) between 8:00 a.m. and 6:30 p.m. Eastern Time;*

*(ii) by designating the entries ''as/of'' trades to denote their execution on a prior day; and*

*(iii) by including the time of execution.*

*(c) Which Party Reports Transaction*

*(1) Transactions executed on an exchange are reported by the exchange and shall not be reported by members.*

*(2) For transactions between two Registered Members or Registered ECNs, the Registered Market Maker or ECN representing the sell side shall report the transaction.*

*(3) For transactions between a Registered Member or Registered ECN and a Non-Registered Member, the Registered Member or Registered ECN shall report the transaction.*

*(4) For transactions between two Non-Registered Members, the Non-Registered Member representing the sell side shall report the transaction.*

*(5) For transactions between a member and a customer, the member shall report the transaction.*

*(6) For transactions between a member and a broker-dealer that is not a member of NASD, the member shall report the transaction.*

*(7) For all transactions between an NASD member and an NASD member that is also a member of Nasdaq or another national securities exchange, where the reporting party has a choice of reporting venues and chooses not to report to Nasdaq or another national securities exchange, the reporting party described in (1) through (6) above shall report the transaction to the NASD.*

*(d) Information To Be Reported—Two Party Trade Reports*

*(1) A two party trade report is a last sale report that denotes a trade between one Reporting NASD member and one Non-Reporting Member. The Reporting NASD Member is denoted as the (''MMID'') side of the trade report and the Non-Reporting Member is denoted as the (''OEID'') side of the report.*

*(2) Each Two Party Last Sale Report Submitted by a Reporting NASD Member Should Contain:*

*(A) Security identification symbol (SECID);*

*(B) Number of shares or bonds;*

*(C) Price of the transaction as required by paragraph (g) below;*

*(D) A designated symbol denoting whether the transaction, from the Reporting NASD Member's perspective, is a buy, sell, sell short, sell short exempt, or cross;*

*(E) If known, a designated symbol denoting whether the transaction, from the perspective of the Non-Reporting Member, is a buy, sell, sell short, or sell short exempt;*

*(F) A designated symbol denoting whether the transaction, from the perspective of the Reporting Member, is as principal, riskless principal, or agent;*

*(G) If known, a designated symbol denoting whether the transaction, from the perspective of the Non-Reporting Member, is as principal, riskless principal, or agent;*

*(H) Execution time for any transaction not reported within 90 seconds of execution;*

*(I) The market participant identifier of the Reporting Member and the Non-Reporting Member;*

*(J) Reporting Member clearing broker;*

*(K) Reporting Member Executing Broker in case of a ''give up;''*

*(L) Non-Reporting Member Executing Broker;*

*(M) Non-Reporting Member introducing broker in case of a ''give up;''*

*(N) Non-Reporting Member clearing broker;*

*(O) A designated symbol denoting whether the trade report should be published;*

*(P) A designated symbol denoting whether the trade report should be compared in TRACS;*

*(Q) If the contra side to the trade report is a customer of the Reporting Member, the Reporting Member shall denote that the trade is an internalized trade with the designated symbol;*

*(R) If the contra side to the trade report is a Non-NASD member, the Reporting Member shall indicate with the designated symbol that the contra side is a non-member.*

*(S) For two party trade reports submitted pursuant to an Automated Give Up (''AGU'') arrangement or a Qualified Service Representative (''QSR'') Agreement, subparagraphs (d) (2) (E) and (G) are mandatory.*

*(e) Information To Be Reported—Three Party Trade Reports*

*(1) A three party trade report is a single last sale trade report that denotes one Reporting Member and two contra parties. The Reporting Member is denoted as the MMID side of the trade report and the two non-reporting sides are denoted as the OEID side of the trade report. In a three party report, the Reporting Member is the buyer to one OEID and the seller to the other OEID. Registered ECNs shall only submit three party trade reports. Risklnnnqess principal trades may be submitted as three party trade reports.*

*(2) Each Three Party Trade Report Submitted by a Reporting Member shall contain the following information:*

*Transaction Information*

*(A) Security Identification Symbol (SECID);*

*(B) Number of shares or bonds;*

*(C) Price of the transaction as required by paragraph (g) below;*

*(D) Execution time for any transaction not reported within 90 seconds of execution;*

*(E) The market participant identifies of the Reporting Member and the two Non-Reporting Members;*

*(F) A designated symbol denoting whether the trade should be published;*

*MMID Side*

*(G) All three party trade reports from ECNs must be marked as agency cross transactions;*

*(H) All three party trade reports from Non-ECNs must be denoted as riskless principal trade reports and shall include a designated symbol denoting whether the trade between the non-ECN and the buy-side OEID is a sell, sell short, or sell short exempt transaction;*

*(I) Reporting Member clearing broker;*

*(J) Reporting Member Executing Broker in the case of a ''give up,'' if applicable;*

*Buy Side OEID*

*(K) Buy Side OEID executing broker;*

*(L) Buy Side OEID introducing broker in case of a ''give up'';*

*(M) Buy Side OEID clearing broker;*

*(N) If known, a designated symbol denoting whether the trade, from the Buy Side OEID's perspective, is as principal, riskless principal, or agent;*

*(O) If the Buy Side OEID is a customer of the Reporting Member, the Reporting Member shall denote that the trade is an internalized trade with the designated symbol;*

*(P) If the Buy Side OEID is a non-NASD member, the Reporting Member shall indicate with the designated symbol that the buy side OEID is a non-member;*

*(Q) A designated symbol denoting whether the trade between the MMID and the Buy Side OEID shall be compared in TRACS;*

*Sell Side OEID*

*(R) Sell Side OEID executing broker;*

*(S) Sell Side OEID introducing broker in case of a ''give up'';*

*(T) Sell Side OEID clearing broker;*

*(U) If known, a designated symbol denoting whether the trade, from the Sell Side OEID's perspective, is as principal, riskless principal, or agent;*

*(V) If known, a symbol denoting whether the trade, from the Sell Side OEID's perspective, is a sell, sell short, or sell short exempt transaction;*

*(W) If the Sell Side OEID is a customer of the Reporting Member, the Reporting Member shall denote that the trade is an internalized trade with the designated symbol;*

*(X) If the Sell Side OEID is a non-NASD Member, the Reporting Member shall indicate with the designated symbol that the buy side OEID is a non-member; and*

*(Y) A designated symbol denoting whether the trade between the MMID and the Sell Side OEID shall be compared in TRACS.*

*(Z) If the transactions between the Buy Side OEID and the Reporting Member is reported pursuant to an AGU arrangement or a QSR agreement, subparagraphs (e) (2) (N) is mandatory.*

*(AA) If the transaction between the Sell Side OEID and the Reporting Member is reported pursuant to an AGU arrangement or a QSR agreement, subparagraphs (e) (2) (U) and (V) are mandatory.*

*(f) Trade Report Modifiers*

*(1) Reporting Members shall append the following trade report modifiers to a last sale report if applicable:*

*(A) .SLD, if the trade is executed during normal market hours and it is reported later than 90 seconds after execution;*

*(B) .SNN, if the trade is a Seller's Option Trade, .NN denotes the number of days for delivery;*

*(C) .C, if the trade is a Cash Trade;*

*(D) .ND, if the trade is a Next Day Trade;*

*(E) .W, if the trade occurs at a price based on an average weighting or another special pricing formula;*

*(F) .T, if the trade is executed outside of normal market hours;*

*(G) .O, if the trade is price beyond certain price validation parameters as established by the NASD; and*

*(H) Any other trade report modifier approved for use by the Securities and Exchange Commission.*

*(2) It will be a violation of this Rule for a Reporting Member to fail to append a required trade modifier or to append a modifier that is not required.*

*(3) A Reporting Member shall not append a .O modifier to a trade report unless the trade price is beyond certain price validation parameters as established by the NASD.*

*(4) The Association seeks to emphasize the obligations of members to report securities transactions within 90 seconds after execution. All reportable transactions not reported within 90 seconds after execution shall be reported as late, and the Association routinely monitors members' compliance with the 90 second requirement. If the Association finds a pattern or practice of unexcused late reporting, that is, repeated reports of executions after 90 seconds without reasonable justification or exceptional circumstances, the member may be found to be in violation of Rule 2110.*

*Exceptional circumstances will be determined on a case by case basis and may include instances of system failure by a member or service bureau, or unusual market conditions, such as extreme volatility in a security, or in the market as a whole. Timely reporting of all transactions is necessary and appropriate for the fair and orderly operation of the Association's marketplace, and the Association will view noncompliance as a rule violation.*

*(g) Procedures for Reporting Price and Volume*

*Members that are required to report pursuant to paragraph (b) above shall transmit last sale reports for all purchases and sales in eligible securities in the following manner:*

*(1) For agency transactions, report the number of shares and the price excluding the commission charged.*

*Example:*

*SELL as agent 100 shares at 40 less a commission of $12.50; REPORT 100 shares at 40.*

*(2) For dual agency transactions, report the number of shares only once, and report the price excluding the commission charged.*

*Example:*

*SELL as agent 100 shares at 40 less a commission of $12.50; BUY as agent 100 shares at 40 plus a commission of $12.50; REPORT 100 shares at 40.*

*(3) (A) For principal transactions, except as provided below, report each purchase and sale transaction separately and report the number of shares and the price. For principal transactions that are executed at a price that includes a mark-up, mark-down or service charge, the price reported shall exclude the mark-up, mark-down or service charge.*

*Example:*

*BUY as principal 100 shares from another member at 40 (no mark-down included).*

*REPORT 100 shares at 40.*

*Example:*

*BUY as principal 100 shares from a customer at 39¾, which includes a ⅛ mark-down from prevailing market of 39⅞; REPORT 100 shares at 39⅞.*

*Example*

*BUY as principal 100 shares from a customer at 39.75, which includes a $0.10 mark-down from prevailing market at $39.85; REPORT 100 shares at 39.85.*

*Example:*

*SELL as principal 100 shares to a customer at 40⅛, which includes a ⅛ mark-up from the prevailing market of 40; REPORT 100 shares at 40.*

*Example:*

*SELL as principal 100 shares to a customer at 40.10, which includes a .10 mark-up from the prevailing market of 40;*

*REPORT 100 shares at 40.*

*(B) Exception: A ''riskless'' principal transaction in which a member, after having received from a customer an order to buy, purchases the security as principal from another member or customer to satisfy the order to buy or, after having received from a customer an order to sell, sells the security as principal to another member or customer to satisfy the order to sell, shall be reported as one three party transaction in the same manner as an agency transaction, excluding the mark-up or mark-down, commission-equivalent, or other fee. Alternatively, a member may report a riskless principal transaction by submitting the following report(s) to the NASD:*

*(i) The member with the obligation to report the transaction pursuant to paragraph (b) above must submit a last sale report for the initial leg of the transaction.*

*(ii) Regardless of whether a member has a reporting obligation pursuant to paragraph (b) above, the firm must submit, for the offsetting, ''riskless'' portion of the transaction, either:*

*a. a clearing-only report with a capacity indicator of ''riskless principal,'' if a clearing report is necessary to clear the transaction; or*

*b. a non-tape, non-clearing report with a capacity indicator of ''riskless principal,'' if a clearing report is not necessary to clear the transaction.*

*A riskless principal transaction in which a member purchases or sells the security on an exchange to satisfy a customer's order will be reported by the exchange and the member shall not report.*

*Example:*

*BUY as principal 100 shares from another member at 40 to fill an existing order;*

*SELL as principal 100 shares to a customer at 40 plus mark-up of $12.50;*

*REPORT 100 shares at 40 by submitting to the NASD either a single trade report marked with a ''riskless principal'' capacity indicator or by submitting the following reports:*

*(1) Where required by this Rule, a tape report marked with a ''principal'' capacity indicator; and*

*(2) either a non-tape, non-clearing report or a clearing-only report marked with a ''riskless principal'' capacity indicator.*

*Example:*

*BUY as principal 100 shares on an exchange at 40 to fill an existing order; SELL as principal 100 shares to a customer at 40 plus a mark-up of $12.50.*

*DO NOT REPORT (will be reported by exchange).*

*(h) Reporting Transactions on Form T*

*All Reporting NASD Members required (or that elect) to report transactions in eligible securities to the NASD shall report, as soon as practicable to NASD Regulation's Market Regulation Department on Form T, last sale reports of transactions in designated securities for which electronic submission into the NASD is not possible (e.g., the ticker symbol for the security is no longer available, a market participant identifier is no longer active, or the NASD will not accept the date of execution because the NASD Alternative Display Facility was closed on that date). Transactions that can be reported into the NASD, whether on trade date or on a subsequent date on an ''as of'' basis (T+N), shall not be reported on Form T.*

*(i) Trade Tickets*

*All trade tickets for transactions in eligible securities shall be time-stamped at the time of execution.*

*(j) Special Trade Indicator*

*A Reporting Member shall append the designated symbol for special trades, step out trades, reversals, and as-of trades.*

*(k) Clearing Indicators*

*A Reporting Member shall use a designated symbol to denote whether the trade is to be: (i) Compared in TRACS; (ii) not compared in TRACS; (iii) compared in TRACS pursuant to an Automatic Give Up Agreement (''AGU''); or (iv) not compared in TRACS, but locked in pursuant to a Qualified Service Representation Agreement (''QSR'').*

*(l) Transactions Not Required To Be Reported*

*The following types of transactions shall not be reported for inclusion on the Consolidated Tape:*

*(1) Transactions executed on an exchange;*

*(2) odd-lot transactions;*

*(3) transactions that are part of a primary distribution by an issuer or of a registered secondary distribution (other than shelf distributions) or of an unregistered secondary distribution effected off the floor of an exchange;*

*(4) transactions made in reliance on Section 4(2) of the Securities Act of 1933;*

*(5) transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security, e.g., to enable the seller to make a gift;*

*(6) the acquisition of securities by a member as principal in anticipation of making an immediate exchange distribution or exchange offering on an exchange;*

*(7) purchases of securities off the floor of an exchange pursuant to a tender offer, and*

*(8) purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the current market.*

*Selected Notices to Members: 94–71; 99–66.*

*6430. Reserved*

***6440. Trading Practices***

*(a) No member shall execute or cause to be executed or participate in an account for which there are executed purchases of any eligible security at successively higher prices, or sales of any such security at successively lower prices, for the purpose of creating or inducing a false, misleading or artificial appearance of activity in such security or for the purpose of unduly or improperly influencing the market price for such security or for the purpose of establishing a price that does not reflect the true state of the market in such security.*

*(b) No member shall, for the purpose of creating or inducing a false or misleading appearance of activity in an eligible security or creating or inducing a false or misleading appearance with respect to the market in such security:*

*(1) Execute any transaction in such security which involves no change in the beneficial ownership thereof; or*

*(2) enter any order or orders for the purchase of such security with the knowledge that an order or orders of substantially the same size, and at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties; or*

*(3) enter any order or orders for the sale of any such security with the knowledge that an order or orders of substantially the same size, and at substantially the same price, for the purchase of such security, has been or will be entered by or for the same or different parties.*

*(c) No member shall execute purchases or sales of any eligible security for any account in which such member is directly or indirectly interested, which purchases or sales are excessive in view of the member's financial resources or in view of the market for such security.*

*(d) No member shall participate or have any interest, directly or indirectly, in the profits of a manipulative operation or knowingly manage or finance a manipulative operation.*

*(1) Any pool, syndicate or joint account organized or used intentionally for the purpose of unfairly influencing the market price of an eligible security shall be deemed to be a manipulative operation.*

*(2) The solicitation of subscriptions to or the acceptance of discretionary orders from any such pool, syndicate or joint account shall be deemed to be managing a manipulative operation.*

*(3) The carrying on margin of a position in such securities or the advancing of credit through loans to any such pool, syndicate or joint account shall be deemed to be financing a manipulative operation.*

*(e) No member shall make any statement or circulate and disseminate any information concerning any eligible security that such member knows or has reasonable grounds for believing is false or misleading or would improperly influence the market price of such security.*

*(f) (1) No member shall:*

*(A) Personally buy or initiate the purchase of an eligible security for its own account or for any account in which it or any person associated with it is directly or indirectly interested, while such member holds or has knowledge that any person associated with it holds an unexecuted market order to buy such security in the unit of trading for a customer; or*

*(B) sell or initiate the sale of any such security for any such account, while it personally holds or has knowledge that any person associated with it holds an unexecuted market order to sell such security in the unit of trading for a customer.*

*(2) No member shall:*

*(A) Buy or initiate the purchase of any eligible security for any such account, at or below the price at which it personally holds or has knowledge that any person associated with it holds an unexecuted limited price order to buy such security in the unit of trading for a customer; or*

*(B) sell or initiate the sale of any eligible security for any such account at or above the price at which it personally holds or has knowledge that any person associated with it holds an unexecuted limited price order to sell such security in the unit of trading for a customer.*

*(3) The provisions of this paragraph shall not apply:*

*(A) To any purchase or sale of any eligible security in an amount less than the unit of trading made by a member to offset odd-lot orders for customers,*

*(B) to any purchase or sale of any eligible security upon terms for delivery other than those specified in such unexecuted market or limited price order,*

*(C) to any unexecuted order that is subject to a condition that has not been satisfied.*

*(g) No member or person associated with a member shall, directly or indirectly, hold any interest or participation in any joint account for buying or selling an eligible security, unless such joint account is promptly reported to NASD. The report should contain the following information for each account:*

*(1) Name of the account, with names of all participants and their respective interests in profits and losses;*

*(2) a statement regarding the purpose of the account;*

*(3) name of the member carrying and clearing the account; and*

*(4) a copy of any written agreement or instrument relating to the account.*

*(h) No member shall offer that a transaction or transactions to buy or sell an eligible security will influence the closing transaction on the Consolidated Tape.*

*(i)(1) A member may, but is not obligated to, accept a stop order in an eligible security.*

*(A) A buy stop order is an order to buy that becomes a market order when a transaction takes place at or above the stop price.*

*(B) A sell stop order is an order to sell that becomes a market order when a transaction takes place at or below the stop price.*

*(2) A member may, but is not obligated to, accept stop limit orders in eligible securities. When a transaction occurs at the stop price, the stop limit order to buy or sell becomes a limit order at the limit price.*

*(j) No member or person associated with a member shall execute or cause to be executed, directly or indirectly, an over-the-counter transaction in a security subject to an initial public offering until such security has first opened for trading on the national securities exchange listing the security, as indicated by the dissemination of an opening transaction in the security by the listing exchange via the Consolidated Tape.*

***6450. Eligible Securities***

*Transactions required to be reported on the Consolidated Tape (eligible securities) include all common stocks, preferred stocks, long-term warrants, and rights entitling the holder to acquire an eligible security, listed on the American Stock Exchange and/or the*

*New York Stock Exchange and the following securities listed on regional stock exchanges.*

| Symbol | Security |
|---|---|
| ALK$ | Alaska Airlines $2.77 Pfd. |
| ADN | Alden Electronic |
| AFI$D | Amer. Financial Corp. Pfd.D |
| AFI$E | Amer. Financial Corp. Pfd.E |
| AFI$F | Amer. Financial Corp. Pfd.F |
| AFI$G | Amer. Financial Corp. Pfd.G |
| AFI$H | Amer. Financial Corp. Pfd.H |
| BPP | Ballys Park Place |
| BSI | Bastian Inds., Inc. |
| BSI$ | Bastian Inds., Inc. $1.00 Pfd |
| BBM | Berkeley Bio Medical |
| CSW | Canada Southern Petroleum |
| CNO | Casco Northern Corp. |
| CJI | Central Jersey Industries |
| CTE | Columbia Chase Corp. |
| DCT | DC Trading Development Corp. |
| EDG | Enterprise Devel. Group, Inc. |
| GEO | Geothermal Resources |
| GLR | Grolier Inc. |
| HWK | Hardwicke Companies, Inc. |
| MOD | Modine Manufacturing Company |
| OKC | OKC Limited Partnership |
| OGS | O's Gold Seed Company |
| PRI | Pacific Resources |
| PJH | Piper Jaffray, Inc. |
| PRB | Provident Bancorp, Inc. |
| REL.Z | Reliance Group 87 Wts. |
| SOU$A | Southern Cal Gas 6% A Pfd. |
| SOU$Q | Southern Cal Gas 6% Pfd. |
| SYN$B | Syntex Corp. Pfd.B |
| TEP$ | Tucson Elec. Power Pfd. |
| UTC | United Canso Oil and Gas |
| WH | White Motor Corporation |

*Selected Notices to Members: 85–27, 87–12, 93–9, 93–25.*

* * * * *

**6600. REPORTING TRANSACTIONS IN [OVER-THE-COUNTER EQUITY] NON-EXCHANGE-LISTED SECURITIES**

This Rule 6600 Series sets forth the trade reporting requirements applicable to members' transactions in equity securities effected otherwise than on an exchange for which real-time trade reporting is not otherwise required (hereinafter referred to as *''non-exchange-listed securities* [OTC Equity Securities]''). Members shall [utilize] *use* the Automated Confirmation Transaction (ACT) for trade reporting in *non-exchange-listed securities* [OTC Equity Securities].

Those members effecting transactions otherwise than on an exchange in non-exchange-listed securities shall have in place contractual agreements with Nasdaq to use ACT for trade reporting. Members who use ACT to compare trades must comply with the applicable Nasdaq trade comparison rules. Members should refer to the Nasdaq rules for the specific rules that govern trade comparison through ACT.

**6610. Definitions**

(a) Terms used in this Rule shall have the same meaning as those defined in the Association's By-Laws and Rules unless otherwise specified herein.

(b) ''Automated Confirmation Transaction Service'' or ACT is the *Nasdaq* service that, among other things, accommodates reporting and dissemination of last sale reports in *non-exchange-listed securities* [OTC Equity Securities]. Regarding those *non-exchange-listed securities* [OTC Equity Securities] that are not eligible for clearance and settlement through the facilities of the National Securities Clearing Corporation, the ACT comparison function will not be available. However, ACT will support the entry and dissemination of last sale data on such securities.

(c) ''Non-Market Maker'' means a member of the Association that is not an OTC Market Maker with respect to a particular *non-exchange-listed security* [OTC Equity Security].

(d) *''Non-exchange-listed security''* [''OTC Equity Security''] means any equity security *that is not traded on any national securities exchange.* [not classified as a ''designated security,'' for purposes of the Rule 4630 and 4640 Series. This term also includes certain exchange-listed securities that do not otherwise qualify for real-time trade reporting because they are not ''eligible securities'' as defined in Rule 6410(d).] The term *''non-exchange-listed securities''* [''OTC Equity Security''] shall not include ''restricted securities,'' as defined by SEC Rule 144(a)(3) under the Securities Act of 1933, nor any securities designated in the PORTAL Market, the Rule [5300] *6700* Series.

(e) ''OTC Market Maker'' means a member of the Association that holds itself out as a market maker by entering proprietary quotations or indications of interest for a particular *non-exchange-listed security* [OTC Equity Security] in any inter-dealer quotation system, including any system that the Commission has qualified pursuant to Section 17B of the Act. A member is an OTC Market Maker only in those *non-exchange-listed securities* [OTC Equity Securities] in which it displays market making interest via an inter-dealer quotation system.

**6620. Transaction Reporting**

(a) When and How Transactions are Reported

(1) OTC Market Makers shall, within 90 seconds after execution, transmit through ACT last sale reports of transactions in *non-exchange-listed securities* [OTC Equity Securities] executed during normal market hours. Transactions not reported within 90 seconds after execution shall be designated as late.

(2) Non-Market Makers shall, within 90 seconds after execution, transmit through ACT or the *Nasdaq* ACT service desk (if qualified pursuant to Rule 7010(i)), or if ACT is unavailable due to system or transmission failure, by telephone to the Nasdaq Market Operations Department, last sale reports of transactions in *non-exchange-listed securities* [OTC Equity Securities] executed during normal market hours. Transactions not reported within 90 seconds after execution shall be designated as late.

(3) Transaction Reporting Outside Normal Market Hours

(A) Last sale reports of transactions in *Non-exchange-listed securities* [OTC Equity Securities] executed between 8:00 a.m. and 9:30 a.m. Eastern Time shall be transmitted through ACT within 90 seconds after execution and shall be designated as ''.T'' trades to denote their execution outside normal market hours. Last sale reports of transactions in *non-exchange-listed securities* [OTC Equity Securities] executed between the hours of 4:00 p.m. and 5:15 p.m. Eastern Time shall also be transmitted through *the NASD* [ACT] within 90 seconds after execution; trades executed and reported after 4:00 p.m. Eastern Time shall be designated as ''.T'' to denote their execution outside normal market hours. Transactions not reported within 90 seconds must include the time of execution on the trade report.

(B) Last sale reports of transactions in *non-exchange-listed securities* [OTC Equity Securities] executed outside the hours of 8:00 a.m. and 5:15 p.m. Eastern Time shall be reported as follows:

(i) Last sale reports of transactions in American Depository Receipts (ADRs), Canadian issues, or domestic *non-exchange-listed securities* [OTC Equity Securities] that are executed between midnight and 8:00 a.m. Eastern Time shall be transmitted through ACT between 8:00 a.m. and 9:30 a.m. Eastern Time on trade date, be designated as ''.T'' trades to denote their execution outside normal market hours, and be accompanied by the time of execution. The party responsible for reporting on trade date, the trade details to be reported, and the applicable procedures shall be governed, respectively, by paragraphs (b), (c), and (d) below;

(ii) Last sale reports of transactions in ADRs, Canadian issues, or domestic *non-exchange-listed securities* [OTC Equity Securities] that are executed between 5:15 p.m. and midnight Eastern

Time shall be transmitted through ACT on the next business day (T+1) between 8:00 a.m. and 5:15 p.m. Eastern Time, be designated ''as/of'' trades to denote their execution on a prior day, and be accompanied by the time of execution. The party responsible for reporting on T+1, the trade details to be reported, and the applicable procedures shall be governed, respectively, by paragraphs (b), (c), and (d) below; and

(iii) Last sale reports of transactions in foreign securities (excluding ADRs and Canadian issues) shall be transmitted through ACT on T+1 regardless of time of execution. Such reports shall be made between 8:00 a.m. and 1:30 p.m. Eastern Time in the same manner as described in subparagraph (3)(B)(ii) above.

(4) All members shall report as soon as practicable to the Market [Surveillance] *Regulation* Department on Form T, last sale reports of transactions in *non-exchange-listed securities* [OTC Equity Securities] for which electronic submission into ACT is not possible (e.g., the ticker symbol for the security is no longer available or a market participant identifier is no longer active). Transactions that can be reported into ACT, whether on trade date or on a subsequent date on an ''as of'' basis (T+N), shall not be reported on Form T.

(5) A pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Rule 2110.

(6) All members shall append a trade report modifier as designated by the Association to transaction reports that reflect a price different from the current market when the execution is based on a prior reference point in time, which shall be accompanied by the prior reference time.

(b) Which Party Reports Transaction

(1) In *a* transaction[s] between two OTC Market Makers, only the member representing the sell side shall report *the transaction.*

(2) In *a* transaction[s] between an OTC Market Maker and a Non-Market Maker, only the OTC Market Maker shall report *the transaction.*

(3) In *a* transaction[s] between two Non-Market Makers, only the member representing the sell side shall report *the transaction.*

(4) In *a* transaction[s] between a member and a customer, the member shall report *the transaction.*

(c) Information To Be Reported

Each last sale report shall contain the following information:

(1) Symbol of the *non-exchange-listed security* [OTC Equity Security];

(2) Number of shares;

(3) Price of the transaction as required by paragraph (d) below; and

(4) A symbol indicating whether the transaction is a buy, sell, or cross.

(d) Procedures for Reporting Price and Volume

Members that are required to report pursuant to paragraph (b) above shall transmit last sale reports for all purchases and sales in *non-exchange-listed securities* [OTC Equity Securities] in the following manner:

(1) For agency transactions, report the number of shares and the price excluding the commission charged.

(2) For dual agency transactions, report the number of shares only once, and report the price excluding the commission charged.

(3) (A) For principal transactions, except as provided in subparagraph (B) hereof, report each purchase and sale transaction separately and report the number of shares and the price. For principal transactions that are executed at a price [which] *that* includes a mark-up, mark-down or service charge, the price reported shall exclude the mark-up, mark-down or service charge. Such reported price shall be reasonably related to the prevailing market, taking into consideration all relevant circumstances including, but not limited to, market conditions with respect to the *non-exchange-listed securities* [OTC Equity Security], the number of shares involved in the transaction, the published bids and offers with size displayed in any inter-dealer quotation system at the time of the execution (including the reporting firm's own quotation), the cost of execution and the expenses involved in clearing the transaction.

(B) Exception: A ''riskless'' principal transaction in which a member, after having received an order to buy a security, purchases the security as principal at the same price to satisfy the order to buy or, after receiving an order to sell, sells the security as principal at the same price to satisfy the order to sell, shall be reported as one transaction in the same manner as an agency transaction, excluding the mark-up or mark-down, commission-equivalent, or other fee.

(e) Transactions Not Required To Be Reported

The following types of transactions shall not be reported:

(1) Transactions [which] *that* are part of a primary distribution by an issuer or a registered secondary distribution (other than ''shelf distributions'') or of an unregistered secondary distribution;

(2) Transactions made in reliance on Section 4(2) of the Securities Act of 1933;

(3) Transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security;

(4) Purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the current market.

* * * * *

**[6700. REPORTING TRANSACTIONS IN NON-NASDAQ SECURITIES]**

**[6710. Definitions]**

[For the purposes of this Rule 6700 Series, unless the context requires otherwise:]

[(a) ''Issuer,'' in the case of quotations for American Depository Receipts (ADRs), shall mean the issuer of the deposited shares represented by such ADRs.]

[(b) ''Non-Nasdaq Reporting System'' means the electronic price and volume reporting system operated by the Association for non-Nasdaq securities.]

[(c) ''Non-Nasdaq security'' means any equity security that is neither included in The Nasdaq Stock Market nor traded on any national securities exchange. For purposes of Rules 6720 and 6730 of this Series, the term ''non-Nasdaq security'' shall also mean any Nasdaq security, if transactions in that security are effected by market makers that are not registered Nasdaq market makers pursuant to Rule 4611, and any security listed on an exchange, if transactions are required to be reported pursuant to the Rule 6400 Series.]

[(d) ''Priced entry'' shall mean a quotation consisting of a bid, offer, or both at a specified price.]

[(e) ''Quotation'' shall mean any bid or offer at a specified price with respect to a non-Nasdaq security, or any indication of interest by a broker or dealer in receiving bids or offers from others for such a security, or any indication by a broker or dealer that it wishes to advertise its general interest in buying or selling a particular non-Nasdaq security.]

[(f) ''Quotation medium'' means any inter-dealer quotation system (except for the PORTAL Market) or any publication or electronic communications network or other device that is used by brokers

or dealers to make known to others their interest in transactions in any non-Nasdaq security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell.]

**[6720. Price and Volume Reporting]**

[(a) Each member shall report through the Non-Nasdaq Reporting System the following information on all principal transactions in non-Nasdaq securities:]

[(1) The highest price at which it sold and the lowest price at which it purchased each non-Nasdaq security;]

[(2) the total volume of purchases and sales executed by it in each non-Nasdaq security; and]

[(3) whether the trades establishing the highest price at which the member sold and the lowest price at which the member purchased the security represented an execution with a customer or with another broker/dealer. The price to be reported for principal sales and purchases from customers shall be inclusive of mark-up or mark-down.]

[(b) Members shall report the price and volume information required by paragraph (a) of this Rule through the Non-Nasdaq Reporting System between the hours of 4 p.m. and 6:30 p.m. Eastern Time on the trade date or between 7:30 a.m. and 9 a.m. Eastern Time on the next business day, or at such other time as determined by the Association.]

[(c) The reporting requirements contained in paragraphs (a) and (b) of this Rule shall not apply to any non-Nasdaq security for which members are required to report individual transactions pursuant to the Rule 6600 Series.]

**[6730. Automated Submission of Trade Data]**

[RESERVED FOR FUTURE USE. REDESIGNATED AS 8213 BY SR–NASD–97–81 EFF. JAN. 16, 1998.]

***6630*[6740]. Submission of Rule 15c2–11 Information on [Non-Nasdaq] *Non-Exchange-Listed* Securities**

(a) Except as provided in SEC Rule 15c2–11(f)(1), (2), (3) and (5) under the Act, no member shall initiate or resume the quotation of a non-*exchange-listed* [Nasdaq] security in any quotation medium unless the member has demonstrated compliance with this Rule and the applicable requirements for information maintenance under Rule 15c2–11. A member shall demonstrate compliance by making a filing with, and in the form required by, the Association, which filing must be received at least three business days before the member's quotation is published or displayed in the quotation medium.

(b) The information to be filed shall contain one copy of all information required to be maintained under SEC Rule 15c2–11(a)(1), (2), (3)(iii), (4)(ii), or (5), including any information that may be required by future amendments thereto. In addition, this filing shall identify the issuer, the issuer's predecessor in the event of a merger or reorganization within the previous 12 months, the type of non-*exchange-listed* [Nasdaq] security to be quoted (e.g., ADR, warrant, unit, or common stock), the quotation medium to be used, the member's initial or resumed quotation, and the particular subsection of Rule 15c2–11 with which the member is demonstrating compliance. Additionally, if a member is initiating or resuming quotation of a non-*exchange-listed* [Nasdaq] security with a priced entry, the member's filing must specify the basis upon which that priced entry was determined and the factors considered in making that determination.

(c) If a member's initial or resumed quotation does not include a priced entry, a member shall supplement its prior filing under this Rule, in the form required by the Association, before inserting a priced entry for the affected non-*exchange-listed* [Nasdaq] security in a quotation medium. The supplemental filing shall specify the basis upon which the proposed priced entry was determined and the factors considered in making that determination. The supplemental filing must be received by the Association at least three business days before the member's priced entry first appears in a quotation medium.

(d) No Change.

***6640. Limit Order Protection***

*(a) Members shall be prohibited from ''trading ahead'' of customer limit orders that a member accepts in non-exchange-listed securities quoted on a quotation medium. Members handling customer limit orders, whether received from their own customers or from another member, are prohibited from trading at prices equal or superior to that of the customer limit order without executing the limit order. Members are under no obligation to accept limit orders from any customer.*

*(b) Members may avoid the obligation specified in paragraph (a) through the provision of price improvement. If a customer limit order is priced at or inside the current inside spread, however, the price improvement must be for a minimum of the lesser of $0.01 or one-half (½) of the current inside spread. For purposes of this rule, the inside spread shall be defined as the difference between the best reasonably available bid and offer in the subject security.*

*(c) Notwithstanding subparagraph (a) of this rule, a member may negotiate specific terms and conditions applicable to the acceptance of limit orders only with respect to such orders that are:*

*(1) For customer accounts that meet the definition of an ''institutional account'' as that term is defined in Rule 3110(c)(4); or*

*(2) for 10,000 shares or more, and greater than $200,000 in value.*

*(d) Contemporaneous trades.*

*A member that trades through a held limit order must execute such limit order contemporaneously, or as soon as practicable, but in no case later than five minutes after the member has traded at a price more favorable than the customer's price.*

*(e) Application.*

*(1) This rule shall apply only to non-exchange-listed securities specifically identified as such on the NASD website.*

*(2) This rule shall apply from 9:30 a.m. to 4:00 p.m. Eastern Time.*

*(3) This rule shall be in effect until February 8, 2002.*

**[67]*66*50. Minimum Quotation Size Requirements For [OTC] *Non-Exchange-Listed* Equity Securities**

[(a)] Every member firm that functions as a market maker in [OTC] *Non-Exchange-Listed* Equity Securities by entering firm quotations into [the OTC Bulletin Board Service (OTCBB) (or] any [other] inter-dealer quotation system that permits quotation updates on a real-time basis[)] must honor those quotations for the minimum size defined in the table below. In this regard, it is the market maker's responsibility to determine the minimum size requirement applicable to its firm bid and/or offer in each of its registered securities [(excluding OTC Equity Securities for which the OTCBB will not accept firm quotations)]. Depending on the price level of the bid or offer, a different minimum size can apply to each side of the market being quoted by the member firm in a given security.

| Price (bid or offer) | Minimum quote size |
|---|---|
| 0–.50* | 5,000 |
| .51–1.00 | 2,500 |
| 1.01–10.00 | 500 |
| 10.01–100.00 | 200 |
| 100.01–200.00 | 100 |
| 200.01–+ | 50 |

A*n* [Nasdaq] *NASD* officer at the Executive Vice President level or above, within its discretion may modify the minimum quotation size for those securities with a price exceeding $200.

[(b) For purposes of this Rule, the term ''OTC Equity Security'' means any equity security not classified as a ''designated security'' for purposes of the Rule 4630 and 4640 Series, or as an ''eligible security,'' for purposes of the Rule 6400 Series. The term does not include ''restricted securities,'' as defined by SEC Rule 144(a)(3) under the Securities Act of 1933, nor any securities designated in the PORTAL Market.SM]

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**6900. REPORTING TRANSACTIONS IN DIRECT PARTICIPATION PROGRAMS**

All secondary market transactions by members in Direct Participation Program securities other than transactions executed on a registered national securities exchange [or through Nasdaq] shall be reported to the Association in accordance with the procedures set forth below. All trade tickets shall be time-stamped at the time of execution.

* * * * *

**6920. Transaction Reporting**

(a) through (d) No Changes.

(e) Transactions Not Required To Be Reported

The following transactions are not required to be reported under the foregoing procedures:

(1) through (2) No Changes.

(3) Transactions executed on a registered national securities exchange [or through Nasdaq].

* * * * *

**7000. CHARGES FOR SERVICES AND EQUIPMENT—TO BE DETERMINED**

* * * * *

**8200. INVESTIGATIONS**

8210. No Change.

**[8212. Automated Submission of Trading Data for the Nasdaq International Service Requested by the Association] *Reserved***

[(a) Every Association member and approved affiliate that participates in the Nasdaq International Service as defined in the Rule 5100 Series (''Nasdaq International'') as a Service market maker or an order-entry firm shall submit to the Association the trade data specified below in automated format as may be prescribed by the Association from time to time. This information shall be supplied with respect to any transaction or transactions that are the subject of a request for information made by the Association. In this rule the terms ''participating firm'' and ''firm'' include both Association members and approved affiliates that utilize the Service.]

[(b) If the transaction was a proprietary transaction effected or caused to be effected by the participating firm for any account in which such firm, or person associated with the firm, is directly or indirectly interested, the participating firm shall submit or cause to be submitted the following information:]

[(1) Clearing house number, or alpha symbol as used by the participating firm submitting the data;]

[(2) Clearing house number(s), or alpha symbol(s) as may be used from time to time, of the participating firm on the opposite side of the transaction;]

[(3) Identifying symbol assigned to the security;]

[(4) Date transaction was executed;]

[(5) Number of shares, ADRs, units, warrants or rights for each specific transaction and whether each transaction was a purchase, sale or short sale;]

[(6) Transaction price;]

[(7) Account number; and]

[(8) Market center where transaction was executed.]

[(c) If the transaction was effected or caused to be effected by the participating firm for any customer account, such firm shall submit or cause to be submitted the following information:]

[(1) The data described in subparagraphs (b)(1) through (8);]

[(2) Customer name, address(es), branch office number, registered representative number, whether order was solicited or unsolicited, date account opened and employer name, and the tax identification number(s); and]

[(3) If the transaction was effected for another Association member or participating firm, whether the other party was acting as principal or agent on the transaction or transactions that are the subject of the Association's request.]

[(d) In addition to the above trade data, a participating firm shall submit such other information in such automated format as may from time to time be required by the Association.]

[(e) Pursuant to the Rule 9600 Series, the Association may exempt a person from the requirement that the data prescribed in paragraphs (b) through (d) above be submitted to the Association in an automated format for good cause shown.]

**8213. Automated Submission of Trading Data for Non-Exchange-Listed [Nasdaq] Securities Requested by the Association**

Each member shall submit trade data specified in Rule 8211 in automated format as may be prescribed by the Association from time to time with respect to any transaction or transactions involving non-*exchange-listed* [Nasdaq] securities as defined in the Rule [6700]*6600* Series that are the subject of a request for information made by the Association. Pursuant to the Rule 9600 Series, the Association may exempt a member from the requirement that the data prescribed in paragraphs (b) through (d) of Rule 8211 be submitted to the Association in an automated format for good cause shown.

* * * * *

**9000. CODE OF PROCEDURE**

**9100. APPLICATION AND PURPOSE**

**9110. Application**

(a) through (b) No Change.

(c) Incorporation of Defined Terms and Cross References

Unless otherwise provided, terms used in the Rule 9000 Series shall have the meaning as defined in Rule 0120 and Rule 9120. References within the Rule 9000 Series to Association offices or departments refer to offices so designated by the NASD[,] *or* NASD Regulation [or Nasdaq].

* * * * *

**9120. Definitions**

(a) through (r) No Change.

(s) ''Market Regulation Committee''

The term ''Market Regulation Committee'' means the committee of NASD Regulation designated to consider the federal securities laws and the rules and regulations adopted thereunder and various Rules of the Association and policies relating to:

(1) through (3) No Change.

(4) trading practices, including rules prohibiting manipulation and insider trading, and those Rules designated as Trading Rules (Rule 3300 Series), [the Nasdaq Stock Market Rules] *the NASD Alternative Display Facility Rules* (Rule 4000 Series), other [Nasdaq and] NASD [Market] *Reporting Facility* Rules (Rule 5000 Series), NASD Systems and Programs Rules (Rule 6000 Series), and Charges for Services and Equipment Rules (Rule 7000 Series).

(t) through (cc) No Change.

* * * * *

**9160. Recusal or Disqualification**

No person shall participate as an Adjudicator in a matter governed by the Code as to which he or she has a conflict of interest or bias, or circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case the person shall recuse himself or herself, or shall be disqualified as follows:

(a) through (c) No Change.

(d) Rule 9514 Hearing Panel

The NASD Regulation Board [or Nasdaq Board] shall have authority to order the disqualification of a member of a Hearing Panel appointed by such Board under Rule 9514(b);

(e) through (g) No Change.

* * * * *

**9230. Appointment of Hearing Panel, Extended Hearing Panel**

**9231. Appointment by the Chief Hearing Officer of Hearing Panel or Extended Hearing Panel**

(a) No Change.

(b) Hearing Panel

The Hearing Panel shall be composed of a Hearing Officer and two Panelists, except as provided in Rule 9234 (a), (c), (d), or (e). The Hearing Officer shall serve as the chair of the Hearing Panel. Each Panelist shall be associated with a member of the Association or retired therefrom.

(1) Except as provided in (2), the Chief Hearing Officer shall select as a Panelist a person who:

(A) through (C) No Change.

(D) previously served as a Director[, a director of the Nasdaq Board of Directors,] or a Governor, but does not serve currently in any of these positions.

(2) No Change.

(c) through (d) No Change.

* * * * *

**9500. OTHER PROCEEDINGS**

**9510. Summary and Non-Summary Proceedings**

9511. No Change

**9512. Initiation of Summary Proceeding**

(a) Authorization

(1) No Change.

(2) The NASD Board may authorize the President of NASD Regulation [or the President of Nasdaq] to issue on a case-by-case basis a written notice that summarily limits or prohibits any person with respect to access to services offered by the Association if paragraph (a)(1) applies to such person or, in the case of a person who is not a member, if the NASD Board determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the Association.

(b) through (c) No Change.

* * * * *

**9514. Hearing and Decision**

(a) No Change.

(b) Designation of Party for the Association and Appointment of Hearing Panel

If a member, associated person, or other person subject to a notice under Rule 2210, 2220, 9512, or 9513 files a written request for a hearing, an appropriate department or office of the Association shall be designated as a Party in the proceeding, and a Hearing Panel shall be appointed.

[(1)] If the President of NASD Regulation or NASD Regulation staff issued the notice initiating the proceeding under Rule 2210, 2220, 9512(a), or 9513(a), the President of NASD Regulation shall designate an appropriate NASD Regulation department or office as a Party. For proceedings initiated under Rule 9513(a) concerning failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation, the Chief Hearing Officer shall appoint a Hearing Panel composed of a Hearing Officer. For any other proceedings initiated under Rule 2210, 2220, 9512(a), or 9513(a) by the President of NASD Regulation or NASD Regulation staff, the NASD Regulation Board shall appoint a Hearing Panel composed of two or more members; one member shall be a Director of NASD Regulation, and the remaining member or members shall be current or former Directors of NASD Regulation or Governors. The President of NASD Regulation may not serve on a Hearing Panel.

[(2) If the President of Nasdaq or Nasdaq staff issued the notice under Rule 9512(a) or 9513(a), the President of Nasdaq shall designate an appropriate Nasdaq department or office as a Party, and the Nasdaq Board shall appoint a Hearing Panel. The Hearing Panel shall be composed of two or more members. One member shall be a director of Nasdaq, and the remaining member or members shall be current or former directors of Nasdaq or Governors. The President of Nasdaq may not serve on the Hearing Panel.]

(c) through (e) No Change.

(f) Hearing Panel Consideration

(1) through (4) No Change.

(5) Custodian of the Record

If the President of NASD Regulation or NASD Regulation staff initiated the proceeding under Rule 2210, 2220, 9512, or 9513, the Office of the General Counsel of NASD Regulation shall be the custodian of the record, except that the Office of Hearing Officers shall be the custodian of record for proceedings initiated under Rule 9513(a) concerning failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation. [If the President of Nasdaq or Nasdaq staff initiated the proceeding under Rule 9512 or 9513, the Office of the General Counsel of Nasdaq shall be the custodian of the record.]

(6) No Change.

(g) No Change.

* * * * *

**9700. PROCEDURES ON GRIEVANCES CONCERNING THE AUTOMATED SYSTEMS**

**9710. Purpose**

The purpose of this Rule 9700 Series is to provide, where justified, redress for persons aggrieved by the operations of any automated quotation, execution, or communication system owned or operated by the Association, or any subsidiary thereof, and approved by the Commission, not otherwise provided for by the Code of Procedure as set forth in the Rule 9000 Series, the Uniform Practice Code as set forth in the Rule 11000 Series.[, or the Procedures for Review of Nasdaq Listing Determinations as set forth in the Rule 4800 Series.]

**9720. Form of Application**

All applications shall be in writing, and shall specify in reasonable detail the nature of and basis for the redress requested. If the application consists of several allegations, each allegation shall be stated separately. All applications must be signed and shall be directed to *the NASD* [Nasdaq].

* * * * *

**9730. Request for Hearing**

Upon request, the applicant shall be granted a hearing after reasonable notice. In the absence of such request for a hearing, [Nasdaq] the NASD may, in its discretion, have any application set down for hearing or consider the matter on the basis of the application and supporting documents.

* * * * *

**9760. *Reserved* [Review by the Nasdaq Listing and Hearing Review Council]**

[The decision shall be subject to review by the Nasdaq Listing and

Hearing Review Council on its own motion within 45 calendar days after issuance of the written decision. Any such decision shall also be subject to review upon application of any person aggrieved thereby, filed within 15 calendar days after issuance. The institution of a review, whether on application or on the initiative of the Nasdaq Listing and Hearing Review Council, shall not operate as a stay of the decision.]

* * * * *

**9770. *Reserved* [Findings of the Nasdaq Listing and Hearing Review Council on Review]**

[Upon consideration of the record, and after such further hearings as it shall order, the Nasdaq Listing and Hearing Review Council shall affirm, modify, reverse, dismiss, or remand the decision. The Nasdaq Listing and Hearing Review Council shall set forth specific grounds upon which its determination is based.]

* * * * *

**9780. *Reserved* [Discretionary Review by the Board]**

[Determinations of the Nasdaq Listing and Hearing Review Council may be reviewed by the NASD Board of Governors solely upon the request of one or more Governors not later than the NASD Board meeting next following the Nasdaq Listing and Hearing Review Council's decision but which is 15 calendar days or more following the decision of the Nasdaq Listing and Hearing Review Council. Notwithstanding the preceding sentence, the NASD Board may determine it is advisable to call for review any decision of the Nasdaq Listing and Hearing Review Council within the 15 calendar day period following the decision of the Nasdaq Listing and Hearing Review Council. Such review, which may be undertaken solely at the discretion of the Board, shall be in accordance with resolutions of the Board governing the review of Nasdaq Listing and Hearing Review Council determinations. The Board shall affirm, modify or reverse the determinations of the Nasdaq Listing and Hearing Review Council or remand the matter to the Nasdaq Listing and Hearing Review Council with appropriate instructions. The institution of discretionary review by the Board shall not operate as a stay of the decision.]

* * * * *

**11300. DELIVERY OF SECURITIES**

**11310. Book-Entry Settlement**

(a) through (c) No Change.

(d) (1) No Change.

(2) A determination under *r*[R]ule*s* [4310(c)(23) or under the corresponding rule] of a national securities exchange that a security depository has included a CUSIP number identifying a security in its file of eligible issues does not render the security ''depository eligible'' under this Rule until:

(A) in the case of any new issue distributed by an underwriting syndicate on or after the date a securities depository system for monitoring repurchases of distributed shares by the underwriting syndicate is available, the date of the commencement of trading in such security on [The Nasdaq Stock Market] *the exchange;* or

(B) in the case of any new issue distributed by an underwriting syndicate prior to the date a securities depository system for monitoring repurchases of distributed shares by the underwriting syndicate is available where the managing underwriter elects not to deposit the securities on the date of the commencement of trading in such security on [The Nasdaq Stock Market] *the exchange,* such later date designated by the managing underwriter in a notification submitted to the securities depository; but in no event more than three (3) months after the commencement of trading in such security on [The Nasdaq Stock Market] *the exchange.*

(e) through (g) No Change.

* * * * *

**11500. DELIVERY OF SECURITIES WITH RESTRICTIONS**

**11580. Transfer of Limited Partnership Securities**

(a) Each member [who] *that* participates in the transfer of limited partnership securities, as defined in Rule 2810, shall use standard transfer forms in the same form as set forth in IM–11580. This Rule shall not apply to limited partnership securities [which] that are traded on [The Nasdaq Stock Market or] a registered national securities exchange, or are on deposit in a registered securities depository and settle regular way.

* * * * *

**11800. CLOSE-OUT PROCEDURES**

11810. No Change

**IM–11810. Sample Buy-In Forms**

(a) through (b) No Change.

(c) Seller's Failure to Deliver After Receipt of Notice

(1) (A) No Change.

(B) For transactions in [Nasdaq] *exchange-listed* [S]*s*ecurities where the buyer is a customer (other than another member), upon failure of a clearing corporation to effect delivery in accordance with a buy-in notice, the contract must be closed by purchasing for ''cash'' in the best available market, or at the option of the buyer for guaranteed delivery, for the account and liability of the party in default all or any part of the securities necessary to complete the contract.

(2) No Change.

(d) through (m) No Change.

* * * * *

**[11890. Clearly Erroneous Transactions]**

[(a) Authority to Review Transactions]

[(1) For the purposes of this Rule, the terms of a transaction are clearly erroneous when there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security.]

[(2) Officers of The Nasdaq Stock Market, Inc. (''Nasdaq'') designated by the President of Nasdaq shall, pursuant to the procedures set forth in paragraph (b) below, have the authority to review any transaction arising out of the use or operation of any automated quotation, execution, or communication system owned or operated by Nasdaq and approved by the Commission, excluding transactions arising from use of the Nasdaq Application of OptiMark. A Nasdaq officer shall review transactions with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. Based upon this review, the officer shall decline to act upon a disputed transaction if the officer believes that the transaction under dispute is not clearly erroneous, or, if the officer determines the transaction in dispute is clearly erroneous, he or she shall declare that the transaction is null and void or modify one or more terms of the transaction. When adjusting the terms of a transaction, the Nasdaq officer shall seek to adjust the price and/or size of the transaction to achieve an equitable rectification of the error that would place the parties to a transaction in the same position, or as close as possible to the same position, that they would have been in had the error not occurred. Nasdaq shall promptly provide oral notification of a determination to the parties involved in a disputed transaction and thereafter issue a

written confirmation of the determination.]

[(b) Procedures for Reviewing Transactions]

[(1) Any member or person associated with a member that seeks to have a transaction reviewed pursuant to paragraph (a) hereof, shall submit a written complaint, via facsimile or otherwise, to Nasdaq Market Operations in accordance with the following time parameters:]

[(A) For transactions occurring at or after 9:30 a.m., Eastern Time, but prior to 10:00 a.m., Eastern Time, complaints must be submitted by 10:30 a.m., Eastern Time; and]

[(B) for transactions occurring prior to 9:30 a.m., Eastern Time and at or after 10:00 a.m., Eastern Time, complaints must be submitted within thirty minutes.]

[(2) Once a complaint has been received in accord with subparagraph (b)(1) above:]

[(A) The complainant shall have up to thirty (30) minutes, or such longer period as specified by Nasdaq staff, to submit any supporting written information concerning the complaint necessary for a determination under paragraph (a)(2), via facsimile or otherwise;]

[(B) the counterparty to the trade shall be verbally notified of the complaint by Nasdaq staff and shall have up to thirty (30) minutes, or such longer period as specified by Nasdaq staff, to submit any supporting written information concerning the complaint necessary for a determination under paragraph (a)(2), via facsimile or otherwise; and]

[(C) either party to a disputed trade may request the written information provided by the other party pursuant to this subparagraph.]

[(3) Notwithstanding paragraph (b)(2) above, once a party to a disputed trade communicates that it does not intend to submit any further information concerning a complaint, the party may not thereafter provide additional information unless requested to do so by Nasdaq staff. If both parties to a disputed trade indicate that they have no further information to provide concerning the complaint before their respective thirty-minute information submission period has elapsed, then the matter may be immediately presented to a Nasdaq officer for a determination pursuant to paragraph (a)(2) above.]

[(4) Each member and/or person associated with a member involved in the transaction shall provide Nasdaq with any information that it requests in order to resolve the matter on a timely basis notwithstanding the time parameters set forth in paragraph (b)(2) above.]

[(5) Once a party has applied to Nasdaq for review, the transaction shall be reviewed and a determination rendered, unless both parties to the transaction agree to withdraw the application for review prior to the time a decision is rendered pursuant to paragraph (a)(2).]

[(c) Procedures for Reviewing Transactions Executed During System Disruptions or Malfunctions]

[In the event of a disruption or malfunction in the use or operation of any automated quotation, execution, or communication system owned or operated by Nasdaq and approved by the Commission, Nasdaq acting through an officer designated by the President of Nasdaq pursuant to paragraph (a)(2), may, on its own motion pursuant to the standards set forth in paragraph (a), declare transactions arising out of the use or operation of such systems during the period of such disruption or malfunction null and void or modify the terms of these transactions; provided that, in the absence of extraordinary circumstances, a Nasdaq officer must take action pursuant to this paragraph within thirty (30) minutes of detection of the erroneous transaction(s), but in no event later than 6:00 p.m., Eastern Time, on the next trading day following the date of the trade at issue. When Nasdaq takes action pursuant to this subparagraph, the member firms involved in the transaction shall be notified as soon as is practicable and shall have a right to appeal such action in accordance with paragraph (d)(1) below.]

[(d) Review by the Market Operations Review Committee (''MORC'')]

[(1) A member or person associated with a member may appeal a determination made under paragraphs (a)(2) or (c) to the MORC provided such appeal is made in writing, via facsimile or otherwise, within thirty (30) minutes after the member or person associated with a member receives verbal notification of such determination, except that if Nasdaq notifies the parties of action taken pursuant to paragraph (c) after 4:00 p.m., either party has until 9:30 a.m. the next trading day to appeal. Once a written appeal has been received, the counterparty to the trade will be notified of the appeal and both parties shall be able to submit any additional supporting written information, via facsimile or otherwise, up until the time the appeal is considered by the Committee. Either party to a disputed trade may request the written information provided by the other party during the appeal process. An appeal to the Committee shall not operate as a stay of the determination made pursuant to paragraph (a)(2) or (c) above. Once a party has appealed a determination to the Committee, the determination shall be reviewed and a decision rendered, unless both parties to the transaction agree to withdraw the appeal prior to the time a decision is rendered by the Committee. Upon consideration of the record, and after such hearings as it may in its discretion order, the Committee, pursuant to the standards set forth in paragraph (a), shall affirm, modify, reverse, or remand the determination made under paragraph (a)(2) or (c) above.]

[(2) The decision of the Committee shall be final and binding upon any member or person associated with a member and shall constitute final Association action on the matter in issue. Any adverse determination by a Nasdaq officer pursuant to paragraph (a)(2) or (c) or any adverse decision by the Committee pursuant to paragraph (d)(1) shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration.]

* * * * *

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD 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*

Background

The purpose of the proposed rule change is twofold: (1) to amend the Association's rules to reflect the anticipated approval of Nasdaq as a national securities exchange[4] and its resultant separation from NASD; and (2) to establish the rules that would govern trading otherwise than on an exchange, including the implementation and

[4] Securities Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 (June 13, 2001).

operation of the ADF. The ADF is a quotation collection, trade comparison, and trade reporting facility being developed by NASD in accordance with the Commission's SuperMontage Approval Order [5] and in conjunction with Nasdaq's anticipated registration as a national securities exchange.

Proposed Rule Change Relating to the Separation of Nasdaq

The NASD is in the process of spinning off its Nasdaq subsidiary as an independent, for-profit company. As the result of a second private placement of Nasdaq shares completed on January 18, 2001, the NASD's ownership interest in Nasdaq was reduced to a minority interest. Before Nasdaq can fully separate from the NASD, it must become registered as a national securities exchange with the SEC. Nasdaq has filed a Form 1 with the SEC requesting such registration. Notice and a request for comments on Nasdaq's completed application for exchange registration was published for comment in the **Federal Register** on June 13, 2001,[6] and the comment period expired on August 29, 2001.

Upon Nasdaq's registration as a national securities exchange, the NASD will no longer control the voting rights in the common stock of Nasdaq. At that point, Nasdaq and the NASD will be unaffiliated corporate entities, and therefore each will need separate rules applicable to their respective members. To effectuate that change, the NASD must modify existing NASD rules, effective upon Nasdaq's registration as an exchange, to reflect this separation of Nasdaq from the NASD. These changes include deleting Nasdaq-specific rules, such as listing and qualification requirements; replacing references to ''Nasdaq'' with ''NASD'' or ''exchange,'' as applicable; and renaming and renumbering certain rules. The proposed rule change also includes corrections of minor grammatical or typographical errors and other miscellaneous non-substantive changes.

*Deleted Rules:* The Association proposes to delete the following rules in their entirety because they either relate exclusively to participation in, and operation of, the Nasdaq Stock Market or would no longer be applicable upon the establishment of the ADF: 2852, 2854, 2870 through 2885; 5100 through 5113; 6700 through 6740; 8212 and 11890.

*IM–2110–2 and Rule 6640 Trading Ahead of Customer Orders:* The proposed rule change would eliminate an exemption in IM–2110–2 for certain customer limit orders received prior to September 1, 1995. The passage of time has rendered this exemptive language obsolete and therefore it no longer bears on the existing application of the interpretation. This change is consistent with Nasdaq's rule filing in connection with its exchange registration application, which contains an identical proposed rule change.

Existing Rule 6541 extends the principles of IM–2110–2 to certain OTC Bulletin Board stocks as part of a pilot program that will continue at least until February 8, 2002. Rule 6541 is renumbered in the rule proposal as new Rule 6640, and the language is changed to include ''non-exchange-listed'' securities, rather than ''Bulletin Board'' securities. Initially, Rule 6640 would cover the same Bulletin Board stocks that are part of the ongoing pilot program. The language change is made in anticipation of the Bulletin Board becoming part of the Nasdaq-listed stock market,[7] and its listed securities becoming subject to IM–2110–2. At that time, the NASD may extend the scope of Rule 6640 to include additional non-exchange-listed securities. The language change in the rule proposal would allow NASD that flexibility without having to amend the rule.

*IM–2310–2 SEEDS Transactions:* As a result of Nasdaq's anticipated separation from the NASD, the proposed rule change deletes Rule 4420, which primarily involves quantitative listing criteria for Nasdaq National Market securities. However, existing Rule 4420(g)(5) describes an obligation on the part of the Association to distribute a circular to member firms that provides guidance when handling Hybrid Securities and Selected Equity-linked Debt Securities (''SEEDS'') transactions. Since that provision applies to the NASD and is regulatory in nature, it has been retained and moved to IM–2310–2. The proposed rule change also would allow either Nasdaq or the NASD to distribute the compliance circular.

*Rule 2840 Trading in Index Warrants:* The proposed rule change would delete language in Rule 2840 related to index warrants listed on the Nasdaq Stock Market. The existing rule was promulgated because Nasdaq expected eventually to list such index warrants. However, as evidenced by Nasdaq's proposed rule filing in connection with its application for exchange registration, Nasdaq no longer intends to list index warrants. The remainder of Rule 2840 remains unchanged, as it has continued applicability to NASD members that are not also members of an exchange on which they trade index warrants.

*Rules 2850 through 2885 Position Limits and Options Trading:* To reflect Nasdaq's separation from the NASD, the proposed rule change deletes from Rules 2850 through 2885 all language related to position limits and transactions in index warrants and options traded on Nasdaq. However, the rule change retains all provisions related to options trading in the over-the-counter market.

*Rule 6600 Transactions in Non-Exchange-Listed Securities:* The proposed rule change would combine the existing Rule 6600 and 6700 Series into a single Rule 6600 Series that governs transactions in non-exchange-listed equity securities. The proposed combination is intended to eliminate redundancies in the existing rules, while maintaining all of the regulatory requirements for trading and reporting transactions in such securities.

Proposed Rule 6620 also would require those NASD members that effect trades otherwise than on an exchange in non-exchange-listed securities to enter into contractual agreements to use Nasdaq's ACT system for trade comparison and trade reporting. The NASD has determined that this contractual agreement with Nasdaq would be the most practical, efficient and fair means to provide access to the ACT system for members that effect such trades.

First, most NASD members are already connected to ACT, since ACT is used currently to report these transactions. Second, this approach would relieve the NASD of significant additional cost to process and administer these services, and Nasdaq already has these operations in place. Third, the subject securities do not trade on Nasdaq; therefore, no competitive issues would be raised. Finally, the NASD would maintain regulatory responsibility to monitor and enforce compliance with the ACT rules by its members that effect transactions in non-exchange-listed securities. Nasdaq would function only as a vendor and systems operator.

The proposed rule change also would amend the minimum quotation size requirements required by Rule 6750 to reflect the fact that upon Nasdaq exchange registration, the NASD would no longer operate the OTC Bulletin Board Service. Therefore, references to the OTC Bulletin Board would be deleted from the rule.

[5] Securities Exchange Act Release No. 43863 (Jan. 19, 2001), 66 FR 8020 (Jan. 26, 2001).

[6] Securities Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 (June 13, 2001) (File No. 10–131).

[7] *See* SR–NASD–2001–82, which is currently being reviewed by the Commission.

Proposed Rule Change Relating to Trading Otherwise Than on an Exchange

The proposed rule change generally would clarify that NASD rules that relate to trading practices (*e.g.,* quotations, trade reporting, short selling, trading halts) apply only to transactions otherwise than on an exchange. To achieve this, the proposal would add a definition of the term ''otherwise than on an exchange'' in Rule 4200 and also specify in particular rules where the rule applies only to trading otherwise than on an exchange.[8] The term ''otherwise than on an exchange'' is defined in the proposal to mean a trade effected by an NASD member otherwise than on or through a national securities exchange. The determination of what constitutes a trade ''on or through'' a national securities exchange would be left to the respective exchanges and applicable statutes, rules and regulations, as approved by the SEC.

The rule proposal, for the most part, maintains the same organization as the existing NASD rules. For example, rules related to trading Nasdaq securities otherwise than on an exchange are found in the Rule 4600 Series. Rules related to trading in Consolidated Quotation Service (''CQS'') securities otherwise than on an exchange similarly remain in the Rule 6300 Series. While the rules governing CQS securities are similar to those governing Nasdaq securities (*e.g.,* the trade reporting rules) the proposal maintains the historically separate rule structure that has been considered helpful by many market participants.

The NASD is considering combining the similar rules, where possible, and placing them in a section that would encompass all rules related to trading otherwise than on an exchange. The current rule proposal begins such a process by establishing a new Rule 5000 Series, Trading Otherwise Than On An Exchange, that would contain some rules that apply both to Nasdaq and CQS securities, such as the short sale rule, trading halts, transactions involving initial public offerings, and clearance and settlement. Rules that previously resided in the Rule 5000 Series, and have not otherwise been deleted, have been moved. Under the proposal, rules related to the Intermarket Trading System (''ITS'') (Rule 5200 Series) would be moved to the Rule 6500 Series. Rules related to The Portal Market (Rule 5300 Series) would be moved to the Rule 6700 Series.

*The NASD Alternative Display Facility:* The NASD would build a quote collection, trade comparison and trade reporting facility that meets specific performance and security standards and provides users with the necessary functionality to make it a viable alternative display facility to Nasdaq.

The facility would provide market participants—market makers, ECNs and order entry firms—the ability to collect and view quotations, and to report transactions to the appropriate Securities Information Processor (''SIP'')[9] for consolidation and dissemination of data to vendors and ADF market participants. The facility also would provide for trade comparison through the Trade Comparison and Reporting Service (''TRACS''), the details of which are described below. The facility further would provide for real-time data delivery to NASD Regulation for regulatory purposes, including enforcement of firm quote and related rules.

The ADF is expected to launch by the end of the first quarter of calendar year 2002, provided that Nasdaq has been approved as a national securities exchange. The NASD or a vendor (other than Nasdaq) would maintain and operate the facility. The NASD would establish the rules that govern the ADF, and NASD Regulation will enforce the rules and provide market surveillance.

The proposed rule change also includes a number of changes that more specifically reflect the implementation and operation of the ADF. Most significantly, the proposed rule change would replace in their entirety the existing Rule 4000 Series and Rules 6100, 6300, 6400 and 6500 with a new set of rules to govern the ADF. For the most part, the proposed ADF rules closely track existing Nasdaq rules or rules proposed by Nasdaq in its exchange registration and existing rules that govern the CQS.[10] The ADF would provide trade comparison and trade reporting services that would be similar to Nasdaq's ACT system. However, the proposed ADF rules have been refined to reflect the more limited functionality of the ADF, most particularly the absence of an automatic execution or order routing system. Instead, the proposed rule change would require ADF market participants to provide direct or indirect access to their quotations, as described in more detail below.

As required by existing Nasdaq rules, ADF participants would be required to register as market makers or ECNs for each security in which they make a market or display orders. Market makers would receive approval for registration upon demonstration that they are members in good standing and comply with the net capital and other financial responsibility requirements of the Act. To ease the administrative burden on NASD members, the NASD rules initially would allow registration as a market maker in the ADF upon proof that a firm is a registered Nasdaq market maker. Eventually, members seeking to become an NASD registered market maker would have to comply either with Rule 1017(a)(5) (which requires an application for approval for a material change in business operations) or Rule 1010 (application for initial membership in the NASD).

Additionally, the proposed rule change tracks Nasdaq requirements that market makers maintain continuous two-sided, firm quotations and prescribes market maker obligations when a bid or offer locks or crosses the market. However, as described in more detail below, the rule proposal does not provide for stabilizing or penalty bids, as existing Nasdaq rules do. The proposal generally adopts Nasdaq's anticipated approach to trade reporting: the seller reports both intramarket and intermarket trades between market makers, the market maker reports trades between it and a customer, and an NASD member reports trades between it and a non-member.[11] ECNs would report all trades effected within the ECN (*i.e.,* when a market maker sells through an ECN). As described below, the ADF also would support a ''three party trade report'' for ECNs.

Order Access Rule: The ADF rules differ from existing Nasdaq rules most significantly with respect to participants' ability to reach quotes displayed in the ADF. The NASD would not provide ADF market participants an order routing capability, other than

[8] *See e.g.,* the new Rule 5000 Series, which sets forth rules that apply generally to trading otherwise than on an exchange (short selling and trading halts) and Rule 4633, which governs specifically transactions effected otherwise than on an exchange in Nasdaq securities.

[9] Nasdaq initially will be the designated SIP for all transactions in Nasdaq securities, while the Securities Industry Automation Corporation will continue to function as the SIP for transactions in listed securities.

[10] Should Nasdaq amend its exchange registration with respect to matters such as trade reporting, short selling, or quotation obligations, we anticipate making similar amendments to the proposed NASD rules.

[11] Securities Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 (June 13, 2001) (File No. 10–131). *But see* note 10, *supra.*

ITS.[12] In order to provide a means to enforce compliance with firm quote obligations, locked and crossed quotation obligations,[13] and to provide other market participants within the ADF and in other markets the ability to provide best execution, in the absence of an NASD-provided router, the proposed rule change contains new Rule 4300. This rule would require market participants to provide direct electronic access to other market participants and direct or indirect electronic access to all other NASD members seeking access. Proposed Rule 4300 defines ''direct electronic access'' as the ability to deliver an order for execution directly against an individual NASD market participant's best bid and offer without the need for voice communication, and with the equivalent speed, reliability, availability and cost as are made available to the NASD market participant's own customer broker/dealers or other active customers or subscribers. The proposal would not, however, preclude market participants from charging more for the access required by the rule—sometimes called ''hit or take'' access—than for full service access, so long as hit or take access is not charged discriminatorily, *i.e.,* charged differently for one group of users (*e.g.,* subscribers) than for others (*e.g.,* non-subscribers). While ''hit or take'' is more limited functionally than full book access, it also is a liquidity taking function and some markets—including Nasdaq—charge more for taking liquidity than providing it.[14]

The proposed rule change defines ''indirect electronic access'' as the ability to route an order through customer broker/dealers of an NASD market participant for execution against the NASD market participant's best bid and offer, without the need for voice communication, and with equivalent speed, reliability, availability and cost as are available to the market participant's customer broker/dealer providing the indirect access or other active customers or subscribers. Market participants would be prohibited from influencing the prices that customer broker/dealers impose for providing indirect access or in any way discouraging the provision of indirect access.

ADF market participants could satisfy these requirements either by providing their own bilateral linkages or by participating in multilateral linkage facilities provided by private vendors. In addition, with respect to links with exchanges, market participants could satisfy these requirements either by linking with the exchange or by linking with market participants operating within those exchanges.

To allow NASD Regulation to monitor compliance with certain trading rules, such as the firm quote rule and ''trade or move'' rules, the proposed rule also requires that all NASD market participants that display quotations or orders in the ADF record specified items of information pertaining to orders they receive via direct or indirect electronic access, and report this information to NASD Regulation on a real-time basis. The proposed rule requires this information to be provided to NASD Regulation within 10 seconds of the receipt of an order and, if applicable, when an order is acted upon or responded to. As part of the subscriber agreement approval process, market participants would be required to provide the terms and methods by which they would comply with these rules. The NASD would review these terms prior to approving a subscriber agreement.

*Trade Reporting and Trade Comparison Service:* As noted above, the NASD intends to operate trade reporting and comparison services as part of the ADF. The trade reporting service would collect trade reports for NASD registered market participants, as well as any NASD member required to report transactions occurring otherwise than on an exchange. The service would transmit the reports automatically to the respective SIPs, if required, for dissemination to the public and the industry. This mechanism would operate similar to the trade reporting functions of Nasdaq's ACT Service,[15] but would contain one notable distinguishing feature.

The ADF would support a ''three party trade report'' that would make it easier for ECNs to submit trade reports involving their subscribers and for market makers to submit riskless principal trade reports. A three party trade report would be a single last sale trade report that would denote one reporting member (*i.e.,* the party with the trade reporting responsibility as defined in Rules 4633 and 6420) and two contra parties. The ADF would be designed to split the three party trade report into two separate reports that would then be processed independently in accordance with existing trade reporting rules. Each of these reports would contain its own identifier and a reference to the original three party trade report, so that the separate reports can be mapped to the same transaction.

Therefore, the ADF trade reporting system would streamline the reporting process by reducing from three or two to one the number of trade reports for most ECN and riskless principal transactions. The proposed rules would require three party trade reports when the reporting party is a registered ECN, and would permit such reports by market makers that execute riskless principal transactions.

The NASD also intends to operate a trade comparison service as part of TRACS that would: (1) Compare trade information entered by TRACS participants and submit ''locked-in'' trades to Depository Trust Clearing Corporation (''DTCC'') for clearance and settlement; (2) transmit reports of the transactions automatically to the respective SIPs, if required, for dissemination to the public and the industry; and (3) provide participants with monitoring capabilities to facilitate participation in a ''locked-in'' trading environment. The proposed trade comparison rules are found in proposed Rule 6100.

The NASD expects that a significant volume of trades would be locked-in and submitted directly to DTCC by way of agreements between market participants and Qualified Service Representatives (''QSR''). As a result, NASD expects the volume of trades sent through TRACS to be relatively low.[16] The proposed TRACS rules would apply only to those members that from time to

[12] The NASD does not intend to provide an order routing capability other than ITS because it believes it can better perform our core investor protection mission by focusing on regulation rather than market operations. The NASD also believes that market participants already do, and can continue to, establish and run order linkage facilities that are more efficient and innovative than a facility the NASD could provide. The ITS ''exception'' is based upon the fact that ITS is in place and is the current accepted mechanism for intermarket linkage for CQS securities. As discussed below, we would make use of ITS optional.

[13] This order access rule would be the basis for satisfying, among other things, locked and crossed quotation obligations. While this rule would require intermarket links with other market centers, as well as intra-ADF links, the proposed locked and crossed rule, Rule 4612(d), unlike other market center locked and crossed rules, is based on the ADF's own quotations. In the event that the markets agree on a locked and crossed rule approach that encompasses quotations in all markets, proposed Rule 4300 would still facilitate compliance.

[14] *See* Securities Exchange Act Release No. 44918 (Oct. 10, 2001), 66 FR 52814 (Oct. 17, 2001).

[15] The NASD service would not perform risk management services that are provided by Nasdaq's ACT service.

[16] The NASD has not yet resolved how to compare and report trades between an ADF market participant and a Nasdaq market participant that has access to Nasdaq's ACT service. The NASD is engaged in discussions with DTCC about the possibility of DTCC continuing its existing trade comparison service for over-the-counter equity securities to provide for those intermarket trades.

time need to compare trades in Nasdaq or CQS securities that are effected otherwise than on an exchange and are not subject to QSR agreements that result in direct submission to DTCC.

*Rules 4633(c) and 6420(b) Which Party Reports a Transaction:* The proposed rule change adopts what the NASD understands to be the current Nasdaq approach to trade reporting. In its exchange application rule proposal, Nasdaq provides that the seller reports trades between market makers, the market maker reports trades between it and a customer, and an ECN reports only those trades where it is deemed to be the liquidity provider. The NASD's current best understanding is that Nasdaq has decided that the seller, rather than the liquidity provider, should report transactions between two market makers or ECNs.[17]

*Rule 5100 Short Sale Rule and Rule 4612 Primary Market Maker Standards:* The proposed rule change would amend the short sale rule and its accompanying interpretation to make them applicable to trading in Nasdaq-listed issues otherwise than on an exchange (including through the ADF), rather than Nasdaq. The rule proposal would renumber the rule and interpretation as Rule 5100 and IM–5100–1, respectively.

The proposed rule change would establish a different bid on which to base the applicability of the short sale rule. The existing rule prohibits members from effecting short sales in Nasdaq National Market securities at or below the best bid, when the current best bid as displayed in the Nasdaq Stock Market is below the preceding best bid in that security. The proposed amendment would substitute the national best (inside) bid for the Nasdaq best bid as the basis for determining when the rule applies. Although a best (inside) bid would be calculated for the ADF, the NASD believes that for the purposes of the short sale rule, the national best (inside) bid would be more reflective of market-wide trading in a security and therefore would better further the purposes of the rule.

Aside from the changes noted above, the NASD intends to have a short sale rule that mirrors Nasdaq's short sale rule. The rule proposal represents NASD's best understanding as to the content of Nasdaq's short sale rule. The existing Nasdaq rule provides an exemption from the rule for a ''qualified market maker'' engaged in bona fide market making activity. The existing rule—and Nasdaq's proposed rule filing in connection with its exchange registration—defines ''qualified market maker'' as a registered market maker that meets the requirement set forth in Rule 4612 to be deemed a Primary Market Maker. The proposed rule change would eliminate the ''qualified market maker'' and ''Primary Market Maker'' standards, and consequently delete Rule 4612. The existing Primary Market Maker Standards rule has been suspended since implementation of the SEC's Order Handling Rules in early 1997. In the event that Nasdaq makes the current Primary Market Maker Standard rule—or an amended rule—effective, the NASD would amend its rules accordingly. Until then, the NASD intends to have a short sale rule that reflects the current exemption for registered market makers engaged in bona fide market making activity.

*Rule 5200 Trading Halts:* Proposed Rule 5200 would provide NASD with authority to halt trading otherwise than on an exchange in securities quoted (*i.e.,* listed securities) through the ADF. The rule proposal also would provide NASD with the authority to halt trading in non-exchange-listed foreign securities that trade in a quotation medium other than a national securities exchange or through the ADF.

As under current NASD rules, trading halts require NASD members to cease effecting trades as agent or principal, but do not preclude customer-to-customer trades. For ADF-eligible securities, the proposed rule would mandate a trade halt when another market halts trading in a security for regulatory reasons and would give the NASD discretionary authority to halt trading when another market halts trading for operational reasons. Any trading halt initiated by the NASD would become effective simultaneously with notification via an administrative message sent through the ADF terminal or interface. Trading similarly would resume after an administrative notice has been issued.

Specifically, the proposed rule would require that the NASD halt trading through the ADF of a security listed on a national securities exchange whenever a market eligible to trade that security imposes a trading halt, or suspends a listing, for one of the following reasons: (1) To permit dissemination of material news; (2) to obtain information from the issuer related to material news; (3) to obtain information related to an issuer's ability to meet listing qualifications; or (4) to obtain other information that is necessary to protect investors and the public interest. The proposed rule change would further require the NASD to halt trading through the ADF in an American Depository Receipt (''ADR''), if that security is listed on a national securities exchange or foreign securities exchange, and one of those exchanges, or an overseeing regulatory authority, halts trading in the security. Finally, the rule would require the NASD to halt trading through the ADF whenever that system is unable to transmit real-time quotation or trade reporting information to the applicable SIP, or whenever a market-wide trading halt is in effect under circuit breaker rules of a primary exchange.

Since the proposed trading halt rules do not differentiate between Nasdaq and other exchange-listed securities, there no longer is a need for the separate trading halt provisions of existing Rule 6430, which apply only to those securities eligible for trading and reporting to the Consolidated Tape, as described in Rule 6400. Accordingly, Rule 6430 would be deleted and its provisions would be absorbed in Rule 5200, including the obligation of members to notify the NASD whenever they have knowledge of information related to a security or issuer that has not been adequately disclosed to the public.

The rule proposal would grant discretionary authority to the NASD to halt trading otherwise than on an exchange by its members through the ADF whenever another national securities exchange halts trading in a security for operational reasons, defined as an order imbalance or influx. Similar discretionary authority would extend to circumstances where a security traded through the ADF is a derivative or component of a security that has been halted by a national securities exchange. In the event that NASD chooses not to halt trading under the aforementioned discretionary circumstances, market participants could continue to trade through the ADF and would be required to meet all applicable trade reporting requirements.

With respect to non-exchange-listed foreign securities, which do not trade through the ADF but only over-the-counter, the proposed rule allows the NASD to impose halts for over-the-counter trading in conjunction with regulatory halts imposed by foreign regulatory authorities because of potential fraudulent conduct. The proposal would not give the NASD authority to impose a trading and quotation halt if the foreign regulatory halt was imposed solely for the dissemination of material news, a regulatory filing deficiency, or operational reasons. Currently, the NASD has no authority to impose

[17] Securities Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 (June 13, 2001) (File No. 10–131). *But see* note 10, *supra.*

trading and quotation halts in securities that are quoted and traded in other quotation media, such as the National Quotation Bureau's Pink Sheets. This proposed rule would grant such authority with respect to foreign securities in circumstances in which it is necessary to protect investors and the public interest.

*Rule 4619 Withdrawal of Quotations and Passive Market Making:* The proposed rule change eliminates a condition in existing Rule 4619(b)(3) for a market maker seeking excused withdrawal status based on vacation. Under the current rule, excused withdrawal status may only be granted to a market maker that has three or fewer Nasdaq Level 3 terminals. The proposal does not replicate that requirement for ADF market makers because the ADF will not operate as a primary market. As such, the absence of a market maker with more than three ADF terminals would not have a significant impact on the liquidity in those securities in which it makes a market.

*Rules 4614 and 4624 Stabilizing Bids and Penalty Bids:* The proposed rule change would delete existing Rules 4614 and 4624 relating to stabilizing and penalty bids. These rules allow a market maker—usually the underwriter of a securities offering—to enter these special bids in connection with a distribution of securities under Rules 101 and 104 of SEC Regulation M. The NASD believes such activity should occur on the market listing the issue and thus proposes to delete these rules.

*Obligations When Quoting in Multiple Market Centers:* Existing Rule 2320(g)(2) requires members that display quotations for non-Nasdaq securities in two or more quotation mediums to post the same priced quotations in each medium. To reflect Nasdaq's registration as an exchange, the proposed rule change would amend the language of that provision to apply to ''non-exchange-listed'' securities. At the same time, the rule proposal would add a similar obligation for members that display quotations for Nasdaq and CQS securities in two or more market centers, including the ADF. The obligations for members quoting Nasdaq and CQS securities are found in proposed Rules 4613(e)(1) and 6330(f), respectively. Note that the proposed rules do not prohibit displaying different size quotations in two or more mediums or market centers, provided that the price displayed is the same.

*Obligation To Have Quotations From Other Market Centers in Close Proximity:* Proposed Rule 4613(e)(2) would require a registered NASD market maker to have in close proximity to the ADF terminal or interface at which it makes a market in a Nasdaq security, a quotation service that disseminates quotations in that security on behalf of national securities exchanges and other market centers. A similar rule, Rule 6330(c), currently exists with respect to CQS market makers. As with the CQS rule, it is the NASD's intention for the quotations displayed in the ADF terminals or interfaces to function as a verification mechanism whereby ADF market participants can monitor their current ADF quotations and ensure that the NASD is timely updating and disseminating their quotations. The NASD would not disseminate to ADF market participants any consolidated quotation or trade data in a security from securities exchanges and market centers. To ensure that ADF participants have the data necessary to make sound order routing decisions and to satisfy the Vendor Display Rule,[18] the NASD would require ADF market participants to obtain from vendors dynamic quotations and last-sale information on the securities they trade through the ADF, and to display this data in close proximity to the ADF data displayed on their terminals—just as is currently required by Nasdaq of CQS market makers in Rule 6330(c).[19]

A requirement to disseminate consolidated quotation and trade data from securities exchanges and other market centers would result in significantly increased costs to build the ADF because it would necessitate substantially greater capacity and would require a more complex technical design of the ADF terminals and user interfaces to allow for receipt of that information.

*Rule 4620 Voluntary Termination of Registration:* The proposal contains a new provision related to voluntary termination as an NASD market maker. Proposed Rule 4620 provides that registration as a market maker in a security is voluntarily terminated where the market maker (1) withdraws its quotations from the ADF and does not re-enter quotations in the security for five minutes or (2) fails to re-enter quotations within 30 minutes of the end of a trading halt. In either circumstance, a market maker would be prohibited from re-registering as a market maker in that security for twenty (20) business days, unless the market maker meets the conditions for excused withdrawal specified in Rule 4619.

*Rules 6350(a) and 6520(e) Obligations of CQS and ITS Market Makers Related to Pre-Opening Applications:* The proposed rule change contains new obligations on registered CQS and ITS market makers that participate in the pre-opening application process. Proposed Rule 6350(a) (CQS) and Rule 6520(e) (ITS) would provide that a registered market maker that participates in the pre-opening application process and does not enter and maintain two-sided quotations in the security on that same trading day may not re-register to participate as a market maker in that security for twenty (20) business days, unless the market maker is granted an excused withdrawal from the NASD.

*Rule 6500 Intermarket Trading System:* The proposed rule change reflects the NASD's anticipated participation in the ITS through the ADF. In many respects, the NASD anticipates participating in ITS in a manner similar to Nasdaq's current participation in ITS. However, the ITS rules have been amended in the proposal to reflect that the ADF will not use Nasdaq's Computer Assisted Execution System (''CAES'') to effect ITS trades. As such, the proposed rule change deletes all references to ''CAES'' in the ITS rules and elsewhere. In addition, the proposal refers to market makers and ECNs participating in ITS as ITS/ADF market makers.

The rule proposal would renumber and move the ITS rules to the 6500 Series. Furthermore, unlike Nasdaq, NASD market participants that register to enter quotations in CQS securities would not be obligated to participate in ITS. Participation in ITS, with the associated obligations such as compliance with the trade-through rule and the market probing requirement, would be completely voluntary. If a market participant determines to participate in ITS, then it must abide by all rules applicable to ITS, including the trade-through rule and the market probing requirement. Also, the NASD would not provide an intra-market order routing system such as CAES. Accordingly, market participants would be responsible under Rule 4300 to establish links to facilitate execution of CQS securities in the intra-market and, in the case of non-ITS participants, direct or indirect linkages to the exchanges.

The quote access requirements of proposed Rule 4300 would not extend to intermarket access for trading Nasdaq securities. Unlike for CQS securities, the Commission has not mandated an intermarket linkage like ITS for Nasdaq securities. Moreover, intermarket

[18] *See* Rule 11Ac1–1 under the Act. 17 CFR 240.11Ac1–1.

[19] Concurrent with this filing, the NASD plans to request an exemption from the Vendor Display Rule, as Nasdaq did with its similar CQS rule.

linkage for trading Nasdaq securities is fundamentally a multilateral, intermarket structural issue. Accordingly, the NASD does not believe it appropriate for the NASD to unilaterally impose such an intermarket linkage obligation. Rather, the NASD would propose—as is the case today—that members of another market that desire to access an ADF market participant's quotes in Nasdaq securities establish an execution arrangement with that ADF market participant or, alternatively, become a member of the NASD.

Additionally, the proposed rule change would add the option of a 30-second commitment to trade period for ITS/ADF Market Makers. This option is permitted under an ongoing ITS Plan pilot program, and the NASD believes it would benefit our member participants.

*Fees and Assessments:* The proposed rule change does not include any proposed fees or assessments specifically related to the ADF. Existing fees and assessments, including the gross assessment and Section 8 fees, would continue to apply to NASD members. Any specific fees or assessments with respect to the ADF would be the subject of a future rule filing.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[20] which requires a national securities association to have rules that prevent fraudulent and manipulative acts, promote just and equitable principles of trade, foster cooperation and coordination among persons engaged in regulating, clearing, settling, processing information and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, this rule proposal is consistent with Section 15A(b)(6) because it does not permit unfair discrimination between customers, issuers, brokers, or dealers, fix minimum profits, impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by members, or regulate matters not related to the purposes of the Act or the administration of the Association.

Moreover, in the SuperMontage Order,[21] the SEC required the NASD to create a facility that ''permits NASD members to comply with their obligations under Commission and NASD rules (including Exchange Act Rule 11Ac1–1(c)(5) and Regulation ATS) without participating in the Nasdaq execution facility. The facility will identify through the central processor the identity of the NASD member that is the source of each quote,'' as is required by Exchange Act Rule 11Ac1–1(b)(1)(ii).[22] Furthermore, the Commission stated that ''[t]he facility will provide a market neutral linkage to the Nasdaq and other marketplaces, but not an execution service.'' The NASD believes that the proposed rule change fulfills the obligations specified by the Commission in the SuperMontage Order. In particular, the NASD believes that this proposal would provide a market neutral linkage by requiring market participants to link, either directly or indirectly, to all those seeking access to the market participants' quotations as required in proposed Rule 4300.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The NASD does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were not solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The NASD has requested that the proposed rule change become effective upon the later of Commission approval or the effectiveness of Nasdaq's Exchange Registration.[23] The NASD has waived the requirement that the Commission either approve the proposed rule change, or institute disapproval proceedings, within thirty-five days of publication of the proposed rule change in the **Federal Register**.[24]

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal, as amended, is consistent with the Act. In particular, the Commission solicits comment on whether the proposed rules are sufficient to meet the NASD's obligations under Sections 15A(b)(11)[25] and 11A(c)(1)[26] of the Act with respect to the over-the-counter market, including providing NASD market makers and ECNs with the ability to comply with their obligations under the Commission's Order Handling Rules and Regulation ATS.[27]

In addition, in Rule 4300 the NASD proposes certain quote and order access obligations. The Commission requests comment on whether this rule will provide potential users with adequate access to quotations displayed through the ADF and will allow the NASD to effectively enforce its access requirements. In particular, the Commission requests comment on what it means to make indirect electronic access ''readily available'' (*see* proposed Rule 4300(a)(2)).

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

[20] 15 U.S.C. 78*o*–3(b)(6).

[21] Securities Exchange Act Release No. 43863 (Jan. 19, 2001), 66 FR 8020 (Jan. 26, 2001).

[22] 17 CFR 240.11Ac1–1(b)(1)(ii).

[23] The proposed effective date is based upon NASD's assumption that Nasdaq's exchange registration will be approved before SuperMontage launches. If that turns out not to be the case, the NASD would have to revisit the effective date of the proposed rule change, including whether the rules related to the ADF should become effective at a different time from the rules resulting from Nasdaq separation.

[24] *See* Amendment No. 1, *supra* note 3.

[25] 15 U.S.C. 78*o*-3(b)(11).

[26] 15 U.S.C. 78k-1(c)(1); *See also* Section 11A(c)(3)(A) of the Act.

[27] *See* Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) (Order Handling Rules); Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998) (Regulation ATS).

the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR–NASD–2001–90 and should be submitted by January 21, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–31481 Filed 12–21–01; 8:45 am]

BILLING CODE 8010–01–P

[28] 17 CFR 200.30–3(a)(12).

Federal Register

Thursday,
January 3, 2002

Part II

# Securities and Exchange Commission

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Nasdaq's Proposed Separation From the NASD and the Establishment of the NASD Alternative Display Facility; Notice**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45156; File No. SR–NASD–2001–90]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Nasdaq's Proposed Separation From the NASD and the Establishment of the NASD Alternative Display Facility

December 14, 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 December 7, 2001, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD amended the proposed rule change on December 14, 2001.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend its rules to reflect Nasdaq's separation from the NASD upon its approval as a national securities exchange and to establish rules that would govern trading otherwise than on an exchange, including rules governing the NASD Alternative Display Facility (''ADF''). Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

**0100. General Provisions**

**0120. Definitions.**

(a) No Change.

(b) ''Association'

The term ''Association'' means, collectively, the NASD, NASD Regulation, [Nasdaq,] and NASD Dispute Resolution.

(c) through (q) No Change.

**0130. Delegation, Authority and Access**

(a) The National Association of Securities Dealers, Inc., delegates to its subsidiaries (NASD Regulation, Inc. and NASD Dispute Resolution, Inc. [The Nasdaq Stock Market, Inc.], hereinafter ''Subsidiaries'') the authority to act on behalf of the Association as set forth in a Plan of Allocation and Delegation adopted by the Board of Governors and approved by the Commission pursuant to its authority under the Act.

(b) No Change.

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**1000. MEMBERSHIP, REGISTRATION AND QUALIFICATION REQUIREMENTS**

* * * * *

**1022. Categories of Principal Registration**

(a) through (d) No Change.

(e) Limited Principal—Direct Participation Programs

(1) No Change.

(2) For purposes of the Rule 1000 Series, ''direct participation programs'' shall mean programs [which] *that* provide for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution including, but not limited to, oil and gas programs, cattle programs, condominium securities, Subchapter S corporate offerings and all other programs of a similar nature, regardless of the industry represented by the program, or any combination thereof. Excluded from this definition are real estate investment trusts, tax qualified pension and profit sharing plans pursuant to Sections 401 and 403(a) of the Internal Revenue Code (Code) and individual retirement plans under Section 408 of the Code, tax sheltered annuities pursuant to the provisions of Section 403(b) of the Code and any company including separate accounts registered pursuant to the Investment Company Act of 1940. Also excluded from this definition is any program [for which quotations are displayed on Nasdaq or which] *that* is listed on a registered national securities exchange or any program for which an application for [quotation on Nasdaq or] listing on a registered national securities exchange has been made.

(3) No Change.

(f) through (g) No Change.

* * * * *

**2000. BUSINESS CONDUCT**

**2100. GENERAL STANDARDS**

**2110. Standards of Commercial Honor and Principles of Trade**

A member, in the conduct of [his] *its* business, shall observe high standards of commercial honor and just and equitable principles of trade.

**IM–2110–1. ''Free-Riding and Withholding'**

(a) No Change.

(b) Violations of Rule 2110

Except as provided herein, it shall be inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of Rule 2110 for a member, or a person associated with a member, to fail to make a bona fide public distribution at the public offering price of securities of a public offering which trade at a premium in the secondary market whenever such secondary market begins regardless of whether such securities are acquired by the member as an underwriter, a selling group member or from a member participating in the distribution as an underwriter or selling group or otherwise. Therefore, it shall be a violation of Rule 2110 for a member, or a person associated with a member, to:

(1) through (8) No Change.

(9) Sell any of the securities to any person, or to a member of the immediate family of such person who is supported directly or indirectly to a material extent by such person, who owns or has contributed capital to a broker/dealer, other than solely a limited business broker/dealer as defined in paragraph (c) of this interpretation, or the account in which any such person has a beneficial interest, provided, however, that:

(A) The prohibition shall not apply to any person who directly or indirectly owns any class of equity securities of, or who has made a contribution of capital to, a member, and whose ownership or capital interest is passive and is less than 10% of the equity or capital of a member, as long as:

(i) Such person purchases hot issues from a person other than the member in which it has such passive ownership and such person is not in a position by virtue of its passive ownership interest to direct the allocation of hot issues, or

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

[2] 17 CFR 240.19b–4.

[3] Letter from Alden S. Adkins, Senior Vice President, NASD Market Operations Administration, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated December 14, 2001 (''Amendment No. 1''). First, Amendment No. 1 revises proposed Rule 4200(a)(12) to (i) clarify that the market where the security is listed, rather than the NASD, determines whether a normal unit of trading should be an amount other than 100 shares and (ii) delete an inadvertent reference to Nasdaq. Second, Amendment No. 1 deletes the phrase ''that enters into a contractual relationship with an NASD Market Participant'' from the definition of ''customer broker/dealer'' in proposed Rule 4300(d)(1) and adds the word ''not'' to the definition of ''Indirect electronic access'' before the word ''affiliates'' in the first sentence of proposed Rule 4300(d)(3). Finally, Amendment No. 1 waives the 35-day period for Commission action until such time as the waiver is withdrawn by the NASD.

(ii) such member's shares or shares of a parent of such member are publicly traded on a[n] *registered national securities* exchange [or Nasdaq].

(B) and (C) No Change.

(c) through (m) No Change.

* * * * *

**IM–2110–2. Trading Ahead of Customer Limit Order**

(a) General Application

To continue to ensure investor protection and enhance market quality, the Association's Board of Governors is issuing an interpretation to the Rules of the Association dealing with member firms' treatment of their customer limit orders in Nasda*q-listed* securities. This interpretation, which is applicable from 9:30 a.m. to 6:30 p.m. Eastern Time, will require members acting as market makers to handle their customer limit orders with all due care so that market makers do not ''trade ahead'' of those limit orders. Thus, members acting as market makers that handle customer limit orders, whether received from their own customers or from another member, are prohibited from trading at prices equal or superior to that of the limit order without executing the limit order.[, provided that, prior to September 1, 1995, this prohibition shall not apply to customer limit orders that a member firm receives from another member firm and that are greater than 1,000 shares. Such orders shall be protected from executions at prices that are superior but not equal to that of the limit order. In the interests of investor protection, the Association is eliminating the so-called disclosure ''safe harbor'' previously established for members that fully disclosed to their customers the practice of trading ahead of a customer limit order by a market-making firm.][1]

[Rule 2110 of the Association's Rules states that:]

[A member, in the conduct of [his] its business, shall observe high standards of commercial honor and just and equitable principles of trade.]

[Rule 2320, the Best Execution Rule, states that:]

[In any transaction for or with a customer, a member and persons associated with a member shall use reasonable diligence to ascertain the best inter-dealer market for the subject security and buy or sell in such a market so that the resultant price to the customer is as favorable as possible to the customer under prevailing market conditions.]

Interpretation

The following interpretation of Rule 2110 has been approved by the Board:

A member firm that accepts and holds an unexecuted limit order from its customer (whether its own customer or a customer of another member) in a Nasda*q-listed* security and that continues to trade the subject security for its own market-making account at prices that would satisfy the customer's limit order, without executing that limit order, shall be deemed to have acted in a manner inconsistent with just and equitable principles of trade, in violation of Rule 2110, provided that, [until September 1, 1995, customer limit orders in excess of 1,000 shares received from another member firm shall be protected from the market maker's executions at prices that are superior but not equal to that of the limit order, and provided further, that] a member firm may negotiate specific terms and conditions applicable to the acceptance of limit orders only with respect to limit orders that are: (a) For customer accounts that meet the definition of an ''institutional account'' as that term is defined in Rule 3110(c)(4); or (b) 10,000 shares or more, unless such orders are less than $100,000 in value. Nothing in this interpretation, however, requires members to accept limit orders from any customer.

[By rescinding the safe harbor position and adopting this interpretation,] [t]*T*he Association wishes to emphasize that members may not trade ahead of their customer limit orders in their market-making capacity even if the member had in the past fully disclosed the practice to its customers prior to accepting limit orders. The Association believes that, pursuant to Rule 2110, members accepting and holding unexecuted customer limit orders owe certain duties to their customers and the customers of other member firms that may not be overcome or cured with disclosure of trading practices that include trading ahead of the customer's order. The terms and conditions under which institutional account or appropriately sized customer limit orders are accepted must be made clear to customers at the time the order is accepted by the firm so that trading ahead in the firm's market making capacity does not occur. For purposes of this interpretation, a member that controls or is controlled by another member shall be considered a single entity so that if a customer's limit order is accepted by one affiliate and forwarded to another affiliate for execution, the firms are considered a single entity and the market making unit may not trade ahead of that customer's limit order.

The Association also wishes to emphasize that all members accepting customer limit orders owe those customers duties of ''best execution'' regardless of whether the orders are executed through the member's market making capacity or sent to another member for execution. [As set out above, the Best Execution Rule] Rule 2320 requires members to use reasonable diligence to ascertain the best inter-dealer market for the security and buy or sell in such a market so that the price to the customer is as favorable as possible under prevailing market conditions. The Association emphasizes that order entry firms should continue to routinely monitor the handling of their customers' limit orders regarding the quality of the execution received.

(b) No Change.

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**IM–2110–3. Front Running Policy**

It shall be considered conduct inconsistent with just and equitable principles of trade for a member or person associated with a member, for an account in which such member or person associated with a member has an interest, for an account with respect to which such member or person associated with a member exercises investment discretion, or for certain customer accounts, to cause to be executed:

(a) No Change.

(b) an order to buy or sell an underlying security when such member or person associated with a member causing such order to be executed has material, non-public market information concerning an imminent block transaction in an option overlying that security, or when a customer has been provided such material, non-public market information by the member or any person associated with a member; prior to the time information concerning the block transaction has been made publicly available.

The violative practice noted above may include transactions [which] *that* are executed based upon knowledge of less than all of the terms of the block transaction, so long as there is knowledge that all of the material terms of the transaction have been or will be agreed upon imminently.

[1] FN1 For purposes of the pilot program expanding the operation of certain Nasdaq transaction and quotation reporting systems and facilities in SR-NASD–99–57 during the period from 4 p.m. to 6:30 p.m. Eastern Time, members may generally limit the life of a customer limit order to the period of 9:30 a.m. to 4 p.m. Eastern Time. If a customer does not formally assent (''opt-in'') to processing of their limit order(s) during the extended hours period commencing after the normal close of the Nasdaq market, limit order protection will not apply to that customer's order(s).

The general prohibitions stated above shall not apply to transactions executed by member participants in automatic execution systems in those instances where participants must accept automatic executions.

These prohibitions also do not include situations in which a member or person associated with a member receives a customer's order of block size relating to both an option and the underlying security. In such cases, the member and person associated with a member may position the other side of one or both components of the order. However, in these instances, the member and person associated with a member would not be able to cover any resulting proprietary position(s) by entering an offsetting order until information concerning the block transaction involved has been made publicly available.

The application of this front running policy is limited to transactions that are required to be reported on the last sale reporting systems administered by Nasdaq, Consolidated Tape Association (CTA), or Option Price Reporting Authority (OPRA). Information as to a block transaction shall be considered to be publicly available when it has been disseminated via the tape or high speed communications line of one of those systems or of a third-party news wire service.

A transaction involving 10,000 shares or more of an underlying security or options covering such number of shares is generally deemed to be a block transaction, although a transaction of less than 10,000 shares could be considered a block transaction in appropriate cases. A block transaction that has been agreed upon does not lose its identity as such by arranging for partial executions of the full transaction in portions [which] *that* themselves are not of block size if the execution of the full transaction may have a material impact on the market. In this situation, the requirement that information concerning the block transaction be made publicly available will not be satisfied until the entire block transaction has been completed and publicly reported.

**IM–2110–4. Trading Ahead of Research Reports**

The Board of Governors, under its statutory obligation to protect investors and enhance market quality, is issuing an interpretation to the Rules regarding a member firm's trading activities that occur in anticipation of a firm's issuance of a research report regarding a security. The Board of Governors is concerned with activities of member firms that purposefully establish or adjust the firm's inventory position in [Nasdaq-listed securities,] an exchange-listed security traded *otherwise than on an exchange* [in the OTC market,] or a derivative security based primarily on a specific [Nasdaq or] exchange-listed security in anticipation of the issuance of a research report in that same security. For example, a firm's research department may prepare a research report recommending the purchase of a particular Nasdaq-listed security. Prior to the publication and dissemination of the report, however, the trading department of the member firm might purposefully accumulate a position in that security to meet anticipated customer demand for that security. After the firm had established its position, the firm would issue the report, and thereafter fill customer orders from the member firm's inventory positions.

The Association believes that such activity is conduct [which] *that* is inconsistent with just and equitable principles of trade, and not in the best interests of the investors. Thus, this interpretation prohibits a member from purposefully establishing, creating or changing the firm's inventory position in [a Nasdaq-listed security,] an exchange-listed security traded *otherwise than on an exchange* [in the third market] or a derivative security related to the underlying equity security, in anticipation of the issuance of a research report regarding such security by the member firm.

[Rule 2110 states that:

A member in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.]

In accordance with Article VII, Section 1(a)(ii) of the NASD By-Laws, the Association's Board of Governors has approved the following interpretation of Rule 2110:

Trading activity purposefully establishing, increasing, decreasing, or liquidating a position in [a Nasdaq security,] an exchange-listed security traded *otherwise than on an exchange* [in the over-the-counter market] or a derivative security based primarily upon a specific [Nasdaq or] exchange-listed security, in anticipation of the issuance of a research report in that security is inconsistent with just and equitable principles of trade and is a violation of Rule 2110.

For purposes of this interpretation, a ''purposeful'' change in the firm's inventory position means any trading activities undertaken with the intent of altering a firm's position in a security in anticipation of accommodating investor interest once the research report has been published. Hence, the interpretation does not apply to changes in an inventory position related to unsolicited order flow from a firm's retail or broker/dealer client base or to research done solely for in-house trading and not in any way used for external publication.

Under this interpretation, the Board recommends, but does not require, that member firms develop and implement policies and procedures to establish effective internal control systems and procedures that would isolate specific information within research and other relevant departments of the firm so as to prevent the trading department from utilizing the advance knowledge of the issuance of a research report. Firms that choose not to develop ''Chinese Wall'' procedures bear the burden of demonstrating that the basis for changes in inventory positions in advance of research reports was not purposeful.

* * * * *

**IM–2110–5. Anti-Intimidation/ Coordination**

The Board of Governors is issuing this interpretation to codify a longstanding policy. It is conduct inconsistent with just and equitable principles of trade for any member or person associated with a member to coordinate the prices (including quotations), trades, or trade reports of such member with any other member or person associated with a member; to direct or request another member to alter a price (including a quotation); or to engage, directly or indirectly, in any conduct that threatens, harasses, coerces, intimidates, or otherwise attempts improperly to influence another member or person associated with a member. This includes, but is not limited to, any attempt to influence another member or person associated with a member to adjust or maintain a price or quotation, whether displayed on any [automated system] *facility* operated by the *NASD* [The Nasdaq Stock Market, Inc. (Nasdaq),] or otherwise, or refusals to trade or other conduct that retaliates against or discourages the competitive activities of another market maker or market participant. Nothing in this interpretation respecting coordination of quotes, trades, or trade reports shall be deemed to limit, constrain, or otherwise inhibit the freedom of a member or person associated with a member to:

(1) Set unilaterally its own bid [and] *or* ask in any [Nasdaq] security, the prices at which it is willing to buy or sell any [Nasdaq] security, and the quantity of shares of any [Nasdaq] security that it is willing to buy or sell;

(2) set unilaterally its own dealer spread, quote increment, or quantity of shares for its quotations (or set any relationship between or among its dealer spread, inside spread, or the size of any quote increment) in any [Nasdaq] security;

(3) communicate its own bid or ask, or the prices at or the quantity of shares in which it is willing to buy or sell any [Nasdaq] security to any person, for the purpose of exploring the possibility of a purchase or sale of that security, and to negotiate for or agree to such purchase or sale;

(4) communicate its own bid or ask, or the price at or the quantity of shares in which it is willing to buy or sell any [Nasdaq] security, to any person for the purpose of retaining such person as an agent or subagent for the member or for a customer of the member (or for the purpose of seeking to be retained as an agent or subagent), and to negotiate for or agree to such purchase or sale;

(5) through (7) No Change.

* * * * *

**2200. Communications with Customers and the Public**

**2210. Communications with the Public**

(a) and (b) No Change.

(c) Filing Requirements and Review Procedures

(1) through (6) No Change.

(7) The following types of material are excluded from the foregoing filing requirements and (except for research reports under paragraph (G)) spot-check procedures:

(A) No Change.

(B) Advertisements or sales literature [which] *that* do no more than identify the [Nasdaq] symbol of the member and/or of a security in which the member is a [Nasdaq] registered market maker;

(C) through (G) No Change.

(8) and (9) No Change.

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**2300. TRANSACTIONS WITH CUSTOMERS**

2310. No Change.

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**IM–2310–1. Possible Application of SEC Rules 15g–1 through 15g–9**

Members should be aware that, effective January 1, 1990, any transaction [which] *that* involves a [non-Nasdaq,] non-exchange-listed equity security trading for less than five dollars per share may be subject to the provisions of SEC Rules 15g–1 through 15g–9, and those Rules should be reviewed to determine if an executed customer suitability agreement is required.

Accounts opened, and recommendations made, prior to January 1, 1991 remain subject to former Article III, Sections 2 and 21(c) of the Rules of Fair Practice as previously in effect, as set forth in Notice to Members 90–52 (August 1990).

* * * * *

**IM–2310–2. Fair Dealing with Customers**

(a) through (d) No Change.

(e) Fair Dealing with Customers with Regard to Derivative Products or New Financial Products.

The Board emphasizes members' obligations for fair dealing with customers when making recommendations or accepting orders for new financial products. As new products are introduced from time to time, it is important that members make every effort to familiarize themselves with each customer's financial situation, trading experience, and ability to meet the risks involved with such products and to make every effort to make customers aware of the pertinent information regarding the products. Members must follow specific guidelines, set forth below, for qualifying the accounts to trade the products and for supervising the accounts thereafter.

(1) Index Warrants

Members are obliged to comply with the Rules, regulations and procedures applicable to index warrants and foreign currency warrants contained in the Rule 2840 Series.

(2) Hybrid Securities and Selected Equity-Linked Debt Securities (''SEEDS'') Designated as Nasdaq National Market Securities [Pursuant to the Rule 4400 Series]

*With respect to Hybrid Securities and Selected Equity-Linked Debt Securities (''SEEDS'') that have been designated as Nasdaq National Market Securities,* [M]*m*embers are obligated to comply with any Rules, regulations, or procedures applicable to such securities [pursuant to the Rule 4420 Series], *including those of Nasdaq,* as well as any other applicable Rule, regulation, or procedure of the Association. *Prior to the commencement of trading of a particular SEEDS, Nasdaq or the Association will distribute a circular providing guidance regarding member firm compliance responsibilities (including suitability recommendations and account approval) when handling transactions in SEEDS.*

* * * * *

**2320. Best Execution and Interpositioning**

(a) through (f) No Change.

(g) (1) Unless two or more priced quotations for a [non-Nasdaq] *non-exchange-listed* security (as defined in the Rule [6700] *6600* Series) are displayed in an inter-dealer quotation system that permits quotation updates on a real-time basis, in any transaction for or with a customer pertaining to the execution of an order in a [non-Nasdaq] *non-exchange-listed* security, a member or person associated with a member[,] shall contact and obtain quotations from three dealers (or all dealers if three or less) to determine the best inter-dealer market for the subject security.

(2) Members that display priced quotations on a real-time basis for a [non-Nasdaq] *non-exchange-listed* security in two or more quotation mediums that permit quotation updates on a real-time basis must display the same priced quotations for the security in each medium.

(3) through (5) No Change.

* * * * *

**2340. Customer Account Statements**

(a) through (b) No Change.

(c) Definitions.

For purposes of this Rule, the following terms will have the stated meanings:

(1) through (2) No Change.

(3) direct participation program or direct participation program security refers to the publicly issued equity securities of a direct participation program as defined in Rule 2810 (including limited liability companies), but does not include securities on deposit in a registered securities depository and settled regular way, securities listed on a national securities exchange [or The Nasdaq Stock Market], or any program registered as a commodity pool with the Commodities Futures Trading Commission.

(4) ''real estate investment trust'' or ''real estate investment trust security'' refers to the publicly issued equity securities of a real estate investment trust as defined in Section 856 of the Internal Revenue Code, but does not include securities on deposit in a registered securities depository and settled regular way or securities listed on a national securities exchange [or The Nasdaq Stock Market].

(5) No Change.

(d) No Change.

* * * * *

**2520. Margin Requirements**

(a)–(e) No Change.

(f) Other Provisions

(1) Determination of Value for Margin Purposes

Active securities dealt in on a national securities exchange [or OTC Marginable securities listed on Nasdaq] shall, for margin purposes, be valued at current market prices provided that, whether or not dealt in on an exchange [or listed on Nasdaq], only those options contracts on a stock or stock index, or a stock index warrant, having an expiration that exceeds nine months and that are listed or guaranteed by the carrying broker-dealer, may be deemed to have market value for the purposes of Rule 2520. Other securities shall be valued conservatively in view of current market prices and the amount [which] *that* might be realized upon liquidation. Substantial additional margin must be required in all cases where the securities carried in ''long'' or ''short'' positions are subject to unusually rapid or violent changes in value, or do not have an active market [on Nasdaq or] on a national securities exchange, or where the amount carried is such that the position(s) cannot be liquidated promptly.

(2)–(9) No Change.

(10) Margin For Index/Currency Warrants

(A) This subparagraph (10) sets forth the minimum amount of margin [which] that must be deposited and maintained in margin accounts of customers having positions in index warrants, currency index warrants or currency warrants dealt in on [Nasdaq or] a national securities exchange. The Association may at any time impose higher margin requirements in respect of such positions when it deems such higher margin requirements to be advisable. The initial deposit of margin required under this Rule must be made within five full business days after the date on which a transaction giving rise to a margin requirement is effected. The margin requirements set forth in this subparagraph (J) are applicable only to index warrants, currency index warrants and currency warrants listed for trading on Nasdaq or a national securities exchange on or after September 28, 1995.

(B) Definitions

The following definitions shall apply to transactions in index warrants, currency index warrants, and currency warrants.

(i) through (ii) No Change.

(iii) The term ''current market value'' of an index warrant, currency index warrant or currency warrant shall mean the total cost or net proceeds of the transaction on the day the warrant was purchased or sold and at any other time shall mean the most recent closing price of that issue of warrants on [Nasdaq, in the case of a Nasdaq-listed index warrants, or] the exchange on which it is listed on any day with respect to which a determination of current market value is made.

(iv) through (xiv) No Change.

(C) through (D) No Change.

* * * * *

**2522. Definitions Related to Options, Currency Warrants, Currency Index Warrants and Stock Index Warrants Transactions**

(a) The following definitions shall apply to the margin requirements for options, currency warrants, currency index warrants and stock index warrants transactions:

(1) through (46) No Change.

(47) Options Trading

The term ''options trading'' means trading in any option issued by The Options Clearing Corporation, whether or not of a type, class or series [which] *that* has been approved for trading [on Nasdaq or] on a national securities exchange.

(48) through (49) No Change.

(50) Primary Market

The term ''primary market'' means (A) in respect of an underlying security that is principally traded on a national securities exchange, the principal exchange market in which the underlying security is traded and (B) in respect of an underlying security that is principally traded in the over-the-counter market, the market reflected by any widely recognized quotation dissemination system or service [(Nasdaq in the case of a Nasdaq stock)].

(51) through (77) No Change.

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**2700. SECURITIES DISTRIBUTIONS**

* * * * *

**2720. Distribution of Securities of Members and Affiliates—Conflicts of Interest**

(a) No Change.

(b) Definitions

For purposes of this Rule, the following words shall have the stated meanings:

(1) through (2) No Change.

(3) Bona fide independent market—a market in a security [which] *that:*

(A) through (D) No Change.

(4) Bona fide independent market maker—a market maker [which] *that:*

(A) is registered *with the NASD* [as a Nasdaq] *or a national securities exchange as* a market maker in the security to be distributed pursuant to this Rule;

(B) through (C) No Change.

(5) through (18) No Change.

(c) through (p) No Change.

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**2800. SPECIAL PRODUCTS**

**2810. Direct Participation Programs**

(a) No Change.

(b) Requirements

(1) No Change.

(2) Suitability

(A) through (C) No Change.

(D) Subparagraphs (A) and (B), and, only in situations where the member is not affiliated with the direct participation program, subparagraph (C) shall not apply to:

(i) A secondary public offering of or a secondary market transaction in a unit, depositary receipt, or other interest in a direct participation program [for which quotations are displayed on Nasdaq or which] *that* is listed on a registered national securities exchange; or

(ii) an initial public offering of a unit, depositary receipt or other interest in a direct participation program for which an application for [inclusion on Nasdaq or] listing on a registered national securities exchange has been approved by [Nasdaq or] such exchange and the applicant makes a good faith representation that it believes such [inclusion on Nasdaq or] listing on an exchange will occur within a reasonable period of time following the formation of the program.

(3) through (5) No Change.

(6) Participation in Rollups

(A) through (B) No Change.

(C) No member or person associated with a member shall participate in any capacity in a limited partnership rollup transaction if the transaction is unfair or unreasonable.

(i) A limited partnership rollup transaction will be presumed not to be unfair or unreasonable if the limited partnership rollup transaction provides for the right of dissenting limited partners:

a. to receive compensation for their limited partnership units based on an appraisal of the limited partnership assets performed by an independent appraiser unaffiliated with the sponsor or general partner of the program [which] *that* values the assets as if sold in an orderly manner in a reasonable period of time, plus or minus other balance sheet items, and less the cost of

sale or refinancing and in a manner consistent with the appropriate industry practice. Compensation to dissenting limited partners of limited partnership rollup transactions may be cash, secured debt instruments, unsecured debt instruments, or freely[-] tradeable securities; provided, however, that:

1. through 3. No Change.

4. freely[-] tradeable securities [utilized] *used* as compensation to dissenting limited partners must be previously listed on a *registered* national securities exchange [or previously traded on Nasdaq] prior to the limited partnership rollup transaction, and the number of securities to be received in return for limited partnership interests must be determined in relation to the average last sale price of the freely[-] tradeable securities in the 20-day period following the date of the meeting at which the vote on the limited partnership rollup transaction occurs. If the issuer of the freely[-] tradeable securities is affiliated with the sponsor or general partner, newly issued securities to be [utilized] *used* as compensation to dissenting limited partners shall not represent more than 20 percent of the issued and outstanding shares of that class of securities after giving effect to the issuance. For purposes of the preceding sentence, a sponsor or general partner is ''affiliated'' with the issuer of the freely[-] tradeable securities if the sponsor or general partner receives any material compensation from the issuer or its affiliates in conjunction with the limited partnership rollup transaction or the purchase of the general partner's interest; provided, however, that nothing herein shall restrict the ability of a sponsor or general partner to receive any payment for its equity interests and compensation as otherwise provided by this subparagraph.

b. and c. No Change.

(ii) No Change.

(c) No Change.

* * * * *

**2840. Trading in Index Warrants, Currency Index Warrants, and Currency Warrants**

**2841. General**

(a) Applicability—This Rule 2840 Series shall be applicable[: (1) To the conduct of accounts, the execution of transactions, and the handling of orders in index warrants listed on The Nasdaq Stock Market (''Nasdaq''); and (2)] to the extent appropriate unless otherwise stated herein, to the conduct of accounts, the execution of transactions, and the handling of orders in exchange-listed stock index warrants, currency index warrants, and currency warrants by members who are not members of the exchange on which the warrant is listed or traded.

(b) and (c) No Change.

* * * * *

**2850. Position Limits**

[(a)] Except with the prior written approval of the Association pursuant to the Rule 9600 Series for good cause shown in each instance, no member shall effect for any account in which such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, a purchase or sale transaction in an index warrant listed [on Nasdaq or] on a national securities exchange if the member has reason to believe that as a result of such transaction the member, or partner, officer, director or employee thereof, or customer would, acting alone or in concert with others, directly or indirectly, hold or control an aggregate position in an index warrant issue on the same side of the market, combining such index warrant position with positions in index warrants overlying the same index on the same side of the market, in excess of the position limits established by the Association[, in the case of Nasdaq-listed index warrants,] or the exchange on which the index warrant is listed.

[(b) In determining compliance with this Rule, the position limits for Nasdaq-listed index warrants are as follows:]

[(1) Fifteen million warrants with respect to warrants on the same stock index (other than the Standard & Poor's MidCap 400 Index) with an original issue price of ten dollars or less.]

[(2) Seven million five hundred thousand warrants, with respect to warrants on the Standard & Poor's MidCap 400 Index with an original issue price of ten dollars or less.]

[(3) For stock index warrants with an original issue price greater than ten dollars, positions in these warrants must be converted to the equivalent-of warrants on the same index priced initially at ten dollars by dividing the original issue price of the index warrants priced above ten dollars by ten and multiplying this number by the size of such index warrant position. After recalculating a warrant position pursuant to this subparagraph, such recalculated warrant position shall be aggregated with other warrant positions on the same underlying index on the same side of the market and subjected to the applicable position limit set forth in subparagraph (1) or (2) above. For example, if an investor held 100,000 Nasdaq 100 Index warrants offered originally at $20 per warrant, the size of this position for the purpose of calculating position limits would be 200,000, or 100,000 times 20/10.]

**2851. Exercise Limits**

(a) Except with the prior written approval of the Association pursuant to the Rule 9600 Series for good cause shown, in each instance, no member or person associated with a member shall exercise, for any account in which such member or person associated with such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, a long position in any index warrant if as a result thereof such member or partner, officer, director or employee thereof or customer, acting alone or in concert with others, directly or indirectly,[:]

[(1) Has or will have exercised within any five (5) consecutive business days a number of index warrants overlying the same index in excess of the limits for index warrant positions contained in Rule 2850; or

(2)] Has or will have exceeded the applicable exercise limit fixed from time to time by an exchange for an index warrant [not dealt in on Nasdaq].

(b) The Association, pursuant to the Rule 9600 Series for good cause shown, may institute other limitations concerning the exercise of index warrants from time to time by action of the Association. Reasonable notice shall be given of each new limitation fixed by the Association. These exercise limitations are separate and distinct from any other exercise limitations imposed by the issuers of index warrants.

**[2852. Reporting Requirements]**
***Reserved***

[(a) Each member shall file with the Association a report with respect to each account in which the member has an interest, each account of a partner, officer, director or employee of such member, and each customer account of the member, which has established an aggregate position of 100,000 index warrants on the same side of the market in an index warrant issue listed on Nasdaq, combining such index warrant position with positions in index warrants overlying the same index on the same side of the market traded on Nasdaq or a national securities exchange.]

[(b) Such report shall identify the person or persons having an interest in such account and shall identify separately the total number of each type of index warrant that comprises the reportable position in such account. The

report shall be in such form as may be prescribed by the Association and shall be filed no later than the close of business on the next business day following the day on which the transaction or transactions necessitating the filing of such report occurred. Whenever a report shall be required to be filed with respect to an account pursuant to this Rule, the member filing such report shall file with the Association such additional periodic reports with respect to such account as the Association may from time to time prescribe.]

* * * * *

**2854. [Trading Halts or Suspensions]**
***Reserved***

[(a) The trading in an index warrant on Nasdaq shall be halted whenever the Senior Vice President for Market Regulation, or its designee, shall conclude that such action is appropriate in the interests of a fair and orderly market and to protect investors. Among the factors that may be considered are the following:]

[(1) Trading has been halted or suspended in underlying stocks whose weighted value represents 20% or more of the index value;]

[(2) the current calculation of the index derived from the current market prices of the stocks is not available;]

[(3) other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.]

[(b) Trading in index warrants that has been the subject of a trading halt or suspension may resume if the Senior Vice President for Market Regulation, or its designee, determines that the conditions which led to the halt or suspension are no longer present or that the interests of a fair and orderly market are served by a resumption of trading. In either event, the reopening may not occur until the Association has determined that trading in underlying stocks whose weighted value represents more than 50% of the index is occurring.]

* * * * *

**2860. Options**

(a) No Change.

(b) Requirements

(1) General

(A) Applicability—This Rule shall be applicable (i) [to the trading of options contracts issued by The Options Clearing Corporation and displayed on The Nasdaq Stock Market and to the terms and conditions of such contracts; (ii)] to the extent appropriate unless otherwise stated herein, to the conduct of accounts, the execution of transactions, and the handling of orders in exchange-listed options by members [who] *that* are not members of an exchange on which the option executed is listed; [(iii)] *(ii)* to the extent appropriate unless otherwise stated herein, to the conduct of accounts, the execution of transactions, and the handling of orders in conventional options; and [(iv)] *(iii)* other matters related to options trading.

Unless otherwise indicated herein, subparagraphs (3) through (12) shall apply only to [options displayed on Nasdaq and] standardized and conventional options on common stock and subparagraphs (13) through (24) shall apply to transactions in all options as defined in paragraph (a), including common stock. The position and exercise limits for FLEX Equity Options for members [who] *that* are not also members of the exchange on which FLEX Equity Options trade shall be the same as the position and exercise limits as applicable to members of the exchange on which such FLEX Equity Options are traded.

(B) through (C) No Change.

(2) Definitions

The following terms shall, unless the context otherwise requires, have the stated meanings:

(A) through (F) No Change.

(G) Call—The term ''call'' means an option contract under which the holder of the option has the right, in accordance with the terms of the option, to purchase the number of units of the underlying security or to receive a dollar equivalent of the underlying index covered by the option contract. In the case of a ''call'' issued by The Options Clearing Corporation on common stock [or on an option displayed on The Nasdaq Stock Market], it shall mean an option contract under which the holder of the option has the right, in accordance with the terms of the option, to purchase from The Options Clearing Corporation the number of units of the underlying security or receive a dollar equivalent of the underlying index covered by the option contract.

(H) through (DD) No Change. [(EE) Nasdaq Market Index Option—The term ''Nasdaq market index option'' means an option contract issued by The Options Clearing Corporation and displayed on Nasdaq based upon an underlying index which has been deemed by the Commission to be a market index.]

[(FF) Nasdaq Option Transaction—The term ''Nasdaq option transaction'' means a transaction effected by a member of the Association for the purchase or sale of an option contract which is displayed on The Nasdaq Stock Market or for the closing out of a long or short position in such option contract.]

(GG) through (II) are renumbered as (EE) through (GG).

[(JJ)] *(HH)* Options Contract—The term ''options contract'' means any option as defined in paragraph (a). For purposes of subparagraphs (3) through (12), an option to purchase or sell common stock shall be deemed to cover 100 shares of such stock at the time the contract granting such option is written. [A Nasdaq index option shall be deemed to cover a dollar equivalent to the numerical value of the underlying index multiplied by the applicable index multiplier.] If a stock option is granted covering some other number of shares, then for purposes of subparagraphs (3) through (12), it shall be deemed to constitute as many option contracts as that other number of shares divided by 100 (e.g., an option to buy or sell five hundred shares of common stock shall be considered as five option contracts). A stock option contract [which] *that,* when written, grants the right to purchase or sell 100 shares of common stock shall continue to be considered as one contract throughout its life, notwithstanding that, pursuant to its terms, the number of shares [which] that it covers may be adjusted to reflect stock dividends, stock splits, reverse splits, or other similar actions by the issuer of such stock.

(KK) through (NN) are renumbered as (II) through (LL).

[(OO)] *(MM)* Put—The term ''put'' means an option contract under which the holder of the option has the right, in accordance with the terms of the option, to sell the number of units of the underlying security or deliver a dollar equivalent of the underlying index covered by the option contract. In the case of a ''put'' issued by The Options Clearing Corporation on common stock [or on an option displayed on The Nasdaq Stock Market], it shall mean an option contract under which the holder of the option has the right, in accordance with terms of the option, to sell to The Options Clearing Corporation the number of units of the underlying security covered by the option contract or to tender the dollar equivalent of the underlying index.

[(PP) Registered Nasdaq Index Options Market Maker—The term ''registered Nasdaq index options market maker'' means a member who meets the qualifications for such, as set forth in subparagraph (3), is willing and

able to serve as such in connection with Nasdaq index option contracts and who is authorized by the Association to do so.]

(QQ) through (VV) are renumbered as (NN) through (SS).

[(WW)] *(TT)* The Options Clearing Corporation—The term ''The Options Clearing Corporation'' means The Options Clearing Corporation, the issuer of exchange-listed options [and options displayed on The Nasdaq Stock Market].

(XX) through (YY) are renumbered as (UU) through (VV).

[(ZZ) Underlying Index—The term ''underlying index'' means an index upon which a Nasdaq index option contract is based.]

(AAA) through (BBB) are renumbered as (YY) through (ZZ).

(3) Position Limits

(A) Stock Options—Except in highly unusual circumstances, and with the prior written approval of the Association pursuant to the Rule 9600 Series for good cause shown in each instance, no member shall effect for any account in which such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, non-member broker, or non-member dealer, an opening transaction through [Nasdaq,] the over-the-counter market or on any exchange in a stock option contract of any class of stock options if the member has reason to believe that as a result of such transaction the member or partner, officer, director or employee thereof, or customer, non-member broker, or non-member dealer, would, acting alone or in concert with others, directly or indirectly, hold or control or be obligated in respect of an aggregate equity options position in excess of:

(i) No Change.

(ii) 22,500 options contracts of the put class and the call class on the same side of the market covering the same underlying security, provid[ing]*ed* that the 22,500 contract position limit shall only be available for option contracts on securities [which] *that* underlie [Nasdaq or] exchange-traded options qualifying under applicable rules for a position limit of 22,500 option contracts; or

(iii) 31,500 option contracts of the put class and the call class on the same side of the market covering the same underlying security provid[ing]*ed* that the 31,500 contract position limit shall only be available for option contracts on securities [which] *that* underlie [Nasdaq or] exchange-traded options qualifying under applicable rules for a position limit of 31,500 option contracts; or

(iv) 60,000 options contracts of the put and the call class on the same side of the market covering the same underlying security, provid[ing]*ed* that the 60,000 contract position limit shall only be available for option contracts on securities [which] *that* underlie [Nasdaq or] exchange-traded options qualifying under applicable rules for a position limit of 60,000 option contracts; or

(v) 75,000 options contracts of the put and the call class on the same side of the market covering the same underlying security, provid[ing]*ed* that the 75,000 contract position limit shall only be available for option contracts on securities [which] *that* underlie [Nasdaq or] exchange-traded options qualifying under applicable rules for a position limit of 75,000 option contracts; or

(vi) through (ix) No Change.

(B) Index Options

[(i)] Except in highly unusual circumstances, and with the prior written approval of the Association pursuant to the Rule 9600 Series for good cause shown in each instance, no member shall effect for any account in which such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, an opening transaction in an option contract of any class of index options [displayed on Nasdaq or] dealt in on an exchange if the member has reason to believe that as a result of such transaction the member or partner, officer, director or employee thereof, or customer, would, acting alone or in concert with others, directly or indirectly, hold or control or be obligated in respect of an aggregate position in excess of position limits established by [the Association, in the case of Nasdaq index options, or] the exchange on which the option trades.

[(ii) In determining compliance with this subparagraph (3), option contracts on a market index displayed in Nasdaq shall be subject to a contract limitation fixed by the Association, which shall not be larger than the equivalent of a $300 million position. For this purpose, a position shall be determined by the product of the closing index value times the index multiplier times the number of contracts on the same side of the market.]

(C) through (D) No Change.

(4) through (6) No Change.

(7) Limit on Uncovered Short Positions

Whenever the Association shall determine in light of current conditions in the markets for options, or in the markets for underlying securities, that there are outstanding a number of uncovered short positions in option contracts of a given class in excess of the limits established by the Association for purposes of this subparagraph or that a percentage of outstanding short positions in option contracts of a given class are uncovered, in excess of the limits established by the Association for purposes of this subparagraph, the Association, upon its determination that such action is in the public interest and necessary for the protection of investors and the maintenance of a fair and orderly market in the option contracts or underlying securities, may prohibit any further opening writing transactions in option contracts of that class unless the resulting short position will be covered, and it may prohibit the uncovering of any existing covered short position in option contracts of one or more series of options of that class. [The Association may exempt transactions in Nasdaq options by registered Nasdaq options market makers from restrictions imposed under this subparagraph and it shall rescind such restrictions upon its determination that they are no longer appropriate.]

(8) through (11) No Change.

(12) Confirmations

Every member shall promptly furnish to each customer a written confirmation of each transaction in option contracts for such customer's account. Each such confirmation shall show the type of option, the underlying security or index, the expiration month, the exercise price, the number of option contracts, the premium, the commission, the trade and settlement dates, whether the transaction was a purchase or a sale (writing) transaction, whether the transaction was an opening or a closing transaction, whether the transaction was effected on a principal or agency basis and, for other than options issued by The Options Clearing Corporation, the date of expiration. The confirmation shall by appropriate symbols distinguish between exchange listed [and Nasdaq option transactions] and other transactions in option contracts.

(13) through (22) No Change.

(23) Tendering Procedures for Exercise of Options

(A) Exercise of Options Contracts

(i) Subject to the restrictions established pursuant to paragraph (b)(4) hereof and such other restrictions [which] *that* may be imposed by the Association, The Options Clearing Corporation or an options exchange pursuant to appropriate rules, an outstanding option contract issued by The Options Clearing Corporation may be exercised during the time period specified in the rules of The Options

Clearing Corporation. An exercise notice may be tendered to The Options Clearing Corporation only by the clearing member in whose account the option contract is carried. Exercise instructions of their customers relating to exchange listed [or Nasdaq] option contracts shall not be accepted by members after 5:30 p.m. (Eastern Time) on the business day immediately prior to the expiration date of any option contract. Exercise instructions in respect of such option contracts carried in any proprietary account of a member shall similarly not be accepted by any other member with [whom] *which* such member maintains an account after 5:30 p.m. (Eastern Time) on the business day immediately prior to the expiration date of any option contract.

(ii) through (iii) No Change.

(B) through (D) No Change.

[(E) Exercise of Nasdaq Index Option Contracts

(i) With respect to Nasdaq index option contracts, clearing members are required to follow the procedures of The Options Clearing Corporation for tendering exercise notices, and member organizations also are required to comply with the following procedures:]

[a. A memorandum to exercise any Nasdaq index option contract issued or to be issued in a customer or market maker account at The Options Clearing Corporation must be received or prepared by the member organization no later than 4:10 p.m. (Eastern Time) and must be time-stamped at the time it is received or prepared. Member organizations must accept exercise instructions until 4:10 p.m. (Eastern Time) each business day.]

[b. A memorandum to exercise any Nasdaq index option contract issued or to be issued in a firm account at The Options Clearing Corporation must be prepared by the member organization no later than 4:10 p.m. (Eastern Time) and must be time-stamped at the time it is prepared.]

[c. Any member or member organization that intends to submit an exercise notice for 25 or more contracts in the same series of Nasdaq index options on the same business day on behalf of an individual customer, registered Nasdaq options market maker or firm account must notify the Association of such exercises in a manner prescribed by the Association no later than 4:10 p.m. (Eastern Time) on that day. For purposes of this subparagraph (E), exercises for all accounts controlled by the same individual must be aggregated.]

[(ii) The provisions of subparagraphs (i) a. and b. above are not applicable in respect to any series of Nasdaq index options on the last day of trading prior to the expiration date of such series.]

(24) No Change.

* * * * *

**2870. [Nasdaq Index Options]** ***Reserved***

**[2871. Definitions]**

[(a) Aggregate Current Index Value—The term ''aggregate current index value'' means the value required to be delivered to the holder of a call or by the holder of a put (against payment of the aggregate exercise price) upon the valid exercise of an index option. Such value is equal to the index multiplier times the current index value on the trading day on which an exercise notice is properly tendered to The Options Clearing Corporation, or, if the day on which such notice is so tendered is not a trading day, then on the most recent trading day.]

[(b) Aggregate Index Option Exercise Price—The term ''aggregate index option exercise price'' in respect of an index option means the exercise price of such option times the index multiplier.]

[(c) Best Bid and Asked—The term ''best bid'' means the best or highest price of all the open, active bids. The term ''best asked'' means the best or lowest (but greater than zero) price of all the open active offers.]

[(d) Cabinet Transaction—The term ''cabinet transaction'' means a transaction in a Nasdaq index option executed at a price of $1.00 per contract for the purpose of opening or closing a position in an index option having a nominal market value.]

[(e) Call—The term ''call'' means an option contract under which the holder of the options has the right, in accordance with the terms of the option, to buy a number of units of the underlying security or to receive a dollar equivalent of the underlying index covered by the option contract.]

[(f) Class of Options—The term ''class of options'' means all option contracts of the same type of option covering the same underlying security or index.]

[(g) Clearing Member—The term ''clearing member'' means a member of the Association which has been admitted to membership in The Options Clearing Corporation pursuant to the provisions of the rules of The Options Clearing Corporation.]

[(h) Closing Purchase Transaction—The term ''closing purchase transaction'' means an option transaction in which the purchaser's intention is to reduce or eliminate a short position in the series of options involved in such transaction.]

[(i) Closing Sale Transaction—The term ''closing sale transaction'' means an option transaction in which the seller's intention is to reduce or eliminate a long position in the series of options involved in such transaction.]

[(j) Combination Order—The term ''combination order'' means an order to buy a number of call option contracts and the same number of put option contracts with respect to the same underlying security or index or put and call option contracts representing the same number of shares or units of trading at option, which contracts do not have both the same exercise price and expiration date; or an order to sell a number of call option contracts and the same number of put option contracts with respect to the same underlying security or index, or put and call option contracts representing the same number of shares, or units of trading at option, which contracts do not have both the same exercise price and expiration date (e.g., an order to buy two XYZ April 50 calls and to buy two XYZ July 40 puts is a combination order). In the case of adjusted option contracts, a combination order need not consist of the same number of put and call contracts if such contracts represent the same number of shares or units of trading at option.]

[(k) Covered—The term ''covered'' in respect of a short position in a call option contract means that the writer's obligation is secured by a ''specific deposit'' or an ''escrow deposit,'' meeting the conditions of Rules 610(e) or 610(h), respectively, of the rules of The Options Clearing Corporation, or the writer holds in the same account as the short position, on a unit-for-unit basis, a long position either in the underlying security or in an option contract of the same class of options where the exercise price of the option contract in such long position is equal to or less than the exercise price of the option contract in such short position. The term ''covered'' in respect of a short position in a put option contract means that the writer holds in the same account as the short position, on a unit-for-unit basis, a long position in an option contract of the same class of options having an exercise price equal to or greater than the exercise price of the option contract in such short position.]

[(l) Current Index Value—The term ''current index value'' means the level of a particular index (derived from the current market prices and capitalization of the underlying securities in the index group) at the close of trading on any trading day, or any multiple or fraction thereof specified by the Association as such value is reported by the reporting authority.]

[(m) Expiration Cycle—The term ''expiration cycle'' means all option contracts covering the same underlying security or index having the same expiration month, or the time period during which such options are authorized for trading.]

[(n) Expiration Date—The term ''expiration date'' of a Nasdaq option contract issued by The Options Clearing Corporation means the day and time fixed by the rules of The Options Clearing Corporation for the expiration of all option contracts having the same expiration month as such option contract.]

[(o) Expiration Month—The term ''expiration month'' in respect of an option contract means the month and year in which such option contract expires.]

[(p) Index Dollar Equivalent—The term ''index dollar equivalent'' is the dollar amount which results when the index value is multiplied by the appropriate index multiplier.]

[(q) Index Group—The term ''index group'' means a group of securities, whose inclusion and relative representation in the group is determined by the inclusion and relative representation of their current market values in a widely disseminated securities index specified by the Association.]

[(r) Index Multiplier—The term ''index multiplier'' as used in reference to an index option contract means the dollar amount (as specified by the Association) by which the current index value is multiplied to arrive at the index dollar equivalent. Such term replaces the term ''unit of trading'' used in reference to other kinds of options.]

[(s) Index Option Exercise Price—The term ''index option exercise price'' in respect of an index option means the specified index value which, when multiplied by the index multiplier, will yield the aggregate exercise price at which the aggregate current index value may be purchased (in the case of a call) or sold (in the case of a put) upon the exercise of such option.]

[(t) Index Option Premium—The term ''index option premium'' means the price of each such option (expressed in points), as agreed upon by the purchaser and seller in such transaction, times the index multiplier and the number of options subject to the transaction.]

[(u) Index Underlying Security—The term index underlying security means any of the securities included in an index group underlying a class of Nasdaq index options.]

[(v) Internalized Trade Transaction—The term ''Internalized Trade Transaction'' or ''ITT'' means an OCT entered into The Nasdaq Stock Market by a participant containing the terms of a transaction executed by the participant as principal where the participant is also the order entry firm.]

[(w) Long Position—The term ''long position'' means the number of outstanding option contracts of a given series of options held by a person (purchaser).]

[(x) Nasdaq Index Option Contract—The term ''Nasdaq index option contract'' means an option contract which is authorized for quotation display on The Nasdaq Stock Market.]

[(y) Nasdaq Index Options Order Entry Firm—The term ''order entry firm'' shall mean a member of the Association who is registered as an order entry firm for purposes of participation in the Nasdaq Index Options Service which permits the firm to enter options orders via Order Confirmation Transactions (OCT) or Internalized Trade Transaction (ITT).]

[(z) Nasdaq Index Options Participant—The term ''participant'' shall mean either a Nasdaq index options market maker or Nasdaq index options order entry firm registered as such with the Association for participation in the Nasdaq Index Options Service.]

[(aa) Nasdaq Index Options Service—The term ''Nasdaq Index Option Service'' or ''Service'' means the Service owned and operated by The Nasdaq Stock Market, Inc. which enables participants to report transaction in Nasdaq index options, to have reports of all Nasdaq index options transactions automatically forwarded to the Options Price Reporting Authority (OPRA) for dissemination to the public and the industry, and to ''lock-in'' these trades by sending both sides to The Options Clearing Corporation for clearance and settlement; and to provide participants with sufficient monitoring and updating capabilities to participate in such trading environment.]

[(bb) Nasdaq Market Index Option—The term ''Nasdaq market index option'' means an option contract issued by The Options Clearing Corporation and displayed on The Nasdaq Stock Market based upon an underlying index which has been deemed by the Commission to be a market index.]

[(cc) Opening Purchase Transaction—The term ''opening purchase transaction'' means an option transaction in which the buyer's intention is to create or increase a long position in the series of options involved in such transaction.]

[(dd) Opening Writing Transaction—The term ''opening writing transaction'' means an option transaction in which the seller's (writer's) intention is to create or increase a short position in the series of options involved in such transaction.]

[(ee) Options Clearing Corporation—The term ''Options Clearing Corporation'' (OCC) means The Options Clearing Corporation, the issuer of options displayed on The Nasdaq Stock Market.]

[(ff) Order Confirmation Transaction—The term ''Order Confirmation Transaction'' or ''OCT'' means a message entered into The Nasdaq Stock Market by an order entry firm which is directed to a market maker not simultaneously acting as both a market maker and an order entry firm, which message contains the information specified by the Association as necessary for trade reporting purposes and for submission of trade detail to The Options Clearing Corporation.]

[(gg) Outstanding—The term ''outstanding'' in respect of an option contract means an option contract which has neither been the subject of a closing sale transaction nor has been exercised nor has reached its expiration date.]

[(hh) Put—The term ''put'' means an option contract under which the holder of the option has the right, in accordance with the terms of the option, to sell the number of units of the underlying security or deliver a dollar equivalent of the underlying index covered by the option contract.]

[(ii) Registered Nasdaq Index Options Market Maker—The term ''registered Nasdaq index options market maker'' means a member who meets the qualifications for such as set forth in Rule 2873, is willing and able to serve as such in connection with Nasdaq index option contracts and who is authorized by the Association to do so.]

[(jj) Rules of The Options Clearing Corporation—The term ''rules of The Options Clearing Corporation'' means the by-laws and the rules of The Option Clearing Corporation, and all written interpretations thereof as may be in effect from time to time.]

[(kk) Series of Options—The term ''series of options'' means all option contracts of the same class of options having the same exercise price and expiration date and which cover the same number of units of the underlying security or index.]

[(ll) Short Position—The term ''short position'' means the number of outstanding option contracts of a given series of options with respect to which a person is obligated as a writer (seller).]

[(mm) Spread Order—The term ''spread order'' means an order to buy a stated number of option contracts and

to sell the same number of option contracts, or contracts representing the same number of shares or units of trading at option in a different series of the same class of options.]

[(nn) Straddle Order—The term ''straddle order'' means an order to buy a number of call option contracts and the same number of put option contracts with respect to the same underlying security or index, or put and call option contracts representing the same number of shares or units of trading at option, and having the same exercise price and expiration date; or an order to sell a number of call option contracts and the same number of put option contracts with respect to the same underlying security or index, or put and call option contracts representing the same number of shares or units of trading at option and having the same exercise price and expiration date, (e.g., an order to buy two XYZ July 50 calls and to buy two XYZ July 50 puts is a straddle order). In the case of adjusted option contracts, a straddle order need not consist of the same number of put and call contracts if such contracts both represent the same number of shares, or units of trading at option.]

[(oo) Type of Options—The term ''type of options'' means the classification of an option contract as either a put or a call.]

[(pp) Uncovered—The term ''uncovered'' in respect of a short position in an option contract means the short position is not covered.]

[(qq) Underlying Index—The term ''underlying index'' means an index upon which a Nasdaq index option contract is based.]

[(rr) Unit of Trading—The term ''unit of trading'' means the number of units of the underlying security designated by The Options Clearing Corporation as the subject of a single option contract. In the absence of any other designation, the unit of trading for a common stock is 100 shares.]

**[2872. Nasdaq Index Option Services Available]**

[(a) Level 2 Nasdaq Index Options Service]

[(1) Nature of Service

This service will provide the subscriber with access to the quotations of all of the registered Nasdaq index options market makers entering quotes on each of the Nasdaq index options, in addition to the last reported sale for each Nasdaq index option, the most recent index computation for the underlying index, daily high and low, daily volume, time of last sale and inside quotations.]

[(2) Availability

This service is available only to persons approved and authorized by the Association for retrieval of Nasdaq index options quotation and last sale data.]

[(b) Level 3 Nasdaq Index Options Service]

[(1) Nature of Service

This service will enable a registered Nasdaq index options market maker to enter quotations in The Nasdaq Stock Market only on the Nasdaq index options as to which the Association has authorized it to enter quotes pursuant to the procedures set forth in Rule 2873. A subscriber to Level 3 Nasdaq Index Options Service shall also receive Level 2 Nasdaq Index Options Service.]

[(2) Availability

Level 3 Nasdaq Index Options Service is available to any member which, upon application, is approved and authorized by the Association to participate in The Nasdaq Stock Market as a registered Nasdaq index options market maker.]

**[2873. Registration, Qualification and Other General Requirements Applicable to All Nasdaq Index Options Market Makers]**

[(a) Registration of Nasdaq Index Options Market Makers—Prior to acting as a market maker in Nasdaq index options, a member must make application to the Association on a form prescribed by the Association and become registered as such with it. In connection with such application, a member must submit to the Association such financial and other information as required by the Association to determine if such member meets the qualifications of a registered Nasdaq index options market maker specified herein. Such other information will include those classes and series of Nasdaq options in which such member desires to be registered as an index options market maker.]

[(b) Participation in the Nasdaq Index Options Service shall be mandatory for all Nasdaq index options market makers. Accordingly, a Nasdaq index options market maker's registration as such shall be conditioned upon the member's initial and continuing compliance with the following requirements:]

[(1) execution of a Nasdaq Index Options Service participant application agreement with the Association;]

[(2) maintenance of the physical security of the equipment located on the premises of the Nasdaq index options market maker to prevent the unauthorized entry of information into the Nasdaq Index Options Service;]

[(3) acceptance and settlement of each NASD index option trade that the Service identifies as having been effected by such Nasdaq index options market maker, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified trade by the clearing member on the regularly scheduled settlement date;]

[(4) membership in The Options Clearing Corporation, or a clearing arrangement with such member; and]

[(5) compliance with all applicable rules and operating procedures of the Association and the Commission.]

[(c) Nasdaq index options market makers shall be under a continuing obligation to inform the Association of non-compliance with any of the registration requirements set forth above.]

[(d) Obligation to Honor Trades—If a Nasdaq index options market maker, or clearing member acting on his behalf, is reported by the Service to clearing at the close of any trading day, or shown by the activity reports generated by the Service as constituting a side of a trade, such market maker, or clearing member acting on his behalf, shall honor such trade on the scheduled settlement date.]

[(e) Compliance with Rules and Registration Requirements—Failure by Nasdaq index options market makers to comply with any of the Rules or registration requirements applicable to the Service identified herein shall subject such participants to censure, fine, suspension or revocation of its registration as Nasdaq index options market maker and/or order entry firm or any other fitting penalty under the Rules of the Association.]

[(f) Market Maker Financial Requirements—A registered Nasdaq index options market maker shall continuously maintain net capital of at least $50,000 computed in accordance with the provisions of SEC Rule 15c3–1(c)(2) under the Act, plus $5,000 per options series up to a maximum requirement of $150,000.]

[(g) Normal Business Hours—A registered Nasdaq index options market maker shall keep the Association advised as to the normal business hours during which it shall enter quotations. All firms should be open and active between the hours of 9:30 a.m. and 4:10 p.m. (Eastern Time). Nasdaq shall publish a ''close symbol'' for a registered Nasdaq index options market maker on Level 2 and Level 3 terminals at the close of such firm's normal business hours.]

[(h) Initiation of Service—Upon initial application, the registration of a Nasdaq index options market maker in a Nasdaq index options series shall be effective at the start of business on the second business day following receipt of his registration application by the Association; provided, however, said registration is accepted by the Association. If said initial registration is received for a Nasdaq index options series which has not previously been authorized by the Association, the registered Nasdaq index options market maker's registration shall be effective at the start of business on the first day that the Nasdaq options series is authorized for quotation by the Association; provided, however, said registration is accepted by the Association. A Nasdaq index options market maker shall commence market making and participation in the Service by initially contacting the Nasdaq Market Operations Center to obtain authorization for the trading of a particular Nasdaq index options series and identifying those terminals on which the Service information is to be displayed and thereafter by an appropriate keyboard entry which obligates him to execute transactions for at least one contract at the market maker's displayed quotations so long as the market maker remains active. All entries shall be made in accordance with the requirements set forth in the User Guide.]

[(i) Withdrawal Procedure for Nasdaq Index Options Market Makers]

[(1) With the approval of the Association, a registered Nasdaq index options market maker may suspend its quotations in a Nasdaq index options series for a specified period of time upon a showing that it is seriously impaired in its ability to enter quotations, or, in the case of a contemplated financing in the underlying security, the presence of statutory prohibitions or restrictions, or such other reason acceptable to the Association.]

[(2) In the event of a malfunction in the Nasdaq index options market maker's equipment rendering on-line communications with the Service inoperable, the Nasdaq index options market maker is obligated to immediately contact the Nasdaq Market Operations Center by telephone to request withdrawal from the Service. Nasdaq operational personnel will in turn enter the withdrawal notification from a supervisory terminal. Such manual intervention, however, will take a certain period of time for completion and any transaction occurring prior to the effectiveness of the withdrawal shall remain the responsibility of the withdrawing market maker.]

[(3) A registered Nasdaq index options market maker who suspends its quotations in a Nasdaq index options series pursuant to subparagraphs (1) and (2) above may not re-enter quotations in such series during the same trading day without the prior approval of the Association.]

[(j) Voluntary Termination—A registered Nasdaq index options market maker may voluntarily terminate its registration as to any Nasdaq options series by withdrawing its quotations from the Service without prior approval of the Association, subject to the conditions set forth in Rules 2875 and 2876. Such Nasdaq index options market maker may, by making application to the Association under the procedures and requirements set forth in this Rule, re-register as a Nasdaq index options market maker in a Nasdaq options series in which his registration is terminated.]

[(k) A Nasdaq index options market maker withdrawing option quotations from the Nasdaq Index Options Service for any reason has a specific obligation to monitor his status to assure that a withdrawal has in fact occurred. Any transaction occurring prior to the effectiveness of the withdrawal shall remain the responsibility of the withdrawing market maker.]

[(l) Suspension and Termination of a Registered Nasdaq Index Options Market Maker's Authority to Enter Quotations by Action of the Association—The Association may, pursuant to provisions specified in the Code of Procedure as set forth in the Rule 9000 Series, suspend, condition or terminate a registered index options market maker's authority to enter quotations on one or more series of Nasdaq index options for violations of applicable Rules of the Association.]

[(m) Termination of Service on the Failure to Promptly Pay Fines and Assessments]

[(1) The Association, upon notice, may terminate service on any level of Nasdaq Index Options Service for failure of a subscriber to maintain the standards of availability specified in this Rule for such service or to pay the Service operator for services rendered.]

[(2) Any member which is a respondent in a complaint pursuant to any Rule of the Association is required promptly to pay any fine or costs imposed to the Treasurer of the Association. In the event that the respondent fails to do so, the Association may, after ten business days notice in writing to such respondent, suspend his authority to enter options quotations into or receive options quotations from Level 2 and 3 of the Nasdaq Index Options Services.]

**[2874. Character of Index Options Quotations Entered Into the Nasdaq Index Options Service by All Nasdaq Index Options Market Makers]**

[(a) All bids or offers for Nasdaq index options shall be for at least one option contract or the minimum unit of trading.]

[(b) All bids and offers for Nasdaq index options shall be expressed in terms of the applicable index multiplier (e.g., a bid of five for a Nasdaq index option having an index multiplier of $100 shall represent a bid to pay a premium of $500 for an option contract).]

[(c) All bids or offers for a Nasdaq index option contract for which The Options Clearing Corporation has established an adjusted unit of trading in accordance with paragraphs (c) and (d) of Section 11 of Article VI of the OCC's By-Laws shall be expressed in terms of dollars per the appropriate fractional part of the total securities and/or other property constituting such adjusted unit of trading.]

[(d) A registered Nasdaq index options market maker who receives a buy or sell order must execute a trade for at least one contract at his quotation as they appear on the Nasdaq CRT screen at the time of receipt of any such buy or sell order. Each quotation entered by a registered Nasdaq index options market maker must be reasonably related to the prevailing market.]

[(e) A registered Nasdaq index options market maker will be permitted to enter a one-sided quotation (0–1/16) with respect to those options which have no present market value.]

[(f) Crossed Markets—A registered Nasdaq index options market maker shall not be permitted, except under extraordinary circumstances, to enter quotations into the Nasdaq Index Options Service if (1) the bid quotation entered is greater than the ask quotation of another registered market maker in the same options series or (2) the asked quotation is less than the bid quotation of another registered market maker in the same options series.]

[(g) Quote Spread Parameters—A registered Nasdaq index options market maker shall not be permitted, except under extraordinary circumstances, to enter index option quotations into the Nasdaq Index Options Service if the spread between the market maker's bid and ask exceeds the following parameters:]

[(1) ¼ of $1, if the member's bid price is $.50 or less;]

[(2) ½ of $1, if the bid price is more than $.50 but does not exceed $10;]

[(3) ¾ of $1, if the bid price is more than $10 but does not exceed $20; or]

[(4) $1, if the bid price is more than $20;]

[Providing, however, that the allowable quote spread differentials for the longest term options series open for trading in each option class shall be twice the amounts stated in subparagraphs (1) through (4) above.]

[(h) Except under extraordinary circumstances, a registered Nasdaq index options market maker shall not be permitted to enter on an intra-day basis a bid quotation more than $1 lower and/or an offering more than $1 higher than the last reported transaction for the particular index option contract. However, this standard shall not ordinarily apply if the price per share (or other unit of trading of the underlying index value has changed since the last preceding transaction for the particular option contract, in which event a market maker may then bid no lower than or offer no more than $1 plus the aggregate change in the price per unit of trading) of the underlying index value since the time of the last preceding transaction for the particular index option contract. Nothing in this paragraph shall alter the maximum bid-ask differential established by paragraph (g) above.]

[(i) Whenever, in the judgment of the Association, the interest of maintaining a fair and orderly market so requires, the Association may waive the requirements of paragraph (h) above on a case by case basis.]

[(j) When unusual trading conditions exist, and the interest of maintaining a fair and orderly market, the Association may waive the requirements of paragraph (g) above in those option series 10 or more points in the money to allow market makers to make bid/ask differentials as wide as the quotation in the primary market as determined by the inside quotation displayed on Nasdaq. Such waiver shall not automatically carry over from one day to the next.]

**[2875. Commitment Rules Applicable to Options Market Makers in Nasdaq Index Options]**

[(a) Commitment Rule for Index Options Market Makers. A market maker in a Nasdaq index option, unless excused from entering quotations pursuant to Rule 2873(i) shall, during normal options business hours, continuously quote all options series in such index option through the expiration of the longest term index options authorized for trading at the time the member commences such market making. Failure to abide by this commitment shall cause the index options market maker to be subject to the sanctions contained in Rule 2876.]

[(b) The following examples illustrate the commitment rule for index option market makers established by this Rule.]

[(1) Member A is authorized as a Nasdaq index options market maker prior to the expiration of January Nasdaq-100 Index® Options. Member A is thus obligated to continuously quote all series of Nasdaq-100 put and call options authorized for trading in the January, February and March expirations through the expiration of the March options.]

[(2) Member B is authorized as a market maker in Nasdaq-100 Index® Options at the time these options are authorized for the Nasdaq Options Program, but prior to the commencement of trading in these index options. The first authorized expiration cycle in Nasdaq-100 Index options will consist of options expiring in April, May and June with trading to commence in March. Member B would be obligated to continuously quote all authorized Nasdaq-100 Index option series from the commencement of trading in such options in March through the expiration of June Nasdaq-100 Index options.]

**[2876. Sanctions Applicable to Nasdaq Index Options Market Makers]**

[(a) A registered Nasdaq market maker in index options whose quotation for any option series in which the member is a market maker is withdrawn without the approval of the Association shall, at or before the daily close of the Nasdaq Index Options Service, have its registration terminated in all Nasdaq index options series covering the same underlying index as that for which option quotations were suspended by the member, subject, however, to the re-registration procedures set forth in paragraph (b) below.]

[(b) A Nasdaq index options market maker in index options whose registration in options classes is terminated pursuant to paragraph (a) above may, by making application to the Association under the procedures and requirements set forth in Rule 2873, re-register as a Nasdaq index options market maker in any Nasdaq index options series in the options classes in which his registration was terminated pursuant to paragraph (a) above providing, however, that the Association shall not grant effectiveness to such registration until the near-term options and those in the following expiration cycle have expired.]

[(c) The following example illustrates the sanction for index options market makers established by paragraph (a) above.]

[(1) Market Maker A, without approval of the Association, withdraws quotations from the Nasdaq Index Options Service for a series of Nasdaq-100 Index® options causing the member's registration in all Nasdaq-100 Index options series to be terminated pursuant to paragraph (a) above.]

[(2) At the time Market Maker A's registration is terminated, January, February and March Nasdaq-100® Index options are trading. Pursuant to paragraph (b), any application by member A to again register as a market maker in Nasdaq-100 Index options would not be granted effectiveness by the Association until the expiration of the February Nasdaq-100 Index options.]

[(d) A registered market maker in Nasdaq index options who withdraws index options quotations from the Nasdaq Index Options Service in any options series without prior authorization during the 15 business days preceding the expiration of the near-term options on the same underlying index may be deemed to be in violation of Rule 2110.]

**[2877. Requirements Applicable to Nasdaq Index Options Order Entry Firms]**

[(a) Participation in the Nasdaq Index Options Service as an order entry firm requires current registration as such with the Association. Such registration shall be conditioned upon the order entry firm's initial and continuing compliance with the following requirements:]

[(1) Execution of a Nasdaq Index Options Service participant application agreement with the Association;]

[(2) membership in, or a clearing arrangement with, a member of The Options Clearing Corporation;]

[(3) compliance with all applicable rules and operating procedures of the Association and the Commission;]

[(4) maintenance of the physical security of the equipment located on the premises of the Nasdaq index options order entry firm to prevent the unauthorized entry of information into the Nasdaq Index Options Service; and]

[(5) acceptance and settlement of each trade that the Service identifies as having been effected by such Nasdaq index options order entry firm or, if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such

identified trade by the clearing member on the regularly scheduled settlement date.]

[(b) The registration required hereunder will apply solely to the qualification of a participant to participate in the Nasdaq Index Options Service. Such registration shall not be conditioned upon registration in any particular eligible or active Nasdaq index options contracts.]

[(c) Each participant shall be under a continuing obligation to inform the Association of non-compliance with any of the registration requirements set forth above.]

[(d) Upon the effectiveness of registration as a Nasdaq index options order entry firm, the participant may commence activity for entry of orders, as applicable. The operating hours of the Nasdaq Index Options Service are currently 9:30 a.m. to 4:10 p.m. (Eastern Time), but may be modified by the Association. The extent of participation in Nasdaq by a Nasdaq index options order entry firm shall be determined solely by the firm in the exercise of its ability to enter orders into Nasdaq.]

[(e) Market orders shall not be permitted in the Nasdaq Index Options Service. All orders entered into the Service other than accommodation transactions shall be priced and all orders shall be directed to a specified Nasdaq index options market maker. Nasdaq index options order entry firms will be immediately notified on the terminal screen and printer, if requested, of the execution or rejection of an order entered into via OCT.]

[(f) If a Nasdaq index options order entry firm or clearing member acting on his behalf, is reported by the Service to clearing at the close of any trading day, or shown by the activity reports generated by the Service as constituting a side of a Nasdaq index option trade, such order entry firm or clearing member acting on his behalf, shall honor such trade on the scheduled settlement date.]

[(g) Failure by a Nasdaq index options order entry firm to comply with any of the Rules or registration requirements applicable to the Service identified herein shall subject such participant to censure, fine, suspension or revocation of its registration as a Nasdaq index options order entry and/or market maker firm or any other fitting sanction under the Rules of the Association.]

**[2878. Transaction Reporting and Other Reporting Requirements]**

[(a) All Nasdaq index options participants, upon becoming so registered and qualified, shall have access to, and be required to utilize, the Order Confirmation Transaction (OCT) and Internalized Trade Transaction (ITT) trade reporting systems established by the Association for Nasdaq index options transactions. Such trade reporting systems are designed to ''lock-in'' all Nasdaq index options transactions. Thus these systems serve trade comparison and clearing functions as well as trade reporting functions, and require the participation of both the order entry and the market making firms in the reporting process. Because these procedures, which are detailed in the User Guide, vary from those applying to transaction reporting in other Nasdaq securities, it is imperative that all Nasdaq index options participants become familiar with and comply with the provisions of this Rule. Failure on the part of a Nasdaq index options participant to comply with Nasdaq index options reporting provisions may subject participants to censure, fine, suspension or revocation of registration as a Nasdaq index options market maker and/or order entry firm or any other fitting sanction under the Rules of the Association.]

[(b) Order Confirmation Transaction (OCT)—Nasdaq index options order entry firms shall enter an OCT into the Service promptly upon the execution of their order. Upon the acceptance by a market maker of an OCT, the Service shall automatically forward a trade report to the Options Price Reporting Authority (OPRA). Nasdaq index options market makers shall accept an OCT via terminal entry within two minutes as specified by the Association, or the OCT shall be ''timed-out,'' in which case the Service will notify the order entry firm of the market maker's non-acceptance of the order. The order entry firm will also be notified if the market maker affirmatively rejects the order via terminal entry. If the market maker wishes to subsequently confirm an OCT which has been timed-out or rejected, a new OCT must be entered into the Service by the order entry firm with a late trade indicator. Once accepted, an OCT may only be canceled or corrected by mutual consent of the market maker and order entry firm.]

[(c) Unsolicited Orders—Nasdaq index options market makers are not obligated to accept an OCT which is unsolicited but, if they choose to do so, must accept the order within two minutes of its receipt as specified by the Association. Upon the acceptance of an unsolicited OCT order by a Nasdaq index options market maker, the system will automatically forward a trade report to OPRA. Once accepted by the market maker, the OCT may only be canceled or corrected with the mutual consent of the market maker and the order entry firm.]

[(d) Internalized Trade Transaction (ITT)—Nasdaq Index Options Service participants shall, where appropriate, enter an ITT message into the Service within two minutes of the execution of an internalized trade. Upon the entry of an ITT message, the Service shall automatically forward a trade report to OPRA. An ITT may be subsequently canceled or corrected by the member.]

[(e) A Nasdaq index options order entry firm shall transmit OCT and ITT for transactions in Nasdaq index options other than cabinet transactions at the price recorded on the trade ticket exclusive of commission, taxes or other charges.]

[(f) Nasdaq index options participants may effect cabinet transactions in any class of options contracts authorized for trading via the Service at a price of $1.00 per contract, providing such price is reasonably related to the prevailing market for the option. In reporting cabinet transactions, participants shall designate these transactions as such with the appropriate indicator on OCT or ITT entered into the Service. Cabinet transactions will not be disseminated to OPRA but will be reported to OCC for clearance.]

[(g) Weekly and/or Monthly Reports—A member shall report weekly and/or monthly to the Association such data on Nasdaq index options quoted in the Service as the Board of Governors shall require. Such report shall be on a form prescribed by the Association.]

[(h) Trade Tickets—All trade tickets on transactions in Nasdaq index options and authorized underlying securities must indicate the time the order was received and the time the order was executed or canceled.]

**[2879. Authorization of Nasdaq Index Option Market Making]**

[(a) The Association shall not authorize index option market making in any options series unless, at the time such market making activity is to commence, there are a minimum of five registered Nasdaq index options market makers in the index option.]

[(b) Once market making has commenced in any class of Nasdaq index options, the Association shall withdraw approval of further market making activity with respect to any succeeding options series to be opened in that Nasdaq index option if there are fewer than three registered market makers in the index option.]

[(c) Whenever the Association shall withdraw its approval for index option market making activity in a particular

Nasdaq index options series pursuant to paragraph (b) above, it shall not reinstate such market making until the provisions of paragraph (a) above have been satisfied.]

* * * * *

**[2880. Nasdaq Index Option Contracts Authorized for Trading]**

[The Association may from time to time approve for display on Nasdaq put option contracts and call option contracts in respect of underlying indexes which have been selected by the Association and approved for trading. All such option contracts shall be designated as to the type of option, the underlying index, the expiration month and the exercise price. Only quotations in respect to option contracts in a class or series of options approved by the Association and currently open for display on the Service may be quoted by a registered Nasdaq index options market maker on the Nasdaq Index Options Service.]

**[2881. Series of Nasdaq Index Options for Trading]**

[(a) Nasdaq Index Options—After a particular class of index options has been approved for display on the Service and quotation thereon by registered Nasdaq index options market makers, the Association shall from time to time open for trading series of options therein. Prior to the opening of trading in any series of options the Association shall fix the expiration month and exercise price of options contracts included in each such series.]

[(1) Expiration Months—At the commencement of trading in a particular class of Nasdaq index options, series of options having three different expiration months will normally be opened. Such expirations shall occur in consecutive months. The first such expiration will occur in the month following the month in which such options are introduced, the second expiration will occur in the month following the first, and the third expiration will occur in the month following the second. Additional series of index options of the same class may be opened for trading at or about the time a prior series expires and the expiration month of each such series will normally be approximately three months following the opening of such series.]

[(2) Exercise Prices—The procedures for fixing the exercise or strike price of each series of index options opened for trading shall be as follows:]

[(A) Strike prices shall be fixed at an index value which is an integer.]

[(B) Regardless of the value of an index, the interval between strike prices will be $5.00.]

[(C) New series of index option contracts may be added up to the fifth business day prior to expiration.]

[(D) When new series of index option contracts within a new expiration cycle are opened for trading, two strike prices above and two strike prices below the current index value may be added.]

[(E) When the value of the index underlying a class of index options reaches a strike price, the Association may add one or more additional strike prices such that there are at least two strike prices above and two strike prices below the strike price which has been reached.]

[(F) In unusual market conditions, the Association may add additional series of index option contracts up to three strike prices above and three strike prices below the current index price.]

[(b) Specification Adjustments—The unit of trading and the exercise price initially established for index option contracts of a particular series are subject to adjustment in accordance with the rules of The Options Clearing Corporation. When such adjustment(s) have been determined, announcement thereof shall be made by the Association and, effective as of the time specified in such announcement, the adjusted unit of trading and the adjusted exercise price shall be applicable with respect to all subsequent transactions in such series.]

[(c) Contract Adjustments—Index option contracts shall be subject to adjustments in accordance with the rules of The Options Clearing Corporation.]

[(d) Puts and Calls—When calls are first opened for trading on an underlying index stock group, the Association may open a series of puts corresponding to each series of calls open or to be opened for trading on the same underlying index stock group.]

**[2882. Unit of Trading]**

[The unit of trading in each series of options displayed on the Service shall be the unit of trading established by The Options Clearing Corporation pursuant to the rules of The Options Clearing Corporation.]

**[2883. Suspension of Authorization of Nasdaq Index Option Contracts]**

[(a) The Association shall have the authority to suspend trading in Nasdaq index option contracts by either one or more market maker or all market makers where it deems it necessary and appropriate:]

[(1) to prevent fraudulent and manipulative acts and practices;]

[(2) to promote just and equitable principles of trade; or]

[(3) to prevent excessive speculation and promote the likelihood of a competitive and orderly market.]

[(b) The Association shall suspend trading in Nasdaq index options contracts by all market makers:]

[(1) If the underlying index is not being computed or disseminated; or]

[(2) if trading is halted or suspended in underlying stocks that collectively contribute (A) 20 percent of the current index group value (in the case of index stock groups comprised of more than 50 stocks); and (B) 10 percent of the current index group value (in the case of index stock groups comprised of 50 or fewer stocks).]

**[2884. Trade Comparison Procedures for Nasdaq Index Options]**

[(a) Scope and Applicability—All transactions in Nasdaq index options shall be reported to the Association pursuant to reporting procedures established by the Association. The Association shall report all compared transactions to The Options Clearing Corporation for clearance and settlement. All compared transactions in Nasdaq options which are cleared and settled through the facilities of The Options Clearing Corporation shall be subject to the rules of The Options Clearing Corporation.]

[(b) Responsibility of Clearing Members—Every member which is a member of The Options Clearing Corporation (a ''clearing member'') shall be responsible for the clearance and settlement of every Nasdaq index option transaction to which it is a party and for each Nasdaq index option transaction of a member for which it acts as correspondent and/or clearing agent pursuant to agreement. Unless specifically authorized by The Options Clearing Corporation, no member shall be permitted to have more than one such agreement with a clearing member in effect at any time.]

[(c) Reporting of Clearing Information]

[(1) Filing of Trade Information—Each Nasdaq index option participant shall individually report each transaction in a Nasdaq index option, for which it has a responsibility to report, each business day to the Association via OCT or ITT in the manner specified by the Association.]

[(2) (A) The Association will provide each Nasdaq index options participant with the opportunity to review on trade date OCT and ITT transactions to which the participant is a party.]

[(B) All OCT orders which are accepted by the contra party and all ITT which have not been canceled shall be considered to be compared trades, i.e., trades where the trade information agrees as to the identity of the other party to the transaction, the type of option contract, the underlying index, the exercise price, the expiration month, the number of options contracts, the amount of the premium, the designation of the parties as purchaser and writer, respectively, and the trade date, if other than the date of submission.]

[(3) Verification of Nasdaq Index Options Transactions—Each participant shall promptly review each OCT or ITT execution report received and report corrected trade information to the Association as soon as possible, but in any event, not later than the hour which shall be from time to time prescribed by the Association. It shall be the sole responsibility of participants to review the accuracy of all reports promptly upon receipt, and the Association shall not assume any responsibility for reviewing such reports for accuracy or for making any corrections not reported by a participant.]

[(4) Reporting of Compared Trades to The Options Clearing Corporation—On each business day, at or prior to such time as may be prescribed by The Options Clearing Corporation, the Association shall furnish The Options Clearing Corporation a report of each clearing member's compared trades as reported to the Association on that day. Only those trades which have been confirmed by both parties shall be furnished by the Association to The Options Clearing Corporation, and the Association shall assume no responsibility with respect to any unaccepted order nor for any delays or errors in the reporting of trades.]

**[2885. Clearance and Settlement Procedures for Nasdaq Index Options]**

[(a) Failure to Pay Premium]

[(1) Whenever The Options Clearing Corporation shall reject a Nasdaq index option transaction because of the failure of a clearing member acting on behalf of the purchaser to pay the premium due thereon as required by the rules of The Options Clearing Corporation, the member acting as or on behalf of the seller (writer) shall have the right either to cancel the transaction by giving notices thereof to the defaulting clearing member or to enter into either a new opening writing transaction or closing sale transaction, as the case may be, in respect of the same Nasdaq index option contract that was the subject of the rejected Nasdaq index option transaction, charging any loss resulting therefrom (including any commissions paid or payable in connection with such new transaction) to the defaulting clearing member. Such action shall be taken on the day the Nasdaq index option transaction was rejected by The Options Clearing Corporation, unless the Association shall extend such time.]

[(2) In the event the rejected transaction involves a Nasdaq index option contract of a series in which trading has been terminated or suspended before a new Nasdaq index option transaction can be effected to establish the amount of loss, the member acting as or on behalf of the seller shall have a claim against the defaulting clearing member for the amount of the premium due thereon.]

[(b) Index Option Contracts of Suspended Members—When announcement is made of the suspension from membership in the Association of a member, other than a clearing member of The Options Clearing Corporation (a ''non-clearing member''), pursuant to the By-Laws of the Association, all open short positions in option contracts of such member and all open positions that are secured in full by a specific deposit or evidenced by an escrow receipt in accordance with the rules of The Options Clearing Corporation, shall be closed out without unnecessary delay by all members carrying such positions for the account of the suspended non-clearing member; provided, however, that upon any such suspension, the Association may, in its discretion and where it determines that such is necessary for the protection of investors, suspend the mandatory close-out provisions hereof and may, in its discretion and where it determines that such is necessary for the protection of investors, reinstate such provisions at such time as it may determine. No temporary suspension of the mandatory close-out provisions hereof shall relieve any suspended non-clearing member of its obligations or of any damages incurred by members carrying positions for the account of such suspended non-clearing member. Should an open short position or an open position resulting from an exercise of an option contract not be closed when required by this Rule, the price for the purpose of determining claims shall be fixed by the price current at the time when such position should have been closed under this Rule. When a member of The Options Clearing Corporation is suspended pursuant to the provisions of the By-Laws, the positions of such clearing member shall be closed out in accordance with the rules of The Options Clearing Corporation.]

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**3100. BOOKS AND RECORDS, AND FINANCIAL CONDITION**

**3110. Books and Records**

(a) No Change.

(b) Marking of Customer Order Tickets

(1) No Change.

(2) A person associated with a member shall indicate on the memorandum for each transaction in a [non-Nasdaq] *non-exchange-listed* security, as that term is defined in the Rule [6700] *6600* Series, the name of each dealer contacted and the quotations received to determine the best inter-dealer market; however, the requirements of this subparagraph shall not apply if two or more priced quotations for the security are displayed in an inter-dealer quotation system, as defined in Rule 2320(g), that permits quotation updates on a real-time basis for which NASD Regulation has access to historical quotation information.

(c) No Change.

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**IM–3110. Customer Account Information**

(a) Members should be aware that, effective January 1, 1990, any transaction [which] *that* involves a [non-Nasdaq,] non-exchange-listed equity security trading for less than five dollars per share may be subject to the provisions of SEC Rules 15g–1 through 15g–9, and those rules should be reviewed to determine if an executed customer suitability agreement is required.

(b) through (h) No Change.

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**[3350] *5100*. Short Sale Rule**

(a) No member shall effect a short sale *in a Nasdaq National Market Security (as that term is defined in Rule 4200) otherwise than on an exchange* for the account of a customer or for its own account in a Nasdaq National Market security at or below the current national best (inside) bid when the current national best (inside) bid [as displayed by The Nasdaq Stock Market] is below the preceding national best (inside) bid in the security.

(b) No change.

(c) The provisions of paragraph (a) shall not apply to:

(1) Sales by a [qualified] registered market maker registered in the security *with* NASD [on Nasdaq] in connection with bona fide market making activity. For purposes of this paragraph,

transactions unrelated to normal market making activity, such as index arbitrage and risk arbitrage that are independent from a member's market making functions, will not be considered bona fide market-making activity.

(2) through (8) No Change.

(d) through (e) No Change.

(f) A member that is not currently registered as NASD [Nasdaq] market maker in a security and that has acquired a security while acting in the capacity of a block positioner shall be deemed to own such security for the purposes of this Rule notwithstanding that such member may not have a net long position in such security if and to the extent that such member's short position in such security is the subject of one or more offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities.

(g) through (h) No Change

(i) (1) A member shall be permitted, consistent with its quotation obligations, to execute a short sale for the account of a warrant market maker that would otherwise be in contravention of this Rule, if:

(A) The warrant market maker is a registered [Nasdaq] NASD market maker for the warrant; and

(B) No Change.

(j) No Change.

(k) Definitions

(1) through (2) No Change.

[(3)(A) Until February 1, 1996, the term ''qualified market maker'' shall mean a registered Nasdaq market maker that has maintained, without interruption, quotations in the subject security for the preceding 20 business days. Notwithstanding the 20-day period specified in this subparagraph, after an offering in a stock has been publicly announced, a registration statement has been filed, or a merger or acquisition involving two issues has been announced, no market maker may register in the stock as a qualified market maker unless it meets the requirements set forth below:]

[(i) For secondary offerings, the offering has become effective and the market maker has been registered in and maintained quotations without interruption in the subject security for 40 calendar days;]

[(ii) For initial public offerings, the market maker may register in the offering and immediately become a qualified market maker; provided however, that if the market maker withdraws on an unexcused basis from the security within the first 20 days of the offering, it shall not be designated as a qualified market maker on any subsequent initial public offerings for the next 10 business days;]

[(iii) After a merger or acquisition involving an exchange of stock has been publicly announced and not yet consummated or terminated, a market maker may immediately register in either or both of the two affected securities as a qualified market maker pursuant to the same-day registration procedures in Rule 4611; provided, however, that if the market maker withdraws on an unexcused basis from any stock in which it has registered pursuant to this paragraph within 20 days of so registering, it shall not be designated as a qualified market maker pursuant to this subparagraph (3) for any subsequent merger or acquisition announced within three months subsequent to such unexcused withdrawal.]

[(B) For purposes of this subparagraph (3), a market maker will be deemed to have maintained quotations without interruption if the market maker is registered in the security and has continued publication of quotations in the security through Nasdaq on a continuous basis; provided however, that if a market maker is granted an excused withdrawal pursuant to the requirements of Rule 4619, the 20 business day standard will be considered uninterrupted and will be calculated without regard to the period of the excused withdrawal. Beginning February 1, 1996, the term ''qualified market maker'' shall mean a registered Nasdaq market maker that meets the criteria for a Primary Nasdaq Market Maker as set forth in Rule 4612.]

[(l) This Rule shall be in effect until March 1, 2002.]

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**IM–[3350]*5100*. Short Sale Rule**

(a) (1) In developing a Short Sale Rule for Nasdaq National Market securities *effected otherwise than on an exchange*, the Association *has* adopted an exemption to the Rule for certain market making activity. This exemption [was deemed] *is* an essential component of the Rule because bona fide market making activity is necessary and appropriate to maintain continuous, liquid markets in Nasdaq National Market securities. Rule 3350(c)(1) states that short selling prohibitions shall not apply to sales by [qualified] *registered* [Nasdaq] *NASD* market makers in connection with bona fide market making activity and specifies that transactions unrelated to normal market making activity, such as index arbitrage and risk arbitrage that are independent from a member's market making functions, will not be considered as bona fide market making. Thus two standards are to be applied: one must be a ['qualified'' Nasdaq] *registered NASD* market maker and one must engage in ''bona fide'' market making activity to take advantage of this exemption. With this interpretation, the Association wishes to clarify for members some of the factors that will be taken into consideration when reviewing market making activity that may not be deemed to be bona fide market making activity and therefore would not be exempted from the Rule's application.

(2) through (3) No change.

(b) (1) Rule [3350] *5100* requires that no member shall effect a short sale *otherwise than on an exchange* for the account of a customer or for its own account in a Nasdaq National Market security at or below the current *national* best (inside) bid when the current *national* best (inside) bid [as displayed by The Nasdaq Stock Market] is below the preceding best (inside) bid in the security. The Association has determined that in order to effect a ''legal'' short sale when the current best bid is lower than the preceding best bid the short sale must be executed at a price of at least 1/16th point above the current *national* inside bid when the current inside spread is 1/16th point or greater. The last sale report for such a trade would, therefore, be above the *national* inside bid by at least 1/16th of a point. If the current spread is less than 1/16th of a point, however, the short sale must be executed at a price equal to or greater than the current inside offer price.

(2) Moreover, the Association believes that requiring short sales to be a minimum increment of 1/16th point above the *national best* bid when the current spread is 1/16th or greater and equal to or greater than the offer when the current spread is less than 1/16th ensures that transactions are not effected at prices inconsistent with the underlying purpose of the Rule. It would be inconsistent with Rule [3350] *5100* for a member or customer to cause the inside spread for an issue to narrow when the current best bid is lower than the preceding best bid (e.g., lowering its offer to create an inside spread less than 1/16th) for the purpose of facilitating the execution of a short sale at a price less than 1/16th above the inside bid.

*(3) For Nasdaq National Market securities trading in decimals pursuant to the Decimals Implementation Plan for Equity and Options Markets, the Association has determined that in order to effect a ''legal'' short sale in such securities when the current bid is lower than the preceding bid the short sale must be executed at least $0.01*

*above the current inside bid. The last sale report for such a trade would, therefore, be above the inside bid by at least $0.01.*

(c) (1) No Change.

(2) For example, in instances where the current best bid is below the preceding best bid, if a market maker alone at the inside best bid were to lower its bid and then raise it to create an ''up bid'' for the purpose of facilitating a short sale, the Association would consider such activity to be a manipulative act and a violation of the Association's Short Sale Rule. The Association also would consider it a manipulative act and a violation of the Rule if a market maker with a long stock position were to raise its bid above the inside bid and then lower it to create a ''down bid'' for the purpose of precluding market participants from selling short. In addition, if a market maker agrees to an arrangement proposed by a member or a customer whereby the market maker raises its bid [in The Nasdaq Stock Market] in order to effect a short sale for the other party and is protected against any loss on the trade or on any other executions effected at its new bid price, the market maker would be deemed to be in violation of Rule [3350] *5100*. Similarly, a market maker would be deemed in violation of the Rule if it entered into an arrangement with a member or a customer whereby it used its exemption from the rule to sell short at the bid at successively lower prices, accumulating a short position, and subsequently offsetting those sales through a transaction at a prearranged price, for the purpose of avoiding compliance with the Rule, and with the understanding that the market maker would be guaranteed by the member or customer against losses on the trades.

(3) No Change.

* * * * *

The 4000 Series is replaced in its entirety by the following proposed rule language.

### *4000. NASD Alternative Display Facility*

### *4100. General*

*The NASD Alternative Display Facility is the facility to be operated by the NASD for members that effect trades in Nasdaq and CQS/CTA (''ADF-eligible'') securities otherwise than on an exchange. The NASD Alternative Display Facility will collect and disseminate quotations, compare trades, and collect and disseminate trade reports.*

### *4110. Use of NASD Alternative Display Facility Data Systems*

*NASD may at any time authorize the use of NASD's Alternative Display Facility data systems on a test basis for whatever studies it considers necessary and appropriate.*

### *4200. DEFINITIONS*

(a) *Unless the context requires otherwise, the terms used in the Rule 4000 through 6000 Series shall have the meanings below. Terms not specifically defined below shall have the meaning in NASD's By-Laws and Rules and SEC Rule 11Aa3–1.*

*(1) ''Act'' means the Securities Exchange Act of 1934.*

*(2) ''ADF-eligible security'' means a Nasdaq or CQS/CTA security.*

*(3) ''CQS/CTA security'' means a security that is eligible for inclusion in the CQ/CTA Plan as from time to time amended in accordance with the provisions of the Plan and with the approval of the SEC.*

*(4) ''Nasdaq'' means the registered national securities exchange and its facilities operated by The Nasdaq Stock Market, Inc.*

*(5) ''Nasdaq market maker'' shall have the meaning as defined in the Nasdaq rules.*

*(6) ''Nasdaq National Market'' or ''NNM'' is a distinct tier of the Nasdaq Stock Market comprised of securities that meet the requirements of and are authorized as a Nasdaq National Market Security.*

*(7) ''Nasdaq National Market security'' or ''NNM security'' shall have the meaning as defined in the Nasdaq rules.*

*(8) ''Nasdaq security'' means a security that is listed on the Nasdaq Stock Exchange.*

*(9) ''Nasdaq SmallCap Market'' or ''SCM'' is a distinct tier of The Nasdaq Stock Market compromised of securities that meet the requirements of and are authorized as a Nasdaq SmallCap Security.*

*(10) ''Nasdaq SmallCap Market security'' shall have the meaning as defined in the Nasdaq rules.*

*(11) ''Non-Registered Member'' means a member of NASD that is not a Registered Market Maker or a Registered ECN.*

*(12) ''Normal unit of trading'' means 100 shares of a security unless, with respect to a particular security, the market where the security is listed determines that a normal unit of trading shall constitute other than 100 shares. If a normal unit of trading is other than 100 shares, a special identifier shall be appended to the issuer's symbol.*

*(13) ''Otherwise than on an exchange'' means a trade effected by an NASD member otherwise than on or through a national securities exchange. The determination of what constitutes a trade ''on or through'' a particular national securities exchange shall be determined by that exchange in accordance with all applicable statutes, rules and regulations, and with any necessary SEC approval.*

*(14) ''Registered ECN'' means a member of NASD that is an electronic communications network (''ECN'') that elects to display orders in the NASD Alternative Display Facility. A member is a Registered ECN in only those designated securities for which it is registered with NASD. A member shall cease being a Registered ECN in a designated security when it has withdrawn or voluntarily terminated its quotations in that security or when its quotations have been suspended or terminated by action of NASD.*

*(15) ''Registered Market Maker'' means a member of NASD that is registered as an NASD market maker in a particular designated security and, with respect to that security, holds itself out (by entering quotations in the NASD Alternative Display Facility) as being willing to buy and sell such security for its own account on a regular and continuous basis. A member is a Registered Market Maker in only those designated securities for which it is registered as an NASD market maker. A member shall cease being a Registered Market Maker in a designated security when it has withdrawn or voluntarily terminated its quotations in that security or when its quotations have been suspended or terminated by action of NASD.*

*(16) ''SEC Rule 100,'' ''SEC Rule 101,'' ''SEC Rule 103,'' and ''SEC Rule 104'' mean the rules adopted by the Commission under Regulation M, and any amendments thereto.*

*(17) ''Stabilizing bid'' means the terms ''stabilizing'' or to ''stabilize'' as defined in SEC Rule 100.*

*(18) ''Underwriting Activity Report'' is a report provided by the Corporate Financing Department of NASD Regulation, Inc. in connection with a distribution of securities subject to SEC Rule 101 pursuant to NASD Rule 2710(b)(11) and includes forms that are submitted by members to comply with their notification obligations under Rules 4614, 4619, and 4623.*

*(b) For purposes of Rules 4619, and 4623, the following terms shall have the meanings as defined in SEC Rule 100: ''affiliated purchaser,'' ''distribution,'' ''distribution participant,'' ''independent bid,'' ''net purchases,''*

*''passive market maker,'' ''penalty bid,'' ''reference security,'' ''restricted period,'' ''subject security,'' and ''syndicate covering transaction.''*

*Selected NASD Notices to Members: 94–70, 95–64, 95–82.*

***4300. Quote and Order Access Requirements***

*(a) To ensure that NASD Market Participants comply with their quote and order access obligations as defined below, for each security in which they elect to display a bid and offer (for Registered Market Makers), or a bid or offer (for Registered ECNs), in the Alternative Display Facility, NASD Market Participants must:*

*(1) Provide other NASD Market Participants direct electronic access, as defined below; and*

*(2) Provide NASD member broker-dealers that are not NASD Market Participants direct electronic access or allow for indirect electronic access, as defined below. Indirect electronic access must be readily available to broker-dealers seeking access, otherwise the NASD Market Participant must provide direct electronic access. In any event, an NASD Market Participant is prohibited from (A) in any way directly or indirectly influencing or prescribing the prices that their customer broker-dealer may choose to impose for providing indirect access; and (B) precluding or discouraging indirect electronic access, including through the imposition of discriminatory pricing or quality of service with regard to a broker-dealer that is providing indirect electronic access.*

*(b) Subject to the terms and conditions contained herein, all NASD Market Participants that display quotations in the NASD Alternative Display Facility must record each item of information described in paragraphs (b)(1) and (2) of this Rule for all orders they receive via direct or indirect electronic access, and report this information to the NASD as specified below.*

*(1) NASD Market Participants must record the following information for every order they receive via direct or indirect electronic access during the trading day:*

*(A) Unique Order Identifier*
*(B) Order Entry Firm (OEID)*
*(C) Order Side (Buy/Sell)*
*(D) Order Quantity*
*(E) Issue Identifier*
*(F) Order Price*
*(G) Order Price Modifier (i.e. .N)*
*(H) Time In Force (i.e. 3 minutes, day, etc.)*
*(I) Order Date*
*(J) Order Time (including seconds)*
*(K) Minimal Acceptable Quantity (i.e. C1, M1, AON, etc.)*
*(L) Market Making Firm (MMID)*

*The information described in paragraphs (A) through (L) must be reported to the NASD within 10 seconds of receipt of the order.*

*(2) In addition to the information previously provided pursuant to paragraph (b)(1), NASD Market Participants must record the following information, as applicable, for every order that has been acted upon or responded to:*

*(A) Unique Order Identifier (as provided in paragraph (b)(1)(A))*
*(B) Order Response (i.e. E=Execute, D=Decline, X=Cancel, T=timed out, P=partial, etc.)*
*(C) Order Response Time (including seconds)*
*(D) Partial Quantity*
*(E) Counter Price*
*(F) Total Execution Quantity*
*(G) Execution Price*

*The information described in paragraphs (A) through (G) must be reported to the NASD within 10 seconds of any response to or action taken regarding an order.*

*(3) Maintaining and Preserving Records*

*(A) In addition to submitting the information described herein to the NASD, each member shall maintain and preserve records of the information required to be recorded under this Rule for the period of time and accessibility specified in SEC Rule 17a–4(b).*

*(B) The records required to be maintained and preserved under this Rule may be immediately produced or reproduced on ''micrographic media'' as defined in SEC Rule 17a–4(f)(1)(i) or by means of ''electronic storage media'' as defined in SEC Rule 17a–4(f)(1)(ii) that meet the conditions set forth in SEC Rule 17a–4(f) and may be maintained and preserved for the required time in that form.*

*(4) Orders Not Required To Be Recorded*

*The recording and reporting requirements contained in paragraphs (a) and (b) of this Rule shall not apply to orders received via ITS or any system operated by a national securities exchange or national securities association.*

*(5) Method of Transmitting Data*

*Members shall transmit this information in such form as prescribed by the Association.*

*(6) Reporting Agent Agreements*

*(A) ''Reporting Agent'' shall mean a third party that enters into any agreement with a member pursuant to which such third party agrees to fulfill such member's obligations under this Rule.*

*(B) Any member may enter into an agreement with a Reporting Agent pursuant to which the Reporting Agent agrees to fulfill the obligations of such member under this Rule. Any such agreement shall be evidenced in writing, which shall specify the respective functions and responsibilities of each party to the agreement that are required to effect full compliance with the requirements of this Rule.*

*(C) All written documents evidencing an agreement described in paragraph (6)(B) shall be maintained by each party to the agreement.*

*(D) Each member remains responsible for compliance with the requirements of this Rule, notwithstanding the existence of an agreement described in this paragraph.*

*(7) Withdrawal of Quotations*

*If an NASD Market Participant knows or has reason to believe that it or its Reporting Agent is not complying with the requirements of this Rule, the member must withdraw its quotations from the NASD Alternative Display Facility until such time that the member is satisfied that its order information is being properly recorded and reported.*

*(c) NASD Market Participants are required to specify as part of their NASD Alternative Display Facility Workstation Subscriber Agreement the method and terms by which they will comply with the requirements of this Rule. NASD Regulation staff will not approve a Market Participant's Subscriber Agreement unless the method and terms provided by the Market Participant are in compliance with this Rule.*

*(d) Definitions*

*(1) Customer broker-dealer is any broker-dealer that has, or seeks to have, an ongoing relationship with a Market Participant, including an ECN subscriber, for the purposes of executing securities transactions.*

*(2) Direct electronic access means the ability to deliver an order for execution directly against an individual NASD Market Participant's best bid and offer subject to quote and order access obligations, as defined herein, without the need for voice communication, with the equivalent speed, reliability, availability, and cost, as are made available to the NASD Market Participant's own customer broker-dealers or other active customers or subscribers.*

*(3) Indirect electronic access means the ability to route an order through*

*customer broker-dealers of an NASD Market Participant that are not affiliates of the NASD Market Participant, for execution against the NASD Market Participant's best bid and offer subject to quote and order access obligations, without the need for voice communication, with equivalent speed, reliability, availability, and cost, as are made available to the Market Participant's customer broker-dealer providing the indirect access or other active customers or subscribers. The NASD Market Participant's customer broker-dealers providing indirect electronic access shall remain responsible for all orders routed through them as though the orders were the firms' own orders.*

*(4) NASD Market Participant means (a) an NASD Registered Market Maker,(b) an ATS, (c) or an NASD Registered ECN.*

*(5) Best bid and offer for purposes of this Rule includes the best-priced buy and sell orders of an NASD Registered ECN.*

*(6) Quote and Order Access Obligations include the requirements under this Rule and the firm quote obligations under Rule 11Ac1–1 under the Act, the standards under Rule 11Ac1–1(c)(5)(ii)(A)(2) under the Act, Sections 301(b)(3) through (5) of Regulation ATS and other order access-related regulatory requirements for ATSs, ECNs and market makers. Obligations under this Rule include providing the ability to send or receive Trade-or-Move messages, identifiable as such, as required by Rule 4613(d) and providing access to any reserved size orders as required by Rule 4623(c).*

* * * * *

***4600. TRADING IN NASDAQ SECURITIES***

***4610. Registration and Other Requirements***

***4611. Registration as a Market Maker***

*(a) Quotations and quotation sizes in Nasdaq securities may be entered into the NASD Alternative Display Facility only by a Registered Market Maker or other entity approved by NASD to function in a market-making capacity.*

*(b) An NASD member seeking registration as a market maker shall file an application with NASD. The application shall certify the member's good standing with NASD and shall demonstrate compliance with the net capital and other financial responsibility provisions of the Act. It shall be sufficient to obtain registration as a market maker for a member to demonstrate proof that it is a registered Nasdaq market maker in good standing. A member's registration as a market maker shall become effective upon receipt by the member of notice of approval of registration from NASD.*

*(c) A market maker may become registered in an issue by entering a registration request via an NASD terminal or other NASD approved electronic interface with NASD's systems or by contacting NASD Alternative Display Facility Operations. If the requirements of paragraph (b) above are satisfied, registration shall become effective on the day the registration request is entered. It shall be sufficient to obtain registration in an issue for a member to demonstrate proof that it is currently registered in that issue as a Nasdaq market maker and is in good standing.*

*(d) A market maker's registration in an issue shall be terminated if the market maker fails to enter quotations in the issue within five (5) business days after the market maker's registration in the issue becomes effective.*

*Selected NASD Notices to Members: 93–24, 94–68, 94–83.*

*4612. Reserved*

***4613. Character of Quotations***

*(a) Two-Sided Quotations*

*(1) For each Nasdaq security for which a member is a Registered Market Maker, the member shall be willing to buy and sell such security for its own account on a continuous basis and shall enter and maintain two-sided quotations through the NASD Alternative Display Facility, subject to the procedures for excused withdrawal set forth in Rule 4619.*

*(A) A Registered Market Maker in a security listed on Nasdaq must display a quotation size for at least one normal unit of trading (or a larger multiple thereof) when it is not displaying a limit order in compliance with SEC Rule 11Ac1–4, provided, however, that a Registered Market Maker may augment its displayed quotation size to display limit orders priced at the market maker's quotation.*

*(B) Minimum Price Variation for Decimal-based Quotations*

*The minimum quotation increment for securities authorized for decimal pricing as part of the SEC-approved Decimals Implementation Plan for the Equities and Options Markets shall be $0.01. Quotations failing to meet this standard shall be rejected.*

*(b) Firm Quotations*

*(1) A Registered Market Maker that receives an offer to buy or sell from another NASD member shall execute a transaction for at least a normal unit of trading at its displayed quotations as disseminated through the NASD Alternative Display Facility at the time of receipt of any such offer. If a Registered Market Maker displays a quotation for a size greater than a normal unit of trading, it shall, upon receipt of an offer to buy or sell from another NASD member, execute a transaction at least at the size displayed.*

*(2) If a Registered Market Maker, upon receipt of an offer to buy or sell from another NASD member in any amount that is at least one normal unit of trading greater than its published quotation size as disseminated through the NASD Alternative Display Facility at the time of receipt of any such offer, executes a transaction in an amount of shares less than the size of the offer, then such Registered Market Maker shall, immediately after such execution, display a revised quotation at a price that is inferior to its previous published quotation. The failure of a Registered Market Maker to execute the offer in an amount greater than its published quotation size shall not constitute a violation of subparagraph (b)(1) of this rule.*

*(c) Quotations Reasonably Related to the Market*

*A Registered Market Maker shall enter and maintain quotations that are reasonably related to the prevailing market. In the event it appears that a Registered Market Maker's quotations are no longer reasonably related to the prevailing market, NASD may require the market maker to re-enter its quotations. If a Registered Market Maker whose quotations are no longer reasonably related to the prevailing market fails to re-enter its quotations, NASD may suspend the market maker's quotations in one or all securities.*

*(1) In the event that a Registered Market Maker's ability to enter or update quotations is impaired, the Registered Market Maker shall immediately contact NASD Alternative Display Facility Operations to request the withdrawal of its quotations.*

(2) In the event that a Registered Market Maker's ability to enter or update quotations is impaired and the Registered Market Maker elects to continue to participate through the NASD Alternative Display Facility, the Registered Market shall execute an offer to buy or sell received from another NASD member at its quotations as disseminated through the NASD Alternative Display Facility.

*(d) Locked and Crossed Markets*

*(1) A Registered Market Maker shall not, except under extraordinary circumstances, enter or maintain quotations through the NASD Alternative Display Facility during normal business hours if:*

*(A) the bid quotation entered is equal to (''lock'') or greater than (''cross'') the asked quotation of another market maker entering quotations in the same security; or*

*(B) the asked quotation is equal to (''lock'') or less than (''cross'') the bid quotation of another market maker entering quotations in the same security.*

*(2) Obligations Regarding Locked/Crossed Market Conditions Prior to Market Opening*

*(A) Locked/Crossed Market Prior to 9:20 a.m.—For locks/crosses that occur prior to 9:20 a.m. Eastern Time, a Registered Market Maker that is a party to a lock/cross because the Registered Market Maker either has entered a bid (ask) quotation that locks/crosses another market maker's quotation(s) or has had its quotation(s) locked/crossed by another market maker (''party to a lock/cross'') may, beginning at 9:20 a.m. Eastern Time, send a message, making use of direct electronic access in accordance with Rule 4300, of any size, that is at the receiving market maker's quoted price (''Trade-or-Move Message''). Any Registered Market Maker that receives a Trade-or-Move Message at or after 9:20 a.m. Eastern Time, and that is a party to a lock/cross, must within 30 seconds of receiving such message either: fill the incoming Trade-or-Move Message for the full size of the message; or move its bid down (offer up) by a quotation increment that unlocks/uncrosses the market.*

*(B) Locked/Crossed Market Between 9:20 and 9:29:59 a.m.—If a Registered Market Maker locks or crosses the market between 9:20 and 9:29:59 a.m. Eastern Time, the Registered Market Maker must immediately send, making use of direct electronic access in accordance with Rule 4300, to the market maker whose quotes it is locking or crossing a Trade-or-Move message that is at the receiving market maker's quoted price and that is for at least 5,000 shares (in instances where there are multiple market makers to a lock/cross, the locking/crossing market maker must send a message to each party to the lock/cross and the aggregate size of all such messages must be at least 5,000 shares); provided, however, that if a market participant is representing an agency order, the market participant shall be required to send a Trade-or-Move Message(s) in an amount equal to the agency order, even if that order is less than 5,000 shares. A Registered Market Maker that receives a Trade-or-Move Message during this period and that is a party to a lock/cross, must within 30 seconds of receiving such message either: fill the incoming Trade-or-Move Message for the full size of the message; or move its bid down (offer up) by a quotation increment that unlocks/uncrosses the market.*

*(C) A Registered Market Maker that sends a Trade-or-Move Message pursuant to of this rule must append to the message a symbol indicating that it is a Trade-or-Move Message.*

*(D) For the purposes of this rule ''agency order'' shall mean an order(s) that is for the benefit of the account of a natural person executing securities transactions with or through or receiving investment banking services from a broker/dealer, or for the benefit of an ''institutional account'' as defined in NASD Rule 3110. An agency order shall not include an order(s) that is for the benefit of a market maker in the security at issue, but shall include an order(s) that is for the benefit of a broker/dealer that is not a market maker in the security at issue.*

*(3) A Registered Market Maker, prior to entering a quotation that locks or crosses another quotation, must make reasonable efforts to avoid such locked or crossed market by executing transactions with all market makers whose quotations would be locked or crossed. Reasonable efforts shall include making use of direct electronic access in accordance with Rule 4300. Pursuant to the provisions of paragraph (b) of this Rule, a Registered Market Maker whose quotations are causing a locked or crossed market is required to execute transactions at its quotations as displayed through the NASD Alternative Display Facility at the time of receipt of any order.*

*(4) For purposes of this Rule 4613(d), the term ''Registered Market Maker'' shall include:*

*(A) any NASD member that enters into an ECN, as that term is defined in SEC Rule 11Ac1–1(a)(8), a order that is displayed through the NASD Alternative Display Facility;*

*(B) any NASD member that operates the ECN when the order being displayed has been entered by a person or entity that is not an NASD member;*

*(C) any NASD member that enters into an ATS, as that term is defined in SEC Regulation ATS, a priced order that is displayed through the NASD Alternative Display Facility; and*

*(D) any NASD member that operates the ATS when the priced order being displayed has been entered by a person or entity that is not an NASD member.*

*(e) Other Quotation Obligations*

*(1) Members that display priced quotations on a real-time basis for Nasdaq securities in two or more market centers that permit quotation updates on a real-time basis must display the same priced quotations for the security in each market center.*

*(2) A member that is registered as a market maker in a Nasdaq security shall be obligated to have available in close proximity to the NASD Alternative Display Facility terminal at which it makes a market in a Nasdaq security a quotation service that disseminates the bid price and offer price then being furnished by or on behalf of national securities exchanges and other market makers trading and quoting that Nasdaq security.*

*Selected NASD Notices to Members: 91–37, 93–2, 93–43, 99–61.*

***IM–4613. Autoquote Policy***

*(a) General Prohibition—NASD bans the automated update of quotations by market makers through the NASD Alternative Display Facility. Except as provided below, this policy prohibits systems known as ''autoquote'' systems from effecting automated quote updates or tracking of inside quotations through the NASD Alternative Display Facility. This ban is necessary to offset the negative impact on the capacity and operation of the NASD Alternative Display Facility caused by certain autoquote techniques that track changes to the inside quotation and automatically react by generating another quote to keep the market maker's quote away from the best market.*

*(b) Exceptions to the General Prohibition—Automated updating of quotations is permitted when: (1) the update is in response to an execution in the security by that firm (such as execution of an order that partially fills a market maker's quotation size), and is in compliance with Rule 4613(b)(2); (2) it requires a physical entry (such as a manual entry to the market maker's internal system which then automatically forwards the update to Nasdaq); or (3) the update is to reflect the receipt, execution, or cancellation of a customer limit order. elected NASD Notices to Members: 99–61.*

*4614. Reserved*

*4615. Reserved*

*4616. Reserved*

***4617. Normal Business Hours***

*A Registered Market Maker shall be open for business as of 9:30 a.m.*

*Eastern Time and shall close no earlier than 4:00 p.m. Eastern Time. An NASD Registered Market Maker may remain open for business on a voluntary basis for any period of time between 4:00 p.m. Eastern time and 6:30 p.m. Eastern Time. Registered Market Makers whose quotes are open after 4:00 p.m. Eastern Time shall be obligated to comply, while their quotes are open, with all NASD Rules that are not by their express terms, or by an official interpretation of NASD, inapplicable to any part of the 4:00 p.m. to 6:30 p.m. Eastern Time period.*

*4618. Reserved*

***4619. Withdrawal of Quotations and Passive Market Making***

*(a) A Registered Market Maker that wishes to withdraw quotations in a security or have its quotations identified as the quotations of a passive market maker shall contact NASD Alternative Display Facility Operations to obtain excused withdrawal status prior to withdrawing its quotations or identification as a passive market maker. Withdrawals of quotations or identifications of quotations as those of a passive market maker shall be granted by NASD Alternative Display Facility Operations only upon satisfying one of the conditions specified in this Rule.*

*(b) Excused withdrawal status based on circumstances beyond the market maker's control may be granted for up to five (5) business days, unless extended by NASD Alternative Display Facility Operations. Excused withdrawal status based on demonstrated legal or regulatory requirements, supported by appropriate documentation and accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon notification, be granted for not more than sixty (60) days (unless such request is required to be made pursuant to paragraph (d) below). Excused withdrawal status based on religious holidays may be granted only if notice is received by NASD one business day in advance and is approved by NASD. Excused withdrawal status based on vacation may be granted only if:*

*(1) The request for withdrawal is received by NASD one business day in advance, and is approved by NASD;*

*(2) the request includes a list of the securities for which withdrawal is requested; and*

*(c) Excused withdrawal status may be granted to a Registered Market Maker that has withdrawn from an issue prior to the public announcement of a merger or acquisition and wishes to re-register in the issue pursuant to the same-day registration procedures contained in Rule 4611, above, provided the Registered Market Maker has remained registered in one of the affected issues. The withdrawal of quotations because of pending news, a sudden influx of orders or price changes, or to effect transactions with competitors shall not constitute acceptable reasons for granting excused withdrawal status; or*

*(d) Excused withdrawal status may be granted to a member that experiences a documented problem or failure impacting the operation or utilization of any automated system operated by or on behalf of the firm (chronic system failures within the control of the member will not constitute a problem or failure impacting a firm's automated system).*

*(e) Excused withdrawal status may be granted to a Registered Market Maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency, thereby terminating its registration as a Registered Market Maker; provided however, that if NASD finds that the Registered Market Maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused pursuant to Rule 4620.*

*(f) Excused withdrawal status or passive market maker status may be granted to a Registered Market Maker that is a distribution participant (or, in the case of excused withdrawal status, an affiliated purchaser) in order to comply with SEC Rules 101, 103, or 104 under the Act on the following conditions:*

*(1) A member acting as a manager (or in a similar capacity) of a distribution of a security that is a subject security or reference security under Rule 101 and any member that is a distribution participant or an affiliated purchaser in such a distribution that does not have a manager shall provide written notice to NASD Alternative Display Facility Operations and the Market Regulation Department of NASD Regulation, Inc. no later than the business day prior to the first entire trading session of the one-day or five-day restricted period under SEC Rule 101, unless later notification is necessary under the specific circumstances.*

*(A) The notice required by subparagraph (f)(1) of this Rule shall be provided by submitting a completed Underwriting Activity Report that includes a request on behalf of each market maker that is a distribution participant or an affiliated purchaser to withdraw the market maker's quotations, or that includes a request on behalf of each market maker that is a distribution participant (or an affiliated purchaser of a distribution participant) that its quotations be identified as those of a passive market maker and includes the contemplated date and time of the commencement of the restricted period.*

*(B) The managing underwriter shall advise each Registered Market Maker that it has been identified as a distribution participant or an affiliated purchaser to NASD Alternative Display Facility Operations and that its quotations will be automatically withdrawn or identified as passive market maker quotations, unless a market maker that is a distribution participant (or an affiliated purchaser of a distribution participant) notifies NASD Alternative Display Facility Operations as required by subparagraph (f)(2), below.*

*(2) A Registered Market Maker that has been identified to NASD Alternative Display Facility Operations as a distribution participant (or an affiliated purchaser of a distribution participant) shall promptly notify NASD Alternative Display Facility Operations and the manager of its intention not to participate in the prospective distribution or not to act as a passive market maker in order to avoid having its quotations withdrawn or identified as the quotations of a passive market maker.*

*(3) If a Registered Market Maker that is a distribution participant withdraws its quotations in a Nasdaq security in order to comply with the net purchases limitation of SEC Rule 103 or with any other provision of SEC Rules 101, 103, or 104 and promptly notifies NASD Alternative Display Facility Operations of its action, the withdrawal shall be deemed an excused withdrawal. Nothing in this subparagraph shall prohibit NASD from taking such action as is necessary under the circumstances against a member and its associated persons for failure to contact NASD Alternative Display Facility Operations to obtain an excused withdrawal as required by subparagraphs (a) of this Rule.*

*(4) The quotations of a passive market maker shall be identified on NASD Alternative Display Facility Data Systems as those of a passive market maker.*

*(5) A member acting as a manager (or in a similar capacity) of a distribution subject to subparagraph (f)(1) of this Rule shall submit a request to NASD Alternative Display Facility Operations and the Market Regulation Department of NASD Regulation, Inc. to rescind the excused withdrawal status or passive market making status of distribution*

*participants and affiliated purchasers, which request shall include the date and time of the pricing of the offering, the offering price, and the time the offering terminated, and, if not in writing, shall be confirmed in writing no later than the close of business the day the offering terminates. The request referenced in this subparagraph may be submitted on the Underwriting Activity Report.*

*(g) The NASD Alternative Display Facility Operations Review Committee shall have jurisdiction over proceedings brought by market makers seeking review of a denial of an excused withdrawal pursuant to this Rule, or the conditions imposed on their reentry.* Selected NASD Notices to Members: 88–69, 89–15, 93–29, 93–41.

***4620. Voluntary Termination of Registration***

*A Registered Market Maker may voluntarily terminate its registration in a security by (1) withdrawing its quotations from the NASD Alternative Display Facility and not re-entering its quotations for five (5) minutes or (2) failing to re-enter quotations within thirty (30) minutes of the end of a trading halt. A Registered Market Maker that voluntarily terminates its registration in a security may not re-register as a market maker in that security for twenty (20) business days, absent an excused withdrawal specified in Rule 4619. Withdrawal from participation as a Registered Market Maker in the NASD Alternative Display Facility shall constitute termination of registration as a market maker in that security for purposes of this Rule; provided, however, that a Registered Market Maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and thereby terminates its registration as a market maker in Nasdaq securities may register as a market maker at any time after a clearing arrangement has been reestablished.*

***4621. Suspension and Termination of Quotations by NASD Action***

*NASD may, pursuant to the procedures set forth in the Rule 9000 Series, suspend, condition, limit, prohibit or terminate a Registered Market Maker's authority to enter quotations in one or more authorized securities for violations of applicable requirements or prohibitions.*

***4622. Termination of NASD Alternative Display Facility Data System Service***

*NASD may, upon notice, terminate NASD Alternative Display Facility Data System service in the event that a Registered Market Maker fails to qualify under specified standards of eligibility or fails to pay promptly for services rendered by NASD. Selected NASD Notices to Members: 88–43.*

***4623. Alternative Trading Systems***

*(a) NASD may provide a means to permit alternative trading systems (''ATSs''), as such term is defined in Regulation ATS, and electronic communications networks (''ECNs''), as such term is defined in SEC Rule 11Ac1–1(a)(8), to comply with the display requirements of SEC Rule 301(b)(3) and the terms of the ECN display alternative provided for in SEC Rule 11Ac1–1(c)(5)(ii)(A) and (B) (''ECN display alternatives''). NASD will not facilitate compliance with access requirements, which are the responsibility of Market Participants under Rule 4300.*

*(b) An ATS or ECN that seeks to use the NASD-provided means to comply with SEC Rule 301(b)(3), the ECN display alternatives shall:*

*(1) Demonstrate to NASD that it is in compliance with Regulation ATS or that it qualifies as an ECN meeting the definition in the SEC Rule;*

*(2) be registered as an NASD member;*

*(3) enter into and comply with the terms of an NASD Alternative Display Facility Workstation Subscriber Agreement, as amended for ATSs and ECNs;*

*(4) agree to provide for NASD's dissemination in the quotation data made available to quotation vendors the prices and sizes of NASD Registered Market Maker orders (and orders from other subscribers of the ATS or ECN, if the ATS or ECN so chooses or is required by SEC Rule 301(b)(3) to display a subscriber's order in the NASD Alternative Display Facility), at the highest buy price and the lowest sell price for each Nasdaq security entered in and widely disseminated by the ATS or ECN; and prior to entering such prices and sizes, register with NASD Alternative Display Facility Operations as an ATS or ECN; and*

*(5) comply with Rule 4300.*

*(c) When an NASD member attempts to access electronically an ATS or ECN-displayed order by sending an order that is larger than the ATS's or ECN's Nasdaq-displayed size and the ATS or ECN is displaying the order on a reserved size basis, the NASD member that operates the ATS or ECN shall execute such delivered order:*

*(1) Up to the size of the delivered order, if the ATS or ECN order (including the reserved size and displayed portions) is the same size or larger than the NASD-delivered order; or*

*(2) up to the size of the ATS or ECN order (including the reserved size and displayed portions), if the delivered order is the same size or larger than the ATS or ECN order (including the reserved size and displayed portions).*

*No ATS or ECN operating through the NASD Alternative Display Facility pursuant to this Rule is permitted to provide a reserved-size function unless the size of the order displayed through the NASD Alternative Display Facility is 100 shares or greater. For purposes of this Rule, the term ''reserved size'' shall mean that a customer entering an order into an ATS or ECN has authorized the ATS or ECN to display publicly part of the full size of the customer's order with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part as the displayed part is executed.*

*4624. Reserved*

***4625. Regulatory Cooperation***

*(a) The NASD may enter into agreements with other self-regulatory organizations, markets, associations and other entities that provide for the exchange of information and other forms of mutual assistance for regulatory purposes.*

*(b) No member or associated person shall refuse a request to appear and testify before, or provide documents or other information to, another self-regulatory organization, market, association or other entity with which NASD has entered into an agreement pursuant to paragraph (a) of this Rule, provided that the request is made in connection with an investigation or proceeding covered by the agreement with NASD. The requirements of this paragraph (b) shall apply irrespective of whether the NASD has initiated its own investigation or proceeding.*

*(c) Whenever a member or associated person responds to a request pursuant to this Rule, the member or associated person shall have all the same rights and obligations that would be accorded if the request had been made pursuant to Rule 8210.*

***4630. Reporting Transactions in Securities Listed on Nasdaq***

*4631. Reserved*

*4632. Reserved*

***4633. Transactions Reported by Members***

*(a) General*

*(1) This Rule governs the reporting of trades through the NASD's Trade Reporting and Comparison Service (''TRACS'') in Nasdaq securities effected otherwise than on an exchange.*

*(2) All times referenced in this Rule are Eastern time.*

*(3) For Purposes of this Rule, the term ''Reporting NASD Member'' or ''Reporting Member'' shall mean an NASD member with the trade reporting obligation as set forth in Rule 4633(d).*

*(4) For purposes of this Rule, the term ''Non-Reporting NASD Member'' or ''Non-Reporting Member'' shall mean the contra side of a trade reported by a Reporting Member.*

*(5) For purposes of this Rule, the term ''normal market hours'' means from 9:30 a.m. to 4:00 p.m.*

*(6) Times in trade reports shall be expressed in hours, minutes, and seconds according to the 24 hour clock (e.g., a trade executed at 1:30:45 p.m. Eastern Time shall be reported as executed at 13:30:45). All times referenced in this Rule are Eastern Time.*

*(7) Participation in the trade reporting function of TRACS is mandatory for all members that have trade reporting obligations under this Rule. Participation in the trade reporting function of TRACS is conditioned upon (a) execution of, and continuing compliance with, a TRACS trade reporting Participant Application Agreement and (b) maintenance of the physical security of the equipment on the premises of the member to prevent unauthorized entry of information into the trade reporting function of TRACS.*

*(b) Normal Market Hours*

*Reporting NASD Members shall transmit last sale reports in Nasdaq securities effected otherwise than on an exchange to TRACS within 90 seconds after execution. Transactions not reported within 90 seconds after execution shall be designated as late and such trade reports must include the time of execution.*

*(c) Outside Normal Market Hours*

*Transactions in Nasdaq securities effected otherwise than on an exchange outside normal market hours shall be reported by members to TRACS as set out below.*

*(1) For transactions effected otherwise than on an exchange between the hours of 8:00 a.m. and 9:30 a.m. and 4:00 p.m. and 6:30 p.m.,*

*(A) A Reporting NASD Member shall transmit last sale reports to TRACS within 90 seconds after execution. Such last sale reports shall be designated as ''.T'' trades to denote their execution outside normal market hours. Transactions not reported within 90 seconds must include the time of execution on the trade report.*

*(2) For transactions effected otherwise than on an exchange between the hours of midnight and 8:00 a.m.,*

*(A) A Reporting NASD Member shall transmit last sale reports to TRACS between 8:00 a.m. and 9:30 a.m. on trade date. Such last sale reports shall be designated as ''.T'' trades, to denote their execution outside normal market hours, and must include the time of execution.*

*(3) For securities transactions effected otherwise than on an exchange between the hours of 6:30 p.m. and 12:00 p.m.*

*(A) A Reporting NASD Member shall transmit last sale reports to TRACS on the next business day (T+1) between 8:00 a.m. and 6:30 p.m. Such last sale reports shall be designated ''as/of'' trades, to denote their execution on a prior day, and must include the time of execution.*

*(d) Determining Which Party Reports a Transaction*

*(1) For transactions between two Registered Market Makers or Registered ECNs, the Registered Market Maker or ECN representing the sell side shall report the transaction.*

*(2) For transactions between a Registered Market Maker or Registered ECN and a Non-Registered Member, the Registered Market Maker or ECN shall report the transaction.*

*(3) For transactions between two Non-Registered Members, the Non-Registered Member representing the sell side shall report the transaction.*

(4) For transactions between a member and a customer, the member shall report the transaction.

*(5) For transactions between a member and a broker-dealer that is not a member of NASD, the member shall report the transaction.*

*(6) For all transactions between an NASD member and an NASD member that is also a member of Nasdaq or another national securities exchange, where the reporting party has a choice of reporting venues and chooses not to report to Nasdaq or another national securities exchange, the reporting party described in (1) through (5) above shall report the transaction to the NASD.*

*(e) Information To Be Reported—Two Party Trade Reports*

*(1) A two party trade report is a last sale report that denotes a trade between one Reporting NASD member and one Non-Reporting Member. The Reporting NASD Member is denoted as the (''MMID'') side of the trade report and the Non-Reporting Member is denoted as the (''OEID'') side of the report.*

*(2) Each Two Party Last Sale Report Submitted by a Reporting NASD Member Should Contain:*

*(A) Security identification symbol (SECID);*

*(B) Number of shares or bonds;*

*(C) Price of the transaction as required by paragraph (h) below;*

*(D) A designated symbol denoting whether the transaction, from the Reporting NASD Member's perspective, is a buy, sell, sell short, sell short exempt, or cross;*

*(E) If known, a designated symbol denoting whether the transaction, from the perspective of the Non-Reporting Member, is a buy, sell, sell short, or sell short exempt;*

*(F) A designated symbol denoting whether the transaction, from the perspective of the Reporting Member, is a principal, riskless principal, or agent;*

*(G) If known, a designated symbol denoting whether the transaction, from the perspective of the Non-Reporting Member, is a principal, riskless principal, or agent;*

*(H) For any transaction in an order for which a member has recording and reporting obligations under NASD Rules 6954 and 6955, the trade report must include:*

*(i) An order identifier, meeting such parameters as may be prescribed by the NASD, assigned to the order that uniquely identifies the order for the date it was received (see Rule 6954(b)(1));*

*(ii) The time of execution. This information must be reported regardless of the period of time between execution of the trade and the NASD report.*

*(I) Execution time for any transaction not reported within 90 seconds of execution;*

*(J) The market participant identifier of the Reporting Member and the Non-Reporting Member;*

*(K) Reporting Member clearing broker;*

*(L) Reporting Member Executing Broker in case of a ''give up;''*

*(M) Non-Reporting Member Executing Broker;*

*(N) Non-Reporting Member introducing broker in case of a ''give up;''*

*(O) Non-Reporting Member clearing broker;*

*(P) A designated symbol denoting whether the trade report should be published;*

*(Q) A designated symbol denoting whether the trade report should be compared in TRACS;*

*(R) If the contra side to the trade report is a customer of the Reporting Member, the Reporting Member shall denote that the trade is an internalized trade with the designated symbol;*

*(S) If the contra side to the trade report is a Non-NASD member, the Reporting Member shall indicate with the designated symbol that the contra side is a non-member.*

*(T) For two party trade reports submitted pursuant to an Automated Give Up (''AGU'') arrangement or a Qualified Service Representative (''QSR'') Agreement, disclosure of the information set forth in subparagraphs (e) (2) (E) and (G) is mandatory.*

*(f) Information To Be Reported—Three Party Trade Reports*

*(1) A three party trade report is a single last sale trade report that denotes one Reporting Member and two contra parties. The Reporting Member is denoted as the MMID side of the trade report and the two non-reporting sides are denoted as the OEID side of the trade report. In a three party report, the Reporting Member is the buyer to one OEID and the seller to the other OEID. Registered ECNs shall only submit three party trade reports. Riskless principal trades may be submitted by reporting members as three party trade reports.*

*(2) Each Three Party Trade Report Submitted by a Reporting Member shall contain the following information:*

*Transaction Information*

*(A) Security Identification Symbol (SECID);*

*(B) Number of shares or bonds;*

*(C) Price of the transaction as required by paragraph (h) below;*

*(D) Execution time for any transaction not reported within 90 seconds of execution;*

*(E) The market participant identifier of the Reporting Member and the two Non-Reporting Members;*

*(F) A designated symbol denoting whether the trade should be published;*

*(G) For any transaction in an order for which a member has recording and reporting obligations under NASD Rules 6954 and 6955, the trade report must include:*

*(i) An order identifier, meeting such parameters as may be prescribed by the NASD, assigned to the order that uniquely identifies the order for the date it was received (see Rule 6954(b)(1)). This order number must associate both the buy side and sell side OATS Execution Reports to the TRACS report;*

*(ii) The time of execution. This information must be reported regardless of the period of time between execution of the trade and the NASD report.*

*MMID Side*

*(H) All three party trade reports from ECNs must be marked as agency cross transactions;*

*(I) All three party trade reports from Non-ECNs must be denoted as riskless principal trade reports and shall include a designated symbol denoting whether the trade between the non-ECN and the buy-side OEID is a sell, sell short, or sell short exempt transaction;*

*(J) Reporting Member clearing broker;*

*(K) Reporting Member Executing Broker in the case of a ''give up'';*

*Buy Side OEID*

*(L) Buy Side OEID executing broker;*

*(M) Buy Side OEID introducing broker in case of a ''give up'';*

*(N) Buy Side OEID clearing broker;*

*(O) If known, a designated symbol denoting whether the trade, from the Buy Side OEID's perspective, is as principal, riskless principal, or agent;*

*(P) If the Buy Side OEID is a customer of the Reporting Member, the Reporting Member shall denote that the trade is an internalized trade with the designated symbol;*

*(Q) If the Buy Side OEID is a non-NASD member, the Reporting Member shall indicate with the designated symbol that the buy side OEID is a non-member;*

*(R) A designated symbol denoting whether the trade between the MMID and the Buy Side OEID shall be compared in TRACS;*

*Sell Side OEID*

*(S) Sell Side OEID executing broker;*

*(T) Sell Side OEID introducing broker in case of a ''give up'';*

*(U) Sell Side OEID clearing broker;*

*(V) If known, a designated symbol denoting whether the trade, from the Sell Side OEID's perspective, is as principal, riskless principal, or agent;*

*(W) If known, a symbol denoting whether the trade, from the Sell Side OEID's perspective, is a sell, sell short, or sell short exempt transaction;*

*(X) If the Sell Side OEID is a customer of the Reporting Member, the Reporting Member shall denote that the trade is an internalized trade with the designated symbol;*

*(Y) If the Sell Side OEID is a non-NASD Member, the Reporting Member shall indicate with the designated symbol that the buy side OEID is a non-member;*

*(Z) A designated symbol denoting whether the trade between the MMID and the Sell Side OEID shall be compared in TRACS;*

*(AA) If the transactions between the Buy Side OEID and the Reporting Member is reported pursuant to an AGU arrangement or a QSR agreement, disclosure of the information set forth in subparagraph (f) (2) (O) is mandatory; and*

*(BB) If the transaction between the Sell Side OEID and the Reporting Member is reported pursuant to an AGU arrangement or a QSR agreement, disclosure of the information set forth in subparagraphs (f) (2) (V) and (W) is mandatory.*

*(g) Trade Report Modifiers*

*(1) Reporting Members shall append the following trade report modifiers to a last sale report if applicable:*

*(A) .SLD, if the trade is executed during normal market hours and it is reported later than 90 seconds after execution;*

*(B) .PRP, if the trade reflects a price different from the current market when the execution is based on a prior reference point in time during normal market hours, which time shall be denoted in the trade report;*

*(C) .B, if the trade is executed during market hours and is an aggregation of transaction reports meeting the conditions set forth in paragraph (h) below;*

*(D) .SB, if the trade is executed during market hours and is a .B trade that is reported later than 90 seconds after execution;*

*(E) .SNN, if the trade is a Seller's Option Trade, .NN denotes the number of days for delivery;*

*(F) .C, if the trade is a Cash Trade;*

*(G) .ND, if the trade is a Next Day Trade;*

*(H) .W, if the trade occurs at a price based on an average weighting or another special pricing formula;*

*(I) .T, if the trade is executed outside of normal market hours;*

*(J) .O, if the trade is priced beyond certain price validation parameters as established by the NASD; and*

*(K) Any other trade report modifier approved for use by the Securities and Exchange Commission.*

*(2) It will be a violation of this Rule for a Reporting Member to fail to append a required trade modifier or to append a modifier that is not required.*

*(3) A Reporting Member shall not append a .O modifier to a trade report unless the trade price is beyond certain price validation parameters as established by the NASD.*

*(4) The Association seeks to emphasize the obligations of members*

*to report securities transactions within 90 seconds after execution. All reportable transactions not reported within 90 seconds after execution shall be reported as late, and the Association routinely monitors members' compliance with the 90 second requirement. If the Association finds a pattern or practice of unexcused late reporting, that is, repeated reports of executions after 90 seconds without reasonable justification or exceptional circumstances, the member may be found to be in violation of Rule 2110. Exceptional circumstances will be determined on a case by case basis and may include instances of system failure by a member or service bureau, or unusual market conditions, such as extreme volatility in a security, or in the market as a whole. Timely reporting of all transactions is necessary and appropriate for the fair and orderly operation of the Association's marketplace, and the Association will view noncompliance as a rule violation.*

*(h) Procedures for Reporting Price and Volume*

*(1) Members that are required to report transactions pursuant to paragraph (d) above shall transmit last sale reports in the following manner:*

*(A) For agency transactions, report the number of shares (or bonds) and the price excluding the commission charged.*

*Example:*

*SELL as agent 100 shares at 40 less a commission of $12.50;*

*REPORT 100 shares at 40.*

*(B) For dual agency transactions, report the number of shares (or bonds) only once, and report the price excluding the commission charged.*

*Example:*

*SELL as agent 100 shares at 40 less a commission of $12.50;*

BUY as agent 100 shares at 40 plus a commission of $12.50;

*REPORT 100 shares at 40.*

*(C) (i) For principal transactions, except as provided below, report each purchase and sale transaction separately and report the number of shares (or bonds) and the price. For principal transactions that are executed at a price that includes a mark-up, mark-down or service charge, the price reported shall exclude the mark-up, mark-down or service charge. Such reported price shall be reasonably related to the prevailing market, taking into consideration all relevant circumstances including, but not limited to, market conditions with respect to the security, the number of shares (or bonds) involved in the transaction, the published bids and offers with size at the time of the execution (including the reporting firm's own quotation), the cost of execution and the expenses involved in clearing the transaction.*

*Example:*

*BUY as principal 100 shares from another member at 40 (no mark-down included);*

*REPORT 100 shares at 40.*

*Example:*

*BUY as principal 100 shares from a customer at 39.85 which includes a .15 mark-down from prevailing market at 40;*

*REPORT 100 shares at 40.*

*Example:*

*SELL as principal 100 shares to a customer at 40.15, which includes a .15 mark-up from the prevailing market of 40;*

*REPORT 100 shares at 40.*

*Example:*

*BUY as principal 10,000 shares from a customer at 39.75, which includes a .25 mark-down or service charge from the prevailing market of 40;*

*REPORT 10,000 shares at 40.*

*(ii) Exception: A ''riskless'' principal transaction in which a member after having received an order to buy a security, purchases the security as principal at the same price to satisfy the order to buy or, after having received an order to sell, sells the security as principal at the same price to satisfy the order to sell, shall be reported as one three party transaction, excluding the mark-up or mark-down, commission-equivalent, or other fee. Alternatively, a member may report a riskless principal transaction by submitting the following report(s) to the NASD:*

*a. The member with the obligation to report the transaction pursuant to paragraph (d) above must submit a last sale report for the initial leg of the transaction.*

*b. Regardless of whether a member has a reporting obligation pursuant to paragraph (d) above, the firm must submit, for the offsetting, ''riskless'' portion of the transaction, either:*

*1. a clearing-only report with a capacity indicator of ''riskless principal,'' if a clearing report is necessary to clear the transaction; or*

*2. a non-tape, non-clearing report with a capacity indicator of ''riskless principal,'' if a clearing report is not necessary to clear the transaction.*

*Example:*

*SELL as a principal 100 shares to another member at 40 to fill an existing order;*

*BUY as principal 100 shares from a customer at 40 minus a mark-down of $12.50;*

*REPORT 100 shares at 40 by submitting to the NASD either a single trade report marked with a ''riskless principal'' capacity indicator or by submitting the following reports:*

*3. where required by this Rule, a tape report marked with a ''principal'' capacity indicator; and*

*4. either a non-tape, non-clearing report or a clearing-only report marked with a ''riskless principal'' capacity indicator.*

*(D) For transactions that are executed at a price different from the current market when the execution is based on a prior reference point in time, members shall append to the transaction report a trade report modifier designated by NASD and shall include in the transaction report the prior reference time.*

*Example:*

*At 9:45 a.m., a member discovers that a customer's order to BUY 100 shares at the opening price has not been executed. The member executes the customer's order at 9:45 a.m. at the opening price (40). Current market is 41.*

*REPORT 100 shares at 40 and append the .PRP modifier with the time 9:30.*

*(i) Aggregation of Transaction Reports*

*(1) Under the following conditions, individual executions of orders in a security at the same price may be aggregated, for transaction reporting purposes, into a single transaction report. Individual transactions in convertible debt securities cannot be aggregated pursuant to this paragraph.*

*(A) Orders received prior to the opening of the reporting member's market in the security and simultaneously executed at the opening. Also, orders received during a trading or quotation halt in the security and executed simultaneously when trading or quotations resume. In no event shall a member delay its opening or resumption of quotations for the purpose of aggregating transactions.*

*Example:*

*A firm receives, prior to its market opening, several market orders to sell which total 10,000 shares. All such orders are simultaneously executed at the opening at a reported price of 40.*

*REPORT 10,000 shares at 40.*

*(B) Simultaneous executions by the member of customer transactions at the same price, e.g., a number of limit orders being executed at the same time when a limit price has been reached.*

*Example:*

*A firm has several customer limit orders to sell which total 10,000 shares at a limit price of 40. That price is reached and all such orders are executed simultaneously.*

*REPORT 10,000 shares at 40.*

*(C) Orders relayed to the trading department of the reporting member for*

*simultaneous execution at the same price.*

*Example:*

*A firm purchases a block of 50,000 shares from an institution at a reported price of 40.*

*REPORT 50,000 at 40.*

*Subsequently, one of the firm's branch offices transmits to the firm's trading department for execution customer buy orders in the security totaling 12,500 shares at a reported price of 40.*

*REPORT 12,500 at 40.*

*Subsequently, another branch office transmits to the firm's trading department for execution customer buy orders totaling 15,000 shares in the security at a reported price of 40.*

*REPORT 15,000 at 40.*

*Example:*

*Due to a major change in market conditions, a firm's trading department receives from a branch office for execution customer market orders to sell totaling 10,000 shares. All are executed at a reported price of 40.*

*REPORT 10,000 at 40.*

*(D) Orders received or initiated by the reporting member that are impractical to report individually and are executed at the same price within 60 seconds of execution of the initial transaction; provided however, that no individual order of 10,000 shares or more may be aggregated in a transaction report and that the aggregated transaction report shall be made within 90 seconds of the initial execution reported therein. Furthermore, it is not permissible for a member to withhold reporting a trade in anticipation of aggregating the transaction with other transactions. The limitation on aggregating individual orders of 10,000 shares or more for a particular security shall not apply on the first day of secondary market trading of an IPO for that security.*

*Examples:*

*A reporting member receives and executes the following orders at the following times and desires to aggregate reports to the maximum extent permitted under this Rule.*

*First Example*

*11:01:00 500 shares at 40*
*11:01:05 500 shares at 40*
*11:01:10 9,000 shares at 40*
*11:01:15 500 shares at 40*

*REPORT 10,500 shares at 40 within ninety seconds of 11:01.*

*Second Example*

*11:01:00 100 shares at 40*
*11:01:10 11,000 shares at 40*
*11:01:30 300 shares at 40*

*REPORT 400 shares within ninety seconds of 11:01 and 11,000 shares within ninety seconds of 11:01:10 (individual transactions of 10,000 shares or more must be reported separately).*

*Third Example*

*11:01:00 100 shares at 40*
*11:01:15 500 shares at 40*
*11:01:30 200 shares at 40*
*11:02:30 400 shares at 40*

*REPORT 800 shares at 40 within ninety seconds of 11:01 and 400 shares at 40 within ninety seconds of 11:02:30 (the last trade is not within sixty seconds of the first and must, therefore, be reported separately).*

*(2) The reporting member shall identify aggregated transaction reports and order tickets of aggregated trades in a manner directed by Nasdaq.*

*(j) Reporting Transactions on Form T*

*All Reporting NASD Members required (or that elect) to report transactions to the NASD shall report, as soon as practicable to NASD Regulation's Market Regulation Department on Form T, last sale reports of transactions in designated securities for which electronic submission into the NASD is not possible (e.g., the ticker symbol for the security is no longer available, a market participant identifier is no longer active, or the NASD will not accept the date of execution because the NASD Alternative Display Facility was closed on that date). Transactions that can be reported into the NASD, whether on trade date or on a subsequent date on an ''as of'' basis (T+N), shall not be reported on Form T.*

*(k) Trade Tickets*

*All trade tickets for transactions in Nasdaq securities shall be time-stamped at the time of execution.*

*(l) Special Trade Indicator*

*A Reporting Member shall append the designated symbol for special trades, step out trades, reversals, and as-of trades.*

*(m) Clearing Indicators*

*A Reporting Member shall use a designated symbol to denote whether the trade is to be: (i) compared in TRACS; (ii) not compared in TRACS; (iii) compared in TRACS pursuant to an Automatic Give Up Agreement (''AGU''); or (iv) not compared in TRACS, but locked in pursuant to a Qualified Service Representation Agreement (''QSR'').*

*(n) Transactions Not To Be Reported To NASD*

*The following types of transactions effected by NASD members otherwise than on an exchange shall not be reported to TRACS for publication:*

*(1) Odd-lot transactions;*

*(2) transactions that are part of a primary distribution by an issuer or of a registered secondary distribution (other than ''shelf distributions'') or of an unregistered secondary distribution;*

*(3) transactions made in reliance on Section 4(2) of the Securities Act of 1933;*

*(4) transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security (e.g., to enable the seller to make a gift);*

*(5) purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the current market.*

*(o) Dissemination of Transaction Reports in Convertible Debt Securities*

*For surveillance purposes, NASD will collect and process trade reports for all transactions in convertible debt securities listed on Nasdaq and effected through the NASD Alternative Display Facility. On a real-time basis, NASD will disseminate to members and the public through NASD, and through securities information processors, transactions in convertible debt securities reported to it equaling 99 bonds or less. Selected NASD Notices to Members: 83–1, 87–85, 93–9, 93–25, 93–83, 94–71, 98–82, 99–65, 99–66.*

* * * * *

**5000. [OTHER NASDAQ AND NASD MARKETS] TRADING OTHERWISE THAN ON AN EXCHANGE**

**[5100. NASDAQ INTERNATIONAL SERVICE RULES]**

**[5101. Applicability]**

[(a) These Rules shall be known as the ''International Rules'' and govern operation of the Nasdaq International Service (''Nasdaq International'' or ''Service''), as well as the obligations, access to and use of the Service by the following parties: broker/dealers admitted to membership in the Association (collectively, ''Association members''); associated persons of such Association members; and any non-member broker/dealer having the status of an approved affiliate. Unless otherwise indicated, the requirements of the International Rules are in addition to those contained in the By-Laws and other Rules of the Association.]

[(b) Rules 5106, 5108, 5109, and 5112 of the International Rules establish requirements that apply exclusively to

participation in the Service during the European Session. As such, these provisions of the International Rules supersede the Rule 2870, 4640, 6300 and 6600 Series: and Rules 6410, 6420 and 6450. Non-compliance with any applicable requirement will subject the Association member and/or its associated person(s) to regulatory action under the Association's Code of Procedure, the Rule 9000 Series.]

[(c) Unless otherwise indicated within a particular provision of the International Rules, all procedures, requirements, and prohibitions shall apply with equal force to Association members, their associated persons, and approved affiliates that participate in the Service.]

**[5102. Definitions]**

[Unless the context otherwise requires, or unless defined in the International Rules, the terms used herein shall retain their present meanings as defined in the By-Laws and other Rules of the Association.]

[(a) ''Approved affiliate'' means a broker/dealer that meets all of the following requirements:]

[(1) it is not admitted to membership in the Association or any registered national securities exchange;]

[(2) it is authorized to conduct securities business in the United Kingdom in accord with all applicable provisions of the Financial Services Act of 1986;]

[(3) it controls, is controlled by, or is under common control with an Association member (hereinafter referred to as a ''control relationship''); and]

[(4) it has been approved by the Association to participate as a Service market maker, in an agency capacity, on behalf of the Association member with whom it has a control relationship.]

[(b) ''Domestic Session'' refers to the market session operated by the Association between the hours of 9:30 a.m. and 4:00 p.m. Eastern Time on each U.S. business day.]

*[(c) ''European-only market maker''* means a broker/dealer that is registered with the Association to make markets in one or more qualified securities in the SERVICE, but is not registered in the same security(ies) for purposes of making a market during the Domestic Session.]

[(d) European Session refers to the market session supported by the Service during the hours specified in Rule 5103.]

[(e) ''International market maker'' means a broker/dealer that is registered with the Association to make markets in one or more qualified securities in the SERVICE and is also registered with the Association to make markets in the same security(ies) during the Domestic Session.]

[(f) The terms ''Nasdaq International'' and ''Service refer to an extension of the basic automation capabilities that support Association members' market making in the Nasdaq National Market (NNM), and exchange-listed securities to the business hours fixed by Rule 5103.]

[(g) ''Non-NNM security'' means every qualified security in the subset defined by Rule 5104(b).]

[(h) Qualified security'' means any security that satisfies the requirements contained in Rule 5104.]

[(i) ''Service market maker'' includes any Association member that is registered as a European-only or International market maker in one or more qualified securities, and any approved affiliate registered as a European-only market maker in one or more qualified securities.]

**[5103. Normal Business Hours]**

[The Nasdaq International market session (hereinafter referred to as the ''European Session'') will run from 3:30 a.m. to 9:00 a.m. Eastern Time on each business day in the U.S.; pre-opening procedures will commence at 2:30 a.m. Eastern Time. Appropriate adjustments will be made in the event that the U.S. and the U.K. move to (or from) daylight-saving time on different dates. All times referenced in the International Rules relate to the Eastern Time zone of the U.S.]

**[5104. Qualified Securities]**

[The Association deems the following classes of securities qualified for inclusion in Nasdaq International:]

[(a) any Nasdaq security that is designated an NNM security;]

[(b) any non-Canadian, foreign security or ADR that is included in Nasdaq but not designated an NNM security; and]

[(c) any equity security that is listed on a registered national securities exchange.]

[Inclusion of a qualified security in Nasdaq International requires a market making commitment by one or more broker/dealers that participate as Service market makers.]

**[5105. Access]**

[(a) Access to the market making capabilities provided by Nasdaq International is restricted to broker/dealers that are either Association members or approved affiliates and that have all equipment and communication lines specified by the Association for receipt of Nasdaq Workstation Service. Additionally, Association members that participate as Service market makers, either directly or through the agency of an approved affiliate, must satisfy the same financial and operational requirements applicable to market makers in Nasdaq securities and/or exchange-listed securities traded off-board during the Domestic Session.]

[(b) Association members that utilize Nasdaq Workstation units to receive Level 2 Nasdaq Service during the Domestic Session can also receive real-time quotation information entered by Service market makers. Similar access terms will be provided to non-member, Level 2 subscribers utilizing Nasdaq Workstation units.]

**[5106. Requirements Applicable to Market Makers]**

**[(a) Service Market Maker]**

[Association members and approved affiliates can function as Service market makers by registering with the Association in one or more qualified securities. Two classifications of market makers are authorized: (1) European-only and (2) International. Association members can register in either capacity in any qualified security; approved affiliates are limited to European-only registration. At the time of registration, a Service market maker must select one of the following time periods to define its daily market making commitment, on a security-by-security basis: 3:30 a.m. to 9:00 a.m.; 5:30 a.m. to 9:00 a.m., and 7:30 a.m. to 9:00 a.m. Every Service market maker must fulfill the market making obligations specified below in each of its registered securities while participating in the European Session. Based on experience gained with Service market makers' use of the multiple openings, the Association may determine to alter the specified times by up to one hour or to eliminate an opening altogether.]

**[(b) Market Maker Obligations]**

[The following requirements and procedures govern a broker/dealer's participation in Nasdaq International as a Service market maker.]

[(1) Registration]

[(A) Quotations and quotation size may be entered into the Service only by a Service market maker.]

[(B) To function as a Service market maker, an Association member must initially obtain registration as a European-only or International market maker by filing an application with the Association. The application shall certify the Association member's good standing with the Association,

demonstrate compliance with the net capital and other financial responsibility provisions of the Act and the rules thereunder, and specify the qualified security(ies) in which the member is seeking to register as a European-only or International market maker. Initial registration as a Service market maker shall become effective upon the member's receipt of the Association's notice approving such registration.]

[(C) For an approved affiliate to function as a Service market maker, it must initially obtain registration as a European-only market maker by filing an application with the Association. Such application must be co-signed by a registered principal of the Association member for whom the approved affiliate will act as agent. The application shall certify the following: the Association member's good standing with the Association; the approved affiliate's authorization to conduct securities business in the United Kingdom in accord with all applicable provisions of the Financial Services Act of 1986; and the Association member's ability to comply and its assumption of compliance with the net capital and other financial responsibility requirements of the Act and the rules thereunder in respect of the approved affiliate's market making in the Service as agent for the Association member. The application shall also specify the qualified security(ies) in which the approved affiliate is seeking to register as a European-only market maker. Initial registration as a Service market maker shall become effective upon the approved affiliate's receipt of the Association's notice approving such registration.]

[(D) A Service market maker may become registered in a newly qualified security by telephoning Market Operations. If registration is requested within five (5) business days after the issue becomes qualified, registration shall take effect at the time the request is entered.]

[(E) A Service market maker may register in additional qualified securities by entering a registration request via its Nasdaq Workstation unit authorized for receipt of the Service. If registration is requested respecting a security that has been a qualified security for more than five (5) days, and the requirements of either subparagraph (B) or (C) above are satisfied, registration shall take effect on the day after the registration request is entered.]

[(F) Registration in a qualified security shall be terminated by the Association if the Service market maker fails to enter quotations in that security within five (5) business days after its registration in that security first became effective.]

[(2) Normal Business Hours]

[Service market makers must be open for business, on each U.S. business day, during the time periods established by their registration in one or more qualified securities. By virtue of the multiple openings feature, a Service market maker would have the flexibility, for example, to register and quote markets in some securities during the 5:30 a.m. to 9:00 a.m. segment and others during the 7:30 a.m. to 9:00 a.m. segment. This flexibility is equally available to Association members and approved affiliates that participate as Service market makers. Appropriate adjustments will be made in the event that the U.S. and U.K. move to (or from) daylight savings time on different dates.]

[(3) Character of Quotations]

[(A) For each security in which an Association member has registered as a Service market maker, it shall be willing to buy and sell such security for its own account on a continuous basis and shall enter and maintain two-sided quotations in the Service during the hours specified above in subparagraph (2), above, subject to the procedures for excused withdrawal set forth in subparagraph (4) below. An approved affiliate registered as a Service market maker shall assume identical obligations in each of its registered securities. Purchases and sales effected to fulfill those obligations shall be deemed to be made for the account of the Association member on whose behalf the approved affiliate acts as agent.]

[(B) A Service market maker that receives an offer to buy or sell from another Association member or approved affiliate shall execute a transaction for at least a normal unit of trading at its displayed quotations as disseminated through the Service at the time of receipt of any such offer. If a Service market maker displays a quotation for a size greater than a normal unit of trading, it shall, upon receipt of an offer to buy or sell from another Association member or approved affiliate, execute a transaction at least at the size displayed.]

[(C) A Service market maker shall enter and maintain quotations that are reasonably related to the prevailing market. If it appears that such market maker's quotations are no longer reasonably related to the prevailing market, the Association may require the firm to re-enter its quotations. However, if that Service market maker fails to re-enter its quotations, the Association may suspend the market maker's quotations in one or all of the qualified securities in which it is registered.]

[(D) If a Service market maker's ability to enter or update quotations is impaired, the market maker shall immediately contact Market Operations to request the withdrawal of its quotations.] [(E) If a Service market maker's ability to enter or update quotations is impaired and it elects to remain in the Service, the market maker shall execute an offer to buy or sell received from another Association member or approved affiliate at its quotations as disseminated through the Service.]

[(F) A Service market maker should refrain from entering quotations into the Service that exceed the guidelines for maximum allowable spreads set forth below:]

SPREAD GUIDELINES

| Average spread | Maximum allowable spread |
|---|---|
| 1/8 or less | 1/4 |
| 1/4 | 1/2 |
| 3/8 | 3/4 |
| 1/2 | 1 |
| 5/8 | 1 |
| 3/4 | 1 1/2 |
| 7/8 | 1 1/2 |
| 1 | 1 1/2 |
| 1 1/8 | 1 5/8 |
| 1 1/4 | 1 3/4 |
| 1 3/8 | 1 7/8 |
| 1 1/2 | 2 |
| 1 5/8 | 2 |
| 1 3/4 | 3 |
| 1 7/8 | 3 |
| 2 | 3 |
| 2 1/8 | 3 |
| 2 1/4 | 3 |
| 2 3/8 | 3 |
| 2 1/2 | 3 |
| 2 5/8 | 4 |
| 2 3/4 | 4 |
| 2 7/8 | 4 |

[For an average spread of 3 or more, the maximum allowable spread is 125 percent of the average spread rounded to the next highest whole number.]

[The Association regards these spread parameters as guidelines rather than absolute requirements. Nonetheless, the Association will continuously monitor the quotation spreads of every Service market maker and consider taking regulatory action upon finding a pattern of excessive spreads disseminated during European Sessions. A pattern of excessive spreads will be deemed to exist where a Service market maker exceeds the applicable guideline on five

or more occasions in the same qualified security during a calendar month or exceeds the applicable guideline respecting at least 10% of its quotation updates entered into the Service during a calendar month.]

[(G) A Service market maker shall not, except under extraordinary circumstances, enter or maintain quotations in the Service during the European Session if: the bid quotation entered is equal to or greater than the asked quotation of another Service market maker displaying quotations in the same qualified security; or the asked quotation is equal to or less than the bid quotation of another Service market maker displaying quotations in the same qualified security.]

[(H) A Service market maker shall, prior to entering a quotation that locks or crosses another quotation, make reasonable efforts to avoid such locked or crossed market by executing transactions with all Service market makers whose quotations would be locked or crossed. A Service market maker whose quotations are causing a locked or crossed market is required to execute transactions at its quotations as displayed through the Service at the time of receipt of any order.]

[(4) Withdrawal of Quotations]

[(A) A Service market maker that wishes to withdraw its quotations in a qualified security shall contact Market Operations to obtain excused withdrawal status prior to effecting withdrawal. Excused withdrawals shall be granted by Market Operations only upon the demonstration of the existence of one of the circumstances set forth in subparagraphs (B) and (C) below.]

[(B) Excused withdrawal status based on physical circumstances beyond the Service market maker's control may be granted for up to five (5) business days, unless extended by Market Operations. Excused withdrawal status based on demonstrated legal or regulatory requirements, supported by appropriate documentation and accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon written request, be granted for not more than sixty (60) days. Excused withdrawal status based on religious holidays or national holidays in the U.K. may be granted only if the request is received by the Association five (5) business days in advance and is approved by the Association. Excused withdrawal status based on vacation may be granted only if: the request for withdrawal is received by the Association twenty (20) business days in advance, and is approved by the Association; the request includes a list of the securities for which withdrawal is requested; and the request is made by a Service market maker with three (3) or fewer Nasdaq Workstation units authorized for market making in the Service. The following shall not constitute acceptable reasons for granting excused withdrawal status: pending news, a sudden influx of orders or price changes, or the desire to effect transactions with competitors.]

[(C) Excused withdrawal status may be granted to a Service market maker that fails to maintain a clearing arrangement with a registered clearing agency or with another party that is a member of such an agency and is therefore withdrawn from participation in the Association's Automated Confirmation Transaction Service. However, if the Association finds that the Service market maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be deemed a voluntary termination pursuant to subparagraph (5) below.]

**[(5) Voluntary Termination of Registration]**

[A Service market maker may voluntarily terminate its registration in a qualified security by withdrawing its quotations in that security from the Service. A market maker that voluntarily terminates its registration in a qualified security may re-register to quote that security in the Service in accord with procedures contained in paragraph (b)(1)(E) above. Nonetheless, if an International market maker voluntarily terminates both the domestic and European components of its registration in a qualified security that is included in Nasdaq (qualified Nasdaq security), this Association member cannot re-register to quote that qualified Nasdaq security during the Domestic Session until twenty (20) business days have elapsed. This waiting period would not apply where an International market maker in a qualified Nasdaq security had terminated the European component of its registration but maintained the domestic component.]

**[(6) Stabilizing Bids]**

[(A) A Service market maker may enter a stabilizing bid in the Service for a qualified Nasdaq security, which bid will be identified with the appropriate identifier on the quotation display. Only one market maker in an issue may enter a stabilizing bid. A stabilizing bid will not be displayed unless one market maker in addition to the market maker entering the stabilizing bid is registered in the issue and enters quotations during the European Session.]

[(B) A stabilizing bid, a pre-effective stabilizing bid, or a penalty bid may be entered into the Service. A stabilizing bid must be available for all freely tradeable outstanding securities of the same class being offered.]

**[(C) Notice to the Association]**

[(i) A Service market maker that wishes to enter a stabilizing bid shall so notify Market Operations in writing prior to the first day on which the stabilizing bid is to appear in the Service. The notice shall include: the name of the qualified Nasdaq security and its Nasdaq symbol; the date on which the security's registration will become effective, if it is already quoted in the Service; whether the stabilizing bid will be a penalty bid or a penalty-free bid; and a copy of the preliminary prospectus or shelf registration statement, unless the Association determines otherwise.]

[(ii) In the case of a pre-effective stabilizing bid, the notice shall include: the name of the qualified Nasdaq security and its Nasdaq symbol; the contemplated effective date of the offering; whether it is contemplated that the pre-effective stabilizing bid will be converted to a stabilizing bid and, if so, whether the stabilizing bid will be a penalty bid or a penalty-free bid; and a copy of the preliminary prospectus, unless the Association determines otherwise.]

[(iii) A service market maker that has provided the written notice prescribed above shall also contact Market Operations for authorization on the day the market maker wishes to enter the stabilizing bid into the Service.]

[(D) A Service market maker shall not enter a stabilizing bid at the same time that it is quoting any other bid or offer in the qualified Nasdaq security.]

[(E) A Service market maker entering a stabilizing bid shall report all purchases made on the stabilizing bid and enter ''zero volume'' for sales during the period in which the stabilizing bid is in effect.]

**[5107. Automated Submission of Trading Data]**

[Reserved for Future Use. Redesignated as 8212 by SR–NASD–97–81 eff. Jan. 16, 1998.]

**[5108. Reports]**

[Every Association member and approved affiliate that functions as a Service market maker shall submit the following reports to the Association at the frequency specified:]

[(a) A Service market maker shall report each business day any data relating to qualified securities quoted in the Service as the Association shall require.]

[(b) A Service market maker shall report monthly such data on qualified securities that are quoted in the Service as the Association shall require.]

[(c) A Service market maker shall make such other reports as the Association may prescribe from time to time.]

**[5109. Clearance and Settlement of International Transactions]**

[(a) Association members and approved affiliates that effect international transactions must clear and settle all such transactions through a clearing agency registered with the Commission that uses a continuous net settlement system. This requirement may be satisfied through direct participation in a suitable clearing agency or through a clearing arrangement with another party.]

[(b) For purposes of this Rule, the term ''international transaction'' means every transaction having the following three characteristics: (1) the transaction involves a qualified security quoted in the Service by at least one registered market maker; (2) the transaction is consummated during the hours of the European Session between two Association members, two approved affiliates, or an Association member and an approved affiliate; and (3) the transaction involves at least one Association member (acting in a principal or agency capacity) that is registered as a European-only or International market maker in any qualified security, or alternatively, at least one approved affiliate (acting in a principal or agency capacity) that is registered as a European-only market maker in any qualified security.]

[(c) Participation in the Automated Confirmation Transaction Service is mandatory for self-clearing Association members participating in the Service directly or through an approved affiliate.]

**[5110. Suspension and Termination of Quotations by Association Action]**

[The Association may, pursuant to the procedures set forth in the Association Code of Procedure, the Rule 9000 Series, suspend, condition, limit, prohibit or terminate a Service market maker's authority to enter quotations in one or more qualified securities for violations of the applicable requirements or prohibitions contained in the By-Laws or Rules of the Association.]

**[5111. Termination of Access]**

[The Association may, upon notice, terminate access to Nasdaq International in the event that a Service market maker fails to qualify under specified standards of eligibility for Association membership or participation in the Service, or fails to pay promptly for services rendered by the Association or its subsidiaries.]

**[5112. Transaction Reporting Requirements]**

[During the European Session, broker/dealers registered as International or European-only market makers shall observe the following requirements for reporting transaction information to the Association on qualified securities quoted in Nasdaq International:]

**[(a) Definitions]**

[(1) ''International Participant'' includes any Association member registered as an International or European-only market maker in at least one qualified security, and any approved affiliate registered as a European-only market maker in at least one qualified security.]

[(2) ''Reportable transaction'' means any round-lot or mixed-lot transaction in a Service security effected during the European Session with an International Participant being on one or both sides. The following are not deemed to be reportable transactions:]

[(A) transactions which are part of a primary distribution by an issuer or of a registered secondary distribution (other than shelf registrations) or of an unregistered secondary distribution; ]

[(B) transactions executed on and reported to a securities exchange domiciled outside the U.S.; ]

[(C) transactions made in reliance on Section 4(2) of the Securities Act of 1933; ]

[(D) transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for a Service security, e.g., to enable the seller to make a gift; and ]

[(E) purchases or sales of Service securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a preestablished consideration unrelated to the current market.]

[(3) ''Service security'' means any qualified security that is quoted in Nasdaq International by at least one registered market maker.]

[(4) ''Trade report'' refers to the entry of the following elements of information for each reportable trans security symbol, price (exclusive of commission, mark-up, or mark-down), volume, and a symbol indicating whether the transaction is a buy, sell or cross.]

**[(b) Timely Trade Reports]**

[International Participants shall enter trade reports on all reportable transactions within three minutes of execution via a Nasdaq Workstation unit authorized for receipt of Nasdaq International or through a CTCI. Trade reports not submitted within three minutes of execution shall be designated as late by addition of the ''SLD'' indicator. A pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Rule 2110 of the Association's Rules.]

**[(c) Obligation To Submit Trade Reports on Reportable Transactions]**

[(1) In transactions between two International Participants that are both Service market makers in the affected Service security, only the party representing the sell side shall report.]

[(2) In transactions between two International Participants where only one is a Service market maker in the affected Service security, the latter party shall report.]

[(3) In transactions between two International Participants where neither is a Service market maker in the affected Service security, only the party representing the sell side shall report.]

[(4) In transactions between an International Participant and a non-member (other than an approved affiliate), the International Participant shall report. Where an International Participant acts as a dual agent in a reportable transaction, it shall be reported only once by the International Participant.]

[(5) In transactions between an International Participant and another Association member that is not an International Participant, only the International Participant shall report.]

**[(d) Aggregation of Trade Reports]**

[(1) The following procedures and requirements apply exclusively to an International Participant registered as a Service market maker in a particular Service security.]

[(2) Under the following conditions, individual trade reports in a Service security at the same price may be aggregated into a single trade report by a Service market maker in that security:]

[(A) orders received prior to opening of the European Session and

simultaneously executed at the opening;]

[(B) orders received during a trading halt and executed simultaneously when trading resumes;]

[(C) orders relayed to the trading department of the Service market maker for simultaneous execution at the same price;]

[(D) simultaneous executions by the Service market maker of customer transactions at the same price, e.g., multiple limit orders being executed at the same time when a limit price has been reached; or]

[(E) orders received or initiated by the Service market maker that are impractical to report individually and are executed at the same price within two minutes of execution of the initial transaction; provided, however, that no individual order of 10,000 shares or more may be aggregated in a trade report and that the aggregated trade report shall be made within three minutes of the initial execution reported therein.]

[(3) In no instance shall a Service market maker delay entry of its opening quotations or resumption of trading in a Service security for the purpose of aggregating trade reports. Further, a Service market maker is prohibited from withholding a trade report in anticipation of aggregating the transaction with others.]

[(4) A Service market maker shall identify aggregated trade reports and the underlying order tickets in a manner prescribed by the Association.]

**[(e) Time Stamping of Transactions]**

[All trade tickets for reportable transactions shall be time-stamped at the time of execution. Association members and approved affiliates that utilize screen-based systems for executing transactions shall satisfy this requirement by ensuring that such a system assigns an appropriate execution time to each reportable transaction.]

**[(f) Weekly Reports]**

[International Participants shall submit trade reports weekly respecting Service securities in the following circumstances:]

[(1) European-only market makers. Transactions in Service securities executed outside hours of the European Session;]

[(2) International market makers. Transactions in Service securities executed outside the hours of both the European Session and the Domestic Session;]

[(3) European-only and International Market Makers. Transactions in Service securities that were effected during the European Session and were omitted inadvertently from reported volume during the preceding week's European Sessions.]

**[5113. Audit Trail Requirements]**

[All existing requirements for submitting audit trail information to the Association, either directly or through a registered clearing agency, shall extend to Association members'/approved affiliates' participation in Nasdaq International. The applicable requirements were published in NASD Notices to Members 84–55 (October 15, 1984), 85–24 (April 12, 1985), and 85–72 (October 30, 1985), which notices are hereby incorporated by reference.]

* * * * *

***5200. Trading Halts***

**(a) Authority To Initiate Halts in Trading Otherwise Than on an Exchange**

*NASD, pursuant to the procedures set forth in paragraph(b):*

*(1) shall halt trading otherwise than on an exchange an ADF-eligible security whenever any market eligible to trade that security imposes a trading halt, or suspends the listing, in order to:*

(A) *Permit dissemination of material news;*

(B) *obtain information from the issuer relating to material news;*

(C) *obtain information relating to the issuer's ability to meet listing qualification requirements; or*

(D) *obtain any other information that is necessary to protect investors and the public interest.*

(2) *shall halt trading otherwise than on an exchange in an American Depository Receipt (''ADR'') listed on a national securities exchange, when the security underlying the ADR is listed on or registered with a national or foreign securities exchange or market, and the national or foreign securities exchange or market, or regulatory authority overseeing such exchange or market, halts trading in such security for regulatory reasons.*

(3) *shall halt all trading through the NASD Alternative Display Facility (a) whenever the NASD Alternative Display Facility is unable to transmit real-time quotation or trade reporting information to the applicable Securities Information Processor, or (b) whenever a market-wide trading halt is in effect under circuit breaker rules of a primary exchange.*

(4) *may, in its discretion, halt all trading otherwise than on an exchange in a security listed on a national securities exchange when (i) a national securities exchange imposes a trading halt in that security because of an order imbalance or influx (''operational trading halt''), or (ii) when the security is a derivative or component of a security listed on a national securities exchange and a national securities exchange imposes an operational trading halt in that security. In the event that the NASD, in its discretion, chooses not to halt trading otherwise than on an exchange in a security when the conditions of this paragraph exist, NASD members may continue to conduct trading in such security during the period of any such halt and shall continue to report all last sale prices reflecting transactions in such security.*

*Members shall promptly notify NASD whenever they have knowledge of any matter related to a security or the issuer thereof that has not been adequately disclosed to the public or where they have knowledge of a regulatory problem relating to such security.*

*(b) Commencement and Termination of a Trading Halt*

(1) *In the event NASD determines that a basis exists under Rule 5200(a) to initiate a trading halt, the commencement of the trading halt will be effective simultaneously with appropriate notice via an administrative message.*

(2) *Trading in a halted security shall resume upon notice via an administrative message that a trading halt is no longer in effect.*

*(c) Authority To Initiate Trading and Quotation Halts in Non-Exchange-Listed Foreign Securities*

*In circumstances in which it is necessary to protect investors and the public interest, NASD Regulation may direct members, pursuant to the procedures set forth in paragraph (d), to halt trading and quotations in a quotation medium other than an exchange or the NASD Alternative Display Facility of an American Depository Receipt (''OTC ADR'') or a security (''OTC Security'') that is traded in the OTC market and that is not otherwise listed on a national securities exchange or included in the OTC Bulletin Board Service (''OTCBB'') when the OTC Security or the security underlying the OTC ADR is listed on or registered with a foreign securities exchange or market, and the foreign securities exchange, market, or regulatory authority overseeing such issuer, exchange or market halts trading in such security for regulatory reasons (''Foreign Regulatory Halt''); provided, however, that NASD Regulation will not impose a trading and quotation halt if the Foreign Regulatory Halt was imposed solely for the dissemination of*

*material news, a regulatory filing deficiency, or operational reasons.*

*(d) Procedure for Initiating a Trading and Quotation Halt*

(1) *For a halt initiated under subparagraph (c) of this rule, NASD Regulation will promptly evaluate information received from a foreign securities exchange or market on which the OTC Security or the security underlying the OTC ADR is listed or registered or from a foreign regulatory authority overseeing such issuer, exchange, or market about a Foreign Regulatory Halt and determine whether a trading and quotation halt in the OTC Security is appropriate.*

(2) *Should NASD Regulation determine that a basis exists under this Rule for initiating a trading and quotation halt, NASD Regulation shall disseminate appropriate public notice that a trading and quotation halt is in effect and the commencement of the trading halt will be effective simultaneously with appropriate public notice.*

(3) *Trading and quotations in the OTC market may resume when NASD Regulation determines that the basis for the halt no longer exists or when five business days have elapsed from the date NASD Regulation initiated the trading and quotation halt in the security, whichever occurs first. NASD Regulation shall disseminate appropriate public notice that a trading and quotation halt is no longer in effect.*

*Selected NASD Notices to Members: 88–46, 94–98.*

### *5300. Transactions Related to Initial Public Offerings*

*No member or person associated with a member shall execute or cause to be executed, directly or indirectly, an over-the-counter transaction in a security subject to an initial public offering until such security has first opened for trading on the national securities exchange listing the security, as indicated by the dissemination of an opening transaction in the security by the listing exchange via the Consolidated Tape or, for Nasdaq, the Nasdaq Tape.*

### [5200] *6500*. INTERMARKET TRADING SYSTEM[/COMPUTER ASSISTED EXECUTION SYSTEM]

### [5210] *6510*. Definitions

(a) The term ''ITS Participant Exchange'' shall mean a participant in the ITS Plan that is a national securities exchange.

(b) The term ''ITS Plan'' shall mean the plan agreed upon by the ITS participants, as from time to time amended in accordance with the provisions therein, and approved by the Commission pursuant to Section 11A(a)(3)(B) of the Act and SEC Rule 11Aa3–2 thereunder.

(c) The term ''ITS Security'' shall mean any security [which] *that* may be traded through the System by an ITS/*ADF*[CAES] Market Maker.

(d) The term ''ITS System'' shall mean the communications network and related equipment that links electronically the ITS Participant Exchanges and ITS/*ADF*[CAES] Market Makers as described in the Plan.

(e) The term ''ITS/*ADF*[CAES] Market'' Maker shall mean a member of the Association that is registered as a market maker with the Association for the purposes of participation in ITS [through CAES] with respect to one or more specified ITS securities in which [he] it is then actively registered. Registration as an ITS/*ADF*[CAES] Market Maker is [mandatory] *optional* for all registered CQS market makers in securities eligible for inclusion in the ITS/*ADF*[CAES] linkage.

(f) The term ''Participant Market'' shall mean the securities trading floor of each participating ITS Exchange and the markets of ITS/*ADF*[CAES] Market Makers in ITS securities.

(g) The term ''Pre-Opening Application'' shall mean the application of the System which permits a specialist or ITS/*ADF*[CAES] Market Maker who wishes to open [his] *its* market in an ITS Security to obtain pre-opening interests from other specialists and ITS/*ADF*[CAES] Market Makers.

(h) The term ''Previous Day's Consolidated Closing Price'' shall mean the last price at which a transaction in a security was reported by the consolidated last sale reporting system on the last previous day on which transactions were reported by such system; provided, however, that the ''previous day's consolidated closing price'' for all Network A or Network B eligible [S]securities shall be the last price at which a transaction in the stock was reported by the New York Stock Exchange, Inc. (NYSE) or the American Stock Exchange, Inc. (Amex), if, because of unusual market conditions, the NYSE or the Amex price is designated as such pursuant to the ITS plan.

(i) A ''Third Participating Market Center Trade-Through,'' as that term is used in this Rule, occurs whenever an ITS/*ADF*[CAES] Market Maker initiates the purchase of an ITS Security by sending a commitment to trade through the System and such commitment results in an execution at a price [which] *that* is higher than the price at which the security is being offered (or initiates the sale of such a security by sending a commitment to trade through the System and such commitment results in an execution at a price which is lower than the price at which the security is being bid for) at the time of the purchase (or sale) in another ITS participating market center as reflected by the offer (bid) then being displayed by [ITS/ CAES] Market Makers from such other market center. The member described in the foregoing sentence is referred to in this Rule as the ''member who initiated a third participating market center trade-through.'' [Amended eff. Nov. 24, 1989; Aug. 5, 1991; amended by SR–NASD–93–10 eff. Oct. 31, 1994; amended by SR–NASD–97–09 eff. May 30, 1997.] Selected Notices to Members: 94–81.

### [5220] *6520*. ITS/*ADF*[CAES] Registration

In order to participate in ITS, a market maker must be registered with the Association as an ITS/*ADF*[CAES] Market Maker in each security in which a market will be made in ITS. Such registration shall be conditioned upon the ITS/*ADF*[CAES] Market Maker's continuing compliance with the following requirements:

(a) Registration as a CQS market maker pursuant to Rule 6320 and compliance with the Rule 6300 Series;

(b) execution of an ITS/*ADF*[CAES] Market Maker application agreement with the Association at least two days prior to the requested date of registration;

(c) compliance with SEC Rule 15c3–1;

(d) compliance with the ITS Plan, SEC Rule 11Ac1–1 and all applicable Rules of the Association;

(e) the maintenance of continuous two-sided quotations in the absence of the grant of an excused withdrawal or a functional excused withdrawal by the Association. *Any registered ITS Market Maker (excluding ECNs) that participates in a pre-opening application process and does not enter and maintain continuous two-sided quotations in the security on that same trading day may not re-register to participate in ITS in such security for twenty (20) business days unless NASD Alternative Display Facility Operations grants an excused withdraw;*

(f) maintenance of the physical security of the equipment used to interface with the ITS System located on the premises of the ITS/*ADF*[CAES] Market Makers to prevent the unauthorized entry of communications into the ITS System; and

(g) acceptance and settlement of each ITS System trade that the ITS System

identifies as effected by such ITS/*ADF*[CAES] Market Maker, or if settlement is to be made through another clearing member, guarantee of the acceptance of settlement of such identified ITS System trade by the clearing member on the regularly scheduled settlement date.

**[5221] *6521*. Suspension or Revocation of ITS/*ADF*[CAES] Registration**

Failure by an ITS/*ADF*[CAES] Market Maker to comply with the ITS Plan or any of the rules identified herein shall subject such ITS/*ADF*[CAES] Market Maker to censure, fine, suspension or revocation of its registration as an ITS/*ADF*[CAES] Market Maker, or any other fitting penalty.

**[5230] *6530*. ITS Operations**

(a) All transactions effected through ITS shall be on a ''regular way'' basis. Each transaction effected through ITS shall be cleared and settled through a clearing agency registered with the Commission [which] *that* maintains facilities through which ITS transactions may be compared and settled.

(b) Any ''commitment to trade,'' which is transmitted by an ITS/*ADF*[CAES] Market Maker to another ITS participating market center through ITS, shall be firm and irrevocable for the period of *thirty (30) seconds*, [either] one minute or two minutes (specified in accordance with subparagraph (7) below) following transmission by the sender. All such commitments to trade shall, at a minimum:

(1) Include the number or symbol which identifies the ITS/*ADF*[CAES] Market Maker;

(2) direct the commitment to a particular participant market;

(3) specify the security which is the subject of the commitment;

(4) designate the commitment as either a commitment to buy or a commitment to sell;

(5) specify the amount of the security to be bought or sold, which amount shall be for one unit of trading or any multiple thereof;

(6) specify:

(A) A price equal to the offer or bid price then being furnished by the destination Participant Market, which price shall represent the price at or below which the security is to be bought or the price at or above which the security is to be sold, respectively;

(B) a price at the execution price in the case of a commitment to trade sent in compliance with the block trade rule; or

(C) that the commitment is a commitment to trade ''at the market;''

(7) specify [either] *thirty (30) seconds,* one minute or two minutes as the time period during which the commitment shall be irrevocable, but if the time period is not specified in the commitment, a two minute period shall be assumed. It should be noted that the period of time represented by these designations may be changed in the future by action of the ITS Operating Committee, whose decision as to the applicable period shall be binding upon ITS/*ADF*[CAES] Market Makers;

(8) designate the commitment ''short'' or ''short exempt'' whenever it is a commitment to sell which, if it should result in an execution in the receiving market, would result in a short sale to which the provisions of SEC Rule 10a–1(a) under the Act would apply.

(c) If a commitment to trade is directed to an ITS/*ADF*[CAES] Market Maker, and the execution of such commitment exhausts the size of the quotation being displayed by the ITS/*ADF*[CAES] Market Maker, then such ITS/*ADF*[CAES] Market Maker shall be placed in a functional excused withdrawal state pending the input of a new two-sided quotation with size into the Association's [Consolidated Quotation Service] *ADF*. The new two-sided quotation required of the ITS/*ADF*[CAES] Market Maker will be entered as promptly as possible into the Association's [Consolidated Quotation Service] *ADF*.

(d) Transactions in ITS securities executed [in CAES] by ITS/*ADF*[CAES] Market Makers or received through the ITS System and executed by an ITS/*ADF*[CAES] Market Maker are reported to the CTA Plan Processor [by the CAES System] at the price specified in the commitment or if executed at a better price, the execution price.

**[5240] *6540*. Pre-Opening Application—Opening by ITS/*ADF*[CAES] Market Maker**

The pre-opening application enables an ITS/*ADF*[CAES] Market Maker or ITS Participant Exchange in any participant market who wishes to open [his] *its* market in an ITS Security to obtain through the ITS System [or CAES], any pre-opening interest of an ITS Participant Exchange or other ITS/*ADF*[CAES] Market Makers registered in that security and/or market makers in other participant markets.

**(a) Notification Requirement—Applicable Price Change, Initial Notification**

(1) Whenever an ITS/*ADF*[CAES] Market Maker, in an opening transaction in any ITS/*ADF*[/CAES] Security, anticipates that the opening transaction will be at a price that represents a change from the security's previous day's consolidated closing price of more than the ''applicable price change'' (as defined below), [he] *its* shall notify the other Participant markets of the situation by sending a ''pre-opening notification'' through the System. Thereafter, the ITS/*ADF*[CAES] Market Maker shall not open the security in [his] *its* market until not less than three minutes after [his] *its* transmission of the pre-opening notification. The ''applicable price changes'' are:

| Security | Consolidated closing price | Applicable price change (more than) |
|---|---|---|
| Network A | Under $15 | 1/8 point. |
| | $15 or over | 1/4 point.[1] |
| Network B | Under $5 | 1/8 point. |
| | $5 or over | 1/4 point.[2] |
| For transactions involving securities trading in decimal-based increments, the ''applicable price changes'' are: | | |
| Network A | Under $15 | $0.10 |
| | $15 or over | $0.25[3] |
| Network B | Under $5 | $0.10 |
| | $5 or over | $0.25[4] |

(2) a pre-opening notification shall:

(A) be designated as a pre-opening notification (POA);

(B) identify the ITS/*ADF*[CAES] Market Maker and the security involved; and

(C) indicate the ''applicable price range'' by being formatted as a standardized pre-opening administrative message as follows:

POA MMID/XYZ

(3) The price range shall not exceed the ''applicable price range'' shown below:

| Security | Consolidated closing price | Applicable price change (more than) |
|---|---|---|
| Network A | Under $50 | ½ point. |
| | $50 or over | 1 point.[5] |
| Network B | Under $10 | ½ point. |
| | $10 or over | 1 point.[6] |

For transactions involving securities trading in decimal-based increments, the price range shall not exceed the ''applicable price range'' shown below:

| Security | Consolidated price | Price range |
|---|---|---|
| Network A | Under $50 | $0.50 |
| | $50 or over | $1.00[7] |
| Network B | Under $20 | $0.50 |
| | $10 or over | $1.00[8] |

[1] If the previous day's consolidated closing price of a Network A Eligible Security exceeded $100 dollars and the security does not underlie an individual stock option contract listed and currently trading on a national securities exchange the ''applicable price change'' is one dollar.

[2] If the previous day's consolidated closing price of a Network B Eligible Security exceeded $75 and the security is not a Portfolio Deposit Receipt, Index Funds Share, or Trust Issued Receipt, or does not underlie an individual stock option contract listed and currently trading on a national securities exchange the ''applicable price change'' is one dollar.

[3] If the previous day's consolidated closing price of a Network A Eligible Security exceeded $100 dollars and the security does not underlie an individual stock option contract listed and currently trading on a national securities exchange the ''applicable price change'' is one dollar.

[4] If the previous day's consolidated closing price of a Network B Eligible Security exceeded $75 and the security is not a Portfolio Deposit Receipt, Index Funds Share, or Trust Issued Receipt, or does not underlie an individual stock option contract listed and currently trading on a national securities exchange the ''applicable price change'' is one dollar.

[5] If the previous day's consolidated closing price of an ITS security exceeded $100 dollars and the Security does not underlie an individual stock option contract listed and currently trading on a national securities exchange the ''applicable price change'' is two dollars.

[6] If the previous day's consolidated closing price of a Network B Eligible Security exceeded $75 and the security is not a Portfolio Deposit Receipt, Index Fund[s] Share, or Trust Issued Receipt, or does not underlie an individual stock option contract listed and currently trading on a national securities exchange the ''applicable price change'' is two dollars.

[7] If the previous day's consolidated closing price of an ITS security exceeded $100 dollars and the Security does not underlie an individual stock option contract listed and currently trading on a national securities exchange the ''applicable price change'' is two dollars.

[8] If the previous day's consolidated closing price of a Network B Eligible Security exceeded $75 and the security is not a Portfolio Deposit Receipt, Index Fund[s] Share, or Trust Issued Receipt, or does not underlie an individual stock option contract listed and currently trading on a national securities exchange the ''applicable price change'' is two dollars.

The price range also shall not straddle the previous day's consolidated closing price, although it may include it as an endpoint (e.g., a ⅛–⅝ price range would be permissible if the previous day's consolidated closing price were ⅛ or ⅝, but not if the closing price were ¼, ⅜ or ⅛).

For transactions involving securities trading in decimal-based increments, the price range also shall not straddle the previous day's consolidated closing price, although it may include it as an endpoint (e.g., a 40.15—40.65 price range would be permissible if the previous day's consolidated closing price were 40.15—40.65, but not if the closing price were within the price range 40.16—40.64).

**(b) Subsequent Notifications**

If, after sending a pre-opening notification, the situation in an ITS/*ADF*[CAES] Market Maker's market changes [he] *it* may have to issue a subsequent pre-opening notification. The three situations requiring subsequent notifications are described below. Subsequent pre-opening notifications shall be standardized pre-opening administrative messages. After sending a subsequent notification, the ITS/*ADF*[CAES] Market Maker shall wait either (1) one minute or (2) until the balance of the original three-minute waiting period expires, whichever is longer, before opening [his] *its* market (i.e., if more than one minute of the initial waiting period has not yet expired at the time the subsequent notification is sent, the ITS/*ADF*[CAES] Market Maker must wait for the rest of the period to pass before opening [his] *its* market).

**(1) Increase or Decrease in Applicable Price Range**

Where, prior to the ITS/*ADF*[CAES] Market Maker's opening of [his] *its* market in the security, [his] *its* anticipated opening price shifts so that it (A) is outside of the price range specified in [his] *its* pre-opening notification but (B) still represents a change from the previous day's consolidated closing price of more than the applicable price change, [he] *it* shall issue a replacement pre-opening notification (an ''additional'' notification) through the system before opening [his] *its* market in the security. An additional notification contains the same kind of information as is required in an original pre-opening notification.

**(2) Shift to Within Applicable Price Change Parameter**

(A) The ITS/*ADF*[CAES] Market Maker shall, by issuing a ''cancellation'' notification through the system, notify the Participant market(s) of the receiving market maker(s) prior to opening the security if the price at which [he] *it* anticipates opening [his] *its* market shifts so that it (i) is outside of the price range specified in [his] *its* pre-opening notification but (ii) does not represent a change from the

previous day's consolidated closing price of more than the applicable price change.

(B) Notwithstanding the preceding sentence, in situations where the price range in an initial or additional notification includes price variations equal to or less than the applicable price change parameters, the ''cancellation'' notification signifies that the anticipated opening price (i) may or may not be outside of the price range specified in the pre-opening notification and (ii) does not represent a change from the previous day's consolidated closing price of more than the applicable price change.

Example: CTA close at 30. Pre–Opening Notification sent with any one of the following price ranges: 30–30½; 30⅛–30⅝; or 30¼–30¾. It is then determined that the stock will open at 29¾ or 29⅞. Under paragraph (b)(2)(A), the specialist ''shall'' send cancellation notification. If it is subsequently determined that stock will open at 30, 30⅛, or 30¼, the specialist need not reindicate stock pursuant to paragraph (b)(2)(B).

Example for Decimal-Based Securities: CTA close at 30. Pre-Opening Notification sent with a price range at or within the following range: 30.10–30.60. It is then determined that the stock will open at a price within the range of 29.75 to 29.99. Under paragraph (b)(2)(A), the specialist ''shall'' send cancellation notification. If it is subsequently determined that stock will open at a price within the range of 30–30.25, the specialist need not reindicate stock pursuant to paragraph (b)(2)(B).

**(3) Participation as Principal Precluded (''Second Look'')**

If a responding market maker who has shown in [his] *its* pre-opening response interest as a principal at a price better than the anticipated opening price would be precluded from participation as principal in the opening transaction (e.g., [his] *its* responding principal interest is to sell at a price ⅛ or more below the opening price established by paired agency orders), the ITS/*ADF*[CAES] Market Maker[s] shall send a ''second look'' notification through the System, notifying such responding market maker of the price and size at which [he] *it* could participate as principal (i.e., in the parenthetical example above, the total amount of the security that [he] *it* would have to sell at the ⅛-better price to permit the opening transaction to occur at that price).

For securities trading in decimal-based increments, if a responding market maker who has shown in [his] *its* pre-opening response interest as a principal at a price better than the anticipated opening price would be precluded from participation as principal in the opening transaction (e.g. [his] *its* responding principal interest is to sell at a price .01 or more below the opening price established by paired agency orders), the ITS/*ADF*[CAES] Market Maker[s] shall send a ''second look'' notification through the System, notifying such responding market maker of the .01 price and size at which [he] *it* could participate as principal (i.e., in the parenthetical example above, the total amount of the security that [he] *it* would have to sell at the .01 better price to permit the opening transaction to occur at that price).

**(c) Tape Indications**

If the CTA Plan or the Association's rules require[s] or permits that an ''indication of interest'' (i.e., an anticipated opening price range) in a security be furnished to the consolidated last sale reporting system prior to the opening of trading or the reopening of trading following a halt or suspension in trading in one or more ITS Securities, then the furnishing of an indication of interest in such situations shall, without any other additional action required of the ITS/*ADF*[CAES] Market Maker, (1) initiate the pre-opening process, and (2) if applicable, substitute for and satisfy the requirements of paragraphs (a), (b)(1), and (b)(2) (while the furnishing of an indication of interest to the consolidated last sale reporting system satisfies the notification requirements of this rule, an ITS/*ADF*[CAES] Market Maker should also transmit the indication through the System in the format of a standardized pre-opening administrative message). In any such situation, the ITS/*ADF*[/CAES] Market Maker shall not open or reopen the security until not less than three minutes after [his] *its* transmission of the opening or reopening indication of interest. For the purpose of paragraphs (b)(3), (d), (f), and (g) through (i), ''pre-opening notification'' includes an indication of interest furnished to the consolidated last sale reporting system.

**(d) Pre-Opening Responses—Decision on Opening Transaction**

Subject to paragraph (e), [I]if an ITS/*ADF*[CAES] Market Maker [who] *that* has issued a pre-opening notification receives ''pre-opening responses'' through the system containing ''obligations to trade'' from market makers in other Participant markets (''responding market makers''), [he] *it* shall combine those obligations with orders [he] *it* already holds in the security and, on the basis of this aggregated information, decide upon the opening transaction in the security. If the ITS/*ADF*[CAES] Market Maker has received more than one pre-opening response from a Participant market, [he] *it* shall include in such combination only those obligations to trade from such Participant market as are specified in the most recent response, whether or not the most recent response expressly cancels the preceding response(s). An original or revised response received after the ITS/*ADF*[CAES] Market Maker has effected [his] *its* opening transaction shall be to no effect.

**(e) Pre-Opening Responses From Open Markets**

(1) An ITS/*ADF*[CAES] Market Maker must accept only those pre-opening responses sent to the Association by market makers in other [p]*P*articipant markets prior to the opening of their markets for trading in the security. Following a halt or suspension in trading declared by the Association in an ITS Security, an ITS/*ADF*[CAES] Market Maker must accept only those pre-opening responses sent by market makers to the Association from other [p]*P*articipant markets that halted trading in the security contemporaneously with the Association and that had not resumed trading in the security at the time the pre-opening response was sent.

(2) In the event that one or more market makers from [p]*P*articipant markets that have already opened trading in a security or, with respect to a halt or suspension in trading, either did not halt trading in the security contemporaneously with the Association, or has already resumed trading in the security, respond to a pre-opening notification in that security, the ITS/*ADF*[CAES] Market Maker need not, but may in [his] its discretion, accept such responses for the purpose of inclusion in the opening or reopening transaction. In the event that a Participant market opens or, with respect to a halt or suspension in trading, resumes trading in a security subsequent to a market maker in the Participant market sending a pre-opening response but prior to the opening or reopening transaction in ITS/*ADF*[CAES], the market maker who sent the pre-opening response to the Association must confirm the pre-opening response by sending an administrative message through the [s]*S*ystem stating that the response remains valid. If the market maker fails to so confirm the pre-opening response, the ITS/*ADF*[CAES] Market Maker need

not, but may in [his] *its* discretion, accept the original response for the purpose of inclusion in the opening or reopening transaction.

**(f) Allocation of Imbalances**

Whenever pre-opening responses from one or more responding market makers include obligations to take or supply as principal more than 50 percent of the opening imbalance, the ITS/*ADF*[CAES] Market Maker may take or supply as principal 50 percent of the imbalance at the opening price, rounded up or down as may be necessary to avoid the allocation of odd lots. In any such case, where the pre-opening response is from more than one responding market maker, the ITS/*ADF*[CAES] Market Maker shall allocate the remaining imbalance (which may be greater than 50 percent if the ITS/*ADF*[CAES] Market Maker elects to take or supply less than 50 percent of the imbalance) among them in proportion to the amount each obligated [himself] *itself* to take or supply as principal at the opening price in [his] *its* pre-opening response, rounded up or down as may be necessary to avoid the allocation of odd lots. For the purpose of this paragraph, multiple responding market makers in the same ITS Security in the same Participant market shall be deemed to be a single responding market maker.

**(g) Treatment of Obligations To Trade**

In receiving a pre-opening response, an ITS/*ADF*[CAES] Market Maker shall accord to any obligation to trade as agent included in the response the same treatment as [he] *it* would to an order entrusted to [him]*it* as agent at the same time such obligation was received.

**(h) Responses Increasing the Imbalances**

An ITS/*ADF*[CAES] Market Maker shall not reject a pre-opening response that has the effect of further increasing the existing imbalance for that reason alone.

**(i) Reports of Participation**

Promptly following the opening in any security as to which an ITS/*ADF*[CAES] Market Maker issued a pre-opening notification, the ITS/*ADF*[/CAES] Market Maker shall report to each Participant responsible for a market in which one or more responding market makers are located (1) the amount of the security purchased and/or sold, if any, by the responding market maker(s) in the opening transaction and the price thereof, or (2) if the responding market maker(s)'s response included agency or principal interest at the opening price that did not participate in the opening transaction, the fact that such interest did not so participate.

[Amended eff. Aug. 5, 1991; Mar. 31, 1993; amended by SR–NASD–97–09 eff. May 30, 1997; amended by SR–NASD–00–46 eff. Aug. 28, 2000.]

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**[5250] *6550*. Pre-Opening Application—Openings on Other Participant Markets**

**(a) Pre-Opening Responses**

Whenever an ITS/*ADF*[CAES] Market Maker [who] *that* has received a pre-opening notification from another ITS/*ADF*[CAES] Market Maker or ITS Participant Exchange as provided in the ITS Plan in any ITS Security as to which [he] *it* is registered as an ITS/*ADF*[CAES] Market Maker wishes to participate in the opening of that security in the Participant market from which the pre-opening notification was issued, [he] *it* may do so by sending obligations to trade through the System to such Participant market in a pre-opening response. A pre-opening response shall be designated as a pre-opening response (POR), identify the security, and show the ITS/*ADF*[CAES] Market Maker's buy and/or sell[,] interest, (if any), both as principal for [his] *its* own account (''P'') and as agent for orders left with [him]*it* (''A''), at each price level within the price-range indicated in the pre-opening notification (e.g., 40⅜), reflected on a netted share basis.

For securities trading in decimal-based increments, whenever an ITS/*ADF*[CAES] Market Maker [who] *that* has received a pre-opening notification from another ITS/*ADF*[CAES] Market Maker or ITS Participant Exchange as provided in the ITS Plan in any ITS Security as to which [he] *it* is registered as an ITS/*ADF*[CAES] Market Maker wishes to participate in the opening of that security in the Participant market from which the pre-opening notification was issued, [he] *it* may do so by sending obligations to trade through the System to such Participant market in a pre-opening response. A pre-opening response shall be designated as a pre-opening response (POR), identify the security, and show the ITS/*ADF*[CAES] Market Maker's buy and/or sell[,] interest, (if any), both as principal for [his] *its* own account (''P'') and as agent for orders left with [him] *it* (''A''), at each price level within the price-range indicated in the pre-opening notification (e.g., 40.40 ), reflected on a netted share basis.

The pre-opening response shall be formatted as follows:

POR (MMID) BUY [SELL] A–P 40⅜

For securities trading in decimal-based increments the pre-opening response shall be:

POR (MMID) BUY (SELL) A–P 40.40

The response may also show market orders separately.

**(b) Revised Responses**

An ITS/*ADF*[CAES] Market Maker may cancel or modify [his] *its* pre-opening response by sending through the System a revised response that cancels the obligations to trade contained in [his] *its* original response and, if a modification is desired, that substitutes new obligations to trade stating the ITS/*ADF*[CAES] Market Maker's aggregate interest (i.e., [his] *its* interest reflected in the original response plus any additional interest and/or minus any withdrawn interest) at each price level. Each succeeding response, even if it fails to expressly cancel its predecessor response, shall supersede the predecessor response in its entirety. Any revised response shall be to no effect if received in the Participant market from which the pre-opening notification was issued after the security has opened in such Participant market.

**(c) Pre-Opening Notification From Other Markets**

No ITS/*ADF*[CAES] Market Maker, whether acting as principal or agent, shall send an obligation to trade, commitment to trade or order in any security through the System to any other [p]*P*articipant market[,] prior to the opening of trading in such security on such other market (or prior to the resumption of trading in such security on such other market following the initiation of a halt or suspension in trading in the security) until a pre-opening notification as to such security has been issued from such other market or a quotation has been disseminated from such other market pursuant to SEC Rule 11Ac1–1. No ITS/*ADF*[CAES] Market Maker that has opened for trading or, with respect to a halt or suspension of trading initiated by another Participant [M]*m*arket, did not halt trading in the security reasonably contemporaneously with the Participant [M]*m*arket or resumed trading during such trading halt or suspension, shall respond to a pre-opening notification.

**(d) Sole Means of Pre-Opening Routing**

Once a pre-opening notification as to any security is received by the ITS/*ADF*[CAES] Market Maker through the

System, the ITS/*ADF*[CAES] Market Maker[s] in such security shall submit obligations to trade that security as principal for [his] *its* own account to the market from which the pre-opening notification was issued only through the Pre-Opening Application and shall not send orders to trade that security for [his] *its* own account to such market for participation at the opening in that market by any other means. However, this restriction shall not apply to any order sent to such market by the ITS/*ADF*[CAES] Market Maker prior to the issuance of the pre-opening notification.

**(e) Duration of Obligations To Trade**

Responses to pre-opening notifications shall be voluntary, but each obligation to trade that an ITS/*ADF*[CAES] Market Maker includes in any pre-opening response, or in any modification of a pre-opening response, shall remain binding on [him] *it*, until the security has opened in the market from which the pre-opening notification was issued or until a cancellation or modification of such obligation has been received in such market, and until a subsequent cancellation or modification thereof has been received in such market.

**(f) Request for Participation Report**

The ITS Plan anticipates that an ITS/*ADF*[CAES] Market Maker [who] *that* has sent one or more obligations to trade in response to a pre-opening notification will request a report through the System as to [his] *its* participation if [he] *it* does not receive a report as required promptly following the opening. If, on or following trade date, [he] *it* does request a report through the System as to [his] *its* participation before 4:00 p.m. Eastern Time, and [he] *it* does not receive a response by 9:30 a.m. Eastern Time on the next trading day, [he] *it* need not accept a later report. If [he] *it* fails to so request a report, [he] *it* must accept a report until 4:00 p.m. Eastern Time on the third trading day following the trade date (i.e., on T+3). The Association does not intend this paragraph to relieve [him] *U the ITS/ASD Market Maker* of the obligation, when [he] it does not receive a report, to request a report as soon as [he] *it* reasonably should expect to have received it.

[Amended eff. Nov. 24, 1989; May 15, 1991; Aug. 5, 1991; amended by SR–NASD–97–09 eff. May 30, 1997; amended by SR–NASD–00–46 eff. Aug. 28, 2000.]

**[5260]*6560*. System Trade and Quotations**

**[5261]*6561*. [Obligation To Honor System Trades] *Obligation Before Issuing External ITS Commitments***

[If an ITS/CAES Market Maker or clearing member acting on his behalf is reported on the clearing tape (as adjusted) at the close of any trading day, or shown by the activity reports developed by CAES as constituting a side of a System trade, such ITS/CAES Market Maker or clearing member shall honor such trade on the scheduled settlement date.]

*Before formatting any order, bid or offer into an ITS commitment to trade and issuing such a commitment to another ITS participant market, a member registered as an ITS Market Maker in an ITS Security shall first exhaust all interest at or better than such order, bid or offer which is resident in the ADF*, and then expose for thirty seconds any remaining balance to all *ADF* Participants, whether or not registered in the ITS Security involved.

**[5262]*6562*. Trade-Throughs**

(a) A member registered as an ITS/*ADF*[CAES] Market Maker in an ITS/*ADF*[CAES] [s]*S*ecurity, shall avoid purchasing or selling such security, whether as principal or agent, at a price [which] *that* is lower than the bid or higher than the offer displayed from an ITS Participant Exchange or ITS/*ADF*[CAES] Market Maker (''trade-through''), unless the following conditions apply:

(1) The size of the bid or offer that is traded-through is for 100 shares;

(2) the ITS/*ADF*[CAES] Market Maker is unable to avoid the trade-through because of [the] *a* systems/equipment failure or malfunction;

(3) the transaction which constituted the trade-through is not a ''regular way'' contract;

(4) the bid or offer that is traded[-] through is being displayed from a [M]*m*arket [C]*c*enter whose members are relieved of their obligations under SEC Rule 11Ac1–1([C]*c*)(2) with respect to such bid or offer;

(5) the bid or offer that is traded[-] through has caused a locked or crossed market in the ITS Security;

(6) the commitment received by an ITS/*ADF*[CAES] Market Maker which caused the trade-through was originated by an ITS Participant Exchange;

(7) The transaction involves (A) purchases and sales effected by ITS/*ADF*[CAES] Market Makers participating in an opening (or reopening) transaction or (B) any ''Block Transaction'' as defined in the ITS/*ADF*[CAES] Rules; or

(8) In the case of a third participating market center trade-through, either:

(A) the ITS/*ADF*[CAES] Market Maker who initiated the trade-through (i) had sent a commitment to trade promptly following the trade-through that satisfies the bid or offer traded[-] through, and (ii) preceded the commitment with an administrative message stating that the commitment was in satisfaction of a third participating market center trade-through; or

(B) a complaint with respect to the trade-through was not received by the Association through the System from the aggrieved party promptly following the trade-through, and, in any event, within ten (10) minutes from the time the aggrieved party sent a complaint through the System to the ITS [p]*P*articipating [m]*M*arket [c]*C*enter that received the commitment to trade that caused the trade-through, which first complaint must have been received within five (5) minutes from the time the report of the transaction that constituted the trade-through was disseminated over the high speed line of the consolidated last sale reporting system.

(b) (1) If a trade-through occurs and a complaint is promptly received by the Association either through the ITS System from the appropriate ITS Participant Exchange whose member is the aggrieved party or from an ITS/*ADF*[CAES] Market Maker, then:

(A) If ITS/*ADF*[CAES] Market Makers are on both sides of a principal trade, the price of the transaction which constituted the trade-through shall be corrected, by agreement of the parties, to a price at which a trade-through would not have occurred and the price correction shall be reported through the consolidated last sale reporting system; otherwise (i) the initiating ITS/*ADF*[CAES] Market Maker shall satisfy, or cause to be satisfied, the bid or offer traded-through in its entirety at the price of such bid or offer or at the price that caused the trade-through (as determined in accordance with subparagraph (E) below, or, if the initiating ITS/*ADF*[CAES] Market Maker elects not to do so, (ii) the transaction shall be voided.

(B) If an ITS/*ADF*[CAES] Market Maker executed the transaction and the contra-side was not an ITS/*ADF*[CAES] Market Maker (i) the ITS/*ADF*[CAES] Market Maker registered in the security shall satisfy, or cause to be satisfied, the bid or offer traded-through in its entirety at the price of such bid or offer, or, if the ITS/*ADF*[CAES] Market Maker elects not to do so, (ii) the price of the transaction [which] *that* constituted the trade-through shall be corrected by the

ITS/*ADF*[CAES] Market Maker to a price at which a trade-through would not have occurred and the price correction shall be reported through the consolidated last sale reporting system.

(C) If ITS/*ADF*[CAES] Market Makers are on both sides of a trade and one or both are acting as agent, the price of the transaction which constituted the trade-through shall be corrected, by agreement of the parties, to a price at which a trade-through would not have occurred and the price correction shall be reported through the consolidated last sale reporting system; otherwise, the ITS/*ADF*[CAES] Market Maker that initiated the transaction shall satisfy, or cause to be satisfied, the bid or offer traded-through in its entirety at the price of such bid or offer.

(D) Whenever the provisions of subparagraphs (B) and (C) above apply, the customer's order or a portion thereof [which] *that* was executed in the transaction [which] *that* constituted the trade-through (whether such order or a portion thereof was executed by the member who initiated the trade-through or by the member on the contra-side of the transaction, or both) shall receive the price [which] *that* caused the trade-through, or the price at which the bid or offer traded-through was satisfied, if it was satisfied pursuant to subparagraph (B) above, or the adjusted price, if there was an adjustment pursuant to subparagraph (B) above, whichever price is most beneficial to the order or a portion thereof. Money differences resulting from the application of this paragraph shall be the liability of the member who initiated the trade-through.

(E) The price at which the bid or offer traded-through shall be satisfied shall be the price of such bid or offer except if (i) the transaction that constituted the trade-through was of ''block size'' but did not constitute a ''block trade'' (as those terms are defined in the Block Trade Rule) and (ii) the ITS/*ADF*[CAES] Market Maker who initiated the trade-through did not make every reasonable effort to satisfy, or cause to be satisfied, through the System the bid or offer traded-through at its price and in its entirety within two (2) minutes from the time the report of the transaction that constituted the trade-through was disseminated over the high speed line of the consolidated last sale reporting system. In the case of such exception, the price at which the bid or offer traded-through shall be satisfied shall be the price that caused the trade-through.

(2) Such complaint shall be considered promptly received when no more than five minutes expire from the time the report of the transaction was disseminated over the high speed line of the consolidated last sale reporting system, unless the transaction is between an ITS/*ADF*[CAES] Market Maker and another ITS/*ADF*[CAES] Market Maker or ITS Participant Exchange. In the latter case, the complaint must be received within ten minutes from the time the aggrieved party sent a complaint through the System to the ITS/*ADF*[CAES] Market Maker or ITS Participant Exchange that received the commitment to trade that caused the trade-through, which first complaint must have been received within five minutes from the time the report of the transaction was disseminated over the high speed line of the consolidated last sale reporting system.

(c) (1) The Association shall notify the ITS/*ADF*[CAES] Market Maker of any trade-through complaint received from an ITS Participant Exchange or ITS/*ADF*[CAES] Market Maker. Upon receipt of such notification, the ITS/*ADF*[CAES] Market Maker shall promptly respond to the complaining ITS Participant Exchange or ITS/*ADF*[CAES] Market Maker. Such response shall set forth either: (A) the conditions specified in paragraph (a) above, or (B) the corrective action to be taken under paragraph (b) above. If there is more than one ITS/*ADF*[CAES] Market Maker that is registered in the ITS Security and participating in the transaction, then the ITS/*ADF*[CAES] Market Maker that initiated the transaction will receive notification of the trade-through complaint.

(2) If it is ultimately determined that an ITS/*ADF*[CAES] Market Maker has engaged in a trade-through but has not taken corrective action required by paragraph (b) above, then the ITS/*ADF*[CAES] Market Maker shall be liable for the lesser of (A) the actual loss proximately caused by the trade-through and suffered by the aggrieved party, or (B) the loss proximately caused by the trade-through which would have been suffered by the aggrieved party had [he] *it* purchased or sold the security subject to the trade-through in order to mitigate [his] *its* loss and had such purchase or sale been effected at the ''loss basis price.'' For purposes of this subparagraph the ''loss basis price'' shall be the price of the next transaction, as reported by the high speed line of the consolidated last sale reporting system in the security in question, after one hour has elapsed from the time the complaint is received (or, if the complaint is so received within the last hour in which transactions are reported on the high speed line of the consolidated last sale reporting system on any day, then the price of the opening transaction in such security reported on such high speed line on the next day on which the security is traded).

(3) Any ITS/*ADF*[CAES] Market Maker that becomes the subject of a trade-through by another ITS Participant Exchange or ITS/*ADF*[CAES] Market Maker may take whatever steps [are] necessary to mitigate any potential loss resulting from the trade-through of his bid or offer. Such action shall be promptly communicated to the offending ITS Participant market.

(4) The provisions of this trade-through rule shall not apply in respect to any Participant Exchange [which] *that* does not have in effect a similar rule imposing similar obligations and responsibilities.

(5) If a complaint of a purported trade-through is received by the Association and the complained-of transaction resulted from an ITS/*ADF*[CAES] Market Maker's execution of a commitment to trade received from another ITS/*ADF*[CAES] Market Maker or ITS Participant Exchange, the ITS/*ADF*[CAES] Market Maker should, if circumstances permit, make reasonable efforts to notify the complaining party, as promptly as practicable following receipt of the complaint, (A) that the transaction was not initiated by the ITS/*ADF*[CAES] Market Maker and (B) [of] the identity of the ITS/*ADF*[CAES] Market Maker or ITS Participant Exchange that originated the commitment. Neither compliance nor non-compliance with the preceding sentence shall be the basis for any liability of the ITS/*ADF*[CAES] Market Maker for any loss associated with the complained-of transaction.

**[5263]*6563*. Locked or Crossed Markets**

(a) A member registered as an ITS/*ADF*[CAES] Market Maker in an ITS/*ADF*[CAES] Security that makes a bid (offer) for such security at a price [which] *that* equals the offering (bid) price at that time from an ITS Participant Exchange or ITS/*ADF*[CAES] Market Maker has created what is referred to in this [r]*R*ule as a ''locked market.''

(b) A member registered as an ITS/*ADF*[CAES] Market Maker in an ITS/*ADF*[CAES] Security that makes a bid (offer) for such security at a price [which] *that* exceeds (is less than) the offering (bid) price at that time from an ITS Participant Exchange or ITS/*ADF*[CAES] Market Maker has created what is referred to in this [r]*R*ule as a ''crossed market.''

(c) An ITS/*ADF*[CAES] Market Maker [who] *that* makes a bid or offer and in

so doing creates a locked or crossed market with another ITS Participant or ITS/*ADF*[CAES] Market Maker shall promptly send to such other ITS Participant Exchange or ITS/*ADF*[CAES] Market Maker a commitment to trade seeking either the bid or offer [which] *that* was locked or crossed, unless excused by operation of paragraph (d) below. Such commitment shall be for either the number of shares [he] *it* has bid for (offered) or the number of shares offered (bid for) on the ITS Participant Exchange or by the ITS/*ADF*[CAES] Market Maker, whichever is less.

(d) The provisions of paragraph (c) above shall not apply when:

(1) The bid or offer in the ITS Participating [m]*M*arket [c]*C*enter is for 100 shares;

(2) the issuance of the commitment to trade referred to above would be prohibited by SEC Rule 10a–1 under the Act;

(3) the ITS/*ADF*[CAES] Market Maker [who] *that* causes a locked or crossed market is unable to comply with the provisions of paragraph (c) above because of a systems/equipment failure or malfunction;

(4) the bid or offer that causes the locked or crossed market is not for a ''regular way'' contract;

(5) the locked or crossed market occurs at a time when, with respect to the ITS Security [which] *that* is the subject of the locked or crossed market, members of the ITS [p]*P*articipating [m]*M*arket [c]*C*enter to which the commitment to trade would be sent pursuant to paragraph (c) above are relieved of their obligations under SEC Rule 11Ac1–1(c)(2);

(6) the transaction involves (A) purchases and sales effected by ITS/[CAES]*ADF* Market Maker[']s participating in an opening or (reopening) transaction or (B) any ''Block Transaction'' as defined in the ITS[/CAES] Rules.

**[5264] *6564*. Block Transactions**

(a) An ITS/*ADF*[CAES] Market Maker [who] *that* executes a ''block transaction'' in an ITS[/CAES] [s]*S*ecurity in which [he] *it* is registered as an ITS/*ADF*[CAES] Market Maker at an execution price outside the best quotation for the security displayed by any ITS [p]*P*articipant market or other ITS/*ADF*[CAES] Market Maker, shall, upon executing the block trade, send to each other [p]*P*articipant market and each ITS/*ADF*[CAES] Market Maker displaying a bid or offer (as the case may be) superior to the execution price, a commitment to trade, at the execution price, to satisfy the number of shares displayed in that [p]*P*articipant market's bid or offer.

(b) For purposes of this Rule, a block transaction shall be a trade that:

(1) Involves 10,000 or more shares of a common stock traded through ITS (an ''ITS Security'') or a quantity of any such security having a market value of $200,000 or more (''block size'');

(2) is effected at a price outside the bid or offer displayed from another ITS [p]*P*articipating [m]*M*arket [c]*C*enter; and

(3) involves either:

(A) a cross of block size (where the member represents all of one side of the transaction and all or a portion of the other side); or

(B) any other transaction of block size (i.e., in which the ITS/*ADF*[CAES] Market Maker represents an order of block size on one side of the transaction only) that is not the result of an execution at the current bid or offer of the ITS/*ADF*[CAES] Market Maker.

Contemporaneous transactions at the same price filling an order or orders then or theretofore represented by the ITS/*ADF*[CAES] Market Maker (including transactions resulting from commitments to trade sent by the ITS/*ADF*[CAES] Market Maker pursuant to paragraph (a) above) shall be deemed to constitute a single transaction for the purpose of this definition.

(c) A ''current bid or offer'' of the ITS/*ADF*[CAES] Market Maker, as that term is used in paragraph (b)(3)(B) above, means the price of the current quotation displayed by the ITS/*ADF*[CAES] Market Maker established independently of the order to buy or sell.

(d) A ''bid or offer'' displayed from another ITS [p]*P*articipating [m]*M*arket [c]*C*enter (or any derivative phrase), as that term is used in this Rule, means the current quotations from another ITS [p]*P*articipating [m]*M*arket [c]*C*enter displayed to the ITS/*ADF*[CAES] Market Maker as required by the ITS Plan, and does not include ''away-from-the-market'' limit orders or other interests that may be represented in such other ITS [p]*P*articipating [m]*M*arket [c]*C*enter.

(e) Inapplicability. Paragraph (a) above shall not apply under the following conditions:

(1) The size of the better priced bid or offer displayed by another ITS [p]*P*articipating [m]*M*arket [c]*C*enter was for 100 shares;

(2) the ITS/*ADF*[CAES] Market Maker representing the block-size order(s) made every reasonable effort to satisfy through ITS a better-priced bid or offer displayed by another ITS [p]*P*articipating [m]*M*arket [c]*C*enter but was unable to because of a systems/equipment failure or malfunction;

(3) the block trade was not a ''regular way'' contract;

(4) the bid or offer that is traded through is being displayed from a [m]*M*arket [c]*C*enter whose members are relieved of their obligations under SEC Rule 11Ac1–1(c)(2) with respect to such bid or offer;

(5) the bid or offer that is traded through has caused a locked or crossed market in the ITS Security;

(6) the better priced bid or offer was being displayed from an ITS [p]*P*articipating [m]*M*arket [c]*C*enter whose members were relieved of their obligations with respect to such bid or offer under SEC Rule 11Ac 1–1(c)(2) pursuant to the ''unusual market'' exception to SEC Rule 11Ac1–1(b)(3); or

(7) the better priced bid or offer had caused a ''locked or crossed market[,]'' in the ITS Security that was the subject of the block trade.

**[5265. Authority To Cancel or Adjust Transactions]**

[(a) In circumstances in which the Association deems it necessary to maintain a fair and orderly market and to protect investors and the public interest, the Association may, pursuant to the procedures set forth in Rule 11890 of the Uniform Practice Code, declare any transaction arising out of the use or operation of the ITS[/CAES] System, null and void on the grounds that one or more of the terms of the transaction are clearly erroneous; and the Association may reallocate stock between ITS[/CAES] Market Makers to correct an erroneous transaction.]

[(b) For purposes of this Rule, the terms of the transaction are clearly erroneous when there is an obvious error in any term, such as price, number of shares or other unit of trading, identification of the security, or if a specific commitment to trade has been executed with the wrong ITS/CAES Market Maker.]

**[5300]*6700*. THE PORTAL® MARKET**

**[5310]*6710*. Definitions**

For purposes of the PORTAL® Market Rules, unless the context requires otherwise:

(a) ''Association'' means the National Association of Securities Dealers, Inc. (Association) or its wholly owned subsidiary, *NASD Regulation, Inc.* [The Nasdaq Stock Market, Inc.,] as determined by the Association.

(a) through (aa) No Change.

**[5320]*6720.* Requirements Applicable to PORTAL Securities**

**[5321]*6721.* Application for Designation**

(a) Application for designation as a PORTAL security shall be in the form required by the Association and shall be filed by a PORTAL participant. Applications may be made with or without the concurrence of the issuer. The application shall demonstrate to the satisfaction of the Association that the security meets or exceeds the qualification requirements set forth in Rule 5322.

(b) Designation of a security as a PORTAL security shall be declared effective within a reasonable time after determination of qualification. The effective date of designation as a PORTAL security shall be determined by the Association giving due regard to the requirements of the PORTAL Market.

**[5322]*6722.* Qualification Requirements for PORTAL Securities**

(a) To qualify for initial designation and continued designation in the PORTAL Market, a security shall:

(1) be:

(A) a restricted security, as defined in SEC Rule 144(a)(3) under the Securities Act; or

(B) a security that upon issuance and continually thereafter only can be sold pursuant to Regulation S under the Securities Act, SEC Rule 144A, or SEC Rule 144 under the Securities Act, or in a transaction exempt from the registration requirements of the Securities Act pursuant to Section 4 thereof and not involving any public offering;

provided, however, that if the security is a depositary receipt, the underlying security shall also be a security that meets the criteria set forth in subparagraphs (A) or (B) hereof;

(2) be eligible to be sold pursuant to SEC Rule 144A under the Securities Act;

(3) be in negotiable form and not subject to any restriction, condition or requirement that would impose an unreasonable burden on any PORTAL participant;

(4) be assigned a CUSIP or CINS security identification number that is different from any identification number assigned to any unrestricted securities of the same class [which] *that* do not satisfy paragraph (a)(1)(B); or, if issued in physical certificate form to investors, have a legend placed on each certificate stating that the securities have not been registered under the Securities Act and cannot be resold without registration under the Securities Act or an exemption therefrom; and

(5) satisfy such additional criteria or requirements as the Association may prescribe.

(b) Notwithstanding the provisions of paragraph (a)(1)(B) of this Rule, if a PORTAL security is sold pursuant to the provisions of Rule 144, including Rule 144(k), it will thereby cease being a PORTAL security and it must be assigned a CUSIP or CINS security identification number that is different from the identification number assigned to a PORTAL security of the same class.

**[5323]*6723.* Suspension or Termination of a PORTAL Security Designation**

(a) The Association may, in its discretion, suspend or terminate designation as a PORTAL security if it determines that:

(1) The security is not in compliance with the requirements of the PORTAL Rules;

(2) a holder or prospective purchaser that requested issuer information pursuant to SEC Rule 144A(d)(4) did not receive the information;

(3) any application or other document relative to such securities submitted to the Association contained an untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein not misleading; or

(4) failure to withdraw designation of such securities would for any reason be detrimental to the interests and welfare of PORTAL participants or the Association.

(b) The Association will promptly notify PORTAL participants of the suspension or termination of a security's designation as a PORTAL security. Such notification may be made through the facilities of the PORTAL Market. Suspension or termination shall become effective in accordance with the terms of notice by the Association. The Association also will promptly notify The Depository Trust Company of the suspension or termination.

(c) Notwithstanding the suspension or termination of designation of a security as a PORTAL security, such security shall remain subject to all rules of the Association applicable to the PORTAL Market until the security is sold in accordance with the terms of notice by the Association of the suspension or termination.

**[5324]*6724.* PORTAL Entry Fees**

When a PORTAL participant submits an application for designation of any class of securities as a PORTAL security, it shall pay to the Association a filing fee of $2,000.00 for an application covering a security or group of identifiable securities issuable as part of a single private placement covered by the same offering documents, plus $200.00 per assigned security symbol that is in addition to the first symbol assigned.

**[5330]*6730.* Requirements Applicable to Members of the Association**

**[5331]*6731.* Limitations on Transactions in PORTAL Securities**

(a) No member shall sell a PORTAL security unless:

(1) The sale is to:

(A) an investor or member that the member reasonably believes is a ''qualified institutional buyer'' in a transaction exempt from registration under the Securities Act by reason of compliance with Rule 144A;

(B) an investor or member in a transaction that is exempt from registration under the Securities Act by reason of compliance with an applicable exemption under the Securities Act other than Rule 144A; or

(C) a member acting as an agent in a transaction that the member acting as agent determines is in compliance with subparagraphs (A) or (B) hereof, and the selling member determines is exempt from registration under the Securities Act by reason of compliance with SEC Rule 144A or an applicable exemption under the Securities Act other than SEC Rule 144A; and

(2) the member maintains in its files information demonstrating that the transaction is in compliance with Rule 144A or with any other applicable exemption from registration under the Securities Act.

**[5332]*6732.* Reporting Debt and Equity Transactions in PORTAL Securities**

(a) A transaction in a PORTAL security in which a PORTAL dealer or PORTAL broker participates shall be reported to the PORTAL Market system in a PORTAL transaction report complying with Rule [5334] *6734* by:

(1) The seller, if each party in the transaction is either a PORTAL dealer or a PORTAL broker;

(2) the PORTAL dealer or PORTAL broker participating in the transaction, if only one party in the transaction is a PORTAL dealer or PORTAL broker; provided, however, that with respect to transactions that are part of the initial offering by or on behalf of the issuer or an affiliate thereof, a PORTAL dealer or PORTAL broker may comply with its obligation to submit a PORTAL transaction report by submitting, instead, a PORTAL surveillance report [which] *that* reports such transaction to

the Market Regulation Department of the Association as set forth in Rule [5336] ***6736.***

(b) A transaction in a PORTAL security in which a member participates, but in which no PORTAL dealer or PORTAL broker participates, shall be reported to the Market Regulation Department of the Association in a PORTAL non-participant report complying with Rule [5335] ***6735*** by:

(1) The seller, if each party in the transaction is a member; or

(2) The member, if only one party in the transaction is a member.

(c) The member responsible for submitting a PORTAL transaction report shall also submit to the Market Regulation Department of the Association a PORTAL surveillance report as set forth in Rule [5336] ***6736.***

(d) The reporting requirements of this Rule shall apply to any transaction in a PORTAL security, including transactions in reliance on SEC Rule 144 and sales to or purchases from a non-U.S. securities market.

[Rule [5332] ***6732*** will not be effective until a date is announced by the NASD.]

**[5333]*6733*. PORTAL Settlement**

(a) Transactions in the PORTAL Market where the PORTAL dealer or PORTAL broker that enters the PORTAL transaction report in the PORTAL Market system designates settlement in the PORTAL clearance and depository systems will settle five (5) business days after the date of the execution of the transaction, except as otherwise agreed between the PORTAL participants, in any currency accepted by the PORTAL depository organization.

(b) PORTAL securities and funds will be transferred on the books of the PORTAL depository system upon receipt from the PORTAL clearing system of the necessary settlement instructions designating settlement in the PORTAL clearance and depository systems from the PORTAL transaction report entered in the PORTAL Market system by the appropriate PORTAL dealer or PORTAL broker and subject to the purchaser meeting the requirements of the relevant PORTAL depository organization concerning deposit and availability of funds in accordance with the depository organization's procedures.

(c) PORTAL dealers and PORTAL brokers that settle a PORTAL transaction outside the PORTAL clearance and depository systems assume responsibility for the prompt settlement of the transaction in accordance with the protocols of the settlement method used and the transaction will not be compared in the PORTAL Market.

**[5334]*6734*. PORTAL Transaction Reports**

(a) Each PORTAL transaction report shall include: whether the report should be forwarded to the PORTAL depository and clearance systems for the clearance and settlement of the transaction; if the PORTAL depository and clearance system is to be used, the identity of the account where the transaction is to be settled; if the PORTAL depository and clearance system is not to be used and the contra-party is an Association member, the identity of the Association member that is the contra-party; whether the transaction is on an agency or principal basis; whether the transaction is a purchase or sale; whether a sale is a ''short'' sale; the quantity of the security; the price of the security expressed in the currency in which the security was quoted in the PORTAL Market; and such additional information as the Association may require.

(b) PORTAL transaction reports shall be entered within 15 minutes after execution of the transaction during hours that the PORTAL Market system accepts PORTAL transaction reports. The PORTAL Market system shall accept PORTAL transaction reports from 8:30 a.m. Eastern Time to 6:30 p.m. Eastern Time. If a transaction is executed during hours that the PORTAL Market system does not accept PORTAL transaction reports, the PORTAL transaction report shall be entered between 8:30 a.m. Eastern Time and 9:30 a.m. Eastern Time when the PORTAL Market system is next open, with the trade date [of] the date of execution of the transaction. The Association, in its discretion, will establish hours for and additional time limitations on the entry of PORTAL transaction reports.

(c) Modification, correction or cancellation of a PORTAL transaction report must be entered in the PORTAL Market system.

(d) The Association will not disseminate PORTAL transaction reports that are entered in the PORTAL Market system between 8:30 a.m. Eastern Time and 9:30 a.m. Eastern Time, and between 4:00 p.m. Eastern Time and 6:30 p.m. Eastern Time. The Association shall, however, display daily aggregate volume of transactions effected pursuant to SEC Rule 144A, including the volume of transactions that are entered in the PORTAL Market system between 8:30 a.m. Eastern Time and 6:30 p.m. Eastern Time.

[Rule [5334] *6734* will not be effective until a date is announced by the NASD.]

**[5335]*6735*. PORTAL Non-Participant Report**

(a) Each PORTAL non-participant report shall include: whether the transaction is on an agency or principal basis, whether the transaction is a purchase or sale; whether a sale is a ''short'' sale; the quantity of the security; the price of the security expressed in the currency in which the security was quoted in the PORTAL Market; a representation as to whether the buyer was a ''qualified institutional buyer'' under Rule 144A, a ''non-qualified institutional buyer'' institution, or an individual investor; and such additional information as the Association may require.

(b) PORTAL non-participant reports shall be submitted to the Market Regulation Department of the Association no later than the fifth day of the month following the month in which the transaction was effected.

(c) Modification, correction, or cancellation of a PORTAL non-participant report must be submitted in the manner specified by the Association.

[Rule [5335] *6735* will not be effective until a date is announced by the NASD.]

Selected Notices to Members: 95–34.

**[5336] *6736*. PORTAL Surveillance Report**

(a) Each PORTAL dealer or PORTAL broker shall submit to the Market Regulation Department of the Association, no later than the fifth day of each month, a PORTAL surveillance report [which] *that* reports every transaction effected during the preceding month (including transactions that are part of the initial offering by or on behalf of the issuer or an affiliate thereof) for which the PORTAL dealer or PORTAL broker was required to submit a PORTAL transaction report under Rule [5332] *6732,* including transactions that are part of the initial offering by or on behalf of the issuer or an affiliate thereof; provided, however, that a member shall not be required to submit a PORTAL surveillance report with respect to any transaction for which the member was not required to submit a PORTAL transaction report.

(b) The PORTAL surveillance report shall be submitted in the manner specified by the Association and shall include for each transaction reported: a representation as to whether the buyer was a ''qualified institutional buyer'' under Rule 144A, a ''non-qualified

institutional buyer'' institution, or an individual investor; the information required under Rule [5334] *6734;* and such additional information as the Association may require.

(c) Modification, correction, or cancellation of a PORTAL surveillance report must be submitted in the manner specified by the Association.

[Rule [5336] *6736* will not be effective until a date is announced by the NASD.]

**[5337]*6737.* Comparison of PORTAL Transaction Reports Entered in the PORTAL Market System**

Each PORTAL dealer and PORTAL broker that executes a purchase transaction in a PORTAL security with another PORTAL dealer or PORTAL broker shall, within 30 minutes after execution of a transaction for which a report is entered into the PORTAL Market system that designates settlement in the PORTAL clearance and depository system:

(a) Accept a PORTAL transaction report entered by the seller by entering in the PORTAL Market system a matching PORTAL comparison report with the same terms as the seller's PORTAL transaction report;

(b) reject a PORTAL transaction report entered by the seller by entering a PORTAL comparison report in the PORTAL Market system with different terms than those included in the seller's PORTAL transaction report; or

(c) enter an affirmation or rejection in the PORTAL Market system with respect to the PORTAL transaction report entered by the seller.

**[5338]*6738.* Registration Requirements for PORTAL Dealers**

(a) A member of the Association that registers as a PORTAL dealer shall also be registered as a PORTAL qualified investor.

(b) To register as a PORTAL dealer, a member shall:

(1) Execute a participation agreement;

(2) demonstrate to the satisfaction of the Association that it is eligible to purchase securities under the financial criteria of SEC Rule 144A as it applies to a dealer registered under Section 15 of the Exchange Act by submission of the member's most recent Audited Financial Statements filed with the SEC pursuant to SEC Rule 17a–5(d) under the Exchange Act, with the supporting schedules required pursuant to subparagraph (3) thereof, and any other information that the Association, in its discretion, may require to be submitted to the Association;

(3) be a member of the Association and qualified to do business as a general securities firm; and

(4) agree to comply with the requirements of the PORTAL Rules, including the filing of such documents and the payment of such fees as may be required by the Association.

**[5339]*6739.* Registration Requirements for PORTAL Brokers**

To register as a PORTAL broker a member shall comply with Rule [5338] *6738*(b)(1), (b)(3), and (b)(4).

**[5340]*6740.* Continuing Requirements for PORTAL Dealers and PORTAL Brokers**

(a) For a PORTAL dealer to continue to be eligible to participate as a PORTAL dealer in the PORTAL Market, the PORTAL dealer shall demonstrate to the satisfaction of the Association that it continues to be eligible to purchase securities under the financial criteria of SEC Rule 144A as it applies to a dealer registered under Section 15 of the Exchange Act by submitting to the Association, concurrent with the dealer's SEC filing, the dealer's Audited Financial Statements filed with the SEC pursuant to SEC Rule 17a-5(d) under the Exchange Act, with the supporting schedules required pursuant to subparagraph (3) thereof, and any other information that the Association, in its discretion, may require to be submitted to the Association.

(b) The Association may suspend or terminate the registration of a PORTAL dealer or PORTAL broker if:

(1) It fails to comply with any requirement of the PORTAL Rules with respect to any PORTAL security;

(2) any application or other document submitted by or on behalf of it contained an untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein not misleading; or

(3) it fails to file any documents or to pay any fee as may be required by the Association.

(c) Nothing in paragraph (b) shall prohibit the Association from taking such other action as it deems necessary under the circumstances against a PORTAL dealer or a PORTAL broker for violations of the requirements of the PORTAL Rules, any other rule or regulation of the Association, or any rule or regulation of the SEC.

**[5350]*6750.* Requirements Applicable to PORTAL Qualified Investors**

**[5351]*6751.* Registration Requirements for PORTAL Qualified Investors**

(a) No investor other than a dealer registered under Section 15 of the Exchange Act shall subscribe to PORTAL Market information directly through the PORTAL Market system or indirectly through a third-party distributor unless:

(1) The investor executes a subscriber agreement;

(2) a PORTAL dealer represents to the Association that it reasonably believes that the investor is a ''qualified institutional buyer'' under SEC Rule 144A; or

(3) the investor demonstrates to the satisfaction of the Association that it is a ''qualified institutional buyer'' under SEC Rule 144A; or

(4) the Association reasonably believes that the investor is a ''qualified buyer'' under SEC Rule 144A.

(b) The Association may classify PORTAL qualified investors in such manner as it deems advisable for the purpose of conforming with SEC Rule 144A.

(c) A PORTAL dealer that submits a representation to the Association pursuant to paragraph (a)(2) shall maintain in its files the basis for its representation that it reasonably believes that the investor satisfies the ''qualified institutional buyer'' requirements of SEC Rule 144A.

(d) No member of the Association may register as a PORTAL qualified investor unless the member is also registered as a PORTAL dealer.

**[5352]*6752.* Continuing Requirements for PORTAL Qualified Investors**

(a) For an investor other than a dealer registered under Section 15 of the Exchange Act, to continue to be eligible to subscribe to PORTAL Market information:

(1) A PORTAL dealer shall represent annually to the Association that it reasonably believes that the investor is a ''qualified institutional buyer'' under SEC Rule 144A; or

(2) the investor shall demonstrate to the satisfaction of the Association or the Association shall form a reasonable belief that the investor is a ''qualified institutional buyer'' under SEC Rule 144A.

(b) A PORTAL dealer that submits a representation to the Association pursuant to paragraph (a)(1) shall maintain in its files the basis for its representation that it reasonably believes that an investor satisfied the ''qualified institutional buyer'' requirements of SEC Rule 144A.

**[5353]*6753.* Suspension or Termination of the Registration of a PORTAL Qualified Investor**

(a) The Association shall suspend or terminate the registration of a PORTAL qualified investor if:

(1) Any application or document submitted by or on behalf of the

PORTAL qualified investor contained an untrue statement of material fact or omitted to state a material fact necessary to make the statements therein not misleading; or

(2) the investor fails to comply with any requirements of the PORTAL Rules, or to file any documents or to pay any fee as may be required by the Association.

(b) Nothing in paragraph (a) shall prohibit the Association from taking such action as it deems necessary under the circumstances against a PORTAL qualified investor that is also a member of the Association for violations of the requirements of the PORTAL Rules, any other rule or regulation of the Association, or any rule or regulation of the SEC.

**[5360]*6760.* Denial, Suspension or Termination Procedures**

A determination by the Association to deny, suspend or terminate the designation of a PORTAL security or registration of a PORTAL participant may be reviewed upon application by the aggrieved person pursuant to the provisions of the Rule [4800] *9700* Series.

**[5370]*6770.* PORTAL Market Transactions**

**[5371]*6771.* Normal PORTAL Market Hours of Operation**

The PORTAL Market shall be open for business from 9:30 a.m. Eastern Time to 4:00 p.m. Eastern Time, or as otherwise determined by the Association.

**[5372]*6772.* PORTAL Quotations**

The PORTAL Market will accept prices and quotations from PORTAL dealers and PORTAL brokers that are one- or two-sided, firm or indicative.

**[5373]*6773.* PORTAL Contracts**

The existence and terms of each PORTAL contract shall be conclusively established by a compared PORTAL transaction report pertaining to the underlying transaction in a PORTAL security. Notwithstanding the foregoing, the parties to any PORTAL contract may modify or correct the terms of any transaction in a PORTAL security in a manner consistent with the rules of the PORTAL Market.

**[5374]*6774.* PORTAL Fees**

PORTAL participants shall pay to the Association a fee for PORTAL transactions or such other fees as determined by the Association, including those set forth in Rule [5324] *6724.* The Board of Governors shall have the power to impose, alter, or amend such fees from time to time pursuant to Article VI, Section 1 of the By-Laws.

**[5375]*6775.* ''When, As and If Issued'' Trading**

PORTAL securities that are of a new issue of securities, primary or secondary, may trade ''when, as and if issued'' in the PORTAL Market subsequent to effectiveness of the designation of the securities as PORTAL securities, provided; however, that the lead manager shall:

(a) Establish a settlement date for the securities based on their anticipated availability; and

(b) in the event of any subsequent delay in the established settlement date, shall enter in the PORTAL Market a corrected PORTAL transaction report designating a substitute date for settlement and cancel the existing PORTAL transaction report.

**[5376]*6776.* ''Short'' Sales**

(a) ''Short'' sale transactions in PORTAL securities may be entered in the PORTAL Market. ''Short'' sale transactions shall be identified as such in the PORTAL transaction report.

(b) The settlement date for ''short'' sales in PORTAL securities shall be negotiated by the parties.

(c) The provisions of Rule [3370] *5100 and IM–5100* that relate to ''short'' sale transactions are applicable to transactions in PORTAL securities.

(d) The Association may adopt such restrictions on ''short'' sales, and the borrowing and return of securities, as it may deem necessary to prevent violation of the registration requirements of the Securities Act in connection with the transactions in the PORTAL Market.

**[5377]*6777.* Stabilizing Bids**

(a) A PORTAL dealer may enter a stabilizing bid in the PORTAL Market subject to compliance with SEC Rules 10b-6 and 10b-7 under the Exchange Act, which bid shall be identified in the PORTAL Market. When a stabilizing bid is entered, it shall be available for all outstanding securities in the PORTAL Market of the same class being offered.

(b) A PORTAL dealer shall notify the Association in writing prior to the first day in which the stabilizing bid is to appear in the PORTAL Market. The notice shall include:

(1) The name of the security and its PORTAL symbol;

(2) the date on which the distribution of the security will commence; and

(3) a copy of any offering document related to the distribution.

The PORTAL dealer shall contact the Association for authorization on the day that the dealer wishes to enter the stabilizing bid.

(c) A PORTAL dealer shall not enter a stabilizing bid at the same time it is quoting any other bid or offer in the issue.

**[5378]*6778.* Partial Delivery**

A PORTAL qualified investor is required to accept a partial delivery on any PORTAL contract due, provided the portion remaining undelivered is not an amount that includes an odd-lot [which] *that* was not part of the original transaction.

**[5379]*6779.* Close-out Procedures—''Buying-In''**

A PORTAL contract [which] *that* has not been completed by the seller according to its terms may be closed by the buyer not sooner than the third business day following the date delivery was due, in accordance with the following procedure:

(a) Notice of ''Buy-In''

(1) Written notice of ''buy-in'' shall be delivered to the seller at the seller's office not later than 12 noon, the seller's local time, two business days preceding the execution of the proposed ''buy-in.''

(2) For purposes of this provision, written notice shall include an electronic notice through a medium that provides for an immediate return receipt capability. Such electronic media shall include but not be limited to facsimile transmission and a computerized network facility.

(b) Information Contained in the ''Buy-In'' Notice

(1) Every notice of ''buy-in'' shall state the date of the PORTAL contract to be closed, the quantity and contract price of the PORTAL securities covered by said contract, the settlement date of said PORTAL contract and any other information deemed necessary to properly identify the PORTAL contract to be closed. Such notice shall state further that unless delivery is effected at or before a certain specified time, which may not be prior to 2:30 p.m. Eastern Time, the PORTAL security may be ''bought-in'' on the date specified for the account of the seller.

(2) Notice may be redelivered immediately to another PORTAL dealer or PORTAL broker from whom the securities involved are due in the form of a re-transmitted notice (re-transmit). Re-transmitted notice of buy-in must be delivered to subsequent PORTAL dealers or PORTAL brokers not later than one business day preceding the time and date of execution of the proposed buy-in.

(c) Seller's Failure to Deliver After Receipt of Notice

On failure of the seller to effect delivery in accordance with the ''buy-in'' notice, or to obtain a stay as hereinafter provided, the buyer may close the PORTAL contract by purchasing all or part of the PORTAL securities necessary to satisfy the amount requested in the ''buy-in'' notice. Securities delivered subsequent to the receipt of the ''buy-in'' notice should be considered as delivered pursuant to the ''buy-in'' notice. Delivery of the requisite amount of securities as stated in the ''buy-in'' notice or execution will also operate to close-out all PORTAL contracts covered under re-transmitted notices of buy-in issued pursuant to the original notice of buy-in. A ''buy-in'' may be executed by a PORTAL dealer from its long position and/or from customers' accounts maintained with such PORTAL dealer. In all cases, PORTAL dealers must be prepared to defend the price at which the ''buy-in'' is executed relative to the current market at the time of the ''buy-in''.

(d) ''Buy-In'' Not Completed

In the event that a ''buy-in'' is not completed pursuant to the provisions of paragraph (b) hereof on the day specified in the notice of ''buy-in,'' or as such date may be extended pursuant to the provisions of paragraph (f) hereof, said notice shall expire at the close of business on the day specified in the notice of buy-in.

(e) Partial Delivery by Seller

Prior to the closing of a PORTAL contract on which a ''buy-in'' notice has been given, the buyer shall accept any portion of the PORTAL securities called for by the PORTAL contract, provided the portion remaining undelivered at the time the buyer proposes to execute the ''buy-in'' is not an amount which includes an odd-lot [which] *that* was not part of the original transaction.

(f) Securities in Transit

If prior to the closing of a PORTAL contract on which a ''buy-in'' notice has been given, the buyer receives from the seller written or comparable electronic notice stating that the securities are: (1) In transfer; (2) in transit; (3) are being shipped that day; or (4) are due from a depository and giving the certificate numbers, except for those securities due from the depository, then the buyer must extend the execution date of the ''buy-in'' for a period of seven (7) calendar days from the date delivery was due under the ''buy-in.''

(g) Notice of Executed ''Buy-In''

The party executing the ''buy-in'' shall immediately upon execution, but not later than the close of business, local time where the seller maintains its office, notify the PORTAL dealer or PORTAL broker for whose account the securities were bought as to the quantity purchased and the price paid. Such notification should be in written or electronic form having immediate receipt capabilities. If this written media is not available, the telephone shall be used for the purpose of same day notification, and written or similar electronic notification having next day receipt capabilities must also be sent out simultaneously. In either case, formal confirmation of purchase along with a billing or payment (depending upon which is applicable) should be forwarded as promptly as possible after the execution of the buy-in. Notification of the execution of a ''buy-in'' shall be given to succeeding broker/dealers to whom a re-transmitted notice was issued pursuant to paragraph (b) using the same procedures stated herein. If a re-transmitted ''buy-in'' is executed, it will operate to close-out all contracts covered under the re-transmitted notices.

(h) ''Close-Out'' under Association or Exchange Rulings

(1) When a national securities exchange makes a ruling that all open contracts with a particular member, who is also a PORTAL dealer or PORTAL broker, should be closed-out immediately (or any similar ruling), PORTAL dealers and PORTAL brokers may close-out contracts as directed by the exchange.

(2) When the Association issues notification that all open contracts with the PORTAL dealer or PORTAL broker in question should be closed-out immediately, PORTAL dealers or PORTAL brokers may close-out contracts as directed by the Association.

(3) Within the meaning of this section, to close-out immediately shall mean that (A) ''buy-ins'' may be executed without prior notice of intent to ''buy-in'' and (B) ''sell-outs'' may be executed without making prior delivery of the securities called for.

(4) All close-outs executed pursuant to the provisions of this subparagraph shall be executed for the account and liability of the PORTAL dealer or PORTAL broker in question. Notification of all close-outs shall immediately be sent to such PORTAL dealer or PORTAL broker.

(i) Failure to Deliver and Liability Notice Procedures

(1) If a contract is for warrants, rights, convertible securities or other securities [which] *that* (A) have been called for redemption; (B) are due to expire by their terms; (C) are the subject of a tender or exchange offer; or (D) are subject to other expiring events such as the record date for the underlying security and the last day on which the securities must be delivered or surrendered (the ''expiration date'') is the settlement date of the contract or any later day, the receiving member may deliver a Liability Notice to the delivering member as an alternative to the close-out procedures set forth in paragraphs (a) through (g) of this Rule. Such Notice must be issued using written or comparable electronic media having immediate receipt capabilities no later than one business day prior to the latest time and date of the offer or other event in order to obtain the protection provided by this provision.

(2) If the delivering PORTAL dealer or PORTAL broker fails to deliver the securities on the expiration date, the delivering PORTAL dealer or PORTAL broker shall be liable for any damages [which] *that* may accrue thereby. A Liability Notice delivered in accordance with this provision shall serve as notification by the receiving member of the existence of a claim for damages. All claims for such damages shall be made promptly.

(3) If the above procedures are not utilized, contracts may be ''bought-in'' without prior notice, after normal delivery hours established in the community where the buyer maintains its office, on the expiration date. Such buy-in execution shall be for the account and risk of the defaulting PORTAL dealer or PORTAL broker.

(j) Information on Notices

Notices of ''buy-in'' and ''re-transmitted buy-in'' shall include all information contained in the sample forms prescribed by the Association.

(k) ''Buy-In'' Desk Required

PORTAL dealers or PORTAL brokers shall have a ''buy-in'' section or desk adequately staffed to process and research all ''buy-ins'' during normal business hours.

(l) ''Buy-In'' of Accrued Securities

Securities in the form of stock, rights or warrants [which] *that* accrue to a purchaser shall be deemed due and deliverable to the purchaser on the payable date. Any such securities remaining undelivered at that time shall

be subject to the ''buy-in'' procedures as provided in this Rule.

**[5380]*6780.* Close-Out Procedures—''Selling-Out''**

A contract [which] *that* has not been completed by the buyer according to its terms may be closed by the seller in accordance with the following procedures:

(a) Conditions Permitting ''Sell-Out''

Upon failure of the buyer to accept delivery in accordance with the terms of the contract, and lacking a properly executed Reclamation Form, the seller may, without notice, ''sell-out'' in the PORTAL Market and for the account and liability of the party in default all or any part of the securities due or deliverable under the contract.

(b) Notice of ''Sell-Out''

The party executing a ''sell-out'' as prescribed above shall, as promptly as possible on the day of execution, by written or comparable electronic notice, notify the PORTAL dealer or PORTAL broker for whose account and risk such securities were sold of the quantity sold and the price received, and shall promptly mail or deliver formal confirmation of such sale.

**[5390]*6790.* Miscellaneous**

**[5391]*6791.* Arbitration**

The facilities of [the Association's Arbitration Department] *NASD Dispute Resolution, Inc.,* and the procedures of the Code of Arbitration Procedure shall be available to PORTAL participants to resolve disputes arising from PORTAL transactions and transfers or activities related thereto.

**[5392]*6792.* Rules of the Association**

(a) The following Rules of the Association and Interpretative Material thereunder are specifically applicable to transactions and business activities relating to the PORTAL Market:

(1) Rules 0113, 0114, 0115, 2110, 2120, 2230, 2240, 2250, 2260, 2270, 2310, 2410, 2420, 2430, 2440, 2510, 2760, 2770, 2780, 3010, 3120, 3310, 3320, 3330, 3370, and 8210;

(2) the Rule 8100 and 8300 Series; and

(3) IM–2310–2, IM–2420–1, IM–2440, IM–3310, and IM–3320.

(b) The following Rules of the Association and Interpretative Material thereunder are specifically applicable to transactions and business activities relating to the PORTAL Market, with the exceptions specified below:

(1) Rule 2320, except for paragraph (g), which requires that a member obtain quotations from three dealers to determine the best inter-dealer market for the subject security;

(2) Rule 2330, except for paragraph (d); and

(3) Rule 3110, except paragraph (b)(2).

(c) The following Rules of the Association are applicable to members and persons associated with members regardless of the member's participation in transactions in the PORTAL Market:

(1) Rules 0111, 0112, 0120, and 0121.

(2) Rules 2210, 3020, 3030, 3040, 3050, 3060, 3130, 3140, and 3340.

(d) The following Rules of the Association and Interpretative Material thereunder are not applicable to transactions and business activities relating to the PORTAL Market:

(1) Rules 1130, 2450, 2520, 2710, 2730, 2740, 2750, 2810, 2820, 2830, 2860, 3210, and 3360; and

(2) IM–2110–1.

* * * * *

***5400. Clearance and Settlement***

*(a) A market maker shall clear and settle transactions effected otherwise than on an exchange in ADF-eligible securities that are eligible for net settlement through the facilities of a registered clearing agency that uses a continuous net settlement system. This requirement may be satisfied by direct participation, use of direct clearing services, or by entry into a correspondent clearing arrangement with another member that clears trades through such an agency.*

(b) Notwithstanding paragraph (a), transactions in listed securities may be settled ''ex-clearing'' provided that both parties to the transaction agree.

*Selected NASD Notices to Members: 94–73.*

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**6000. NASD SYSTEMS AND PROGRAMS**

The 6100 Series is replaced in its entirety by the following proposed rule language:

***6100. TRACS TRADE COMPARISON SERVICE***

***6110. Definitions***

*(a) The term ''Browse'' shall mean the function of TRACS that permits a Participant to review (or query) for trades in the system identifying the Participant as a party to the transaction, subject to the specific uses contained in the TRACS Users Guide.*

*(b) The term ''Clearing Broker/Dealer'' or ''Clearing Broker'' shall mean the member firm that has been identified in the TRACS system as principal for clearing and settling a trade, whether for its own account or for a correspondent firm.*

*(c) The term ''Correspondent Executing Broker/Dealer'' or ''Correspondent Executing Broker'' shall mean the member firm that has been identified in the TRACS system as having a correspondent relationship with a clearing firm whereby it executes trades and the clearing function is the responsibility of the clearing firm.*

*(d) The term ''Introducing Broker/Dealer'' or ''introducing broker'' shall mean the member firm that has been identified in the TRACS system as a party to the transaction, but does not execute or clear trades.*

*(e) The term ''Participant'' shall mean any member of NASD in good standing that uses the TRACS system as an NASD Registered Market Maker or CQS Market Maker according to the requirements of Rule 4611 or Rule 6320, an ECN registered in accordance with Rule 4623, an Order Entry Firm, or a clearing broker/dealer, correspondent executing broker/dealer, or introducing broker/dealer.*

*(f) The terms ''Participant,'' ''TRACS Order Entry Firm,'' ''correspondent executing broker/dealer,'' ''correspondent executing broker,'' ''introducing broker/dealer,'' ''introducing broker,'' ''clearing broker/dealer,'' and ''clearing broker'' shall also include, where appropriate, the Non-Member Clearing Organizations listed in Rule 6120(a)(5) below and their qualifying members.*

*(g) The term ''Parties to the Transaction'' shall mean the executing brokers, introducing brokers and clearing brokers, if any.*

*(h) The term ''Reportable TRACS Transaction'' shall mean those transactions in a TRACS eligible security that are required to be submitted to NASD pursuant to the Rule 4630, 6400, and 6620 Series. The term shall also include transactions in TRACS eligible securities that are for less than one round lot, and those transactions that are to be compared and locked-in for settlement.*

*(i) The term ''Reporting Party'' shall mean the TRACS Participant that is required to input the trade information, according to the requirements in NASD Rule 4633.*

*(j) The term ''Trade Reporting and Comparison Service'' or ''TRACS'' shall mean the automated system owned and operated by NASD that reports trades and compares trade information entered by TRACS participants and submits ''locked-in'' trades to Depository Trust Clearing Corporation (DTCC) for clearance and settlement; transmits reports of the transactions automatically to the Securities Information Processor, if required, for dissemination to the*

*public and the industry; and provides participants with monitoring capabilities to facilitate participation in a ''locked-in'' trading environment.*

*(k) The term ''TRACS ECN'' shall mean a member of NASD that is an electronic communications network (''ECN'') that elects to display orders in the NASD Alternative Display Facility pursuant to Rule 4623 and is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member. This term shall also include an NASD member that is an alternative trading system (''ATS'') that displays orders in the NASD Alternative Display Facility pursuant to Rule 4623 and is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member.*

*(l) The term ''TRACS Eligible Security'' shall mean all Nasdaq securities, all Consolidated Quotation Service (CQS) securities traded pursuant to unlisted trading privileges, all non-exchange-listed securities as defined in the Rule 6600 series, and all Direct Participation Programs as defined in the Rule 6900 series.*

*(m) The term ''TRACS Market Maker'' shall mean a member of NASD that is registered as an NASD or CQS Market Maker and is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member.*

*(n) The term ''TRACS Order Entry Firm'' shall mean a member of NASD that is a firm that executes orders but does not act as a market maker in the instant transaction and is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member.*

***6120. Participation in TRACS Trade Comparison Feature by Participants in the NASD Alternative Display Facility***

*The following Rules 6120 through 6190 apply to members that effect transactions in ADF-eligible securities otherwise than on an exchange.*

*(a) Mandatory Participation for Clearing Agency Members*

*(1) Participation in TRACS trade comparison feature is mandatory for any NASD member that effects transactions in ADF-eligible securities otherwise than on an exchange that are not locked-in and sent directly to Deposit Trust Clearing Corporation (''DTCC'') by that member. All members, whether or not they must participate in the TRACS trade comparison feature, must comply with the trade reporting requirements described in Rule 4633.*

*(2) Participation in the TRACS trade comparison feature as a Market Maker shall be conditioned upon the TRACS Market Maker's initial and continuing compliance with the following requirements:*

*(A) Execution of, and continuing compliance with, a TRACS trade comparison Participant Application Agreement;*

*(B) membership in, or maintenance of, an effective clearing arrangement with a member of a clearing agency registered pursuant to the Act;*

*(C) registration as an NASD Market Maker or ECN for Nasdaq or CQS securities pursuant to Rule 4611 or Rule 6320, if applicable, and compliance with all applicable rules and operating procedures of NASD and the Commission;*

*(D) maintenance of the physical security of the equipment located on the premises of the TRACS Market Maker to prevent unauthorized entry of information into the TRACS trade comparison feature; and*

*(E) acceptance and settlement of each trade that the TRACS trade comparison feature identifies as having been effected by such TRACS Market Maker, or if settlement is to be made through a clearing member, guarantee or the acceptance and settlement of each TRACS identified trade by the clearing member on the regularly scheduled settlement date.*

*(3) Participation in the TRACS trade comparison feature as an Order Entry Firm shall be conditioned upon the Order Entry Firm's initial and continuing compliance with the following requirements:*

*(A) Execution of, and continuing compliance with, a TRACS trade comparison Participant Application Agreement;*

*(B) membership in, or maintenance of, an effective clearing arrangement with a member of a clearing agency registered pursuant to the Act;*

*(C) compliance with all applicable rules and operating procedures of NASD and the Commission;*

*(D) maintenance of the physical security of the equipment located on the premises of the TRACS Order Entry Firm to prevent the unauthorized entry of information into the TRACS trade comparison feature; and*

*(E) acceptance and settlement of each trade that the TRACS trade comparison feature identifies as having been effected by such TRACS Order Entry Firm, or if settlement is to be made through a clearing member, guarantee of the acceptance and settlement of each TRACS identified trade by the clearing member on the regularly scheduled settlement date.*

*(4) Participation in the TRACS trade comparison feature as a Clearing Broker shall be conditioned upon the Clearing Broker's initial and continuing compliance with the following requirements:*

*(A) Execution of, and continuing compliance with, a TRACS trade comparison Participant Application Agreement;*

*(B) membership in a clearing agency registered pursuant to the Act;*

*(C) compliance with all applicable rules and operating procedures of NASD and the Commission;*

*(D) maintenance of the physical security of the equipment located on the premises of the TRACS Clearing Broker to prevent the unauthorized entry of information into the TRACS trade comparison feature; and*

*(E) acceptance and settlement of each trade that the TRACS trade comparison feature identifies as having been effected by itself or any of its correspondents on the regularly scheduled settlement date.*

*(5) Participation in the TRACS trade comparison feature as an ECN shall be conditioned upon the ECN's initial and continuing compliance with the following requirements:*

*(A) execution of, and continuing compliance with, a TRACS trade comparison Participant Application Agreement;*

*(B) membership in, or maintenance of an effective clearing arrangement with a member of, a clearing agency registered pursuant to the Act;*

*(C) compliance with all applicable rules and operating procedures of NASD and the Commission;*

*(D) maintenance of the physical security of the equipment located on the premises of the ECN to prevent the unauthorized entry of information into the TRACS trade comparison feature; and*

*(E) acceptance and settlement of each trade that the TRACS trade comparison feature identifies as having been effected by such TRACS ECN, or if settlement is to be made through a clearing member, guarantee of the acceptance and settlement of each TRACS identified trade by the clearing member on the regularly scheduled settlement date.*

*(6) Each TRACS trade comparison Participant shall be obligated to inform NASD of non-compliance with any of the participation requirements set forth above.*

*(b) Participant Obligations in TRACS*

*(1) Access to TRACS*

*Upon execution and receipt by NASD of the TRACS trade comparison Participant Application Agreement, a TRACS trade comparison Participant may commence input and validation of trade information in TRACS eligible securities. TRACS trade comparison Participants may access the service via NASD terminals or Workstations or through computer interface during the hours of operation specified in the TRACS Users Guide. Prior to such input, all TRACS comparison Participants, including those that have trade report information submitted to NASD by any third party, must obtain from NASD a unique identifying Market Participant Symbol (''MMID'' or ''MPID''), and use that identifier for trade reporting and audit trail purposes.*

*(2) Market Maker Obligations*

*(A) TRACS Market Makers shall commence participation in the TRACS trade comparison feature by initially contacting the TRACS Operation Center to verify authorization for submitting trade data to the TRACS system for TRACS eligible securities.*

*(B) A TRACS Market Maker that is a self-clearing firm shall be obligated to accept and clear each trade that the TRACS trade comparison feature identifies as having been effected by that Market Maker.*

*(C) A TRACS Market Maker that is an introducing broker or a correspondent executing broker shall identify its clearing broker when it becomes an TRACS trade comparison participant and notify the TRACS Operation Center if its clearing broker is to be changed; this will necessitate execution of a revised TRACS trade comparison Participant Application Agreement.*

*(D) If at any time a TRACS Market Maker fails to maintain a clearing arrangement, it shall be removed from the TRACS trade comparison feature, and be precluded from participation as a Market Maker in Nasdaq and CQS securities pursuant to the requirements of 6300 Series until such time as a clearing arrangement is reestablished and notice of such arrangement, with an amended TRACS trade comparison Participant Application Agreement, is filed with NASD. If, however, the NASD finds that the TRACS Market Maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused pursuant to Rule 4619.*

*(3) Order Entry Firm Obligations*

*(A) TRACS Order Entry Firms shall commence participation in the TRACS trade comparison feature by initially contacting the TRACS Operation Center to verify authorization for submitting trade data to the TRACS system for TRACS eligible securities.*

*(B) A TRACS Order Entry Firm that is a self-clearing firm shall be obligated to accept and clear each trade that the TRACS trade comparison feature identifies as having been effected by the Order Entry Firm.*

*(C) A TRACS Order Entry Firm that is an introducing broker or a correspondent executing broker shall identify its clearing broker when it becomes a TRACS trade comparison Participant and notify the TRACS Operations Center if its clearing broker is to be changed; this change will necessitate execution of a revised TRACS trade comparison Participant Application Agreement.*

*(D) If at any time a TRACS Order Entry Firm fails to maintain a clearing arrangement, it shall be removed from the TRACS trade comparison feature until such time as a clearing arrangement is reestablished, and notice of such arrangement, with an amended TRACS trade comparison Participant Application Agreement, is filed with NASD.*

*(4) Clearing Broker Obligation*

*TRACS clearing brokers shall be obligated to accept and clear as a party to the transaction each trade that the system identifies as having been effected by itself or any of its correspondent executing brokers. Clearing brokers may cease to act as principal for a correspondent executing broker at any time provided that notification has been given to, received and acknowledged by the TRACS Operations Center and affirmative action has been completed by the Center to remove the clearing broker from the TRACS trade comparison feature for that correspondent executing broker. The clearing broker's obligation to accept and clear trades for its correspondents shall not cease prior to the completion of all of the steps detailed in this subparagraph (4).*

*(5) ECN Obligations*

*(A) TRACS ECNs shall commence participation in the TRACS trade comparison feature by initially contacting the TRACS Operations Center to verify authorization for submitting trade data to the TRACS trade comparison feature for TRACS eligible securities.*

*(B) A TRACS ECN that is a self-clearing firm shall be obligated to accept and clear each trade that the TRACS trade comparison feature identifies as having been effected by the ECN.*

*(C) A TRACS ECN that is an introducing broker or a correspondent executing broker shall identify its clearing broker when it becomes a TRACS trade comparison Participant and notify the TRACS Operations Center if its clearing broker is to be changed; this change will necessitate execution of a revised TRACS trade comparison Participant Application Agreement.*

*(D) If at any time a TRACS ECN fails to maintain a clearing arrangement, it shall be removed from the TRACS trade comparison feature until such time as a clearing arrangement is reestablished, and notice of such arrangement, with an amended TRACS trade comparison Participant Application Agreement, is filed with NASD.*

*Selected NASD Notices to Members: Notice to Members 98–82.*

***6130. Trade Report Input***

*(a) Reportable TRACS Transactions*

*A member choosing to submit a trade to the NASD for comparison shall report the trade to TRACS. TRACS will also process trades that are submitted on an automatic locked-in basis for transmission to NSCC. All trades that are reportable transactions pursuant to NASD Rule 4633 will be transmitted to the applicable securities information processor; however, only those trades that are subject to regular way settlement and are not already locked-in trades will be compared and locked-in through TRACS. Trades that are reported as other than regular way settlement (i.e., Cash, Next-Day, Seller's Option) will not be compared in TRACS or reported to DTCC. All transactions in Direct Participation Program securities shall be reported to TRACS pursuant to the Rule 6900 Series as set forth therein.*

*(b) When and How Trade Reports Are Submitted to TRACS*

*(1) TRACS trade comparison Participants who are Reporting Members that choose to submit a trade for comparison shall transmit to TRACS the information required by Rule 4633 (e) or (f), as applicable, within 90 seconds of execution.*

*(2) A TRACS trade comparison Participant who is a Non-Reporting Member to a transaction shall, within twenty (20) minutes after execution accept (or decline, if applicable) a transaction submitted by the Reporting*

*Member for comparison through TRACS. A Non-Reporting Member has an obligation to ensure that the information that it transmits or accepts in TRACS is timely, accurate and complete. Therefore, if a Non-Reporting Member accepts a transaction in TRACS transmitted by the Reporting Member for comparison through TRACS, then the Non-Reporting Member shall be deemed to have adopted all of the data elements required by Rule 4633(e) or (f), as applicable, concerning the Non-Reporting Member's side of the transaction, absent any subsequent modification of the trade through TRACS.*

*(3) Trades not required to be reported for public dissemination may still be compared and locked-in through TRACS.*

*(4) Reporting NASD Members may conduct the following functions in TRACS pursuant to TRACS specifications established by the NASD: (i) MMID Trade Entry; (ii) Trade Cancellation; and (iii) Trade Break.*

*(5) Non-Reporting NASD Members may conduct the following functions in TRACS pursuant to TRACS specifications established by the NASD: (i) Trade Accept; (ii) Trade Decline; and (iii) Trade Break.*

*(6) If a TRACS Report from a Reporting Member did not include a necessary OATS order number for OATS/TRACS matching from the Non-Reporting Member's perspective, the Non-Reporting Member shall submit a non-published TRACS Report to compare the trades.*

*(7) A party entering a trade report into the TRACS trade comparison feature shall use a designated symbol to denote whether the party is submitting the trade report as the Reporting Member or the Non-Reporting Member.*

***6140. TRACS Processing***

*Locked-in trades may be determined through the TRACS trade comparison feature through one of the following methods:*

*(a) Trade Acceptance*

*The reporting party enters its version of the trade into the system and the contra party reviews the trade report and accepts or declines the trade. An acceptance results in a locked-in trade; a declined trade report is purged from the TRACS system at the end of trade date processing;*

*(b) Aggregate Volume Match*

*A batch type comparison will be run at the end of trade date and will aggregate volume of previously entered uncompared trade reports (if all other matching fields agree) in order to effect matching;*

*(c) T+N Trade Processing*

*T+N entries may be submitted until 5:15 p.m. each business day. At the end of daily matching, all declined trade entries will be purged from the TRACS system. TRACS will not purge any open trade (i.e. unmatched or unaccepted) at the end of its entry day, but will carry-over such trades to the next business day for continued comparison and reconciliation. TRACS will automatically lock in and submit to NSCC as such any carried-over T to T+21 (calendar day) trade if it remains open as of 2:30 p.m. on the next business day. TRACS will not automatically lock in T+22 (calendar day) or older open ''as-of'' trades that were carried-over from the previous business day; these trades will be purged by TRACS at the end of the carry-over day if such trades remain open. Members may re-submit these T+22 or older ''as-of'' trades into TRACS on the next business day for continued comparison and reconciliation for up to one calendar year.*

*Selected NASD Notices to Members 94–73.*

*6150. Reserved*

***6160. Obligation to Honor Trades***

*If a TRACS trade comparison Participant is reported by TRACS as a party to a trade that has been treated as locked-in and sent to DTCC, notwithstanding any other agreement to the contrary, that party shall be obligated to act as a principal to the trade and shall honor such trade on the scheduled settlement date.*

***6170. Audit Trail Requirements***

*The data elements specified in Rule 6130(b) are critical to NASD's compilation of a transaction audit trail for regulatory purposes. As such, all member firms using the TRACS Service have an ongoing obligation to input Rule 6130(b) information accurately and completely.*

*6180. Reserved*

***6190. Termination of TRACS Service***

*NASD may, upon notice, terminate TRACS service as to a Participant in the event that a TRACS Participant fails to abide by any of the rules or operating procedures of the TRACS service or NASD, or fails to honor contractual agreements entered into with NASD or its subsidiaries, or fails to pay promptly for services rendered by the TRACS Service.*

* * * * *

6200. To be replaced in its entirety by SR–NASD–99–65, which currently is expected to be effective on February 1, 2002.

* * * * *

The 6300 through 6500 Series are replaced in their entirety by the following proposed rule language.

***6300. CONSOLIDATED QUOTATIONS SERVICE (CQS)***

***6310. General***

*The Rule 6300 through 6500 Series govern trading by members in CQS/CTA securities otherwise than on an exchange.*

***6320. Registration as a CQS Market Maker***

*(a) Quotations and quotation sizes in reported securities may be entered into the Consolidated Quotations Service (CQS) through the NASD Alternative Display Facility only by an NASD member registered with it as a CQS market maker.*

*(b) An NASD member, including an operator of an ECN/ATS seeking registration as a CQS market maker, shall file an application with NASD. The application shall certify the member's good standing with NASD and shall demonstrate compliance with the net capital and other financial responsibility provisions of the Act. A member's registration as a CQS market maker shall become effective upon receipt by the member of notice of approval of registration by NASD. It shall be sufficient to obtain registration as a CQS market maker with NASD for a member to demonstrate proof that it is a registered CQS market maker with Nasdaq in good standing.*

*(c) A CQS market maker registered in a reported security may become registered in additional reported securities by entering a registration request via an NASD Alternative Display Facility terminal. Registration shall become effective at the time the registration request is entered.*

*(d) An NASD member that becomes registered as a CQS market maker in an issue shall enter quotations in the issue on the effective date of the issue's authorization. If quotations are not entered on the effective date of authorization and the CQS market maker remains inactive in the issue for five (5) business days, the CQS market maker's registration in the issue will be terminated.*

*(e) Any CQS market makers registered in reported securities that are eligible*

*for inclusion in the Intermarket Trading System (ITS) may be registered as market makers in ITS and, if they so choose, shall be subject to the Rule 6500 Series.*

***6330. Obligations of CQS Market Makers***

*(a) Pursuant to SEC Rule 11Ac1–1, a CQS market maker's quotations in reported securities are required to be firm for the size displayed or, if no size is displayed, for a normal unit of trading. If a market maker displays quotations in a reported security in both a national securities exchange and NASD's CQS System, the market maker shall maintain identical quotations in each system.*

*(b) A CQS market maker's quotation must be at least one normal unit of trading.*

*(c) A CQS market maker shall be obligated to have available in close proximity to the NASD Alternative Display Facility terminal at which it makes a market in a CQS security a quotation service that disseminates the bid price and offer price then being furnished by or on behalf of other national securities exchanges and CQS market makers trading and quoting that CQS security.*

*(d) Computer-Generated Quotations*

*(1) General Prohibition—Except as provided below, this Rule prohibits the automatic updating or tracking of inside quotations in CQS by computer-generated quote systems. This ban is necessary to offset the negative impact on the capacity and operation of NASD systems regarding certain systems that track changes to the inside quotation and automatically react by generating another quote to keep the market maker's quote away from the best market, without any cognizable human intervention.*

*(2) Exceptions to the General Prohibition—Automated updating of quotations is permitted when:*

*(A) The update is in response to an execution in the security by that firm (such as execution of an order that partially fills a market maker's quotation size);*

*(B) it requires a physical, cognizable entry (such as a manual entry to the market maker's internal system which then automatically forwards the update to the NASD system);*

*(C) the update is to reflect the receipt, execution, or cancellation of a customer limit order;*

*(D) it is used to expose a customer's market or marketable limit order for price improvement opportunities; or*

*(E) it is used to equal or improve either or both sides of the national best bid or offer (''NBBO''), or add size to the NBBO.*

*(e) Minimum Price Variation for Decimal-Based Quotations*

*(1) The minimum quotation increment for securities authorized for decimal pricing as part of the SEC-approved Decimals Implementation Plan for the Equities and Options Markets shall be $0.01.*

*(f) Members that display priced quotations on a real-time basis for CQS securities in two or more market centers that permit quotation updates on a real-time basis must display the same priced quotations for the security in each market center.*

*Cross Reference—IM–4613, Autoquote Policy*

***6340. Normal Business Hours***

*A CQS market maker shall be open for business as of 9:30 a.m. Eastern Time and shall close no earlier than 4:00 p.m. Eastern Time. An NASD market maker may remain open for business on a voluntary basis for any period of time between 4:00 p.m. Eastern time and 6:30 p.m. Eastern Time. A CQS market maker whose quotes are open after 4:00 p.m. Eastern Time shall be obligated to comply, while their quotes are open, with all NASD Rules that are not by their express terms, or by an official interpretation of NASD, inapplicable to any part of the 4:00 p.m. to 6:30 p.m. Eastern Time period.*

***6350. Withdrawal of Quotations***

*(a) Any registered CQS market maker (excluding ECNs) that initiates a pre-opening application and does not enter and maintain continuous two-sided quotations in the security on the same trading day may not re-register to enter quotations in such security for twenty (20) business days unless NASD Alternative Display Facility Operations grants an excused withdrawal.*

*(b) A CQS market maker that wishes to withdraw quotations in a reported security shall contact NASD Alternative Display Facility Operations to obtain excused withdrawal status prior to withdrawing its quotations. Excused withdrawal status based on illness, vacations or physical circumstances beyond the CQS market maker's control may be granted for up to five (5) business days, unless extended by NASD Alternative Display Facility Operations. Excused withdrawal status based on investment activity or advice of legal counsel, accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon written request, be granted for not more than sixty (60) days. The withdrawal of quotations because of pending news, a sudden influx of orders or price changes, or to effect transactions with competitors shall not normally constitute acceptable reasons for granting excused withdrawal status, unless NASD has initiated a trading halt for ITS Market Makers in the security, pursuant to Rule 5200.*

***6360. Voluntary Termination of Registration***

*A CQS market maker may voluntarily terminate its registration in a reported security by withdrawing its quotations from the NASD Alternative Display Facility. A CQS market maker that voluntarily terminates its registration in a reported security may not, however, re-register as a CQS market maker in that security for two (2) business days.*

***6370. Suspension and Termination of Quotations by NASD Action***

*NASD may, pursuant to the procedures set forth in NASD's Code of Procedure as set forth in the Rule 9000 Series, suspend, condition, limit, prohibit or terminate a CQS market maker's authority to enter quotations in one or more reported securities for violations of the applicable requirements or prohibitions of the Rule 4000, 5000 and 6300 Series. Selected NASD Notices to Members: 94–81.*

***6400. REPORTING TRANSACTIONS IN CTA-ELIGIBLE SECURITIES***

*The provisions of this Rule 6400 Series shall apply to all transactions effected by members otherwise than on an exchange in securities listed on an exchange (other than Nasdaq) that are required to be reported to the Consolidated Tape (''eligible securities''), as provided in the Plan filed by NASD pursuant to SEC Rule 11Aa3–1 under the Act (''Plan''). Rule 6420 shall not apply to transactions executed through the Intermarket Trading System by market makers registered as CQS market makers.*

*Selected NASD Notices to Members:* 94–81.

***6410. Definitions***

*(a) Unless the context requires otherwise, terms used herein shall have the meaning below. Terms not specifically defined below shall have the meaning in the By-Laws and NASD Rules, SEC Rule 11Aa3–1 and the Plan.*

*(b) ''Consolidated Tape'' means the consolidated transaction reporting system for the dissemination of last sale reports in eligible securities required to be reported pursuant to the Plan.*

*(c) ''Eligible securities'' means all common stocks, preferred stocks, long-term warrants, and rights entitling the holder to acquire an eligible security, listed or admitted to unlisted trading privileges on the American Stock Exchange or the New York Stock Exchange, and securities listed on regional stock exchanges, which substantially meet the original listing requirements of the New York Stock Exchange or the American Stock Exchange. A list of eligible securities listed on regional stock exchanges is contained in Rule 6450. An updated list of eligible securities will be provided to members from time to time.*

*(d) ''Initial Public Offering''—a security is subject to an ''initial public offering'' if: (1) the offering of the security is registered under the Securities Act of 1933; and (2) the issuer of the security, immediately prior to filing the registration statement with respect to such offering, was not subject to the reporting requirements of Section 13 or 15(d) of the Act.*

*(e) ''Non-Registered Member'' shall have the meaning as defined in NASD Rule 4200.*

*(f) ''Transaction effected through the NASD Alternative Display Facility'' shall have the meaning as defined in Rule 4100.*

*(g) ''Registered Member'' means a member of NASD that is registered as a CQS market maker, pursuant to Rule 6320, in a particular eligible security. A member is a Registered Member in only those eligible securities for which it has registered as a CQS market maker. A member shall cease being a Registered Member in an eligible security when it has withdrawn or voluntarily terminated its quotations in that security or when its quotations have been suspended or terminated by action of NASD.*

*(h) ''Registered ECN'' means a member of NASD that is an electronic communications network (''ECN'') that has chosen to register with NASD and meets the terms of registration set forth in the NASD-provided agreement. A member is a Registered ECN in only those eligible securities for which it is registered with NASD. A member shall cease being a Registered ECN in an eligible security when it has withdrawn or voluntarily terminated its quotations in that security or when its quotations have been suspended or terminated by action of NASD. The term ''Registered ECN'' shall also include NASD members that are alternative trading systems (''ATS''), subject to SEC Regulation ATS, that comply with the requirements of this paragraph.*

***6420. Transaction Reporting***

*(a) General*

*(1) This Rule governs the reporting of trades in eligible securities through the NASD's Trade Reporting and Comparison Service (''TRACS'').*

*(2) All times referenced in this Rule are Eastern time.*

*(3) For Purposes of this Rule, the term ''Reporting NASD Member'' or ''Reporting Member'' shall mean an NASD member with the trade reporting obligation as set forth in Rule 6420(c).*

*(4) For purposes of this Rule, the term ''Non-Reporting NASD Member'' or ''Non-Reporting Member'' shall mean the contra side of a trade reported by a Reporting Member.*

*(5) For purposes of this Rule, the term ''normal market hours'' means from 9:30 a.m. to 4:00 p.m. All times referenced in this Rule are Eastern Time.*

*(b) When and How Transactions are Reported*

*(1) Reporting NASD Members shall transmit to TRACS, within 90 seconds after execution, last sale reports of transactions in eligible securities effected by members otherwise than on an exchange during the trading hours of the Consolidated Tape. Transactions not reported within 90 seconds after execution shall be designated as late and such trade reports must include the time of execution. Reporting NASD Members shall also transmit to TRACS, within 90 seconds after execution, last sale reports of transactions in eligible securities effected by members otherwise than on an exchange between 4:00 p.m. and 6:30 p.m.; trades executed and reported after 4:00 p.m. shall be designated as ''.T'' trades to denote their execution outside normal market hours. Transactions not reported within 90 seconds after execution must include the time of execution on the trade report.*

*(2) (A) Reporting NASD Members shall report transactions in eligible securities effected otherwise than on an exchange outside the hours of 9:30 a.m. and 6:30 p.m. Eastern Time as follows:*

*(i) By transmitting the individual trade reports to TRACS on the next business day (T+1) between 8:00 a.m. and 6:30 p.m. Eastern Time;*

*(ii) by designating the entries ''as/of'' trades to denote their execution on a prior day; and*

*(iii) by including the time of execution.*

*(c) Which Party Reports Transaction*

*(1) Transactions executed on an exchange are reported by the exchange and shall not be reported by members.*

*(2) For transactions between two Registered Members or Registered ECNs, the Registered Market Maker or ECN representing the sell side shall report the transaction.*

*(3) For transactions between a Registered Member or Registered ECN and a Non-Registered Member, the Registered Member or Registered ECN shall report the transaction.*

*(4) For transactions between two Non-Registered Members, the Non-Registered Member representing the sell side shall report the transaction.*

*(5) For transactions between a member and a customer, the member shall report the transaction.*

*(6) For transactions between a member and a broker-dealer that is not a member of NASD, the member shall report the transaction.*

*(7) For all transactions between an NASD member and an NASD member that is also a member of Nasdaq or another national securities exchange, where the reporting party has a choice of reporting venues and chooses not to report to Nasdaq or another national securities exchange, the reporting party described in (1) through (6) above shall report the transaction to the NASD.*

*(d) Information To Be Reported—Two Party Trade Reports*

*(1) A two party trade report is a last sale report that denotes a trade between one Reporting NASD member and one Non-Reporting Member. The Reporting NASD Member is denoted as the (''MMID'') side of the trade report and the Non-Reporting Member is denoted as the (''OEID'') side of the report.*

*(2) Each Two Party Last Sale Report Submitted by a Reporting NASD Member Should Contain:*

*(A) Security identification symbol (SECID);*

*(B) Number of shares or bonds;*

*(C) Price of the transaction as required by paragraph (g) below;*

*(D) A designated symbol denoting whether the transaction, from the Reporting NASD Member's perspective, is a buy, sell, sell short, sell short exempt, or cross;*

*(E) If known, a designated symbol denoting whether the transaction, from the perspective of the Non-Reporting Member, is a buy, sell, sell short, or sell short exempt;*

*(F) A designated symbol denoting whether the transaction, from the perspective of the Reporting Member, is as principal, riskless principal, or agent;*

*(G) If known, a designated symbol denoting whether the transaction, from the perspective of the Non-Reporting Member, is as principal, riskless principal, or agent;*

*(H) Execution time for any transaction not reported within 90 seconds of execution;*

*(I) The market participant identifier of the Reporting Member and the Non-Reporting Member;*

*(J) Reporting Member clearing broker;*

*(K) Reporting Member Executing Broker in case of a ''give up;''*

*(L) Non-Reporting Member Executing Broker;*

*(M) Non-Reporting Member introducing broker in case of a ''give up;''*

*(N) Non-Reporting Member clearing broker;*

*(O) A designated symbol denoting whether the trade report should be published;*

*(P) A designated symbol denoting whether the trade report should be compared in TRACS;*

*(Q) If the contra side to the trade report is a customer of the Reporting Member, the Reporting Member shall denote that the trade is an internalized trade with the designated symbol;*

*(R) If the contra side to the trade report is a Non-NASD member, the Reporting Member shall indicate with the designated symbol that the contra side is a non-member.*

*(S) For two party trade reports submitted pursuant to an Automated Give Up (''AGU'') arrangement or a Qualified Service Representative (''QSR'') Agreement, subparagraphs (d) (2) (E) and (G) are mandatory.*

*(e) Information To Be Reported—Three Party Trade Reports*

*(1) A three party trade report is a single last sale trade report that denotes one Reporting Member and two contra parties. The Reporting Member is denoted as the MMID side of the trade report and the two non-reporting sides are denoted as the OEID side of the trade report. In a three party report, the Reporting Member is the buyer to one OEID and the seller to the other OEID. Registered ECNs shall only submit three party trade reports. Risklnnnqess principal trades may be submitted as three party trade reports.*

*(2) Each Three Party Trade Report Submitted by a Reporting Member shall contain the following information:*

*Transaction Information*

*(A) Security Identification Symbol (SECID);*

*(B) Number of shares or bonds;*

*(C) Price of the transaction as required by paragraph (g) below;*

*(D) Execution time for any transaction not reported within 90 seconds of execution;*

*(E) The market participant identifies of the Reporting Member and the two Non-Reporting Members;*

*(F) A designated symbol denoting whether the trade should be published;*

*MMID Side*

*(G) All three party trade reports from ECNs must be marked as agency cross transactions;*

*(H) All three party trade reports from Non-ECNs must be denoted as riskless principal trade reports and shall include a designated symbol denoting whether the trade between the non-ECN and the buy-side OEID is a sell, sell short, or sell short exempt transaction;*

*(I) Reporting Member clearing broker;*

*(J) Reporting Member Executing Broker in the case of a ''give up,'' if applicable;*

*Buy Side OEID*

*(K) Buy Side OEID executing broker;*

*(L) Buy Side OEID introducing broker in case of a ''give up'';*

*(M) Buy Side OEID clearing broker;*

*(N) If known, a designated symbol denoting whether the trade, from the Buy Side OEID's perspective, is as principal, riskless principal, or agent;*

*(O) If the Buy Side OEID is a customer of the Reporting Member, the Reporting Member shall denote that the trade is an internalized trade with the designated symbol;*

*(P) If the Buy Side OEID is a non-NASD member, the Reporting Member shall indicate with the designated symbol that the buy side OEID is a non-member;*

*(Q) A designated symbol denoting whether the trade between the MMID and the Buy Side OEID shall be compared in TRACS;*

*Sell Side OEID*

*(R) Sell Side OEID executing broker;*

*(S) Sell Side OEID introducing broker in case of a ''give up'';*

*(T) Sell Side OEID clearing broker;*

*(U) If known, a designated symbol denoting whether the trade, from the Sell Side OEID's perspective, is as principal, riskless principal, or agent;*

*(V) If known, a symbol denoting whether the trade, from the Sell Side OEID's perspective, is a sell, sell short, or sell short exempt transaction;*

*(W) If the Sell Side OEID is a customer of the Reporting Member, the Reporting Member shall denote that the trade is an internalized trade with the designated symbol;*

*(X) If the Sell Side OEID is a non-NASD Member, the Reporting Member shall indicate with the designated symbol that the buy side OEID is a non-member; and*

*(Y) A designated symbol denoting whether the trade between the MMID and the Sell Side OEID shall be compared in TRACS.*

*(Z) If the transactions between the Buy Side OEID and the Reporting Member is reported pursuant to an AGU arrangement or a QSR agreement, subparagraphs (e) (2) (N) is mandatory.*

*(AA) If the transaction between the Sell Side OEID and the Reporting Member is reported pursuant to an AGU arrangement or a QSR agreement, subparagraphs (e) (2) (U) and (V) are mandatory.*

*(f) Trade Report Modifiers*

*(1) Reporting Members shall append the following trade report modifiers to a last sale report if applicable:*

*(A) .SLD, if the trade is executed during normal market hours and it is reported later than 90 seconds after execution;*

*(B) .SNN, if the trade is a Seller's Option Trade, .NN denotes the number of days for delivery;*

*(C) .C, if the trade is a Cash Trade;*

*(D) .ND, if the trade is a Next Day Trade;*

*(E) .W, if the trade occurs at a price based on an average weighting or another special pricing formula;*

*(F) .T, if the trade is executed outside of normal market hours;*

*(G) .O, if the trade is price beyond certain price validation parameters as established by the NASD; and*

*(H) Any other trade report modifier approved for use by the Securities and Exchange Commission.*

*(2) It will be a violation of this Rule for a Reporting Member to fail to append a required trade modifier or to append a modifier that is not required.*

*(3) A Reporting Member shall not append a .O modifier to a trade report unless the trade price is beyond certain price validation parameters as established by the NASD.*

*(4) The Association seeks to emphasize the obligations of members to report securities transactions within 90 seconds after execution. All reportable transactions not reported within 90 seconds after execution shall be reported as late, and the Association routinely monitors members' compliance with the 90 second requirement. If the Association finds a pattern or practice of unexcused late reporting, that is, repeated reports of executions after 90 seconds without reasonable justification or exceptional circumstances, the member may be found to be in violation of Rule 2110.*

*Exceptional circumstances will be determined on a case by case basis and may include instances of system failure by a member or service bureau, or unusual market conditions, such as extreme volatility in a security, or in the market as a whole. Timely reporting of all transactions is necessary and appropriate for the fair and orderly operation of the Association's marketplace, and the Association will view noncompliance as a rule violation.*

*(g) Procedures for Reporting Price and Volume*

*Members that are required to report pursuant to paragraph (b) above shall transmit last sale reports for all purchases and sales in eligible securities in the following manner:*

*(1) For agency transactions, report the number of shares and the price excluding the commission charged.*

*Example:*

*SELL as agent 100 shares at 40 less a commission of $12.50; REPORT 100 shares at 40.*

*(2) For dual agency transactions, report the number of shares only once, and report the price excluding the commission charged.*

*Example:*

*SELL as agent 100 shares at 40 less a commission of $12.50; BUY as agent 100 shares at 40 plus a commission of $12.50; REPORT 100 shares at 40.*

*(3) (A) For principal transactions, except as provided below, report each purchase and sale transaction separately and report the number of shares and the price. For principal transactions that are executed at a price that includes a mark-up, mark-down or service charge, the price reported shall exclude the mark-up, mark-down or service charge.*

*Example:*

*BUY as principal 100 shares from another member at 40 (no mark-down included).*

*REPORT 100 shares at 40.*

*Example:*

*BUY as principal 100 shares from a customer at 39¾, which includes a ⅛ mark-down from prevailing market of 39⅞; REPORT 100 shares at 39⅞.*

*Example*

*BUY as principal 100 shares from a customer at 39.75, which includes a $0.10 mark-down from prevailing market at $39.85; REPORT 100 shares at 39.85.*

*Example:*

*SELL as principal 100 shares to a customer at 40⅛, which includes a ⅛ mark-up from the prevailing market of 40; REPORT 100 shares at 40.*

*Example:*

*SELL as principal 100 shares to a customer at 40.10, which includes a .10 mark-up from the prevailing market of 40;*

*REPORT 100 shares at 40.*

*(B) Exception: A ''riskless'' principal transaction in which a member, after having received from a customer an order to buy, purchases the security as principal from another member or customer to satisfy the order to buy or, after having received from a customer an order to sell, sells the security as principal to another member or customer to satisfy the order to sell, shall be reported as one three party transaction in the same manner as an agency transaction, excluding the mark-up or mark-down, commission-equivalent, or other fee. Alternatively, a member may report a riskless principal transaction by submitting the following report(s) to the NASD:*

*(i) The member with the obligation to report the transaction pursuant to paragraph (b) above must submit a last sale report for the initial leg of the transaction.*

*(ii) Regardless of whether a member has a reporting obligation pursuant to paragraph (b) above, the firm must submit, for the offsetting, ''riskless'' portion of the transaction, either:*

*a. a clearing-only report with a capacity indicator of ''riskless principal,'' if a clearing report is necessary to clear the transaction; or*

*b. a non-tape, non-clearing report with a capacity indicator of ''riskless principal,'' if a clearing report is not necessary to clear the transaction.*

*A riskless principal transaction in which a member purchases or sells the security on an exchange to satisfy a customer's order will be reported by the exchange and the member shall not report.*

*Example:*

*BUY as principal 100 shares from another member at 40 to fill an existing order;*

*SELL as principal 100 shares to a customer at 40 plus mark-up of $12.50;*

*REPORT 100 shares at 40 by submitting to the NASD either a single trade report marked with a ''riskless principal'' capacity indicator or by submitting the following reports:*

*(1) Where required by this Rule, a tape report marked with a ''principal'' capacity indicator; and*

*(2) either a non-tape, non-clearing report or a clearing-only report marked with a ''riskless principal'' capacity indicator.*

*Example:*

*BUY as principal 100 shares on an exchange at 40 to fill an existing order; SELL as principal 100 shares to a customer at 40 plus a mark-up of $12.50.*

*DO NOT REPORT (will be reported by exchange).*

*(h) Reporting Transactions on Form T*

*All Reporting NASD Members required (or that elect) to report transactions in eligible securities to the NASD shall report, as soon as practicable to NASD Regulation's Market Regulation Department on Form T, last sale reports of transactions in designated securities for which electronic submission into the NASD is not possible (e.g., the ticker symbol for the security is no longer available, a market participant identifier is no longer active, or the NASD will not accept the date of execution because the NASD Alternative Display Facility was closed on that date). Transactions that can be reported into the NASD, whether on trade date or on a subsequent date on an ''as of'' basis (T+N), shall not be reported on Form T.*

*(i) Trade Tickets*

*All trade tickets for transactions in eligible securities shall be time-stamped at the time of execution.*

*(j) Special Trade Indicator*

*A Reporting Member shall append the designated symbol for special trades, step out trades, reversals, and as-of trades.*

*(k) Clearing Indicators*

*A Reporting Member shall use a designated symbol to denote whether the trade is to be: (i) Compared in TRACS; (ii) not compared in TRACS; (iii) compared in TRACS pursuant to an Automatic Give Up Agreement (''AGU''); or (iv) not compared in TRACS, but locked in pursuant to a Qualified Service Representation Agreement (''QSR'').*

*(l) Transactions Not Required To Be Reported*

*The following types of transactions shall not be reported for inclusion on the Consolidated Tape:*

*(1) Transactions executed on an exchange;*

*(2) odd-lot transactions;*

*(3) transactions that are part of a primary distribution by an issuer or of a registered secondary distribution (other than shelf distributions) or of an unregistered secondary distribution effected off the floor of an exchange;*

*(4) transactions made in reliance on Section 4(2) of the Securities Act of 1933;*

*(5) transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security, e.g., to enable the seller to make a gift;*

*(6) the acquisition of securities by a member as principal in anticipation of making an immediate exchange distribution or exchange offering on an exchange;*

*(7) purchases of securities off the floor of an exchange pursuant to a tender offer, and*

*(8) purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the current market.*

*Selected Notices to Members: 94–71; 99–66.*

*6430. Reserved*

***6440. Trading Practices***

*(a) No member shall execute or cause to be executed or participate in an account for which there are executed purchases of any eligible security at successively higher prices, or sales of any such security at successively lower prices, for the purpose of creating or inducing a false, misleading or artificial appearance of activity in such security or for the purpose of unduly or improperly influencing the market price for such security or for the purpose of establishing a price that does not reflect the true state of the market in such security.*

*(b) No member shall, for the purpose of creating or inducing a false or misleading appearance of activity in an eligible security or creating or inducing a false or misleading appearance with respect to the market in such security:*

*(1) Execute any transaction in such security which involves no change in the beneficial ownership thereof; or*

*(2) enter any order or orders for the purchase of such security with the knowledge that an order or orders of substantially the same size, and at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties; or*

*(3) enter any order or orders for the sale of any such security with the knowledge that an order or orders of substantially the same size, and at substantially the same price, for the purchase of such security, has been or will be entered by or for the same or different parties.*

*(c) No member shall execute purchases or sales of any eligible security for any account in which such member is directly or indirectly interested, which purchases or sales are excessive in view of the member's financial resources or in view of the market for such security.*

*(d) No member shall participate or have any interest, directly or indirectly, in the profits of a manipulative operation or knowingly manage or finance a manipulative operation.*

*(1) Any pool, syndicate or joint account organized or used intentionally for the purpose of unfairly influencing the market price of an eligible security shall be deemed to be a manipulative operation.*

*(2) The solicitation of subscriptions to or the acceptance of discretionary orders from any such pool, syndicate or joint account shall be deemed to be managing a manipulative operation.*

*(3) The carrying on margin of a position in such securities or the advancing of credit through loans to any such pool, syndicate or joint account shall be deemed to be financing a manipulative operation.*

*(e) No member shall make any statement or circulate and disseminate any information concerning any eligible security that such member knows or has reasonable grounds for believing is false or misleading or would improperly influence the market price of such security.*

*(f) (1) No member shall:*

*(A) Personally buy or initiate the purchase of an eligible security for its own account or for any account in which it or any person associated with it is directly or indirectly interested, while such member holds or has knowledge that any person associated with it holds an unexecuted market order to buy such security in the unit of trading for a customer; or*

*(B) sell or initiate the sale of any such security for any such account, while it personally holds or has knowledge that any person associated with it holds an unexecuted market order to sell such security in the unit of trading for a customer.*

*(2) No member shall:*

*(A) Buy or initiate the purchase of any eligible security for any such account, at or below the price at which it personally holds or has knowledge that any person associated with it holds an unexecuted limited price order to buy such security in the unit of trading for a customer; or*

*(B) sell or initiate the sale of any eligible security for any such account at or above the price at which it personally holds or has knowledge that any person associated with it holds an unexecuted limited price order to sell such security in the unit of trading for a customer.*

*(3) The provisions of this paragraph shall not apply:*

*(A) To any purchase or sale of any eligible security in an amount less than the unit of trading made by a member to offset odd-lot orders for customers,*

*(B) to any purchase or sale of any eligible security upon terms for delivery other than those specified in such unexecuted market or limited price order,*

*(C) to any unexecuted order that is subject to a condition that has not been satisfied.*

*(g) No member or person associated with a member shall, directly or indirectly, hold any interest or participation in any joint account for buying or selling an eligible security, unless such joint account is promptly reported to NASD. The report should contain the following information for each account:*

*(1) Name of the account, with names of all participants and their respective interests in profits and losses;*

*(2) a statement regarding the purpose of the account;*

*(3) name of the member carrying and clearing the account; and*

*(4) a copy of any written agreement or instrument relating to the account.*

*(h) No member shall offer that a transaction or transactions to buy or sell an eligible security will influence the closing transaction on the Consolidated Tape.*

*(i)(1) A member may, but is not obligated to, accept a stop order in an eligible security.*

*(A) A buy stop order is an order to buy that becomes a market order when a transaction takes place at or above the stop price.*

*(B) A sell stop order is an order to sell that becomes a market order when a transaction takes place at or below the stop price.*

*(2) A member may, but is not obligated to, accept stop limit orders in eligible securities. When a transaction occurs at the stop price, the stop limit order to buy or sell becomes a limit order at the limit price.*

*(j) No member or person associated with a member shall execute or cause to be executed, directly or indirectly, an over-the-counter transaction in a security subject to an initial public offering until such security has first opened for trading on the national securities exchange listing the security, as indicated by the dissemination of an opening transaction in the security by the listing exchange via the Consolidated Tape.*

***6450. Eligible Securities***

*Transactions required to be reported on the Consolidated Tape (eligible securities) include all common stocks, preferred stocks, long-term warrants, and rights entitling the holder to acquire an eligible security, listed on the American Stock Exchange and/or the*

*New York Stock Exchange and the following securities listed on regional stock exchanges.*

| Symbol | Security |
|---|---|
| ALK$ | Alaska Airlines $2.77 Pfd. |
| ADN | Alden Electronic |
| AFI$D | Amer. Financial Corp. Pfd.D |
| AFI$E | Amer. Financial Corp. Pfd.E |
| AFI$F | Amer. Financial Corp. Pfd.F |
| AFI$G | Amer. Financial Corp. Pfd.G |
| AFI$H | Amer. Financial Corp. Pfd.H |
| BPP | Ballys Park Place |
| BSI | Bastian Inds., Inc. |
| BSI$ | Bastian Inds., Inc. $1.00 Pfd |
| BBM | Berkeley Bio Medical |
| CSW | Canada Southern Petroleum |
| CNO | Casco Northern Corp. |
| CJI | Central Jersey Industries |
| CTE | Columbia Chase Corp. |
| DCT | DC Trading Development Corp. |
| EDG | Enterprise Devel. Group, Inc. |
| GEO | Geothermal Resources |
| GLR | Grolier Inc. |
| HWK | Hardwicke Companies, Inc. |
| MOD | Modine Manufacturing Company |
| OKC | OKC Limited Partnership |
| OGS | O's Gold Seed Company |
| PRI | Pacific Resources |
| PJH | Piper Jaffray, Inc. |
| PRB | Provident Bancorp, Inc. |
| REL.Z | Reliance Group 87 Wts. |
| SOU$A | Southern Cal Gas 6% A Pfd. |
| SOU$Q | Southern Cal Gas 6% Pfd. |
| SYN$B | Syntex Corp. Pfd.B |
| TEP$ | Tucson Elec. Power Pfd. |
| UTC | United Canso Oil and Gas |
| WH | White Motor Corporation |

*Selected Notices to Members: 85–27, 87–12, 93–9, 93–25.*

* * * * *

**6600. REPORTING TRANSACTIONS IN [OVER-THE-COUNTER EQUITY] NON-EXCHANGE-LISTED SECURITIES**

This Rule 6600 Series sets forth the trade reporting requirements applicable to members' transactions in equity securities effected otherwise than on an exchange for which real-time trade reporting is not otherwise required (hereinafter referred to as *''non-exchange-listed securities* [OTC Equity Securities]''). Members shall [utilize] *use* the Automated Confirmation Transaction (ACT) for trade reporting in *non-exchange-listed securities* [OTC Equity Securities].

Those members effecting transactions otherwise than on an exchange in non-exchange-listed securities shall have in place contractual agreements with Nasdaq to use ACT for trade reporting. Members who use ACT to compare trades must comply with the applicable Nasdaq trade comparison rules. Members should refer to the Nasdaq rules for the specific rules that govern trade comparison through ACT.

**6610. Definitions**

(a) Terms used in this Rule shall have the same meaning as those defined in the Association's By-Laws and Rules unless otherwise specified herein.

(b) ''Automated Confirmation Transaction Service'' or ACT is the *Nasdaq* service that, among other things, accommodates reporting and dissemination of last sale reports in *non-exchange-listed securities* [OTC Equity Securities]. Regarding those *non-exchange-listed securities* [OTC Equity Securities] that are not eligible for clearance and settlement through the facilities of the National Securities Clearing Corporation, the ACT comparison function will not be available. However, ACT will support the entry and dissemination of last sale data on such securities.

(c) ''Non-Market Maker'' means a member of the Association that is not an OTC Market Maker with respect to a particular *non-exchange-listed security* [OTC Equity Security].

(d) *''Non-exchange-listed security''* [''OTC Equity Security''] means any equity security *that is not traded on any national securities exchange.* [not classified as a ''designated security,'' for purposes of the Rule 4630 and 4640 Series. This term also includes certain exchange-listed securities that do not otherwise qualify for real-time trade reporting because they are not ''eligible securities'' as defined in Rule 6410(d).] The term *''non-exchange-listed securities''* [''OTC Equity Security''] shall not include ''restricted securities,'' as defined by SEC Rule 144(a)(3) under the Securities Act of 1933, nor any securities designated in the PORTAL Market, the Rule [5300] *6700* Series.

(e) ''OTC Market Maker'' means a member of the Association that holds itself out as a market maker by entering proprietary quotations or indications of interest for a particular *non-exchange-listed security* [OTC Equity Security] in any inter-dealer quotation system, including any system that the Commission has qualified pursuant to Section 17B of the Act. A member is an OTC Market Maker only in those *non-exchange-listed securities* [OTC Equity Securities] in which it displays market making interest via an inter-dealer quotation system.

**6620. Transaction Reporting**

(a) When and How Transactions are Reported

(1) OTC Market Makers shall, within 90 seconds after execution, transmit through ACT last sale reports of transactions in *non-exchange-listed securities* [OTC Equity Securities] executed during normal market hours. Transactions not reported within 90 seconds after execution shall be designated as late.

(2) Non-Market Makers shall, within 90 seconds after execution, transmit through ACT or the *Nasdaq* ACT service desk (if qualified pursuant to Rule 7010(i)), or if ACT is unavailable due to system or transmission failure, by telephone to the Nasdaq Market Operations Department, last sale reports of transactions in *non-exchange-listed securities* [OTC Equity Securities] executed during normal market hours. Transactions not reported within 90 seconds after execution shall be designated as late.

(3) Transaction Reporting Outside Normal Market Hours

(A) Last sale reports of transactions in *Non-exchange-listed securities* [OTC Equity Securities] executed between 8:00 a.m. and 9:30 a.m. Eastern Time shall be transmitted through ACT within 90 seconds after execution and shall be designated as ''.T'' trades to denote their execution outside normal market hours. Last sale reports of transactions in *non-exchange-listed securities* [OTC Equity Securities] executed between the hours of 4:00 p.m. and 5:15 p.m. Eastern Time shall also be transmitted through *the NASD* [ACT] within 90 seconds after execution; trades executed and reported after 4:00 p.m. Eastern Time shall be designated as ''.T'' to denote their execution outside normal market hours. Transactions not reported within 90 seconds must include the time of execution on the trade report.

(B) Last sale reports of transactions in *non-exchange-listed securities* [OTC Equity Securities] executed outside the hours of 8:00 a.m. and 5:15 p.m. Eastern Time shall be reported as follows:

(i) Last sale reports of transactions in American Depository Receipts (ADRs), Canadian issues, or domestic *non-exchange-listed securities* [OTC Equity Securities] that are executed between midnight and 8:00 a.m. Eastern Time shall be transmitted through ACT between 8:00 a.m. and 9:30 a.m. Eastern Time on trade date, be designated as ''.T'' trades to denote their execution outside normal market hours, and be accompanied by the time of execution. The party responsible for reporting on trade date, the trade details to be reported, and the applicable procedures shall be governed, respectively, by paragraphs (b), (c), and (d) below;

(ii) Last sale reports of transactions in ADRs, Canadian issues, or domestic *non-exchange-listed securities* [OTC Equity Securities] that are executed between 5:15 p.m. and midnight Eastern

Time shall be transmitted through ACT on the next business day (T+1) between 8:00 a.m. and 5:15 p.m. Eastern Time, be designated ''as/of'' trades to denote their execution on a prior day, and be accompanied by the time of execution. The party responsible for reporting on T+1, the trade details to be reported, and the applicable procedures shall be governed, respectively, by paragraphs (b), (c), and (d) below; and

(iii) Last sale reports of transactions in foreign securities (excluding ADRs and Canadian issues) shall be transmitted through ACT on T+1 regardless of time of execution. Such reports shall be made between 8:00 a.m. and 1:30 p.m. Eastern Time in the same manner as described in subparagraph (3)(B)(ii) above.

(4) All members shall report as soon as practicable to the Market [Surveillance] *Regulation* Department on Form T, last sale reports of transactions in *non-exchange-listed securities* [OTC Equity Securities] for which electronic submission into ACT is not possible (e.g., the ticker symbol for the security is no longer available or a market participant identifier is no longer active). Transactions that can be reported into ACT, whether on trade date or on a subsequent date on an ''as of'' basis (T+N), shall not be reported on Form T.

(5) A pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Rule 2110.

(6) All members shall append a trade report modifier as designated by the Association to transaction reports that reflect a price different from the current market when the execution is based on a prior reference point in time, which shall be accompanied by the prior reference time.

(b) Which Party Reports Transaction

(1) In *a* transaction[s] between two OTC Market Makers, only the member representing the sell side shall report *the transaction.*

(2) In *a* transaction[s] between an OTC Market Maker and a Non-Market Maker, only the OTC Market Maker shall report *the transaction.*

(3) In *a* transaction[s] between two Non-Market Makers, only the member representing the sell side shall report *the transaction.*

(4) In *a* transaction[s] between a member and a customer, the member shall report *the transaction.*

(c) Information To Be Reported

Each last sale report shall contain the following information:

(1) Symbol of the *non-exchange-listed security* [OTC Equity Security];

(2) Number of shares;

(3) Price of the transaction as required by paragraph (d) below; and

(4) A symbol indicating whether the transaction is a buy, sell, or cross.

(d) Procedures for Reporting Price and Volume

Members that are required to report pursuant to paragraph (b) above shall transmit last sale reports for all purchases and sales in *non-exchange-listed securities* [OTC Equity Securities] in the following manner:

(1) For agency transactions, report the number of shares and the price excluding the commission charged.

(2) For dual agency transactions, report the number of shares only once, and report the price excluding the commission charged.

(3) (A) For principal transactions, except as provided in subparagraph (B) hereof, report each purchase and sale transaction separately and report the number of shares and the price. For principal transactions that are executed at a price [which] *that* includes a mark-up, mark-down or service charge, the price reported shall exclude the mark-up, mark-down or service charge. Such reported price shall be reasonably related to the prevailing market, taking into consideration all relevant circumstances including, but not limited to, market conditions with respect to the *non-exchange-listed securities* [OTC Equity Security], the number of shares involved in the transaction, the published bids and offers with size displayed in any inter-dealer quotation system at the time of the execution (including the reporting firm's own quotation), the cost of execution and the expenses involved in clearing the transaction.

(B) Exception: A ''riskless'' principal transaction in which a member, after having received an order to buy a security, purchases the security as principal at the same price to satisfy the order to buy or, after receiving an order to sell, sells the security as principal at the same price to satisfy the order to sell, shall be reported as one transaction in the same manner as an agency transaction, excluding the mark-up or mark-down, commission-equivalent, or other fee.

(e) Transactions Not Required To Be Reported

The following types of transactions shall not be reported:

(1) Transactions [which] *that* are part of a primary distribution by an issuer or a registered secondary distribution (other than ''shelf distributions'') or of an unregistered secondary distribution;

(2) Transactions made in reliance on Section 4(2) of the Securities Act of 1933;

(3) Transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security;

(4) Purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the current market.

* * * * *

**[6700. REPORTING TRANSACTIONS IN NON-NASDAQ SECURITIES]**

**[6710. Definitions]**

[For the purposes of this Rule 6700 Series, unless the context requires otherwise:]

[(a) ''Issuer,'' in the case of quotations for American Depository Receipts (ADRs), shall mean the issuer of the deposited shares represented by such ADRs.]

[(b) ''Non-Nasdaq Reporting System'' means the electronic price and volume reporting system operated by the Association for non-Nasdaq securities.]

[(c) ''Non-Nasdaq security'' means any equity security that is neither included in The Nasdaq Stock Market nor traded on any national securities exchange. For purposes of Rules 6720 and 6730 of this Series, the term ''non-Nasdaq security'' shall also mean any Nasdaq security, if transactions in that security are effected by market makers that are not registered Nasdaq market makers pursuant to Rule 4611, and any security listed on an exchange, if transactions are required to be reported pursuant to the Rule 6400 Series.]

[(d) ''Priced entry'' shall mean a quotation consisting of a bid, offer, or both at a specified price.]

[(e) ''Quotation'' shall mean any bid or offer at a specified price with respect to a non-Nasdaq security, or any indication of interest by a broker or dealer in receiving bids or offers from others for such a security, or any indication by a broker or dealer that it wishes to advertise its general interest in buying or selling a particular non-Nasdaq security.]

[(f) ''Quotation medium'' means any inter-dealer quotation system (except for the PORTAL Market) or any publication or electronic communications network or other device that is used by brokers

or dealers to make known to others their interest in transactions in any non-Nasdaq security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell.]

**[6720. Price and Volume Reporting]**

[(a) Each member shall report through the Non-Nasdaq Reporting System the following information on all principal transactions in non-Nasdaq securities:]

[(1) The highest price at which it sold and the lowest price at which it purchased each non-Nasdaq security;]

[(2) the total volume of purchases and sales executed by it in each non-Nasdaq security; and]

[(3) whether the trades establishing the highest price at which the member sold and the lowest price at which the member purchased the security represented an execution with a customer or with another broker/dealer. The price to be reported for principal sales and purchases from customers shall be inclusive of mark-up or mark-down.]

[(b) Members shall report the price and volume information required by paragraph (a) of this Rule through the Non-Nasdaq Reporting System between the hours of 4 p.m. and 6:30 p.m. Eastern Time on the trade date or between 7:30 a.m. and 9 a.m. Eastern Time on the next business day, or at such other time as determined by the Association.]

[(c) The reporting requirements contained in paragraphs (a) and (b) of this Rule shall not apply to any non-Nasdaq security for which members are required to report individual transactions pursuant to the Rule 6600 Series.]

**[6730. Automated Submission of Trade Data]**

[RESERVED FOR FUTURE USE. REDESIGNATED AS 8213 BY SR–NASD–97–81 EFF. JAN. 16, 1998.]

***6630*[6740]. Submission of Rule 15c2–11 Information on [Non-Nasdaq] *Non-Exchange-Listed* Securities**

(a) Except as provided in SEC Rule 15c2–11(f)(1), (2), (3) and (5) under the Act, no member shall initiate or resume the quotation of a non-*exchange-listed* [Nasdaq] security in any quotation medium unless the member has demonstrated compliance with this Rule and the applicable requirements for information maintenance under Rule 15c2–11. A member shall demonstrate compliance by making a filing with, and in the form required by, the Association, which filing must be received at least three business days before the member's quotation is published or displayed in the quotation medium.

(b) The information to be filed shall contain one copy of all information required to be maintained under SEC Rule 15c2–11(a)(1), (2), (3)(iii), (4)(ii), or (5), including any information that may be required by future amendments thereto. In addition, this filing shall identify the issuer, the issuer's predecessor in the event of a merger or reorganization within the previous 12 months, the type of non-*exchange-listed* [Nasdaq] security to be quoted (e.g., ADR, warrant, unit, or common stock), the quotation medium to be used, the member's initial or resumed quotation, and the particular subsection of Rule 15c2–11 with which the member is demonstrating compliance. Additionally, if a member is initiating or resuming quotation of a non-*exchange-listed* [Nasdaq] security with a priced entry, the member's filing must specify the basis upon which that priced entry was determined and the factors considered in making that determination.

(c) If a member's initial or resumed quotation does not include a priced entry, a member shall supplement its prior filing under this Rule, in the form required by the Association, before inserting a priced entry for the affected non-*exchange-listed* [Nasdaq] security in a quotation medium. The supplemental filing shall specify the basis upon which the proposed priced entry was determined and the factors considered in making that determination. The supplemental filing must be received by the Association at least three business days before the member's priced entry first appears in a quotation medium.

(d) No Change.

***6640. Limit Order Protection***

*(a) Members shall be prohibited from ''trading ahead'' of customer limit orders that a member accepts in non-exchange-listed securities quoted on a quotation medium. Members handling customer limit orders, whether received from their own customers or from another member, are prohibited from trading at prices equal or superior to that of the customer limit order without executing the limit order. Members are under no obligation to accept limit orders from any customer.*

*(b) Members may avoid the obligation specified in paragraph (a) through the provision of price improvement. If a customer limit order is priced at or inside the current inside spread, however, the price improvement must be for a minimum of the lesser of $0.01 or one-half (½) of the current inside spread. For purposes of this rule, the inside spread shall be defined as the difference between the best reasonably available bid and offer in the subject security.*

*(c) Notwithstanding subparagraph (a) of this rule, a member may negotiate specific terms and conditions applicable to the acceptance of limit orders only with respect to such orders that are:*

*(1) For customer accounts that meet the definition of an ''institutional account'' as that term is defined in Rule 3110(c)(4); or*

*(2) for 10,000 shares or more, and greater than $200,000 in value.*

*(d) Contemporaneous trades.*

*A member that trades through a held limit order must execute such limit order contemporaneously, or as soon as practicable, but in no case later than five minutes after the member has traded at a price more favorable than the customer's price.*

*(e) Application.*

*(1) This rule shall apply only to non-exchange-listed securities specifically identified as such on the NASD website.*

*(2) This rule shall apply from 9:30 a.m. to 4:00 p.m. Eastern Time.*

*(3) This rule shall be in effect until February 8, 2002.*

**[67]*66*50. Minimum Quotation Size Requirements For [OTC] *Non-Exchange-Listed* Equity Securities**

[(a)] Every member firm that functions as a market maker in [OTC] *Non-Exchange-Listed* Equity Securities by entering firm quotations into [the OTC Bulletin Board Service (OTCBB) (or] any [other] inter-dealer quotation system that permits quotation updates on a real-time basis[)] must honor those quotations for the minimum size defined in the table below. In this regard, it is the market maker's responsibility to determine the minimum size requirement applicable to its firm bid and/or offer in each of its registered securities [(excluding OTC Equity Securities for which the OTCBB will not accept firm quotations)]. Depending on the price level of the bid or offer, a different minimum size can apply to each side of the market being quoted by the member firm in a given security.

| Price (bid or offer) | Minimum quote size |
|---|---|
| 0–.50* | 5,000 |
| .51–1.00 | 2,500 |
| 1.01–10.00 | 500 |
| 10.01–100.00 | 200 |
| 100.01–200.00 | 100 |
| 200.01–+ | 50 |

A*n* [Nasdaq] *NASD* officer at the Executive Vice President level or above, within its discretion may modify the minimum quotation size for those securities with a price exceeding $200.

[(b) For purposes of this Rule, the term ''OTC Equity Security'' means any equity security not classified as a ''designated security'' for purposes of the Rule 4630 and 4640 Series, or as an ''eligible security,'' for purposes of the Rule 6400 Series. The term does not include ''restricted securities,'' as defined by SEC Rule 144(a)(3) under the Securities Act of 1933, nor any securities designated in the PORTAL Market.SM]

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**6900. REPORTING TRANSACTIONS IN DIRECT PARTICIPATION PROGRAMS**

All secondary market transactions by members in Direct Participation Program securities other than transactions executed on a registered national securities exchange [or through Nasdaq] shall be reported to the Association in accordance with the procedures set forth below. All trade tickets shall be time-stamped at the time of execution.

* * * * *

**6920. Transaction Reporting**

(a) through (d) No Changes.

(e) Transactions Not Required To Be Reported

The following transactions are not required to be reported under the foregoing procedures:

(1) through (2) No Changes.

(3) Transactions executed on a registered national securities exchange [or through Nasdaq].

* * * * *

**7000. CHARGES FOR SERVICES AND EQUIPMENT—TO BE DETERMINED**

* * * * *

**8200. INVESTIGATIONS**

8210. No Change.

**[8212. Automated Submission of Trading Data for the Nasdaq International Service Requested by the Association] *Reserved***

[(a) Every Association member and approved affiliate that participates in the Nasdaq International Service as defined in the Rule 5100 Series (''Nasdaq International'') as a Service market maker or an order-entry firm shall submit to the Association the trade data specified below in automated format as may be prescribed by the Association from time to time. This information shall be supplied with respect to any transaction or transactions that are the subject of a request for information made by the Association. In this rule the terms ''participating firm'' and ''firm'' include both Association members and approved affiliates that utilize the Service.]

[(b) If the transaction was a proprietary transaction effected or caused to be effected by the participating firm for any account in which such firm, or person associated with the firm, is directly or indirectly interested, the participating firm shall submit or cause to be submitted the following information:]

[(1) Clearing house number, or alpha symbol as used by the participating firm submitting the data;]

[(2) Clearing house number(s), or alpha symbol(s) as may be used from time to time, of the participating firm on the opposite side of the transaction;]

[(3) Identifying symbol assigned to the security;]

[(4) Date transaction was executed;]

[(5) Number of shares, ADRs, units, warrants or rights for each specific transaction and whether each transaction was a purchase, sale or short sale;]

[(6) Transaction price;]

[(7) Account number; and]

[(8) Market center where transaction was executed.]

[(c) If the transaction was effected or caused to be effected by the participating firm for any customer account, such firm shall submit or cause to be submitted the following information:]

[(1) The data described in subparagraphs (b)(1) through (8);]

[(2) Customer name, address(es), branch office number, registered representative number, whether order was solicited or unsolicited, date account opened and employer name, and the tax identification number(s); and]

[(3) If the transaction was effected for another Association member or participating firm, whether the other party was acting as principal or agent on the transaction or transactions that are the subject of the Association's request.]

[(d) In addition to the above trade data, a participating firm shall submit such other information in such automated format as may from time to time be required by the Association.]

[(e) Pursuant to the Rule 9600 Series, the Association may exempt a person from the requirement that the data prescribed in paragraphs (b) through (d) above be submitted to the Association in an automated format for good cause shown.]

**8213. Automated Submission of Trading Data for Non-Exchange-Listed [Nasdaq] Securities Requested by the Association**

Each member shall submit trade data specified in Rule 8211 in automated format as may be prescribed by the Association from time to time with respect to any transaction or transactions involving non-*exchange-listed* [Nasdaq] securities as defined in the Rule [6700]*6600* Series that are the subject of a request for information made by the Association. Pursuant to the Rule 9600 Series, the Association may exempt a member from the requirement that the data prescribed in paragraphs (b) through (d) of Rule 8211 be submitted to the Association in an automated format for good cause shown.

* * * * *

**9000. CODE OF PROCEDURE**

**9100. APPLICATION AND PURPOSE**

**9110. Application**

(a) through (b) No Change.

(c) Incorporation of Defined Terms and Cross References

Unless otherwise provided, terms used in the Rule 9000 Series shall have the meaning as defined in Rule 0120 and Rule 9120. References within the Rule 9000 Series to Association offices or departments refer to offices so designated by the NASD[,] *or* NASD Regulation [or Nasdaq].

* * * * *

**9120. Definitions**

(a) through (r) No Change.

(s) ''Market Regulation Committee''

The term ''Market Regulation Committee'' means the committee of NASD Regulation designated to consider the federal securities laws and the rules and regulations adopted thereunder and various Rules of the Association and policies relating to:

(1) through (3) No Change.

(4) trading practices, including rules prohibiting manipulation and insider trading, and those Rules designated as Trading Rules (Rule 3300 Series), [the Nasdaq Stock Market Rules] *the NASD Alternative Display Facility Rules* (Rule 4000 Series), other [Nasdaq and] NASD [Market] *Reporting Facility* Rules (Rule 5000 Series), NASD Systems and Programs Rules (Rule 6000 Series), and Charges for Services and Equipment Rules (Rule 7000 Series).

(t) through (cc) No Change.

* * * * *

**9160. Recusal or Disqualification**

No person shall participate as an Adjudicator in a matter governed by the Code as to which he or she has a conflict of interest or bias, or circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case the person shall recuse himself or herself, or shall be disqualified as follows:

(a) through (c) No Change.

(d) Rule 9514 Hearing Panel

The NASD Regulation Board [or Nasdaq Board] shall have authority to order the disqualification of a member of a Hearing Panel appointed by such Board under Rule 9514(b);

(e) through (g) No Change.

* * * * *

**9230. Appointment of Hearing Panel, Extended Hearing Panel**

**9231. Appointment by the Chief Hearing Officer of Hearing Panel or Extended Hearing Panel**

(a) No Change.

(b) Hearing Panel

The Hearing Panel shall be composed of a Hearing Officer and two Panelists, except as provided in Rule 9234 (a), (c), (d), or (e). The Hearing Officer shall serve as the chair of the Hearing Panel. Each Panelist shall be associated with a member of the Association or retired therefrom.

(1) Except as provided in (2), the Chief Hearing Officer shall select as a Panelist a person who:

(A) through (C) No Change.

(D) previously served as a Director[, a director of the Nasdaq Board of Directors,] or a Governor, but does not serve currently in any of these positions.

(2) No Change.

(c) through (d) No Change.

* * * * *

**9500. OTHER PROCEEDINGS**

**9510. Summary and Non-Summary Proceedings**

9511. No Change

**9512. Initiation of Summary Proceeding**

(a) Authorization

(1) No Change.

(2) The NASD Board may authorize the President of NASD Regulation [or the President of Nasdaq] to issue on a case-by-case basis a written notice that summarily limits or prohibits any person with respect to access to services offered by the Association if paragraph (a)(1) applies to such person or, in the case of a person who is not a member, if the NASD Board determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the Association.

(b) through (c) No Change.

* * * * *

**9514. Hearing and Decision**

(a) No Change.

(b) Designation of Party for the Association and Appointment of Hearing Panel

If a member, associated person, or other person subject to a notice under Rule 2210, 2220, 9512, or 9513 files a written request for a hearing, an appropriate department or office of the Association shall be designated as a Party in the proceeding, and a Hearing Panel shall be appointed.

[(1)] If the President of NASD Regulation or NASD Regulation staff issued the notice initiating the proceeding under Rule 2210, 2220, 9512(a), or 9513(a), the President of NASD Regulation shall designate an appropriate NASD Regulation department or office as a Party. For proceedings initiated under Rule 9513(a) concerning failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation, the Chief Hearing Officer shall appoint a Hearing Panel composed of a Hearing Officer. For any other proceedings initiated under Rule 2210, 2220, 9512(a), or 9513(a) by the President of NASD Regulation or NASD Regulation staff, the NASD Regulation Board shall appoint a Hearing Panel composed of two or more members; one member shall be a Director of NASD Regulation, and the remaining member or members shall be current or former Directors of NASD Regulation or Governors. The President of NASD Regulation may not serve on a Hearing Panel.

[(2) If the President of Nasdaq or Nasdaq staff issued the notice under Rule 9512(a) or 9513(a), the President of Nasdaq shall designate an appropriate Nasdaq department or office as a Party, and the Nasdaq Board shall appoint a Hearing Panel. The Hearing Panel shall be composed of two or more members. One member shall be a director of Nasdaq, and the remaining member or members shall be current or former directors of Nasdaq or Governors. The President of Nasdaq may not serve on the Hearing Panel.]

(c) through (e) No Change.

(f) Hearing Panel Consideration

(1) through (4) No Change.

(5) Custodian of the Record

If the President of NASD Regulation or NASD Regulation staff initiated the proceeding under Rule 2210, 2220, 9512, or 9513, the Office of the General Counsel of NASD Regulation shall be the custodian of the record, except that the Office of Hearing Officers shall be the custodian of record for proceedings initiated under Rule 9513(a) concerning failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation. [If the President of Nasdaq or Nasdaq staff initiated the proceeding under Rule 9512 or 9513, the Office of the General Counsel of Nasdaq shall be the custodian of the record.]

(6) No Change.

(g) No Change.

* * * * *

**9700. PROCEDURES ON GRIEVANCES CONCERNING THE AUTOMATED SYSTEMS**

**9710. Purpose**

The purpose of this Rule 9700 Series is to provide, where justified, redress for persons aggrieved by the operations of any automated quotation, execution, or communication system owned or operated by the Association, or any subsidiary thereof, and approved by the Commission, not otherwise provided for by the Code of Procedure as set forth in the Rule 9000 Series, the Uniform Practice Code as set forth in the Rule 11000 Series.[, or the Procedures for Review of Nasdaq Listing Determinations as set forth in the Rule 4800 Series.]

**9720. Form of Application**

All applications shall be in writing, and shall specify in reasonable detail the nature of and basis for the redress requested. If the application consists of several allegations, each allegation shall be stated separately. All applications must be signed and shall be directed to *the NASD* [Nasdaq].

* * * * *

**9730. Request for Hearing**

Upon request, the applicant shall be granted a hearing after reasonable notice. In the absence of such request for a hearing, [Nasdaq] the NASD may, in its discretion, have any application set down for hearing or consider the matter on the basis of the application and supporting documents.

* * * * *

**9760. *Reserved* [Review by the Nasdaq Listing and Hearing Review Council]**

[The decision shall be subject to review by the Nasdaq Listing and

Hearing Review Council on its own motion within 45 calendar days after issuance of the written decision. Any such decision shall also be subject to review upon application of any person aggrieved thereby, filed within 15 calendar days after issuance. The institution of a review, whether on application or on the initiative of the Nasdaq Listing and Hearing Review Council, shall not operate as a stay of the decision.]

* * * * *

**9770. *Reserved* [Findings of the Nasdaq Listing and Hearing Review Council on Review]**

[Upon consideration of the record, and after such further hearings as it shall order, the Nasdaq Listing and Hearing Review Council shall affirm, modify, reverse, dismiss, or remand the decision. The Nasdaq Listing and Hearing Review Council shall set forth specific grounds upon which its determination is based.]

* * * * *

**9780. *Reserved* [Discretionary Review by the Board]**

[Determinations of the Nasdaq Listing and Hearing Review Council may be reviewed by the NASD Board of Governors solely upon the request of one or more Governors not later than the NASD Board meeting next following the Nasdaq Listing and Hearing Review Council's decision but which is 15 calendar days or more following the decision of the Nasdaq Listing and Hearing Review Council. Notwithstanding the preceding sentence, the NASD Board may determine it is advisable to call for review any decision of the Nasdaq Listing and Hearing Review Council within the 15 calendar day period following the decision of the Nasdaq Listing and Hearing Review Council. Such review, which may be undertaken solely at the discretion of the Board, shall be in accordance with resolutions of the Board governing the review of Nasdaq Listing and Hearing Review Council determinations. The Board shall affirm, modify or reverse the determinations of the Nasdaq Listing and Hearing Review Council or remand the matter to the Nasdaq Listing and Hearing Review Council with appropriate instructions. The institution of discretionary review by the Board shall not operate as a stay of the decision.]

* * * * *

**11300. DELIVERY OF SECURITIES**

**11310. Book-Entry Settlement**

(a) through (c) No Change.

(d) (1) No Change.

(2) A determination under *r*[R]ule*s* [4310(c)(23) or under the corresponding rule] of a national securities exchange that a security depository has included a CUSIP number identifying a security in its file of eligible issues does not render the security ''depository eligible'' under this Rule until:

(A) in the case of any new issue distributed by an underwriting syndicate on or after the date a securities depository system for monitoring repurchases of distributed shares by the underwriting syndicate is available, the date of the commencement of trading in such security on [The Nasdaq Stock Market] *the exchange;* or

(B) in the case of any new issue distributed by an underwriting syndicate prior to the date a securities depository system for monitoring repurchases of distributed shares by the underwriting syndicate is available where the managing underwriter elects not to deposit the securities on the date of the commencement of trading in such security on [The Nasdaq Stock Market] *the exchange,* such later date designated by the managing underwriter in a notification submitted to the securities depository; but in no event more than three (3) months after the commencement of trading in such security on [The Nasdaq Stock Market] *the exchange.*

(e) through (g) No Change.

* * * * *

**11500. DELIVERY OF SECURITIES WITH RESTRICTIONS**

**11580. Transfer of Limited Partnership Securities**

(a) Each member [who] *that* participates in the transfer of limited partnership securities, as defined in Rule 2810, shall use standard transfer forms in the same form as set forth in IM–11580. This Rule shall not apply to limited partnership securities [which] that are traded on [The Nasdaq Stock Market or] a registered national securities exchange, or are on deposit in a registered securities depository and settle regular way.

* * * * *

**11800. CLOSE-OUT PROCEDURES**

11810. No Change

**IM–11810. Sample Buy-In Forms**

(a) through (b) No Change.

(c) Seller's Failure to Deliver After Receipt of Notice

(1) (A) No Change.

(B) For transactions in [Nasdaq] *exchange-listed* [S]*s*ecurities where the buyer is a customer (other than another member), upon failure of a clearing corporation to effect delivery in accordance with a buy-in notice, the contract must be closed by purchasing for ''cash'' in the best available market, or at the option of the buyer for guaranteed delivery, for the account and liability of the party in default all or any part of the securities necessary to complete the contract.

(2) No Change.

(d) through (m) No Change.

* * * * *

**[11890. Clearly Erroneous Transactions]**

[(a) Authority to Review Transactions]

[(1) For the purposes of this Rule, the terms of a transaction are clearly erroneous when there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security.]

[(2) Officers of The Nasdaq Stock Market, Inc. (''Nasdaq'') designated by the President of Nasdaq shall, pursuant to the procedures set forth in paragraph (b) below, have the authority to review any transaction arising out of the use or operation of any automated quotation, execution, or communication system owned or operated by Nasdaq and approved by the Commission, excluding transactions arising from use of the Nasdaq Application of OptiMark. A Nasdaq officer shall review transactions with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. Based upon this review, the officer shall decline to act upon a disputed transaction if the officer believes that the transaction under dispute is not clearly erroneous, or, if the officer determines the transaction in dispute is clearly erroneous, he or she shall declare that the transaction is null and void or modify one or more terms of the transaction. When adjusting the terms of a transaction, the Nasdaq officer shall seek to adjust the price and/or size of the transaction to achieve an equitable rectification of the error that would place the parties to a transaction in the same position, or as close as possible to the same position, that they would have been in had the error not occurred. Nasdaq shall promptly provide oral notification of a determination to the parties involved in a disputed transaction and thereafter issue a

written confirmation of the determination.]

[(b) Procedures for Reviewing Transactions]

[(1) Any member or person associated with a member that seeks to have a transaction reviewed pursuant to paragraph (a) hereof, shall submit a written complaint, via facsimile or otherwise, to Nasdaq Market Operations in accordance with the following time parameters:]

[(A) For transactions occurring at or after 9:30 a.m., Eastern Time, but prior to 10:00 a.m., Eastern Time, complaints must be submitted by 10:30 a.m., Eastern Time; and]

[(B) for transactions occurring prior to 9:30 a.m., Eastern Time and at or after 10:00 a.m., Eastern Time, complaints must be submitted within thirty minutes.]

[(2) Once a complaint has been received in accord with subparagraph (b)(1) above:]

[(A) The complainant shall have up to thirty (30) minutes, or such longer period as specified by Nasdaq staff, to submit any supporting written information concerning the complaint necessary for a determination under paragraph (a)(2), via facsimile or otherwise;]

[(B) the counterparty to the trade shall be verbally notified of the complaint by Nasdaq staff and shall have up to thirty (30) minutes, or such longer period as specified by Nasdaq staff, to submit any supporting written information concerning the complaint necessary for a determination under paragraph (a)(2), via facsimile or otherwise; and]

[(C) either party to a disputed trade may request the written information provided by the other party pursuant to this subparagraph.]

[(3) Notwithstanding paragraph (b)(2) above, once a party to a disputed trade communicates that it does not intend to submit any further information concerning a complaint, the party may not thereafter provide additional information unless requested to do so by Nasdaq staff. If both parties to a disputed trade indicate that they have no further information to provide concerning the complaint before their respective thirty-minute information submission period has elapsed, then the matter may be immediately presented to a Nasdaq officer for a determination pursuant to paragraph (a)(2) above.]

[(4) Each member and/or person associated with a member involved in the transaction shall provide Nasdaq with any information that it requests in order to resolve the matter on a timely basis notwithstanding the time parameters set forth in paragraph (b)(2) above.]

[(5) Once a party has applied to Nasdaq for review, the transaction shall be reviewed and a determination rendered, unless both parties to the transaction agree to withdraw the application for review prior to the time a decision is rendered pursuant to paragraph (a)(2).]

[(c) Procedures for Reviewing Transactions Executed During System Disruptions or Malfunctions]

[In the event of a disruption or malfunction in the use or operation of any automated quotation, execution, or communication system owned or operated by Nasdaq and approved by the Commission, Nasdaq acting through an officer designated by the President of Nasdaq pursuant to paragraph (a)(2), may, on its own motion pursuant to the standards set forth in paragraph (a), declare transactions arising out of the use or operation of such systems during the period of such disruption or malfunction null and void or modify the terms of these transactions; provided that, in the absence of extraordinary circumstances, a Nasdaq officer must take action pursuant to this paragraph within thirty (30) minutes of detection of the erroneous transaction(s), but in no event later than 6:00 p.m., Eastern Time, on the next trading day following the date of the trade at issue. When Nasdaq takes action pursuant to this subparagraph, the member firms involved in the transaction shall be notified as soon as is practicable and shall have a right to appeal such action in accordance with paragraph (d)(1) below.]

[(d) Review by the Market Operations Review Committee (''MORC'')]

[(1) A member or person associated with a member may appeal a determination made under paragraphs (a)(2) or (c) to the MORC provided such appeal is made in writing, via facsimile or otherwise, within thirty (30) minutes after the member or person associated with a member receives verbal notification of such determination, except that if Nasdaq notifies the parties of action taken pursuant to paragraph (c) after 4:00 p.m., either party has until 9:30 a.m. the next trading day to appeal. Once a written appeal has been received, the counterparty to the trade will be notified of the appeal and both parties shall be able to submit any additional supporting written information, via facsimile or otherwise, up until the time the appeal is considered by the Committee. Either party to a disputed trade may request the written information provided by the other party during the appeal process. An appeal to the Committee shall not operate as a stay of the determination made pursuant to paragraph (a)(2) or (c) above. Once a party has appealed a determination to the Committee, the determination shall be reviewed and a decision rendered, unless both parties to the transaction agree to withdraw the appeal prior to the time a decision is rendered by the Committee. Upon consideration of the record, and after such hearings as it may in its discretion order, the Committee, pursuant to the standards set forth in paragraph (a), shall affirm, modify, reverse, or remand the determination made under paragraph (a)(2) or (c) above.]

[(2) The decision of the Committee shall be final and binding upon any member or person associated with a member and shall constitute final Association action on the matter in issue. Any adverse determination by a Nasdaq officer pursuant to paragraph (a)(2) or (c) or any adverse decision by the Committee pursuant to paragraph (d)(1) shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration.]

* * * * *

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD 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*

Background

The purpose of the proposed rule change is twofold: (1) to amend the Association's rules to reflect the anticipated approval of Nasdaq as a national securities exchange[4] and its resultant separation from NASD; and (2) to establish the rules that would govern trading otherwise than on an exchange, including the implementation and

[4] Securities Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 (June 13, 2001).

operation of the ADF. The ADF is a quotation collection, trade comparison, and trade reporting facility being developed by NASD in accordance with the Commission's SuperMontage Approval Order [5] and in conjunction with Nasdaq's anticipated registration as a national securities exchange.

Proposed Rule Change Relating to the Separation of Nasdaq

The NASD is in the process of spinning off its Nasdaq subsidiary as an independent, for-profit company. As the result of a second private placement of Nasdaq shares completed on January 18, 2001, the NASD's ownership interest in Nasdaq was reduced to a minority interest. Before Nasdaq can fully separate from the NASD, it must become registered as a national securities exchange with the SEC. Nasdaq has filed a Form 1 with the SEC requesting such registration. Notice and a request for comments on Nasdaq's completed application for exchange registration was published for comment in the **Federal Register** on June 13, 2001,[6] and the comment period expired on August 29, 2001.

Upon Nasdaq's registration as a national securities exchange, the NASD will no longer control the voting rights in the common stock of Nasdaq. At that point, Nasdaq and the NASD will be unaffiliated corporate entities, and therefore each will need separate rules applicable to their respective members. To effectuate that change, the NASD must modify existing NASD rules, effective upon Nasdaq's registration as an exchange, to reflect this separation of Nasdaq from the NASD. These changes include deleting Nasdaq-specific rules, such as listing and qualification requirements; replacing references to ''Nasdaq'' with ''NASD'' or ''exchange,'' as applicable; and renaming and renumbering certain rules. The proposed rule change also includes corrections of minor grammatical or typographical errors and other miscellaneous non-substantive changes.

*Deleted Rules:* The Association proposes to delete the following rules in their entirety because they either relate exclusively to participation in, and operation of, the Nasdaq Stock Market or would no longer be applicable upon the establishment of the ADF: 2852, 2854, 2870 through 2885; 5100 through 5113; 6700 through 6740; 8212 and 11890.

*IM–2110–2 and Rule 6640 Trading Ahead of Customer Orders:* The proposed rule change would eliminate an exemption in IM–2110–2 for certain customer limit orders received prior to September 1, 1995. The passage of time has rendered this exemptive language obsolete and therefore it no longer bears on the existing application of the interpretation. This change is consistent with Nasdaq's rule filing in connection with its exchange registration application, which contains an identical proposed rule change.

Existing Rule 6541 extends the principles of IM–2110–2 to certain OTC Bulletin Board stocks as part of a pilot program that will continue at least until February 8, 2002. Rule 6541 is renumbered in the rule proposal as new Rule 6640, and the language is changed to include ''non-exchange-listed'' securities, rather than ''Bulletin Board'' securities. Initially, Rule 6640 would cover the same Bulletin Board stocks that are part of the ongoing pilot program. The language change is made in anticipation of the Bulletin Board becoming part of the Nasdaq-listed stock market,[7] and its listed securities becoming subject to IM–2110–2. At that time, the NASD may extend the scope of Rule 6640 to include additional non-exchange-listed securities. The language change in the rule proposal would allow NASD that flexibility without having to amend the rule.

*IM–2310–2 SEEDS Transactions:* As a result of Nasdaq's anticipated separation from the NASD, the proposed rule change deletes Rule 4420, which primarily involves quantitative listing criteria for Nasdaq National Market securities. However, existing Rule 4420(g)(5) describes an obligation on the part of the Association to distribute a circular to member firms that provides guidance when handling Hybrid Securities and Selected Equity-linked Debt Securities (''SEEDS'') transactions. Since that provision applies to the NASD and is regulatory in nature, it has been retained and moved to IM–2310–2. The proposed rule change also would allow either Nasdaq or the NASD to distribute the compliance circular.

*Rule 2840 Trading in Index Warrants:* The proposed rule change would delete language in Rule 2840 related to index warrants listed on the Nasdaq Stock Market. The existing rule was promulgated because Nasdaq expected eventually to list such index warrants. However, as evidenced by Nasdaq's proposed rule filing in connection with its application for exchange registration, Nasdaq no longer intends to list index warrants. The remainder of Rule 2840 remains unchanged, as it has continued applicability to NASD members that are not also members of an exchange on which they trade index warrants.

*Rules 2850 through 2885 Position Limits and Options Trading:* To reflect Nasdaq's separation from the NASD, the proposed rule change deletes from Rules 2850 through 2885 all language related to position limits and transactions in index warrants and options traded on Nasdaq. However, the rule change retains all provisions related to options trading in the over-the-counter market.

*Rule 6600 Transactions in Non-Exchange-Listed Securities:* The proposed rule change would combine the existing Rule 6600 and 6700 Series into a single Rule 6600 Series that governs transactions in non-exchange-listed equity securities. The proposed combination is intended to eliminate redundancies in the existing rules, while maintaining all of the regulatory requirements for trading and reporting transactions in such securities.

Proposed Rule 6620 also would require those NASD members that effect trades otherwise than on an exchange in non-exchange-listed securities to enter into contractual agreements to use Nasdaq's ACT system for trade comparison and trade reporting. The NASD has determined that this contractual agreement with Nasdaq would be the most practical, efficient and fair means to provide access to the ACT system for members that effect such trades.

First, most NASD members are already connected to ACT, since ACT is used currently to report these transactions. Second, this approach would relieve the NASD of significant additional cost to process and administer these services, and Nasdaq already has these operations in place. Third, the subject securities do not trade on Nasdaq; therefore, no competitive issues would be raised. Finally, the NASD would maintain regulatory responsibility to monitor and enforce compliance with the ACT rules by its members that effect transactions in non-exchange-listed securities. Nasdaq would function only as a vendor and systems operator.

The proposed rule change also would amend the minimum quotation size requirements required by Rule 6750 to reflect the fact that upon Nasdaq exchange registration, the NASD would no longer operate the OTC Bulletin Board Service. Therefore, references to the OTC Bulletin Board would be deleted from the rule.

[5] Securities Exchange Act Release No. 43863 (Jan. 19, 2001), 66 FR 8020 (Jan. 26, 2001).

[6] Securities Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 (June 13, 2001) (File No. 10–131).

[7] *See* SR–NASD–2001–82, which is currently being reviewed by the Commission.

Proposed Rule Change Relating to Trading Otherwise Than on an Exchange

The proposed rule change generally would clarify that NASD rules that relate to trading practices (*e.g.,* quotations, trade reporting, short selling, trading halts) apply only to transactions otherwise than on an exchange. To achieve this, the proposal would add a definition of the term ''otherwise than on an exchange'' in Rule 4200 and also specify in particular rules where the rule applies only to trading otherwise than on an exchange.[8] The term ''otherwise than on an exchange'' is defined in the proposal to mean a trade effected by an NASD member otherwise than on or through a national securities exchange. The determination of what constitutes a trade ''on or through'' a national securities exchange would be left to the respective exchanges and applicable statutes, rules and regulations, as approved by the SEC.

The rule proposal, for the most part, maintains the same organization as the existing NASD rules. For example, rules related to trading Nasdaq securities otherwise than on an exchange are found in the Rule 4600 Series. Rules related to trading in Consolidated Quotation Service (''CQS'') securities otherwise than on an exchange similarly remain in the Rule 6300 Series. While the rules governing CQS securities are similar to those governing Nasdaq securities (*e.g.,* the trade reporting rules) the proposal maintains the historically separate rule structure that has been considered helpful by many market participants.

The NASD is considering combining the similar rules, where possible, and placing them in a section that would encompass all rules related to trading otherwise than on an exchange. The current rule proposal begins such a process by establishing a new Rule 5000 Series, Trading Otherwise Than On An Exchange, that would contain some rules that apply both to Nasdaq and CQS securities, such as the short sale rule, trading halts, transactions involving initial public offerings, and clearance and settlement. Rules that previously resided in the Rule 5000 Series, and have not otherwise been deleted, have been moved. Under the proposal, rules related to the Intermarket Trading System (''ITS'') (Rule 5200 Series) would be moved to the Rule 6500 Series. Rules related to The Portal Market (Rule 5300 Series) would be moved to the Rule 6700 Series.

*The NASD Alternative Display Facility:* The NASD would build a quote collection, trade comparison and trade reporting facility that meets specific performance and security standards and provides users with the necessary functionality to make it a viable alternative display facility to Nasdaq.

The facility would provide market participants—market makers, ECNs and order entry firms—the ability to collect and view quotations, and to report transactions to the appropriate Securities Information Processor (''SIP'')[9] for consolidation and dissemination of data to vendors and ADF market participants. The facility also would provide for trade comparison through the Trade Comparison and Reporting Service (''TRACS''), the details of which are described below. The facility further would provide for real-time data delivery to NASD Regulation for regulatory purposes, including enforcement of firm quote and related rules.

The ADF is expected to launch by the end of the first quarter of calendar year 2002, provided that Nasdaq has been approved as a national securities exchange. The NASD or a vendor (other than Nasdaq) would maintain and operate the facility. The NASD would establish the rules that govern the ADF, and NASD Regulation will enforce the rules and provide market surveillance.

The proposed rule change also includes a number of changes that more specifically reflect the implementation and operation of the ADF. Most significantly, the proposed rule change would replace in their entirety the existing Rule 4000 Series and Rules 6100, 6300, 6400 and 6500 with a new set of rules to govern the ADF. For the most part, the proposed ADF rules closely track existing Nasdaq rules or rules proposed by Nasdaq in its exchange registration and existing rules that govern the CQS.[10] The ADF would provide trade comparison and trade reporting services that would be similar to Nasdaq's ACT system. However, the proposed ADF rules have been refined to reflect the more limited functionality of the ADF, most particularly the absence of an automatic execution or order routing system. Instead, the proposed rule change would require ADF market participants to provide direct or indirect access to their quotations, as described in more detail below.

As required by existing Nasdaq rules, ADF participants would be required to register as market makers or ECNs for each security in which they make a market or display orders. Market makers would receive approval for registration upon demonstration that they are members in good standing and comply with the net capital and other financial responsibility requirements of the Act. To ease the administrative burden on NASD members, the NASD rules initially would allow registration as a market maker in the ADF upon proof that a firm is a registered Nasdaq market maker. Eventually, members seeking to become an NASD registered market maker would have to comply either with Rule 1017(a)(5) (which requires an application for approval for a material change in business operations) or Rule 1010 (application for initial membership in the NASD).

Additionally, the proposed rule change tracks Nasdaq requirements that market makers maintain continuous two-sided, firm quotations and prescribes market maker obligations when a bid or offer locks or crosses the market. However, as described in more detail below, the rule proposal does not provide for stabilizing or penalty bids, as existing Nasdaq rules do. The proposal generally adopts Nasdaq's anticipated approach to trade reporting: the seller reports both intramarket and intermarket trades between market makers, the market maker reports trades between it and a customer, and an NASD member reports trades between it and a non-member.[11] ECNs would report all trades effected within the ECN (*i.e.,* when a market maker sells through an ECN). As described below, the ADF also would support a ''three party trade report'' for ECNs.

Order Access Rule: The ADF rules differ from existing Nasdaq rules most significantly with respect to participants' ability to reach quotes displayed in the ADF. The NASD would not provide ADF market participants an order routing capability, other than

[8] *See e.g.,* the new Rule 5000 Series, which sets forth rules that apply generally to trading otherwise than on an exchange (short selling and trading halts) and Rule 4633, which governs specifically transactions effected otherwise than on an exchange in Nasdaq securities.

[9] Nasdaq initially will be the designated SIP for all transactions in Nasdaq securities, while the Securities Industry Automation Corporation will continue to function as the SIP for transactions in listed securities.

[10] Should Nasdaq amend its exchange registration with respect to matters such as trade reporting, short selling, or quotation obligations, we anticipate making similar amendments to the proposed NASD rules.

[11] Securities Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 (June 13, 2001) (File No. 10–131). *But see* note 10, *supra.*

ITS.[12] In order to provide a means to enforce compliance with firm quote obligations, locked and crossed quotation obligations,[13] and to provide other market participants within the ADF and in other markets the ability to provide best execution, in the absence of an NASD-provided router, the proposed rule change contains new Rule 4300. This rule would require market participants to provide direct electronic access to other market participants and direct or indirect electronic access to all other NASD members seeking access. Proposed Rule 4300 defines ''direct electronic access'' as the ability to deliver an order for execution directly against an individual NASD market participant's best bid and offer without the need for voice communication, and with the equivalent speed, reliability, availability and cost as are made available to the NASD market participant's own customer broker/dealers or other active customers or subscribers. The proposal would not, however, preclude market participants from charging more for the access required by the rule—sometimes called ''hit or take'' access—than for full service access, so long as hit or take access is not charged discriminatorily, *i.e.,* charged differently for one group of users (*e.g.,* subscribers) than for others (*e.g.,* non-subscribers). While ''hit or take'' is more limited functionally than full book access, it also is a liquidity taking function and some markets—including Nasdaq—charge more for taking liquidity than providing it.[14]

The proposed rule change defines ''indirect electronic access'' as the ability to route an order through customer broker/dealers of an NASD market participant for execution against the NASD market participant's best bid and offer, without the need for voice communication, and with equivalent speed, reliability, availability and cost as are available to the market participant's customer broker/dealer providing the indirect access or other active customers or subscribers. Market participants would be prohibited from influencing the prices that customer broker/dealers impose for providing indirect access or in any way discouraging the provision of indirect access.

ADF market participants could satisfy these requirements either by providing their own bilateral linkages or by participating in multilateral linkage facilities provided by private vendors. In addition, with respect to links with exchanges, market participants could satisfy these requirements either by linking with the exchange or by linking with market participants operating within those exchanges.

To allow NASD Regulation to monitor compliance with certain trading rules, such as the firm quote rule and ''trade or move'' rules, the proposed rule also requires that all NASD market participants that display quotations or orders in the ADF record specified items of information pertaining to orders they receive via direct or indirect electronic access, and report this information to NASD Regulation on a real-time basis. The proposed rule requires this information to be provided to NASD Regulation within 10 seconds of the receipt of an order and, if applicable, when an order is acted upon or responded to. As part of the subscriber agreement approval process, market participants would be required to provide the terms and methods by which they would comply with these rules. The NASD would review these terms prior to approving a subscriber agreement.

*Trade Reporting and Trade Comparison Service:* As noted above, the NASD intends to operate trade reporting and comparison services as part of the ADF. The trade reporting service would collect trade reports for NASD registered market participants, as well as any NASD member required to report transactions occurring otherwise than on an exchange. The service would transmit the reports automatically to the respective SIPs, if required, for dissemination to the public and the industry. This mechanism would operate similar to the trade reporting functions of Nasdaq's ACT Service,[15] but would contain one notable distinguishing feature.

The ADF would support a ''three party trade report'' that would make it easier for ECNs to submit trade reports involving their subscribers and for market makers to submit riskless principal trade reports. A three party trade report would be a single last sale trade report that would denote one reporting member (*i.e.,* the party with the trade reporting responsibility as defined in Rules 4633 and 6420) and two contra parties. The ADF would be designed to split the three party trade report into two separate reports that would then be processed independently in accordance with existing trade reporting rules. Each of these reports would contain its own identifier and a reference to the original three party trade report, so that the separate reports can be mapped to the same transaction.

Therefore, the ADF trade reporting system would streamline the reporting process by reducing from three or two to one the number of trade reports for most ECN and riskless principal transactions. The proposed rules would require three party trade reports when the reporting party is a registered ECN, and would permit such reports by market makers that execute riskless principal transactions.

The NASD also intends to operate a trade comparison service as part of TRACS that would: (1) Compare trade information entered by TRACS participants and submit ''locked-in'' trades to Depository Trust Clearing Corporation (''DTCC'') for clearance and settlement; (2) transmit reports of the transactions automatically to the respective SIPs, if required, for dissemination to the public and the industry; and (3) provide participants with monitoring capabilities to facilitate participation in a ''locked-in'' trading environment. The proposed trade comparison rules are found in proposed Rule 6100.

The NASD expects that a significant volume of trades would be locked-in and submitted directly to DTCC by way of agreements between market participants and Qualified Service Representatives (''QSR''). As a result, NASD expects the volume of trades sent through TRACS to be relatively low.[16] The proposed TRACS rules would apply only to those members that from time to

[12] The NASD does not intend to provide an order routing capability other than ITS because it believes it can better perform our core investor protection mission by focusing on regulation rather than market operations. The NASD also believes that market participants already do, and can continue to, establish and run order linkage facilities that are more efficient and innovative than a facility the NASD could provide. The ITS ''exception'' is based upon the fact that ITS is in place and is the current accepted mechanism for intermarket linkage for CQS securities. As discussed below, we would make use of ITS optional.

[13] This order access rule would be the basis for satisfying, among other things, locked and crossed quotation obligations. While this rule would require intermarket links with other market centers, as well as intra-ADF links, the proposed locked and crossed rule, Rule 4612(d), unlike other market center locked and crossed rules, is based on the ADF's own quotations. In the event that the markets agree on a locked and crossed rule approach that encompasses quotations in all markets, proposed Rule 4300 would still facilitate compliance.

[14] *See* Securities Exchange Act Release No. 44918 (Oct. 10, 2001), 66 FR 52814 (Oct. 17, 2001).

[15] The NASD service would not perform risk management services that are provided by Nasdaq's ACT service.

[16] The NASD has not yet resolved how to compare and report trades between an ADF market participant and a Nasdaq market participant that has access to Nasdaq's ACT service. The NASD is engaged in discussions with DTCC about the possibility of DTCC continuing its existing trade comparison service for over-the-counter equity securities to provide for those intermarket trades.

time need to compare trades in Nasdaq or CQS securities that are effected otherwise than on an exchange and are not subject to QSR agreements that result in direct submission to DTCC.

*Rules 4633(c) and 6420(b) Which Party Reports a Transaction:* The proposed rule change adopts what the NASD understands to be the current Nasdaq approach to trade reporting. In its exchange application rule proposal, Nasdaq provides that the seller reports trades between market makers, the market maker reports trades between it and a customer, and an ECN reports only those trades where it is deemed to be the liquidity provider. The NASD's current best understanding is that Nasdaq has decided that the seller, rather than the liquidity provider, should report transactions between two market makers or ECNs.[17]

*Rule 5100 Short Sale Rule and Rule 4612 Primary Market Maker Standards:* The proposed rule change would amend the short sale rule and its accompanying interpretation to make them applicable to trading in Nasdaq-listed issues otherwise than on an exchange (including through the ADF), rather than Nasdaq. The rule proposal would renumber the rule and interpretation as Rule 5100 and IM–5100–1, respectively.

The proposed rule change would establish a different bid on which to base the applicability of the short sale rule. The existing rule prohibits members from effecting short sales in Nasdaq National Market securities at or below the best bid, when the current best bid as displayed in the Nasdaq Stock Market is below the preceding best bid in that security. The proposed amendment would substitute the national best (inside) bid for the Nasdaq best bid as the basis for determining when the rule applies. Although a best (inside) bid would be calculated for the ADF, the NASD believes that for the purposes of the short sale rule, the national best (inside) bid would be more reflective of market-wide trading in a security and therefore would better further the purposes of the rule.

Aside from the changes noted above, the NASD intends to have a short sale rule that mirrors Nasdaq's short sale rule. The rule proposal represents NASD's best understanding as to the content of Nasdaq's short sale rule. The existing Nasdaq rule provides an exemption from the rule for a ''qualified market maker'' engaged in bona fide market making activity. The existing rule—and Nasdaq's proposed rule filing in connection with its exchange registration—defines ''qualified market maker'' as a registered market maker that meets the requirement set forth in Rule 4612 to be deemed a Primary Market Maker. The proposed rule change would eliminate the ''qualified market maker'' and ''Primary Market Maker'' standards, and consequently delete Rule 4612. The existing Primary Market Maker Standards rule has been suspended since implementation of the SEC's Order Handling Rules in early 1997. In the event that Nasdaq makes the current Primary Market Maker Standard rule—or an amended rule—effective, the NASD would amend its rules accordingly. Until then, the NASD intends to have a short sale rule that reflects the current exemption for registered market makers engaged in bona fide market making activity.

*Rule 5200 Trading Halts:* Proposed Rule 5200 would provide NASD with authority to halt trading otherwise than on an exchange in securities quoted (*i.e.,* listed securities) through the ADF. The rule proposal also would provide NASD with the authority to halt trading in non-exchange-listed foreign securities that trade in a quotation medium other than a national securities exchange or through the ADF.

As under current NASD rules, trading halts require NASD members to cease effecting trades as agent or principal, but do not preclude customer-to-customer trades. For ADF-eligible securities, the proposed rule would mandate a trade halt when another market halts trading in a security for regulatory reasons and would give the NASD discretionary authority to halt trading when another market halts trading for operational reasons. Any trading halt initiated by the NASD would become effective simultaneously with notification via an administrative message sent through the ADF terminal or interface. Trading similarly would resume after an administrative notice has been issued.

Specifically, the proposed rule would require that the NASD halt trading through the ADF of a security listed on a national securities exchange whenever a market eligible to trade that security imposes a trading halt, or suspends a listing, for one of the following reasons: (1) To permit dissemination of material news; (2) to obtain information from the issuer related to material news; (3) to obtain information related to an issuer's ability to meet listing qualifications; or (4) to obtain other information that is necessary to protect investors and the public interest. The proposed rule change would further require the NASD to halt trading through the ADF in an American Depository Receipt (''ADR''), if that security is listed on a national securities exchange or foreign securities exchange, and one of those exchanges, or an overseeing regulatory authority, halts trading in the security. Finally, the rule would require the NASD to halt trading through the ADF whenever that system is unable to transmit real-time quotation or trade reporting information to the applicable SIP, or whenever a market-wide trading halt is in effect under circuit breaker rules of a primary exchange.

Since the proposed trading halt rules do not differentiate between Nasdaq and other exchange-listed securities, there no longer is a need for the separate trading halt provisions of existing Rule 6430, which apply only to those securities eligible for trading and reporting to the Consolidated Tape, as described in Rule 6400. Accordingly, Rule 6430 would be deleted and its provisions would be absorbed in Rule 5200, including the obligation of members to notify the NASD whenever they have knowledge of information related to a security or issuer that has not been adequately disclosed to the public.

The rule proposal would grant discretionary authority to the NASD to halt trading otherwise than on an exchange by its members through the ADF whenever another national securities exchange halts trading in a security for operational reasons, defined as an order imbalance or influx. Similar discretionary authority would extend to circumstances where a security traded through the ADF is a derivative or component of a security that has been halted by a national securities exchange. In the event that NASD chooses not to halt trading under the aforementioned discretionary circumstances, market participants could continue to trade through the ADF and would be required to meet all applicable trade reporting requirements.

With respect to non-exchange-listed foreign securities, which do not trade through the ADF but only over-the-counter, the proposed rule allows the NASD to impose halts for over-the-counter trading in conjunction with regulatory halts imposed by foreign regulatory authorities because of potential fraudulent conduct. The proposal would not give the NASD authority to impose a trading and quotation halt if the foreign regulatory halt was imposed solely for the dissemination of material news, a regulatory filing deficiency, or operational reasons. Currently, the NASD has no authority to impose

[17] Securities Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 (June 13, 2001) (File No. 10–131). *But see* note 10, *supra.*

trading and quotation halts in securities that are quoted and traded in other quotation media, such as the National Quotation Bureau's Pink Sheets. This proposed rule would grant such authority with respect to foreign securities in circumstances in which it is necessary to protect investors and the public interest.

*Rule 4619 Withdrawal of Quotations and Passive Market Making:* The proposed rule change eliminates a condition in existing Rule 4619(b)(3) for a market maker seeking excused withdrawal status based on vacation. Under the current rule, excused withdrawal status may only be granted to a market maker that has three or fewer Nasdaq Level 3 terminals. The proposal does not replicate that requirement for ADF market makers because the ADF will not operate as a primary market. As such, the absence of a market maker with more than three ADF terminals would not have a significant impact on the liquidity in those securities in which it makes a market.

*Rules 4614 and 4624 Stabilizing Bids and Penalty Bids:* The proposed rule change would delete existing Rules 4614 and 4624 relating to stabilizing and penalty bids. These rules allow a market maker—usually the underwriter of a securities offering—to enter these special bids in connection with a distribution of securities under Rules 101 and 104 of SEC Regulation M. The NASD believes such activity should occur on the market listing the issue and thus proposes to delete these rules.

*Obligations When Quoting in Multiple Market Centers:* Existing Rule 2320(g)(2) requires members that display quotations for non-Nasdaq securities in two or more quotation mediums to post the same priced quotations in each medium. To reflect Nasdaq's registration as an exchange, the proposed rule change would amend the language of that provision to apply to ''non-exchange-listed'' securities. At the same time, the rule proposal would add a similar obligation for members that display quotations for Nasdaq and CQS securities in two or more market centers, including the ADF. The obligations for members quoting Nasdaq and CQS securities are found in proposed Rules 4613(e)(1) and 6330(f), respectively. Note that the proposed rules do not prohibit displaying different size quotations in two or more mediums or market centers, provided that the price displayed is the same.

*Obligation To Have Quotations From Other Market Centers in Close Proximity:* Proposed Rule 4613(e)(2) would require a registered NASD market maker to have in close proximity to the ADF terminal or interface at which it makes a market in a Nasdaq security, a quotation service that disseminates quotations in that security on behalf of national securities exchanges and other market centers. A similar rule, Rule 6330(c), currently exists with respect to CQS market makers. As with the CQS rule, it is the NASD's intention for the quotations displayed in the ADF terminals or interfaces to function as a verification mechanism whereby ADF market participants can monitor their current ADF quotations and ensure that the NASD is timely updating and disseminating their quotations. The NASD would not disseminate to ADF market participants any consolidated quotation or trade data in a security from securities exchanges and market centers. To ensure that ADF participants have the data necessary to make sound order routing decisions and to satisfy the Vendor Display Rule,[18] the NASD would require ADF market participants to obtain from vendors dynamic quotations and last-sale information on the securities they trade through the ADF, and to display this data in close proximity to the ADF data displayed on their terminals—just as is currently required by Nasdaq of CQS market makers in Rule 6330(c).[19]

A requirement to disseminate consolidated quotation and trade data from securities exchanges and other market centers would result in significantly increased costs to build the ADF because it would necessitate substantially greater capacity and would require a more complex technical design of the ADF terminals and user interfaces to allow for receipt of that information.

*Rule 4620 Voluntary Termination of Registration:* The proposal contains a new provision related to voluntary termination as an NASD market maker. Proposed Rule 4620 provides that registration as a market maker in a security is voluntarily terminated where the market maker (1) withdraws its quotations from the ADF and does not re-enter quotations in the security for five minutes or (2) fails to re-enter quotations within 30 minutes of the end of a trading halt. In either circumstance, a market maker would be prohibited from re-registering as a market maker in that security for twenty (20) business days, unless the market maker meets the conditions for excused withdrawal specified in Rule 4619.

*Rules 6350(a) and 6520(e) Obligations of CQS and ITS Market Makers Related to Pre-Opening Applications:* The proposed rule change contains new obligations on registered CQS and ITS market makers that participate in the pre-opening application process. Proposed Rule 6350(a) (CQS) and Rule 6520(e) (ITS) would provide that a registered market maker that participates in the pre-opening application process and does not enter and maintain two-sided quotations in the security on that same trading day may not re-register to participate as a market maker in that security for twenty (20) business days, unless the market maker is granted an excused withdrawal from the NASD.

*Rule 6500 Intermarket Trading System:* The proposed rule change reflects the NASD's anticipated participation in the ITS through the ADF. In many respects, the NASD anticipates participating in ITS in a manner similar to Nasdaq's current participation in ITS. However, the ITS rules have been amended in the proposal to reflect that the ADF will not use Nasdaq's Computer Assisted Execution System (''CAES'') to effect ITS trades. As such, the proposed rule change deletes all references to ''CAES'' in the ITS rules and elsewhere. In addition, the proposal refers to market makers and ECNs participating in ITS as ITS/ADF market makers.

The rule proposal would renumber and move the ITS rules to the 6500 Series. Furthermore, unlike Nasdaq, NASD market participants that register to enter quotations in CQS securities would not be obligated to participate in ITS. Participation in ITS, with the associated obligations such as compliance with the trade-through rule and the market probing requirement, would be completely voluntary. If a market participant determines to participate in ITS, then it must abide by all rules applicable to ITS, including the trade-through rule and the market probing requirement. Also, the NASD would not provide an intra-market order routing system such as CAES. Accordingly, market participants would be responsible under Rule 4300 to establish links to facilitate execution of CQS securities in the intra-market and, in the case of non-ITS participants, direct or indirect linkages to the exchanges.

The quote access requirements of proposed Rule 4300 would not extend to intermarket access for trading Nasdaq securities. Unlike for CQS securities, the Commission has not mandated an intermarket linkage like ITS for Nasdaq securities. Moreover, intermarket

[18] *See* Rule 11Ac1–1 under the Act. 17 CFR 240.11Ac1–1.

[19] Concurrent with this filing, the NASD plans to request an exemption from the Vendor Display Rule, as Nasdaq did with its similar CQS rule.

linkage for trading Nasdaq securities is fundamentally a multilateral, intermarket structural issue. Accordingly, the NASD does not believe it appropriate for the NASD to unilaterally impose such an intermarket linkage obligation. Rather, the NASD would propose—as is the case today—that members of another market that desire to access an ADF market participant's quotes in Nasdaq securities establish an execution arrangement with that ADF market participant or, alternatively, become a member of the NASD.

Additionally, the proposed rule change would add the option of a 30-second commitment to trade period for ITS/ADF Market Makers. This option is permitted under an ongoing ITS Plan pilot program, and the NASD believes it would benefit our member participants.

*Fees and Assessments:* The proposed rule change does not include any proposed fees or assessments specifically related to the ADF. Existing fees and assessments, including the gross assessment and Section 8 fees, would continue to apply to NASD members. Any specific fees or assessments with respect to the ADF would be the subject of a future rule filing.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[20] which requires a national securities association to have rules that prevent fraudulent and manipulative acts, promote just and equitable principles of trade, foster cooperation and coordination among persons engaged in regulating, clearing, settling, processing information and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, this rule proposal is consistent with Section 15A(b)(6) because it does not permit unfair discrimination between customers, issuers, brokers, or dealers, fix minimum profits, impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by members, or regulate matters not related to the purposes of the Act or the administration of the Association.

Moreover, in the SuperMontage Order,[21] the SEC required the NASD to create a facility that ''permits NASD members to comply with their obligations under Commission and NASD rules (including Exchange Act Rule 11Ac1–1(c)(5) and Regulation ATS) without participating in the Nasdaq execution facility. The facility will identify through the central processor the identity of the NASD member that is the source of each quote,'' as is required by Exchange Act Rule 11Ac1–1(b)(1)(ii).[22] Furthermore, the Commission stated that ''[t]he facility will provide a market neutral linkage to the Nasdaq and other marketplaces, but not an execution service.'' The NASD believes that the proposed rule change fulfills the obligations specified by the Commission in the SuperMontage Order. In particular, the NASD believes that this proposal would provide a market neutral linkage by requiring market participants to link, either directly or indirectly, to all those seeking access to the market participants' quotations as required in proposed Rule 4300.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The NASD does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were not solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The NASD has requested that the proposed rule change become effective upon the later of Commission approval or the effectiveness of Nasdaq's Exchange Registration.[23] The NASD has waived the requirement that the Commission either approve the proposed rule change, or institute disapproval proceedings, within thirty-five days of publication of the proposed rule change in the **Federal Register**.[24]

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal, as amended, is consistent with the Act. In particular, the Commission solicits comment on whether the proposed rules are sufficient to meet the NASD's obligations under Sections 15A(b)(11)[25] and 11A(c)(1)[26] of the Act with respect to the over-the-counter market, including providing NASD market makers and ECNs with the ability to comply with their obligations under the Commission's Order Handling Rules and Regulation ATS.[27]

In addition, in Rule 4300 the NASD proposes certain quote and order access obligations. The Commission requests comment on whether this rule will provide potential users with adequate access to quotations displayed through the ADF and will allow the NASD to effectively enforce its access requirements. In particular, the Commission requests comment on what it means to make indirect electronic access ''readily available'' (*see* proposed Rule 4300(a)(2)).

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

[20] 15 U.S.C. 78*o*–3(b)(6).

[21] Securities Exchange Act Release No. 43863 (Jan. 19, 2001), 66 FR 8020 (Jan. 26, 2001).

[22] 17 CFR 240.11Ac1–1(b)(1)(ii).

[23] The proposed effective date is based upon NASD's assumption that Nasdaq's exchange registration will be approved before SuperMontage launches. If that turns out not to be the case, the NASD would have to revisit the effective date of the proposed rule change, including whether the rules related to the ADF should become effective at a different time from the rules resulting from Nasdaq separation.

[24] *See* Amendment No. 1, *supra* note 3.

[25] 15 U.S.C. 78*o*-3(b)(11).

[26] 15 U.S.C. 78k-1(c)(1); *See also* Section 11A(c)(3)(A) of the Act.

[27] *See* Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) (Order Handling Rules); Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998) (Regulation ATS).

the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR–NASD–2001–90 and should be submitted by January 21, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–31481 Filed 12–21–01; 8:45 am]

BILLING CODE 8010–01–P

[28] 17 CFR 200.30–3(a)(12).

Federal Register

Thursday,
January 3, 2002

# Part III

# Department of Commerce

## Bureau of Export Administration

**15 CFR Parts 743, 752, et al.**

**Implementation of the Wassenaar Arrangement List of Dual-Use Items: Revisions to Categories 1, 2, 3, 4, 5, 6, 7 and 9 of the Commerce Control List and Revisions to Reporting Requirements; Final Rule**

**DEPARTMENT OF COMMERCE**

**Bureau of Export Administration**

**15 CFR Parts 743, 752, 772 and 774**

**[Docket No. 011026261–1261–01]**

**RIN 0694–AC44**

## Implementation of the Wassenaar Arrangement List of Dual-Use Items: Revisions to Categories 1, 2, 3, 4, 5, 6, 7 and 9 of the Commerce Control List and Revisions to Reporting Requirements

**AGENCY:** Bureau of Export Administration, Commerce

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Export Administration (BXA) maintains the Commerce Control List (CCL), which identifies items subject to Department of Commerce export controls. This final rule revises certain entries controlled for national security reasons in Categories 1, 2, 3, 4, 5 Part I (telecommunications), 6, 7 and 9 to conform with changes in the List of Dual-Use Goods and Technologies maintained and agreed to by governments participating in the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement). The Wassenaar Arrangement controls strategic items with the objective of improving regional and international security and stability.

The purpose of this final rule is to make the necessary changes to the Commerce Control List to implement revisions to the Wassenaar List that were agreed upon in the December 1, 2000 meeting and to make necessary revisions to reporting requirements. The majority of the changes that affected Category 4 items will be published in a separate rule.

**DATES:** This rule is effective January 3, 2002.

**FOR FURTHER INFORMATION CONTACT:** Tanya Hodge Mottley in the Office of Strategic Trade and Foreign Policy Controls, Bureau of Export Administration, U.S. Department of Commerce at (202) 482–1837.

**SUPPLEMENTARY INFORMATION:**

### Background

In July 1996, the United States and thirty-two other countries gave final approval to the establishment of a new multilateral export control arrangement, called the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement). The Wassenaar Arrangement contributes to regional and international security and stability by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilizing accumulations of such items. Participating states have committed to exchange information on exports of dual-use goods and technologies to non-participating states for the purposes of enhancing transparency and assisting in developing common understandings of the risks associated with the transfers of these items.

This final rule revises a number of national security controlled entries on the Commerce Control List (CCL) to conform with December 1, 2000 revisions to the Wassenaar List of Dual-Use Goods and Technologies. This rule also revises language to provide a complete or more accurate description of controls. A detailed description of the revisions to the CCL is provided below.

Specifically, this rule makes the following amendments to the Commerce Control List:

### Category 1—Materials, Chemicals, Microorganisms, and Toxins

1A002—amended by:

(1) Moving the exception contained in the NS control language for finished or semifinished items specially designed for civilian applications to two separate notes under paragraphs a. and b. of this entry. This revision clarifies that this entry does not control finished or semifinished items specially designed for purely civilian applications, as follows: sporting goods, automotive industry, machine tool industry, and medical applications; and

(2) Correcting a typographical error in note 2 of the Related Controls paragraph of this entry.

1B002—amended by:

(1) Clarifying that the equipment described by this entry is used for producing the highest performance ductile metal alloys in the entry heading; and

(2) Replacing the reference to controlled materials with a reference to the critical processes listed in 1C002.c.2. in the entry heading.

1C002—amended by:

(1) Reformatting the entry to specify the types of materials controlled (material in solid forms and powders/particulates suitable for making them). Specifically, each subparagraph has been revised to identify the main classes of controlled material, as follows:

(i) 1C002.a for aluminides;

(ii) 1C002.b for alloys made by powder metallurgy techniques;

(iii) 1C002.c for alloy powders suitable for re-melting to make controlled alloys; and

(iv) 1C002.d for material that has been refined to the correct composition for controlled alloys, which needs only to be mechanically reduced to powder in order to be suitable for re-melting to make controlled alloys; and

(2) Moving the Technical Notes that were after a.2.e to the beginning of the List of Items Controlled for this entry.

1C007—amended by:

(1) Clarifying that ceramic-ceramic ''composite'' materials are controlled when made from the listed ''materials'' instead of ''systems'' in paragraph (c);

(2) Clarifies that all the parameters in paragraph (c) must be met for the item to be subject to control; and

(3) Reformatting paragraph (c) to be consistent with the Wassenaar Information System.

### Category 2—Material Processing

2A001—amended by revising the tolerance standards for ball bearings and solid roller bearings described in 2A001.a and 2A002.b. These tolerance standards are revised to add greater precision. Specifically, in 2A001.a, the following standards ''ABEC 7, ABEC 7P, ABEC 7T or ISO Standard Class 4, or national equivalents, or better'' are revised to read ''ISO Tolerance Class 4 (or ANSI/ABMA Std 20 Tolerance Class ABEC–7 or RBEC–7, or other national equivalents), or better''. In 2A001.b, the following standards ''ABEC 9, ABEC 9P or ISO Standard Class 2, or national equivalents'' are revised to read ''ISO 492 Tolerance Class 2 (or ANSI/ABMA Std 20 Tolerance Class ABEC–9 or RBEC–9, or other national equivalents), or better''.

Technical Notes to Category 2 B—amended by:

(1) Redesignating technical notes 2 through 5 as technical notes 3 though 6; and

(2) Adding a new technical note 2 to clarify the meaning of the term ''contouring control''.

2B001—amended by:

(1) Adding two notes to decontrol special purpose machine tools that produce certain type parts. Specifically, Note 1 specifies that 2B001 does not control special purpose machine tools limited to the manufacture of gears. Note 2 specifies that 2B001 does not control special purpose machine tools limited to the manufacture of crank shafts or cam shafts, tools or cutters, extruder worms, or engraving or facetted jewelry parts;

(2) Adding a new national security control for fly cutting machine tools, as described by 2B001.b.4. This new

control introduces new parameters for the control of fly cutting machines, such as a spindle run-out and angular deviation of slide movement (2B001.b.4); and

(3) Adding clarifying text to paragraph (e), machine tools for removing metals, ceramics or ''composites'', to be consistent with the Wassenaar Information System.

2B008—amended by:

(1) Removing the reference to the term ''inserts'' in the entry heading. The term ''inserts'' has been removed because no inserts are contained in the List of Items Controlled;

(2) Replacing the phrase ''for equipment controlled by 2B006 or 2B007'' with the phrase ''dimensional inspection or measuring systems and equipment'' in the entry heading. The phrase referencing equipment controlled by 2B007 has been removed because the items listed in 2B008 are not key elements of robots controlled by 2B007; and

(3) Replacing the reference to 2B006 with the phrase ''dimensional inspection or measuring systems and equipment'' in the entry heading, in order to reduce the number of unnecessary cross-references to other entries.

2D002—amended by removing controls for ''real-time processing'' of data to modify tool path, feed rate and spindle data, during machining operation, by deleting 2D002.b. No such software currently is available. The parameters set forth in 2D002.a have been included in the entry heading and the List of Items Controlled has been removed.

2E003—Materials Processing Table for Deposition Techniques—Notes—amended by revising Note 17 to the Table by removing the exclusion from control for technology specially designed to deposit diamond like carbon on polycarbonate eyeglasses, bakery equipment and high quality lenses designed for cameras or telescopes.

**Category 3—Electronics**

3A001—amended by revising the following subparagraphs:

3A001.a.3.c—amended by clarifying that the control for this subparagraph applies only to the capability of processors directly interconnected with each other and by relaxing controls on the external interconnect transfer rate from 2.5 Mbytes/s to 150 Mbyte/s.

3A001.a.5.a.1—amended by relaxing controls for analog-to-digital converters by lowering the conversion time from 10 ns to 5 ns.

3A001.a.10—amended by:

(1) Relaxing controls for custom integrated circuits by increasing the control threshold on the number of terminals from 208 to 1,000 (3A001.a.10.a); and

(2) Decreasing the control threshold for basic gate propagation delay time from 0.35 ns to 0.1 ns (3A001.a.10.b).

3A001.a.12—amended by:

(1) Modifying the subparagraph to reflect advancements in Fast Fourier Transform (FFT) processors. The formula for determining the control parameters for FFT processors has been modified. This modification relaxes controls over the execution time from 1 millisecond to 500 microseconds for a 1024 point complex FFT; and

(2) Deleting the control parameter for butterfly throughput, because it is a software algorithm and does not describe performance levels of currently produced FFT processors.

3A001.b.1, b.2 and b.8—amended by revising the decontrol notes in these subparagraphs to clarify that bands within the frequency range between 0 to 31 GHz are not subject to national security controls.

3A001.b.1.a.1—amended by revising the phrase ''higher than 31 GHz'' to read ''exceeding 31 GHz''.

3A001.b.1.a.3—amended by replacing the term ''instantaneous bandwidth'' with ''fractional bandwidth''. The term ''fractional bandwidth'' more accurately reflects the appropriate control for this entry.

3A001.b.2—amended by:

(1) Adding the phrase ''having one or more active elements'' to further define the control of microwave integrated circuits and modules (3A001.b.2.a); and

(2) Adding a new decontrol note for certain satellite broadcast equipment.

3A002.b—amended by revising the phrase ''assemblies'' to read ''electronic assemblies'', to be consistent with the Wassenaar Arrangement.

3A002.c.2—amended by:

(1) Modifying controls for dynamic signal analyzers by increasing the control parameter for real-time bandwidth from 25.6 kHz to 500 kHz; and

(2) Moving the text of the technical note under paragraph c. (Constant percentage bandwidth filters are also known as octave or fractional octave filters) to the ''Related Definitions'' paragraph for the entry.

3A991—amended by:

(1) Adding a new parameter in paragraph (a) related to external interconnection for ''Microprocessor microcircuits'', ''microcomputer microcircuits'', and microcontroller microcircuits;

(2) Adding a new paragraph (c) to include analog-to-digital converters having a resolution of 8 bit or more, but less than 12 bit, with a total conversion time of less than 10 ns;

(3) Adding a new paragraph (e) to include Fast Fourier Transform (FFT) processors having a rated execution time for a 1,024 point complex FFT of less than 1 ms; and

(4) Redesignating paragraph (c) as paragraph (d), and paragraphs (d) through (l) as paragraphs (f) through (n).

3B002—amended by:

(1) Adding to the heading the phrase ''as follows (see List of Items Controlled)'';

(2) Modifying the note to 3B002.b to clarify that equipment to test memories are not controlled by 3B002.b; and

(3) Revising the phrase ''assemblies'' to read ''electronic assemblies'' to be consistent with the Wassenaar Arrangement.

3B991—amended by revising the phrase ''assemblies'' to read ''electronic assemblies'' in paragraph 3B991.b.

3B992—amended by revising the phrase ''assemblies'' to read ''electronic assemblies'' in paragraphs 3B992.b, 3B992.b.4.b, and in Note 1 to 3B992.b.4.b.

3C001—amended by:

(1) Adding silicon carbide to the list of controlled hetero-epitaxtial materials. Like silicon and germanium, silicon carbide is a Group IV material capable of producing strategic items (3C001.c); and

(2) Adding a note to clarify that equipment or material whose functionality has been unalterably disabled are not controlled by 3C001.

3D003—amended by modifying the control language to clarify the intent of computer-aided-design (CAD) software controls in order to remove any ambiguities in interpretation whether CAD software supplied without design rule libraries are subject to control under 3D003. Exports of CAD software with or without design rule libraries are both subject to national security controls.

3E001—amended by moving the Notes in the Related Controls paragraph to the List of Items Controlled to be consistent with the Wassenaar List.

3E002 and 3E003—amended by:

(1) Redesignating 3E002.a through 3E002.f as new ECCN 3E003;

(2) In the new ECCN 3E003, expanding eligibility under License Exception TSR to include silicon-on-insulator (SOI) technology as described in the new 3E003.e;

(3) Adding a Note to describe what 3E002 does not control to the List of Items Controlled in 3E002; and

(4) Redesignating 3E002.g as new ECCN 3E002.

**Category 4—Computers**

4D003—amended by removing national security controls for expert system software as described by 4D003.b.

**Category 5—Telecommunications, Part I**

5D001—amended by removing national security controls for software which provides the capability of recovering ''source code'' of telecommunications ''software'' controlled by 5D001 (5D001.c).

5E001—amended by adding a decontrol note to 5E001.c.4.b specifying that this entry does not control ''technology'' for the ''development'' or ''production'' of equipment designed or modified for operation in any frequency band which is ''allocated by the ITU'' for radio-communications services, but not for radio-determination.

**Category 6—Sensors and Lasers**

6A003—amended by:

(1) Revising the controls on instrumentation cameras specified in 6A003.a to include specially designed components therefor and by revising the note to 6A003.a to replace the term ''electronic assemblies'' with ''plug-ins''. This change is necessary to make the controls for instrumental cameras more complete, as plug-in modules are specially designed components of controlled cameras. Complementing this revision to 6A003.a, a new subparagraph 6A003.a.6 has been added to describe the control parameters for ''plug-ins''. In addition, License Exception LVS has been modified to exclude the new control for 6A003.a.6 ''plug-ins'' from eligibility; and

(2) Adding a new technical note to 6A003.b.1 to clarify that digital video cameras should be evaluated by the maximum number of ''active pixels'' used for capturing moving images.

6A005—amended by:

(1) Removing the phrase ''or CW'' from the control parameter for excimer lasers and metal vapor lasers, as described in 6A005.a.1 and 6A005.a.2. The deletion of the term ''CW'' from these subparagraphs more accurately describes the technical nature of control, as both excimer and metal vapor lasers are not physically capable of working the CW mode;

(2) Revising the control text for semiconductor lasers described by 6A005.b. Previously in 6A005.b.2, individual multiple-transverse mode semiconductor lasers and individual arrays of individual semiconductor lasers were controlled using the same threshold. However, since the output power of an array of semiconductor laser is greater than that of an individual semiconductor lasers it should be subject to a different control threshold. Therefore, a new subparagraph 6A005.b.3 has been added describing the control threshold for individual arrays of individual semiconductor lasers.

6A995—amended by correcting an abbreviation for a parameter for semiconductor lasers in b.1.a by revising ''MW'' to read ''mW'.

6C002—amended by revising 6C002.b to adopt the term ''percent by mole fraction'' rather than the term ''percent by weight'' for the control of zinc in cadmium zinc telluride (CdZnTe) substrates. The previous control language in 6C002.b incorrectly referred to the zinc percentage by weight. The formula for CdZnTe is an atomic formula which specifies the number of atoms of each constituent. Therefore, specifying the zinc percentage in terms of mole fraction percentage correctly relates the concentration of zinc to the concentration of cadmium in CdZnTe. In addition, a technical note is added to paragraph 6C002.b to define ''mole fraction''. Also, in 6C002.b text is added to clarify that Single crystals includes epitaxial wafers.

6C992—amended by revising the heading to adopt the term ''percent by mole fraction'' rather than the term ''percent by weight'' and adding the definition of ''mole fraction'' to the Related Definitions paragraph, to conform with changes to ECCN 6C002.

**Category 7—Avionics**

7A001—amended by:

(1) Revising the entry heading to limit control of this entry to certain linear accelerometers, rather than a broad category of accelerometers; and

(2) Adding a reference specifying that angular or rotational accelerometers are controlled under 7A002 in the Related Controls section.

7A002—amended by:

(1) Revising the entry heading to control certain angular or rotational accelerometers. Previously, accelerometers were controlled under 7A001; and

(2) Adding a reference specifying that linear accelerometers are controlled under 7A001 to the Related Controls section.

**Category 9—Propulsion Systems, Space Vehicles and Related Equipment**

9B001—amended by:

(1) Revising the entry heading to remove the phrase ''or measuring''. In 1999, the subparagraph that specifically referenced measuring equipment was deleted; and

(2) Removing the corresponding reference in the entry heading.

9E003—amended by:

(1) Removing the control for ''overhaul'' technology for gas turbine engine components or systems described in 9E003.a; and

(2) Revising the phrase ''of the following commercial aircraft engines, components or systems'' to read ''of any of the following gas turbine engine components or systems'' to more accurately describe the controls of paragraph a.

*Reformatting and conforming revisions to the structure of the entries on the CCL* This final rule makes a number of reformatting revisions to the CCL in order to conform certain entries and subparagraphs to the new Wassenaar Automated Information System (WAIS). These conforming revisions do not affect or change the scope of control, but merely provide standard consistency in structure within the CCL. Specific revisions on the CCL include: ECCNs 2B001.b.1, 2B001.c.1, 2B001.e, 2B001.e.1, 9E003.d and 9E003.e.

Items placed under control by this rule will be subject to both national security (NS) and antiterrorism (AT) controls. These actions are taken in consultation with the Departments of State and Defense and pursuant to agreements reached in the Wassenaar Arrangement.

All items removed from national security (NS) controls as a result of changes to the Wassenaar List of Dual-Use Goods and Technologies will continue to be controlled for antiterrorism (AT) reasons.

This final rule also revises the reporting and recordkeeping provisions of the Wassenaar Arrangement in § 743.1 by requiring reports for exports of sensitive list items made under the Special Comprehensive License Procedure. Conforming revisions are also made to the recordkeeping provisions in § 752.12. Extending Wassenaar Arrangement reporting requirements to the Special Comprehensive Licensing Procedure is necessary in order for the U.S. to fulfill its obligations in complying with the objectives of the regime.

This final rule also amends part 772 by adding two new definitions to § 772.1, they are ''Allocated by the ITU'' and ''Fractional bandwidth.'' These definitions are added pursuant to agreements reached in the Wassenaar Arrangement.

Although the Export Administration Act expired on August 20, 2001, the

President, through Executive Order 13222 of August 17, 2001 (66 Fed. Reg. 44025 (August 22, 2001)), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

**Saving Clause**

Shipments of items removed from eligibility for export or reexport without a license, under a particular License Exception authorization or the designator NLR, as a result of this regulatory action, may continue to be exported or reexported under that License Exception authorization or designator until February 4, 2002. In addition, this rule revises the numbering and structure of certain entries on the Commerce Control List. For items under such entries and for April 3, 2002, BXA will accept license applications for items described either by the entries in effect immediately before January 3, 2002 or the entries described in this rule.

**Rulemaking Requirements**

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of 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 requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) These collections has been approved by the Office of Management and Budget under control numbers 0694–0106, ''Reporting and Recordkeeping Requirements under the Wassenaar Arrangement,'' which carries a burden hour estimate of 5 minutes to record the information for each export and 1 minute to submit the report twice a year to BXA; and 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 40 minutes to prepare and submit electronically and 45 minutes to submit manually on form BXA–748P. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to the Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044

3. This rule does not contain policies with Federalism implications as this term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

**List of Subjects**

*15 CFR Parts 743 and 752*

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

*15 CFR Part 772*

Exports, Foreign trade.

*15 CFR Part 774*

Exports, Foreign Trade, Reporting and recordkeeping requirements.

Accordingly, parts 743, 752, 772 and 774 of the Export Administration Regulations (15 CFR parts 730 through 799) are amended as follows:

1. The authority citation for part 743 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq;* Pub.L. 106–508; 50 U.S.C. 1701 *et seq;* E.O. 13206, 66 FR 18397, April 9, 2001.

2. The authority citation for parts 752 and 772 are revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13222, 66 FR 44025, August 22, 2001.

3. The authority citation for part 774 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, August 22, 2001.

## PART 743—[AMENDED]

4. Section 743.1 is amended by adding a note immediately following paragraph (a) and by revising paragraph (b) to read as follows:

**§ 743.1 Wassenaar Arrangement.**

(a) * * *

**Note to paragraph (a) of this section:** For purposes of part 743, the term ''you'' has the same meaning as the term ''exporter'', as defined in part 772 of the EAR.

(b) *Requirements.* You must submit two (2) copies of each report required under the provisions of this section and maintain accurate supporting records (see § 762.2(b) of the EAR) for all exports of items specified in paragraph (c) of this section for the following:

(1) *Exports authorized under License Exceptions GBS, CIV, TSR, LVS, CTP and GOV* (see part 740 of the EAR). Note that exports of technology and source code under License Exception TSR to foreign nationals located in the U.S. should not be reported; and

(2) Exports authorized under the Special Comprehensive License procedure (see part 752 of the EAR).

* * * * *

## PART 752—[AMENDED]

5. Section 752.12 is amended by redesignating paragraph (b) as paragraph (c) and by adding a new paragraph (b) to read as follows:

**§ 752.12 Recordkeeping requirements.**

* * * * *

(b) *SCL holder.* The SCL holder is responsible for complying with the special reporting requirements for exports of certain commodities, software and technology under the Wassenaar Arrangement as described in § 743.1 of the EAR.

* * * * *

## PART 772—[AMENDED]

6. Part 772 is amended by adding a new definition ''Allocated by the ITU'' and a new definition ''Fractional bandwidth'' in alphabetical order to § 772.1, to read as follows:

**§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).**

* * * * *

''*Allocated by the ITU*''. (Cat 3 and Cat 5 part 1)—The allocation of frequency bands according to the ITU Radio Regulations (Edition 1998) for primary, permitted and secondary services.

N.B. Additional and alternative allocations are not included.

* * * * *

''*Fractional bandwidth*''. (Cat 3)—The ''instantaneous bandwidth'' divided by

the center frequency, expressed as a percentage.

* * * * *

## PART 774—[AMENDED]

7. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, Microorganisms, and Toxins, Export Control Classification Numbers (ECCNs) are amended:

a. By revising the License Requirements section and the List of Items Controlled section for ECCNs 1A002 and 1C002;

b. By revising the entry heading for ECCN 1B002; and

c. By revising the List of Items Controlled section for ECCN 1C007, to read as follows:

**1A002 ''Composite'' Structures or Laminates, Having Any of the Following (See List of Items Controlled)**

**License Requirements**

*Reason for Control:* NS, NP, AT.

| Control(s) | Country chart |
|---|---|
| NS applies to entire entry .... | NS Column 2. |
| NP applies to 1A002.b.1 in the form of tubes with an inside diameter between 75 mm and 400 mm. | NP Column 1. |
| 1 AT applies to entire entry | AT Column 1. |

*License Requirement Notes:* See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

* * * * *

**List of Items Controlled**

*Unit:* Kilograms.

*Related Controls:* (1) See also 1A202, 9A010, and 9A110. (2) Composite structures that are specially designed for missile application (including specially designed subsystems and components) are controlled by 9A110.

*Related Definitions:* N/A.

*Items:*

a. An organic ''matrix'' and made from materials controlled by 1C010.c, 1C010.d or 1C010.e; or

**Note:** 1A002.a does not control finished or semifinished items specially designed for purely civilian applications as follows:

a. Sporting goods;

b. Automotive industry;

c. Machine tool industry; and

d. Medical applications.

b. A metal or carbon ''matrix'' and made from:

b.1. Carbon ''fibrous or filamentary materials'' with:

b.1.a. A ''specific modulus'' exceeding $10.15 \times 10^6$ m; and

b.1.b. A ''specific tensile strength'' exceeding $17.7 \times 10^4$ m; or

b.2. Materials controlled by 1C010.c.

**Note:** 1A002.b does not control finished or semifinished items specially designed for purely civilian applications as follows:

a. Sporting goods;

b. Automotive industry;

c. Machine tool industry; and

d. Medical applications.

**Technical Notes:** (1) Specific modulus: Young's modulus in pascals, equivalent to $N/m^2$ divided by specific weight in $N/m^3$, measured at a temperature of (296±2) K ((23±2) °C) and a relative humidity of (50±5)%. (2) Specific tensile strength: ultimate tensile strength in pascals, equivalent to $N/m^2$ divided by specific weight in $N/m^3$, measured at a temperature of (296±2) K ((232) °C) and a relative humidity of (50±5)%.

**Note:** 1A002 does not control composite structures or laminates made from epoxy resin impregnated carbon ''fibrous or filamentary materials'' for the repair of aircraft structures of laminates, provided that the size does not exceed one square meter ($1 m^2$).

**1B002 Equipment for Producing Metal Alloys, Metal Alloy Powder or Alloyed Materials, Specially Designed to Avoid Contamination and Specially Designed for Use in One of the Processes Specified in 1C002.c.2**

* * * * *

**1C002 Metal Alloys, Metal Alloy Powder and Alloyed Materials, As Follows (See List of Items Controlled)**

**License Requirements**

*Reason for Control:* NS, NP, AT.

| Control(s) | Country chart |
|---|---|
| NS applies to entire entry .... | NS Column 2. |
| NP applies to 1C002.b.3 or b.4 if they exceed the parameters stated in 1C202. | NP Column 1. |
| AT applies to entire entry .... | AT Column 1. |

* * * * *

**List of Items Controlled**

*Unit:* Kilograms.

*Related Controls:* See also 1C202.

*Related Definition:* N/A.

*Items:*

**Note:** 1C002 does not control metal alloys, metal alloy powder or alloyed materials for coating substrates.

**Technical Note 1:** The metal alloys in 1C002 are those containing a higher percentage by weight of the stated metal than of any other element.

**Technical Note 2:** Stress-rupture life should be measured in accordance with ASTM standard E–139 or national equivalents.

**Technical Note 3:** Low cycle fatigue life should be measured in accordance with ASTM Standard E–606 ''Recommended Practice for Constant-Amplitude Low-Cycle Fatigue Testing'' or national equivalents. Testing should be axial with an average stress ratio equal to 1 and a stress-concentration factor ($K_t$) equal to 1. The average stress is defined as maximum stress minus minimum stress divided by maximum stress.

a. Aluminides, as follows:

a.1. Nickel aluminides containing a minimum of 15 weight percent aluminum, a maximum of 38 weight percent aluminum and at least one additional alloying element;

a.2. Titanium aluminides containing 10 weight percent or more aluminum and at least one additional alloying element;

b. Metal alloys, as follows, made from material controlled by 1C002.c:

b.1. Nickel alloys with:

b.1.a. A stress-rupture life of 10,000 hours or longer at 923 K (650 °C) at a stress of 676 MPa; or

b.1.b. A low cycle fatigue life of 10,000 cycles or more at 823 K (550 °C) at a maximum stress of 1,095 MPa;

b.2. Niobium alloys with:

b.2.a. A stress-rupture life of 10,000 hours or longer at 1,073 K (800 °C) at a stress of 400 MPa; or

b.2.b. A low cycle fatigue life of 10,000 cycles or more at 973 K (700 °C) at a maximum stress of 700 MPa;

b.3. Titanium alloys with:

b.3.a. A stress-rupture life of 10,000 hours or longer at 723 K (450 °C) at a stress of 200 MPa; or

b.3.b. A low cycle fatigue life of 10,000 cycles or more at 723 K (450 °C) at a maximum stress of 400 MPa;

b.4 Aluminum alloys with a tensile strength of:

b.4.a. 240 MPa or more at 473 K (200 °C); or

b.4.b. 415 MPa or more at 298 K (25 °C);

b.5. Magnesium alloys with:

b.5.a. A tensile strength of 345 MPa or more; and

b.5.b. A corrosion rate of less than 1 mm/year in 3% sodium chloride aqueous solution measured in accordance with ASTM standard G–31 or national equivalents;

c. Metal alloy powder or particulate material, having all of the following characteristics:

c.1. Made from any of the following composition systems:

**Technical Note:** X in the following equals one or more alloying elements.

c.1.a. Nickel alloys (Ni-Al-X, Ni-X-Al) qualified for turbine engine parts or components, i.e. with less than 3 non-metallic particles (introduced during the manufacturing process) larger than 100 µ in $10^9$ alloy particles;

c.1.b. Niobium alloys (Nb-Al-X or Nb-X-Al, Nb-Si-X or Nb-X-Si, Nb-Ti-X or Nb-X-Ti);

c.1.c. Titanium alloys (Ti-Al-X or Ti-X-Al);

c.1.d. Aluminum alloys (Al-Mg-X or Al-X-Mg, Al-Zn-X or Al-X-Zn, Al-Fe-X or Al-X-Fe); or

c.1.e. Magnesium alloys (Mg-Al-X or Mg-X-Al); and

c.2. Made in a controlled environment by any of the following processes:

c.2.a. ''Vacuum atomization'';

c.2.b. ''Gas atomization'';

c.2.c. ''Rotary atomization'';

c.2.d. ''Splat quenching'';

c.2.e. ''Melt spinning'' and ''comminution'';

c.2.f. ''Melt extraction'' and ''comminution''; or

c.2.g. ''Mechanical alloying'';

d. Alloyed materials, having all the following characteristics:

d.1. Made from any of the composition systems specified in 1C002.c.1;

d.2. In the form of uncomminuted flakes, ribbons or thin rods; *and*

d.3. Produced in a controlled environment by any of the following:

d.3.a. ''Splat quenching'';

d.3.b. ''Melt spinning''; or

d.3.c. ''Melt extraction''.

* * * * *

**1C007 Ceramic Base Materials, Non-''Composite'' Ceramic Materials, Ceramic-''Matrix'' ''Composite'' Materials and Precursor Materials, As Follows (See List of Items Controlled)**

* * * * *

**List of Items Controlled**

*Unit:* Kilograms.

*Related Controls:* See also 1C107.

*Related Definitions:* N/A.

*Items:*

a. Base materials of single or complex borides of titanium having total metallic impurities, excluding intentional additions, of less than 5,000 ppm, an average particle size equal to or less than 5 μm and no more than 10% of the particles larger than 10 μm;

b. Non-''composite'' ceramic materials in crude or semi-fabricated form, composed of borides of titanium with a density of 98% or more of the theoretical density;

**Note:** 1C007.b does not control abrasives.

c. Ceramic-ceramic ''composite'' materials with a glass or oxide-''matrix'' and reinforced with fibers having all the following:

c.1 Made from any of the following materials:

c.1.a. Si-N;

c.1.b. Si-C;

c.1.c. Si-Al-O-N; or

c.1.d. Si-O-N; and

c.2. Having a ''specific tensile strength'' exceeding 12.7 x $10^3$ m;

d. Ceramic-ceramic ''composite'' materials, with or without a continuous metallic phase, incorporating particles, whiskers or fibers, where carbides or nitrides of silicon, zirconium or boron form the ''matrix'';

e. Precursor materials (i.e., special purpose polymeric or metallo-organic materials) for producing any phase or phases of the materials controlled by 1C007.c, as follows:

e.1. Polydiorganosilanes (for producing silicon carbide);

e.2. Polysilazanes (for producing silicon nitride);

e.3. Polycarbosilazanes (for producing ceramics with silicon, carbon and nitrogen components);

f. Ceramic-ceramic ''composite'' materials with an oxide or glass ''matrix'' reinforced with continuous fibers from any of the following systems:

f.1. $Al_2O_3$; or

f.2. Si-C-N.

**Note:** 1C007.f does not control ''composites'' containing fibers from these systems with a fiber tensile strength of less than 700 MPa at 1,273 K (1,000 °C) or fiber tensile creep resistance of more than 1% creep strain at 100 MPa load and 1,273 K (1,000 °C) for 100 hours.

* * * * *

8. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Numbers (ECCNs) are amended:

a. By revising the List of Items Controlled section for ECCNs 2A001 and 2B001;

b. By adding the entry heading and Notes for Category 2B—Test, Inspection and Production Equipment immediately following ECCN 2A999;

c. By revising the entry heading for ECCN 2B008;

d. By revising the entry heading, the License Requirements section and the List of Items Controlled section for ECCN 2D002; and

e. By revising Note 17 of the Notes to ''Category 2E—Materials Processing Table; Deposition Techniques'', that follows ECCN 2E003, to read as follows:

**2A001 Anti-Friction Bearings and Bearing Systems, As Follows, (See List of Items Controlled) and Components Therefor**

* * * * *

**List of Items Controlled**

*Unit:* $ value.

*Related Controls:* (1) See also 2A991. (2) Quiet running bearings are subject to the export licensing authority of the Department of State, Office of Defense Trade Controls. (See 22 CFR part 121.)

*Related Definitions:* Annular Bearing Engineers Committee (ABEC).

*Items:*

**Note:** 2A001 does not control balls with tolerance specified by the manufacturer in accordance with ISO 3290 as grade 5 or worse.

a. Ball bearings and solid roller bearings having tolerances specified by the manufacturer in accordance with ISO 492 Tolerance Class 4 (or ANSI/ABMA Std 20 Tolerance Class ABEC–7 or RBEC–7, or other national equivalents), or better, and having rings, balls or rollers made from monel or beryllium;

**Note:** 2A001.a does not control tapered roller bearings.

b. Other ball bearings and solid roller bearings having tolerances specified by the manufacturer in accordance with ISO 492 Tolerance Class 2 (or ANSI/ABMA Std 20 Tolerance Class ABEC–9 or RBEC–9, or other national equivalents), or better;

**Note:** 2A001.b does not control tapered roller bearings.

c. Active magnetic bearing systems using any of the following:

c.1. Materials with flux densities of 2.0 T or greater and yield strengths greater than 414 MPa;

c.2. All-electromagnetic 3D homopolar bias designs for actuators; or

c.3. High temperature (450 K (177°C) and above) position sensors.

*B. Test, Inspection and Production Equipment*

Technical Notes for 2B001 to 2B009:

1. Secondary parallel contouring axes, (e.g., the w-axis on horizontal boring mills or a secondary rotary axis the center line of which is parallel to the primary rotary axis) are not counted in the total number of contouring axes. Rotary axes need not rotate over 360o. A rotary axis can be driven by a linear device (e.g., a screw or a rack-and-pinion).

2. The number of axes which can be co-ordinated simultaneously for ''contouring control'' is the number of axes which affect relative movement between any one workpiece and a tool, cutting head or grinding wheel which is cutting or removing material from the workpiece. This does not include any additional axes which affect other relative movement within the machine. Such axes include:

2.a. Wheel-dressing systems in grinding machines;

2.b. Parallel rotary axes designed for mounting of separate workpieces;

2.c. Co-linear rotary axes designed for manipulating the same workpiece by holding it in a chuck from different ends.

3. Axis nomenclature shall be in accordance with International Standard

ISO 841, ''Numerical Control Machines—Axis and Motion Nomenclature''.

4. A''tilting spindle'' is counted as a rotary axis.

5. Guaranteed ''positioning accuracy'' levels instead of individual test protocols may be used for each machine tool model using the agreed ISO test procedure.

6. The positioning accuracy of ''numerically controlled'' machine tools is to be determined and presented in accordance with ISO 230/2 (1988).

**2B001 Machine Tools and Any Combination Thereof, for Removing (or Cutting) Metals, Ceramics or ''Composites'', Which, According to the Manufacturer's Technical Specification, Can Be Equipped With Electronic Devices for ''Numerical Control''**

* * * * *

**List of Items Controlled**

*Unit:* Equipment in number; parts and accessories in $ value.

*Related Controls:* (1.) See also 2B290 and 2B991; (2.) See also 1B101.d for cutting equipment designed or modified for removing prepregs and preforms controlled by 9A110.

*Related Definitions:* N/A.

*Items:*

**Note 1:** 2B001 does not control special purpose machine tools limited to the manufacture of gears. For such machines, see 2B003.

**Note 2:** 2B001 does not control special purpose machine tools limited to the manufacture of any of the following parts:

a. Crank shafts or cam shafts;

b. Tools or cutters;

c. Extruder worms;

d. Engraved or facetted jewellery parts.

a. Machine tools for turning, having all of the following characteristics:

a.1. Positioning accuracy with ''all compensations available'' of less (better) than 6 μm along any linear axis; and

a.2. Two or more axes which can be coordinated simultaneously for ''contouring control'';

**Note:** 2B001.a does not control turning machines specially designed for the production of contact lenses.

b. Machine tools for milling, having any of the following characteristics:

b.1. Having all of the following:

b.1.a. Positioning accuracy with ''all compensations available'' of less (better) than 6 μm along any linear axis; and

b.1.b. Three linear axes plus one rotary axis which can be coordinated simultaneously for ''contouring control'';

b.2. Five or more axes which can be coordinated simultaneously for ''contouring control'';

b.3. A positioning accuracy for jig boring machines, with ''all compensations available'', of less (better) than 4 μm along any linear axis; or

b.4. Fly cutting machines, having all of the following characteristics: b.4.a. Spindle ''run-out'' and ''camming'' less (better) than 0.0004 mm TIR; *and*

b.4.b. Angular deviation of slide movement (yaw, pitch and roll) less (better) than 2 seconds of arc, TIR, over 300 mm of travel.

c. Machine tools for grinding, having any of the following characteristics:

c.1. Having all of the following:

c.1.a. Positioning accuracy with ''all compensations available'' of less (better) than 4 μm along any linear axis; and c.1.b. Three or more axes which can be coordinated simultaneously for ''contouring control''; or

c.2. Five or more axes which can be coordinated simultaneously for ''contouring control'';

**Notes:** 2B001.c does not control grinding machines, as follows:

1. Cylindrical external, internal, and external-internal grinding machines having all the following characteristics:

a. Limited to cylindrical grinding; and

b. Limited to a maximum workpiece capacity of 150 mm outside diameter or length.

2. Machines designed specifically as jig grinders having any of following characteristics:

a. The c-axis is used to maintain the grinding wheel normal to the work surface; or

b. The a-axis is configured to grind barrel cams.

3. Tool or cutter grinding machines limited to the production of tools or cutters.

4. Crank shaft or cam shaft grinding machines.

5. Surface grinders.

d. Electrical discharge machines (EDM) of the non-wire type which have two or more rotary axes which can be coordinated simultaneously for ''contouring control'';

e. Machine tools for removing metals, ceramics or ''composites'' having all of the following characteristics:

e.1. Removing material by means of any of the following:

e.1.a. Water or other liquid jets, including those employing abrasive additives;

e.1.b. Electron beam; or

e.1.c. ''Laser'' beam; and

e.2. Having two or more rotary axes which:

e.2.a. Can be coordinated simultaneously for ''contouring control''; and

e.2.b. Have a positioning accuracy of less (better) than 0.003°;

f. Deep-hole-drilling machines and turning machines modified for deep-hole-drilling, having a maximum depth-of-bore capability exceeding 5,000 mm and specially designed components therefor.

**2B008 Assemblies or Units, Specially Designed for Machine Tools, or Dimensional Inspection or Measuring Systems and Equipment, as Follows (See List of Items Controlled)**

* * * * *

**2D002 ''Software'' for Electronic Devices, Even When Residing in an Electronic Device or System, Enabling Such Devices or Systems to Function as a ''Numerical Control'' Unit, Capable of Coordinating Simultaneously More Than 4 Axes for ''Contouring Control''**

**License Requirements**

*Reason for Control:* NS, NP, AT.

| Control(s) | Country chart |
|---|---|
| NS applies to entire entry .... | NS Column 1. |
| NP applies to entire entry .... | NP Column 1. |
| AT applies to entire entry .... | AT Column 1. |

* * * * *

**List of Items Controlled**

*Unit:* $ value.

*Related Controls:* See also 2D202.

*Related Definitions:* N/A.

*Items:*

**Note:** 2D002 does not control ''software'' specially designed or modified for the operation of machine tools not controlled by Category 2.

The list of items controlled is contained in the ECCN heading.

* * * * *

*Category 2E—Materials Processing Table; Deposition Techniques*

* * * * *

Notes to Table on Deposition Techniques

* * * * *

17. ''Technology'' specially designed to deposit diamond-like carbon on any of the following is not controlled: magnetic disk drives and heads, equipment for the manufacture of disposables valves for faucets, acoustic diaphragms for speakers, engine parts for automobiles, cutting tools, punching-pressing dies, office automation equipment, microphones or medical devices.

* * * * *

9. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Numbers (ECCNS) are amended:

a. By revising the List of Items Controlled section for ECCNs 3A001, 3A002, 3A991, 3B991, 3B992, 3C001, and 3E001;

b. By revising the entry heading and the List of Items Controlled section for ECCNs 3B002 and 3D003;

c. By revising the entire entry for ECCN 3E002; and

d. By adding a new entry for ECCN 3E003, to read as follows:

**3A001 Electronic Components, As Follows (See List of Items Controlled)**

* * * * *

**List of Items Controlled**

*Unit:* Number.

*Related Controls:* See also 3A101, 3A201, and 3A991.

*Related Definitions:* For the purposes of integrated circuits in 3A001.a.1, 5 x $10^3$ Gy(Si) = 5 x $10^5$ Rads (Si); 5 x $10^6$ Gy (Si)/s = 5 x $10^8$ Rads (Si)/s.

*Items:*

a. General purpose integrated circuits, as follows:

**Note 1:** The control status of wafers (finished or unfinished), in which the function has been determined, is to be evaluated against the parameters of 3A001.a.

**Note 2:** Integrated circuits include the following types:

''Monolithic integrated circuits'';

''Hybrid integrated circuits'';

''Multichip integrated circuits'';

''Film type integrated circuits'', including silicon-on-sapphire integrated circuits;

''Optical integrated circuits''.

a.1. Integrated circuits, designed or rated as radiation hardened to withstand any of the following:

a.1.a. A total dose of 5 x $10^3$ Gy (Si), or higher; or

a.1.b. A dose rate upset of 5 x $10^6$ Gy (Si)/s, or higher;

a.2. ''Microprocessor microcircuits'', ''microcomputer microcircuits'', microcontroller microcircuits, storage integrated circuits manufactured from a compound semiconductor, analog-to-digital converters, digital-to-analog converters, electro-optical or ''optical integrated circuits'' designed for ''signal processing'', field programmable logic devices, neural network integrated circuits, custom integrated circuits for which either the function is unknown or the control status of the equipment in which the integrated circuit will be used in unknown, Fast Fourier Transform (FFT) processors, electrical erasable programmable read-only memories (EEPROMs), flash memories or static random-access memories (SRAMs), having any of the following:

a.2.a. Rated for operation at an ambient temperature above 398 K (125 °C);

a.2.b. Rated for operation at an ambient temperature below 218 K (−55 °C); or

a.2.c. Rated for operation over the entire ambient temperature range from 218 K (−55 °C) to 398 K (125 °C);

**Note:** 3A001.a.2 does not apply to integrated circuits for civil automobile or railway train applications.

a.3. ''Microprocessor microcircuits'', ''micro-computer microcircuits'' and microcontroller microcircuits, having any of the following characteristics:

**Note:** 3A001.a.3 includes digital signal processors, digital array processors and digital coprocessors.

a.3.a. A ''composite theoretical performance'' (''CTP'') of 6,500 million theoretical operations per second (MTOPS) or more and an arithmetic logic unit with an access width of 32 bit or more;

a.3.b. Manufactured from a compound semiconductor and operating at a clock frequency exceeding 40 MHz; or

a.3.c. More than one data or instruction bus or serial communication port that provides a direct external interconnection between parallel ''microprocessor microcircuits'' with a transfer rate exceeding 150 Mbyte/s;

a.4. Storage integrated circuits manufactured from a compound semiconductor;

a.5. Analog-to-digital and digital-to-analog converter integrated circuits, as follows:

a.5.a. Analog-to-digital converters having any of the following:

a.5.a.1. A resolution of 8 bit or more, but less than 12 bit, with a total conversion time of less than 5 ns;

a.5.a.2. A resolution of 12 bit with a total conversion time of less than 200 ns; or

a.5.a.3. A resolution of more than 12 bit with a total conversion time of less than 2 μs;

a.5.b. Digital-to-analog converters with a resolution of 12 bit or more, and a ''settling time'' of less than 10 ns;

**Technical Note:**

1. A resolution of n bit corresponds to a quantization of $2^n$ levels.

2. Total conversion time is the inverse of the sample rate.

a.6. Electro-optical and ''optical integrated circuits'' designed for ''signal processing'' having all of the following:

a.6.a. One or more than one internal ''laser'' diode;

a.6.b. One or more than one internal light detecting element; and

a.6.c. Optical waveguides;

a.7. Field programmable logic devices having any of the following:

a.7.a. An equivalent usable gate count of more than 30,000 (2 input gates);

a.7.b. A typical ''basic gate propagation delay time'' of less than 0.4 ns; or

a.7.c. A toggle frequency exceeding 133 MHz;

**Note:** 3A001.a.7 includes: Simple Programmable Logic Devices (SPLDs), Complex Programmable Logic Devices (CPLDs), Field Programmable Gate Arrays (FPGAs), Field Programmable Logic Arrays (FPLAs), and Field Programmable Interconnects (FPICs).

N.B.: Field programmable logic devices are also known as field programmable gate or field programmable logic arrays.

a.8. Reserved.

a.9. Neural network integrated circuits;

a.10. Custom integrated circuits for which the function is unknown, or the control status of the equipment in which the integrated circuits will be used is unknown to the manufacturer, having any of the following:

a.10.a. More than 1,000 terminals;

a.10.b. A typical ''basic gate propagation delay time'' of less than 0.1 ns; or

a.10.c. An operating frequency exceeding 3 GHz;

a.11. Digital integrated circuits, other than those described in 3A001.a.3 to 3A001.a.10 and 3A001.a.12, based upon any compound semiconductor and having any of the following:

a.11.a. An equivalent gate count of more than 3,000 (2 input gates); or

a.11.b. A toggle frequency exceeding 1.2 GHz;

a.12. Fast Fourier Transform (FFT) processors having a rated execution time for an N-point complex FFT of less than $(N \log_2 N)/20{,}480$ ms, where N is the number of points;

**Technical Note:** When N is equal to 1,024 points, the formula in 3A001.a.12 gives an execution time of 500 μs.

b. Microwave or millimeter wave components, as follows:

b.1. Electronic vacuum tubes and cathodes, as follows:

**Note:** 3A001.b.1 does not control tubes designed or rated for operation in any frequency band which meets all of the following characteristics:

(a) Does not exceed 31 GHz; *and*

(b) Is ''allocated by the ITU'' for radio-communications services, but not for radio-determination.

b.1.a. Traveling wave tubes, pulsed or continuous wave, as follows:

b.1.a.1. Operating at frequencies exceeding 31 GHz;

b.1.a.2. Having a cathode heater element with a turn on time to rated RF power of less than 3 seconds;

b.1.a.3. Coupled cavity tubes, or derivatives thereof, with a ''fractional bandwidth'' of more than 7% or a peak power exceeding 2.5 kW;

b.1.a.4. Helix tubes, or derivatives thereof, with any of the following characteristics:

b.1.a.4.a. An ''instantaneous bandwidth'' of more than one octave, and average power (expressed in kW) times frequency (expressed in GHz) of more than 0.5;

b.1.a.4.b. An ''instantaneous bandwidth'' of one octave or less, and average power (expressed in kW) times frequency (expressed in GHz) of more than 1; *or*

b.1.a.4.c. Being ''space qualified'';

b.1.b. Crossed-field amplifier tubes with a gain of more than 17 dB;

b.1.c. Impregnated cathodes designed for electronic tubes producing a continuous emission current density at rated operating conditions exceeding 5 $A/cm^2$;

b.2. Microwave integrated circuits or modules having all of the following:

b.2.a. Containing ''monolithic integrated circuits'' having one or more active circuit elements; *and*

b.2.b. Operating at frequencies above 3 GHz;

**Note 1:** 3A001.b.2 does not control circuits or modules for equipment designed or rated to operate in any frequency band which meets all of the following characteristics: (a.) Does not exceed 31 GHz; *and* (b.) Is ''allocated by the ITU'' for radio-communications services, but not for radio-determination.

**Note 2:** 3A001.b.2 does not control broadcast satellite equipment designed or rated to operate in the frequency range of 40.5 to 42.5 GHz. b.3.

Microwave transistors rated for operation at frequencies exceeding 31 GHz;

b.4. Microwave solid state amplifiers, having any of the following:

b.4.a. Operating frequencies exceeding 10.5 GHz and an ''instantaneous bandwidth'' of more than half an octave; *or*

b.4.b. Operating frequencies exceeding 31 GHz;

b.5. Electronically or magnetically tunable band-pass or band-stop filters having more than 5 tunable resonators capable of tuning across a 1.5:1 frequency band ($f_{max}/f_{min}$) in less than 10 µs having any of the following:

b.5.a. A band-pass bandwidth of more than 0.5% of center frequency; *or*

b.5.b. A band-stop bandwidth of less than 0.5% of center frequency;

b.6. Microwave ''assemblies'' capable of operating at frequencies exceeding 31 GHz;

b.7. Mixers and converters designed to extend the frequency range of equipment described in 3A002.c, 3A002.e or 3A002.f beyond the limits stated therein;

b.8. Microwave power amplifiers containing tubes controlled by 3A001.b and having all of the following:

b.8.a. Operating frequencies above 3 GHz;

b.8.b. An average output power density exceeding 80 W/kg; *and*

b.8.c. A volume of less than 400 $cm^3$;

**Note:** 3A001.b.8 does not control equipment designed or rated for operation in any frequency band which is ''allocated by the ITU'' for radio-communications services, but not for radio-determination.

c. Acoustic wave devices, as follows, and specially designed components therefor:

c.1. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (*i.e.,* ''signal processing'' devices employing elastic waves in materials), having any of the following:

c.1.a. A carrier frequency exceeding 2.5 GHz;

c.1.b. A carrier frequency exceeding 1 GHz, but not exceeding 2.5 GHz, and having any of the following:

c.1.b.1. A frequency side-lobe rejection exceeding 55 dB;

c.1.b.2. A product of the maximum delay time and the bandwidth (time in µs and bandwidth in MHz) of more than 100;

c.1.b.3. A bandwidth greater than 250 MHz; or

c.1.b.4. A dispersive delay of more than 10 µs; or

c.1.c. A carrier frequency of 1 GHz or less, having any of the following:

c.1.c.1. A product of the maximum delay time and the bandwidth (time in µs and bandwith in MHz) of more than 100;

c.1.c.2. A dispersive delay of more than 10 µs; or

c.1.c.3. A frequency side-lobe rejection exceeding 55 dB and a bandwidth greater than 50 MHz;

c.2. Bulk (volume) acoustic wave devices (i.e., ''signal processing'' devices employing elastic waves) that permit the direct processing of signals at frequencies exceeding 1 GHz;

c.3. Acoustic-optic ''signal processing'' devices employing interaction between acoustic waves (bulk wave or surface wave) and light waves that permit the direct processing of signals or images, including spectral analysis, correlation or convolution;

d. Electronic devices and circuits containing components, manufactured from ''superconductive'' materials specially designed for operation at temperatures below the ''critical temperature'' of at least one of the ''superconductive'' constituents, with any of the following:

d.1. Current switching for digital circuits using ''superconductive'' gates with a product of delay time per gate (in seconds) and power dissipation per gate (in watts) of less than $10^{-14}$ J; or

d.2. Frequency selection at all frequencies using resonant circuits with Q-values exceeding 10,000;

e. High energy devices, as follows:

e.1. Batteries and photovoltaic arrays, as follows:

**Note:** 3A001.e.1 does not control batteries with volumes equal to or less than 27 $cm^3$ (e.g., standard C-cells or R14 batteries).

e.1.a. Primary cells and batteries having an energy density exceeding 480 Wh/kg and rated for operation in the temperature range from below 243 K (−30 °C) to above 343 K (70°C);

e.1.b. Rechargeable cells and batteries having an energy density exceeding 150 Wh/kg after 75 charge/discharge cycles at a discharge current equal to C/5 hours (C being the nominal capacity in ampere hours) when operating in the temperature range from below 253 K (−20 °C) to above 333 K (60 °C);

**Technical Note:** Energy density is obtained by multiplying the average power in watts (average voltage in volts times average current in amperes) by the duration of the discharge in hours to 75% of the open circuit voltage divided by the total mass of the cell (or battery) in kg.

e.1.c. ''Space qualified'' and radiation hardened photovoltaic arrays with a specific power exceeding 160 $W/m^2$ at an operating temperature of 301 K (28 °C) under a tungsten illumination of 1 $kW/m^2$ at 2,800 K (2,527 °C);

e.2. High energy storage capacitors, as follows:

e.2.a. Capacitors with a repetition rate of less than 10 Hz (single shot capacitors) having all of the following:

e.2.a.1. A voltage rating equal to or more than 5 kV;

e.2.a.2. An energy density equal to or more than 250 J/kg; and

e.2.a.3. A total energy equal to or more than 25 kJ;

e.2.b. Capacitors with a repetition rate of 10 Hz or more (repetition rated capacitors) having all of the following:

e.2.b.1. A voltage rating equal to or more than 5 kV;

e.2.b.2. An energy density equal to or more than 50 J/kg;

e.2.b.3. A total energy equal to or more than 100 J; and

e.2.b.4. A charge/discharge cycle life equal to or more than 10,000;

e.3. ''Superconductive'' electromagnets and solenoids specially

designed to be fully charged or discharged in less than one second, having all of the following:

**Note:** 3A001.e.3 does not control ''superconductive'' electromagnets or solenoids specially designed for Magnetic Resonance Imaging (MRI) medical equipment.

e.3.a. Energy delivered during the discharge exceeding 10 kJ in the first second;

e.3.b. Inner diameter of the current carrying windings of more than 250 mm; and

e.3.c. Rated for a magnetic induction of more than 8 T or ''overall current density'' in the winding of more than 300 A/mm$^2$;

f. Rotary input type shaft absolute position encoders having any of the following:

f.1. A resolution of better than 1 part in 265,000 (18 bit resolution) of full scale; or

f.2. An accuracy better than ± 2.5 seconds of arc.

**3A002 General Purpose Electronic Equipment, as follows (See List of Items Controlled)**

* * * * *

**List of Items Controlled**

*Unit:* Number.

*Related Controls:* See also 3A292 and 3A992.

*Related Definitions:* Constant percentage bandwidth filters are also known as octave or fractional octave filters.

*Items:*

a. Recording equipment, as follows, and specially designed test tape therefor:

a.1. Analog instrumentation magnetic tape recorders, including those permitting the recording of digital signals (e.g., using a high density digital recording (HDDR) module), having any of the following:

a.1.a. A bandwidth exceeding 4 MHz per electronic channel or track;

a.1.b. A bandwidth exceeding 2 MHz per electronic channel or track and having more than 42 tracks; or

a.1.c. A time displacement (base) error, measured in accordance with applicable IRIG or EIA documents, of less than ± 0.1 μs;

**Note:** Analog magnetic tape recorders specially designed for civilian video purposes are not considered to be instrumentation tape recorders.

a.2. Digital video magnetic tape recorders having a maximum digital interface transfer rate exceeding 360 Mbit/s;

**Note:** 3A002.a.2 does not control digital video magnetic tape recorders specially designed for television recording using a signal format, which may include a compressed signal format, standardized or recommended by the ITU, the IEC, the SMPTE, the EBU or the IEEE for civil television applications.

a.3. Digital instrumentation magnetic tape data recorders employing helical scan techniques or fixed head techniques, having any of the following:

a.3.a. A maximum digital interface transfer rate exceeding 175 Mbit/s; or

a.3.b. Being ''space qualified'';

**Note:** 3A002.a.3 does not control analog magnetic tape recorders equipped with HDDR conversion electronics and configured to record only digital data.

a.4. Equipment, having a maximum digital interface transfer rate exceeding 175 Mbit/s, designed to convert digital video magnetic tape recorders for use as digital instrumentation data recorders;

a.5. Waveform digitizers and transient recorders having all of the following:

N.B.: See also 3A292.

a.5.a. Digitizing rates equal to or more than 200 million samples per second and a resolution of 10 bits or more; and

a.5.b. A continuous throughput of 2 Gbit/s or more;

**Technical Note:** For those instruments with a parallel bus architecture, the continuous throughput rate is the highest word rate multiplied by the number of bits in a word. Continuous throughput is the fastest data rate the instrument can output to mass storage without the loss of any information while sustaining the sampling rate and analog-to-digital conversion.

b. ''Frequency synthesizer'', ''electronic assemblies'' having a ''frequency switching time'' from one selected frequency to another of less than 1 ms;

c. ''Signal analyzers'', as follows:

c.1. ''Signal analyzers'' capable of analyzing frequencies exceeding 31 GHz;

c.2. ''Dynamic signal analyzers'' having a ''real-time bandwidth'' exceeding 500 kHz;

**Note:** 3A002.c.2 does not control those ''dynamic signal analyzers'' using only constant percentage bandwidth filters (also known as octave or fractional octave filters).

d. Frequency synthesized signal generators producing output frequencies, the accuracy and short term and long term stability of which are controlled, derived from or disciplined by the internal master frequency, and having any of the following:

d.1. A maximum synthesized frequency exceeding 31 GHz;

d.2. A ''frequency switching time'' from one selected frequency to another of less than 1 ms; or

d.3. A single sideband (SSB) phase noise better than $-(126 + 20 \log_{10}F - 20 \log_{10}f)$ in dBc/Hz, where F is the off-set from the operating frequency in Hz and f is the operating frequency in MHz;

**Note:** 3A002.d does not control equipment in which the output frequency is either produced by the addition or subtraction of two or more crystal oscillator frequencies, or by an addition or subtraction followed by a multiplication of the result.

e. Network analyzers with a maximum operating frequency exceeding 40 GHz;

f. Microwave test receivers having all of the following:

f.1. A maximum operating frequency exceeding 40 GHz; and

f.2. Being capable of measuring amplitude and phase simultaneously;

g. Atomic frequency standards having any of the following:

g.1. Long-term stability (aging) less (better) than $1 \times 10^{-11}$/month; or

g.2. Being ''space qualified''.

**Note:** 3A002.g.1 does not control non-''space qualified'' rubidium standards.

**3A991 Electronic Devices and Components Not Controlled by 3A001**

* * * * *

**List of Items Controlled**

*Unit:* Equipment in number.

*Related Controls:* N/A.

*Related Definitions:* N/A.

Items:

a. ''Microprocessor microcircuits'', ''microcomputer microcircuits'', and microcontroller microcircuits having any of the following:

a.1. A clock frequency rate exceeding 25 MHz; or

a.2. More than one date or instruction bus or serial communication port that provides a direct external interconnection between parallel ''microprocessor microcircuits'' with a transfer rate of 2.5 Mbyte/s.

b. Storage integrated circuits, as follows:

b.1. Electrical erasable programmable read-only memories (EEPROMs) with a storage capacity;

b.1.a. Exceeding 16 Mbits per package for flash memory types; or

b.1.b. Exceeding either of the following limits for all other EEPROM types:

b.1.b.1. Exceeding 1 Mbit per package; or

b.1.b.2. Exceeding 256 kbit per package and a maximum access time of less than 80 ns;

b.2. Static random access memories (SRAMs) with a storage capacity:

b.2.a. Exceeding 1 Mbit per package; or

b.2.b. Exceeding 256 kbit per package and a maximum access time of less than 25 ns;

c. Analog-to-digital converters having a resolution of 8 bit or more, but less

than 12 bit, with a total conversion time of less than 10 ns;

d. Field programmable logic devices having either of the following:

d.1. An equivalent gate count of more than 5000 (2 input gates); or

d.2. A toggle frequency exceeding 100 MHz;

e. Fast Fourier Transform (FFT) processors having a rated execution time for a 1,024 point complex FFT of less than 1 ms.

f. Custom integrated circuits for which either the function is unknown, or the control status of the equipment in which the integrated circuits will be used is unknown to the manufacturer, having any of the following:

f.1. More than 144 terminals; or

f.2. A typical ''basic propagation delay time'' of less than 0.4 ns.

g. Travelling wave tubes, pulsed or continuous wave, as follows:

g.1. Coupled cavity tubes, or derivatives thereof;

g.2. Helix tubes, or derivatives thereof, with any of the following:

g.2.a. An ''instantaneous bandwidth'' of half an octave or more; and

g.2.b. The product of the rated average output power (expressed in kW) and the maximum operating frequency (expressed in GHz) of more than 0.2;

g.2.c. An ''instantaneous bandwidth'' of less than half an octave; and

g.2.d. The product of the rated average output power (expressed in kW) and the maximum operating frequency (expressed in GHz) of more than 0.4;

h. Flexible waveguides designed for use at frequencies exceeding 40 GHz;

i. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (i.e., ''signal processing'' devices employing elastic waves in materials), having either of the following:

i.1. A carrier frequency exceeding 1 GHz; or

i.2. A carrier frequency of 1 GHz or less; and

i.2.a. A frequency side-lobe rejection exceeding 55 Db;

i.2.b. A product of the maximum delay time and bandwidth (time in microseconds and bandwidth in MHz) of more than 100; or

i.2.c. A dispersive delay of more than 10 microseconds.

j. Batteries, as follows:

**Note:** 3A991.j does not control batteries with volumes equal to or less than 26 $cm^3$ (e.g., standard C-cells or UM–2 batteries).

j.1. Primary cells and batteries having an energy density exceeding 350 Wh/kg and rated for operation in the temperature range from below 243 K (−30 °C) to above 343 K (70 °C);

j.2. Rechargeable cells and batteries having an energy density exceeding 150 Wh/kg after 75 charge/discharge cycles at a discharge current equal to C/5 hours (C being the nominal capacity in ampere hours) when operating in the temperature range from below 253 K (−20 °C) to above 333 K (60 °C);

**Technical Note:** Energy density is obtained by multiplying the average power in watts (average voltage in volts times average current in amperes) by the duration of the discharge in hours to 75 percent of the open circuit voltage divided by the total mass of the cell (or battery) in kg.

k. ''Superconductive'' electromagnets or solenoids specially designed to be fully charged or discharged in less than one minute, having all of the following:

**Note:** 3A991.k does not control ''superconductive'' electromagnets or solenoids designed for Magnetic Resonance Imaging (MRI) medical equipment.

k.1. Maximum energy delivered during the discharge divided by the duration of the discharge of more than 500 kJ per minute;

k.2. Inner diameter of the current carrying windings of more than 250 mm; and

k.3. Rated for a magnetic induction of more than 8T or ''overall current density'' in the winding of more than 300 $A/mm^2$.

l. Circuits or systems for electromagnetic energy storage, containing components manufactured from ''superconductive'' materials specially designed for operation at temperatures below the ''critical temperature'' of at least one of their ''superconductive'' constituents, having all of the following:

l.1. Resonant operating frequencies exceeding 1 MHz;

l.2. A stored energy density of 1 $MJ/M^3$ or more; and

l.3. A discharge time of less than 1 ms;

m. Hydrogen/hydrogen-isotope thyratrons of ceramic-metal construction and rate for a peak current of 500 A or more;

n. Digital integrated circuits based on any compound semiconductor having an equivalent gate count of more than 300 (2 input gates).

**3B002 ''Stored Program Controlled'' Test Equipment, Specially Designed for Testing Finished or Unfinished Semiconductor Devices, As Follows (See List of Items Controlled), and Specially Designed Components and Accessories Therefor**

* * * * *

**List of Items Controlled**

*Unit:* Number.
*Related Controls:* See also 3B992.
*Related Definitions:* N/A.
*Items:*

a. For testing S-parameters of transistor devices at frequencies exceeding 31 GHz;

b. For testing integrated circuits capable of performing functional (truth table) testing at a pattern rate of more than 333 MHz;

**Note:** 3B002.b does not control test equipment specially designed for testing:

1. ''Electronic assemblies'' or a class of ''electronic assemblies'' for home or entertainment applications;

2. Uncontrolled electronic components, ''electronic assemblies'' or integrated circuits;

3. Memories.

**Technical Note:** For purposes of 3B002.b, pattern rate is defined as the maximum frequency of digital operation of a tester. It is therefore equivalent to the highest data rate that a tester can provide in non-multiplexed mode. It is also referred to as test speed, maximum digital frequency or maximum digital speed.

c. For testing microwave integrated circuits controlled by 3A001.b.2.

* * * * *

**3B991 Equipment Not Controlled by 3B001 for the Manufacture of Electronic Components and Materials, and Specially Designed Components and Accessories Therefor**

* * * * *

**List of Items Controlled**

*Unit:* Equipment in number.
*Related Controls:* N/A.
*Related Definitions:* N/A.
*Items:*

a. Equipment specially designed for the manufacture of electron tubes, optical elements and specially designed components therefor controlled by 3A001 or 3A991;

b. Equipment specially designed for the manufacture of semiconductor devices, integrated circuits and ''electronic assemblies'', as follows, and systems incorporating or having the characteristics of such equipment:

**Note:** 3B991.b also controls equipment used or modified for use in the manufacture of other devices, such as imaging devices, electro-optical devices, acoustic-wave devices.

b.1. Equipment for the processing of materials for the manufacture of devices and components as specified in the heading of 3B991.b, as follows:

**Note:** 3B991 does not control quartz furnace tubes, furnace liners, paddles, boats (except specially designed caged boats), bubblers, cassettes or crucibles specially designed for the processing equipment controlled by 3B991.b.1.

b.1.a. Equipment for producing polycrystalline silicon and materials controlled by 3C001;

b.1.b. Equipment specially designed for purifying or processing III/V and II/VI semiconductor materials controlled by 3C001, 3C002, 3C003, or 3C004, except crystal pullers, for which see 3B991.b.1.c below;

b.1.c. Crystal pullers and furnaces, as follows:

**Note:** 3B991.b.1.c does not control diffusion and oxidation furnaces.

b.1.c.1. Annealing or recrystallizing equipment other than constant temperature furnaces employing high rates of energy transfer capable of processing wafers at a rate exceeding 0.005 $m^2$ per minute;

b.1.c.2. ''Stored program controlled'' crystal pullers having any of the following characteristics:

b.1.c.2.a. Rechargeable without replacing the crucible container;

b.1.c.2.b. Capable of operation at pressures above $2.5 \times 10^5$ Pa; or

b.1.c.2.c. Capable of pulling crystals of a diameter exceeding 100 mm;

b.1.d. ''Stored program controlled'' equipment for epitaxial growth having any of the following characteristics:

b.1.d.1. Capable of producing a layer thickness uniformity across the wafer of equal to or better than ±3.5%; *or*

b.1.d.2. Rotation of individual wafers during processing;

b.1.e. Molecular beam epitaxial growth equipment;

b.1.f. Magnetically enhanced ''sputtering'' equipment with specially designed integral load locks capable of transferring wafers in an isolated vacuum environment;

b.1.g. Equipment specially designed for ion implantation, ion-enhanced or photo-enhanced diffusion, having any of the following characteristics:

b.1.g.1. Patterning capability;

b.1.g.2. Beam energy (accelerating voltage) exceeding 200 keV;

b.1.g.3. Optimized to operate at a beam energy (accelerating voltage) of less than 10 keV; or

b.1.g.4. Capable of high energy oxygen implant into a heated ''substrate'';

b.1.h. ''Stored program controlled'' equipment for the selective removal (etching) by means of anisotropic dry methods (e.g., plasma), as follows:

b.1.h.1. Batch types having either of the following:

b.1.h.1.a. End-point detection, other than optical emission spectroscopy types; or

b.1.h.1.b. Reactor operational (etching) pressure of 26.66 Pa or less;

b.1.h.2. Single wafer types having any of the following:

b.1.h.2.a. End-point detection, other than optical emission spectroscopy types;

b.1.h.2.b. Reactor operational (etching) pressure of 26.66 Pa or less; or

b.1.h.2.c. Cassette-to-cassette and load locks wafer handling;

**Notes:** 1. ''Batch types'' refers to machines not specially designed for production processing of single wafers. Such machines can process two or more wafers simultaneously with common process parameters, e.g., RF power, temperature, etch gas species, flow rates.

2. ''Single wafer types'' refers to machines specially designed for production processing of single wafers. These machines may use automatic wafer handling techniques to load a single wafer into the equipment for processing. The definition includes equipment that can load and process several wafers but where the etching parameters, e.g., RF power or end point, can be independently determined for each individual wafer.

b.1.i. ''Chemical vapor deposition'' (CVD) equipment, e.g., plasma-enhanced CVD (PECVD) or photo-enhanced CVD, for semiconductor device manufacturing, having either of the following capabilities, for deposition of oxides, nitrides, metals or polysilicon:

b.1.i.1. ''Chemical vapor deposition'' equipment operating below $10^5$ Pa; or

b.1.i.2. PECVD equipment operating either below 60 Pa (450 millitorr) or having automatic cassette-to-cassette and load lock wafer handling;

**Note:** 3B991.b.1.i does not control low pressure ''chemical vapor deposition'' (LPCVD) systems or reactive ''sputtering'' equipment.

b.1.j. Electron beam systems specially designed or modified for mask making or semiconductor device processing having any of the following characteristics:

b.1.j.1. Electrostatic beam deflection;

b.1.j.2. Shaped, non-Gaussian beam profile;

b.1.j.3. Digital-to-analog conversion rate exceeding 3 MHz;

b.1.j.4. Digital-to-analog conversion accuracy exceeding 12 bit; or

b.1.j.5. Target-to-beam position feedback control precision of 1 micrometer or finer;

**Note:** 3B991.b.1.j does not control electron beam deposition systems or general purpose scanning electron microscopes.

b.1.k. Surface finishing equipment for the processing of semiconductor wafers as follows:

b.1.k.1. Specially designed equipment for backside processing of wafers thinner than 100 micrometer and the subsequent separation thereof; or

b.1.k.2. Specially designed equipment for achieving a surface roughness of the active surface of a processed wafer with a two-sigma value of 2 micrometer or less, total indicator reading (TIR);

**Note:** 3B991.b.1.k does not control single-side lapping and polishing equipment for wafer surface finishing.

b.1.l. Interconnection equipment which includes common single or multiple vacuum chambers specially designed to permit the integration of any equipment controlled by 3B991 into a complete system;

b.1.m. ''Stored program controlled'' equipment using ''lasers'' for the repair or trimming of ''monolithic integrated circuits'' with either of the following characteristics:

b.1.m.1. Positioning accuracy less than ± 1 micrometer; or

b.1.m.2. Spot size (kerf width) less than 3 micrometer.

b.2. Masks, mask ''substrates'', mask-making equipment and image transfer equipment for the manufacture of devices and components as specified in the heading of 3B991, as follows:

**Note:** The term ''masks'' refers to those used in electron beam lithography, X-ray lithography, and ultraviolet lithography, as well as the usual ultraviolet and visible photo-lithography.

b.2.a. Finished masks, reticles and designs therefor, except:

b.2.a.1. Finished masks or reticles for the production of unembargoed integrated circuits; or

b.2.a.2. Masks or reticles, having both of the following characteristics:

b.2.a.2.a. Their design is based on geometries of 2.5 micrometer or more; and

b.2.a.2.b. The design does not include special features to alter the intended use by means of production equipment or ''software'';

b.2.b. Mask ''substrates'' as follows:

b.2.b.1. Hard surface (e.g., chromium, silicon, molybdenum) coated ''substrates'' (e.g., glass, quartz, sapphire) for the preparation of masks having dimensions exceeding 125 mm x 125 mm; or

b.2.b.2. ''Substrates'' specially designed for X-ray masks;

b.2.c. Equipment, other than general purpose computers, specially designed for computer aided design (CAD) of semiconductor devices or integrated circuits;

b.2.d. Equipment or machines, as follows, for mask or reticle fabrication:

b.2.d.1. Photo-optical step and repeat cameras capable of producing arrays larger than 100 mm x 100 mm, or capable of producing a single exposure larger than 6 mm x 6 mm in the image (i.e., focal) plane, or capable of producing line widths of less than 2.5 micrometer in the photoresist on the ''substrate'';

b.2.d.2. Mask or reticle fabrication equipment using ion or ''laser'' beam

lithography capable of producing line widths of less than 2.5 micrometer; or

b.2.d.3. Equipment or holders for altering masks or reticles or adding pellicles to remove defects;

**Note:** 3B991.b.2.d.1 and b.2.d.2 do not control mask fabrication equipment using photo-optical methods which was either commercially available before the 1st January, 1980, or has a performance no better than such equipment.

b.2.e. ''Stored program controlled'' equipment for the inspection of masks, reticles or pellicles with:

b.2.e.1. A resolution of 0.25 micrometer or finer; and

b.2.e.2. A precision of 0.75 micrometer or finer over a distance in one or two coordinates of 63.5 mm or more;

**Note:** 3B991.b.2.e does not control general purpose scanning electron microscopes except when specially designed and instrumented for automatic pattern inspection.

b.2.f. Align and expose equipment for wafer production using photo-optical or X-ray methods, including both projection image transfer equipment and step and repeat (direct step on wafer) or step and scan (scanner) equipment, capable of performing any of the following functions:

**Note:** 3B991.b.2.f does not control photo-optical contact and proximity mask align and expose equipment or contact image transfer equipment.

b.2.f.1. Production of a pattern size of less than 2.5 micrometer;

b.2.f.2. Alignment with a precision finer than ± 0.25 micrometer (3 sigma);

b.2.f.3. Machine-to-machine overlay no better than ±+ 0.3 micrometer; or

b.2.f.4. A light source wavelength shorter than 400 nm;

b.2.g. Electron beam, ion beam or X-ray equipment for projection image transfer capable of producing patterns less than 2.5 micrometer;

**Note:** For focussed, deflected-beam systems (direct write systems), see 3B991.b.1.j or b.10.

b.2.h. Equipment using ''lasers'' for direct write on wafers capable of producing patterns less than 2.5 micrometer.

b.3. Equipment for the assembly of integrated circuits, as follows:

b.3.a. ''Stored program controlled'' die bonders having all of the following characteristics:

b.3.a.1. Specially designed for ''hybrid integrated circuits'';

b.3.a.2. X–Y stage positioning travel exceeding 37.5 x 37.5 mm; and

b.3.a.3. Placement accuracy in the X–Y plane of finer than ± 10 micrometer;

b.3.b. ''Stored program controlled'' equipment for producing multiple bonds in a single operation (e.g., beam lead bonders, chip carrier bonders, tape bonders);

b.3.c. Semi-automatic or automatic hot cap sealers, in which the cap is heated locally to a higher temperature than the body of the package, specially designed for ceramic microcircuit packages controlled by 3A001 and that have a throughput equal to or more than one package per minute.

**Note:** 3B991.b.3 does not control general purpose resistance type spot welders.

b.4. Filters for clean rooms capable of providing an air environment of 10 or less particles of 0.3 micrometer or smaller per 0.02832 $m^3$ and filter materials therefor.

**3B992 Equipment Not Controlled by 3B002 for the Inspection or Testing of Electronic Components and Materials, and Specially Designed Components and Accessories Therefor**

* * * * *

**List of Items Controlled**

*Unit:* Equipment in number.

*Related Controls:* N/A.

*Related Definitions:* N/A.

*Items:*

a. Equipment specially designed for the inspection or testing of electron tubes, optical elements and specially designed components therefor controlled by 3A001 or 3A991;

b. Equipment specially designed for the inspection or testing of semiconductor devices, integrated circuits and ''electronic assemblies'', as follows, and systems incorporating or having the characteristics of such equipment:

**Note:** 3B992.b also controls equipment used or modified for use in the inspection or testing of other devices, such as imaging devices, electro-optical devices, acoustic-wave devices.

b.1. ''Stored program controlled'' inspection equipment for the automatic detection of defects, errors or contaminants of 0.6 micrometer or less in or on processed wafers, ''substrates'', other than printed circuit boards or chips, using optical image acquisition techniques for pattern comparison;

**Note:** 3B992.b.1 does not control general purpose scanning electron microscopes, except when specially designed and instrumented for automatic pattern inspection.

b.2. Specially designed ''stored program controlled'' measuring and analysis equipment, as follows:

b.2.a. Specially designed for the measurement of oxygen or carbon content in semiconductor materials;

b.2.b. Equipment for line width measurement with a resolution of 1 micrometer or finer;

b.2.c. Specially designed flatness measurement instruments capable of measuring deviations from flatness of 10 micrometer or less with a resolution of 1 micrometer or finer.

b.3. ''Stored program controlled'' wafer probing equipment having any of the following characteristics:

b.3.a. Positioning accuracy finer than 3.5 micrometer;

b.3.b. Capable of testing devices having more than 68 terminals; or

b.3.c. Capable of testing at a frequency exceeding 1 GHz;

b.4. Test equipment as follows:

b.4.a. ''Stored program controlled'' equipment specially designed for testing discrete semiconductor devices and unencapsulated dice, capable of testing at frequencies exceeding 18 GHz;

**Technical Note:** Discrete semiconductor devices include photocells and solar cells.

b.4.b. ''Stored program controlled'' equipment specially designed for testing integrated circuits and ''electronic assemblies'' thereof, capable of functional testing:

b.4.b.1. At a pattern rate exceeding 20 MHz; or

b.4.b.2. At a pattern rate exceeding 10 MHz but not exceeding 20 MHz and capable of testing packages of more than 68 terminals;

**Note:** 3B992.b.4.b does not control equipment specially designed for testing integrated circuits not controlled by 3A001 or 3A991.

**Notes:** 1. 3B992.b.4.b does not control test equipment specially designed for testing ''assemblies'' or a class of ''electronic assemblies'' for home and entertainment applications.

2. 3B992.b.4.b does not control test equipment specially designed for testing electronic components, ''assemblies'' and integrated circuits not controlled by 3A001 or 3A991 provided such test equipment does not incorporate computing facilities with ''user accessible programmability''.

b.4.c. Equipment specially designed for determining the performance of focal-plane arrays at wavelengths of more than 1,200 nm, using ''stored program controlled'' measurements or computer aided evaluation and having any of the following characteristics:

b.4.c.1. Using scanning light spot diameters of less than 0.12 mm;

b.4.c.2. Designed for measuring photosensitive performance parameters and for evaluating frequency response, modulation transfer function, uniformity of responsivity or noise; or

b.4.c.3. Designed for evaluating arrays capable of creating images with more than 32 x 32 line elements;

b.5. Electron beam test systems designed for operation at 3 keV or below, or ''laser'' beam systems, for non-

contactive probing of powered-up semiconductor devices having any of the following:

b.5.a. Stroboscopic capability with either beam blanking or detector strobing;

b.5.b. An electron spectrometer for voltage measurements with a resolution of less than 0.5 V; or

b.5.c. Electrical tests fixtures for performance analysis of integrated circuits;

**Note:** 3B992.b.5 does not control scanning electron microscopes, except when specially designed and instrumented for non-contactive probing of a powered-up semiconductor device.

b.6. ''Stored program controlled'' multifunctional focused ion beam systems specially designed for manufacturing, repairing, physical layout analysis and testing of masks or semiconductor devices and having either of the following characteristics:

b.6.a. Target-to-beam position feedback control precision of 1 micrometer or finer; or

b.6.b. Digital-to-analog conversion accuracy exceeding 12 bit;

b.7. Particle measuring systems employing ''lasers'' designed for measuring particle size and concentration in air having both of the following characteristics:

b.7.a. Capable of measuring particle sizes of 0.2 micrometer or less at a flow rate of 0.02832 $m^3$ per minute or more; and

b.7.b. Capable of characterizing Class 10 clean air or better.

**3C001 Hetero-Epitaxial Materials Consisting of a ''Substrate'' Having Stacked Epitaxially Grown Multiple Layers of Any of the Following (See List of Items Controlled)**

* * * * *

**List of Items Controlled**

*Unit:* $ value.

*Related Controls:* This entry does not control equipment or material whose functionality has been unalterably disabled are not controlled.

*Related Definitions:* III/V compounds are polycrystalline or binary or complex monocrystalline products consisting of elements of groups IIIA and VA of Mendeleyev's periodic classification table (e.g., gallium arsenide, gallium-aluminium arsenide, indium phosphide).

*Items:*

a. Silicon;

b. Germanium;

c. Silicon Carbide; *or*

d. III/V compounds of gallium or indium.

**3D003 Computer-Aided-Design (CAD) ''Software'', Having all of the Following (See List of Items Controlled)**

* * * * *

**List of Items Controlled**

*Unit:* $ value.

*Related Controls:* 3D003 does not control ''software'' specially designed for schematic entry, logic simulation, placing and routing, layout verification or pattern generation tape.

*Related Definitions:* (1.) Libraries, design attributes or associated data for the design of semiconductor devices or integrated circuits are considered as ''technology''. (2.) A lithographic processing simulator is a ''software'' package used in the design phase to define the sequence of lithographic, etching and deposition steps for translating masking patterns into specific topographical patterns in conductors, dielectrics or semiconductor material.

*Items:*

a. Designed for the ''development'' of semiconductor devices or integrated circuits; and

b. Designed to perform or use any of the following:

b.1. Design rules or circuit verification rules;

b.2. Simulation of the physically laid out circuits; or

b.3. Lithographic processing simulators for design.

**3E001 ''Technology'' According to the General Technology Note for the ''Development'' or ''Production'' of Equipment or Materials Controlled by 3A (Except 3A292, 3A980, 3A981, 3A991 or 3A992), 3B (except 3B991 and 3B992) or 3C**

* * * * *

**List of Items Controlled**

*Unit:* N/A.

*Related Controls:* See also 3E101 and 3E201.

*Related Definition:* N/A.

*Items:*

The list of items controlled is contained in the ECCN heading.

**Note:** 3E001 does not control ''technology'' for the ''development'' or ''production'' of:

(a) Microwave transistors operating at frequencies below 31 GHz;

(b) Integrated circuits controlled by 3A001.a.3 to a.12, having all of the following:

(b.1) Using ''technology'' of 0.7 micrometer or more; and

(b.2) Not incorporating multi-layer structures.

**Technical Note:** The term multi-layer structures in Note b.2 does not include devices incorporating a maximum of two metal layers and two polysilicon layers.

**3E002 ''Technology'' According to the General Technology Note Other Than That Controlled in 3E001 for the ''Development'' or ''Production'' of ''Microprocessor Microcircuits'', ''Micro-Computer Microcircuits'' and Microcontroller Microcircuits Having a ''Composite Theoretical Performance'' (''CTP'') of 530 Million Theoretical Operations Per Second (MTOPS) or More and an Arithmetic Logic Unit With an Access Width of 32 Bits or More**

**License Requirements**

*Reason for Control:* NS, AT.

| Control(s) | Country chart |
|---|---|
| NS applies to entire entry .... | NS Column 1. |
| AT applies to entire entry .... | AT Column 1. |

**License Exceptions**

*CIV:* N/A.

*TSR:* Yes.

**List of Items Controlled**

*Unit:* N/A.

*Related Controls:* N/A.

*Related Definitions:* N/A.

*Items:*

The list of items controlled is contained in the ECCN heading.

**Note:** 3E002 does not control ''technology'' for the ''development'' or ''production'' of:

(a) Microwave transistors operating at frequencies below 31 GHz;

(b) Integrated circuits controlled by 3A001.a.3 to a.12, having all of the following:

(b.1) Using ''technology'' of 0.7 micrometer or more; and

(b.2) Not incorporating multi-layer structures.

**Technical Note:** The term multi-layer structures in Note b.2 does not include devices incorporating a maximum of two metal layers and two polysilicon layers.

**3E003 Other ''Technology'' for the ''Development'' or ''Production'' of Items Described in the List of Items Controlled**

**License Requirements**

*Reason for Control:* NS, AT.

| Control(s) | Country chart |
|---|---|
| NS applies to entire entry .... | NS Column 1. |
| AT applies to entire entry .... | AT Column 1. |

**License Exceptions**

*CIV:* N/A.

*TSR:* Yes, except .f.

**List of Items Controlled**

*Unit:* N/A.

*Related Controls:* See 3E001 for silicon-on-insulation (SOI) technology for the ''development'' or ''production''

related to radiation hardening of integrated circuits.

*Related Definitions:* N/A.

*Items:*

a. Vacuum microelectronic devices;

b. Hetero-structure semiconductor devices such as high electron mobility transistors (HEMT), hetero-bipolar transistors (HBT), quantum well and super lattice devices;

c. ''Superconductive'' electronic devices;

d. Substrates of films of diamond for electronic components;

e. Substrates of silicon-on-insulator (SOI) for integrated circuits in which the insulator is silicon dioxide;

f. Substrates of silicon carbide for electronic components.

10. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4D003 is amended by revising the List of Items Controlled Section, to read as follows:

**4D003 Specific ''Software'', As Follows (See List of Items Controlled)**

* * * * *

**List of Items Controlled**

*Unit:* $ value.

*Related Controls:* N/A.

*Related Definitions:* N/A.

*Items:*

a. Operating system ''software'', ''software'' development tools and compilers specially designed for ''multi-data-stream processing'' equipment, in ''source code'';

b. [Reserved]

c. ''Software'' having characteristics or performing functions exceeding the limits in Category 5, Part 2 (''Information Security'');

d. Operating systems specially designed for ''real time processing'' equipment that guarantees a ''global interrupt latency time'' of less than 20 μs.

11. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and ''Information Security'', Part I—Telecommunications is amended by revising the List of Items Controlled section for Export Control Classification Numbers (ECCNs) 5D001 and 5E001, to read as follows:

**5D001 ''Software'', As Described in the List of Items Controlled**

* * * * *

**List of Items Controlled**

*Unit:* $ value.

*Related Controls:* See also 5D991.

*Related Definitions:* N/A.

*Items:*

a. ''Software'' specially designed or modified for the ''development'', ''production'' or ''use'' of equipment, functions or features controlled by 5A001 or 5B001.

b. ''Software'' specially designed or modified to support ''technology'' controlled by 5E001.

c. Specific ''software'' as follows:

c.1. ''Software'' specially designed or modified to provide characteristics, functions or features of equipment controlled by 5A001 or 5B001;

c.2. [Reserved];

c.3. ''Software'', other than in machine-executable form, specially designed for ''dynamic adaptive routing''.

d. ''Software'' specially designed or modified for the ''development'' of any of the following telecommunication transmission or ''stored program controlled'' switching equipment:

d.1. Equipment employing digital techniques, including ''Asynchronous Transfer Mode'' (''ATM''), designed to operate at a ''total digital transfer rate'' exceeding 1.5 Gbit/s;

d.2. Equipment employing a ''laser'' and having any of the following:

d.2.a. A transmission wavelength exceeding 1750 nm; or

d.2.b. Employing analog techniques and having a bandwidth exceeding 2.5 GHz;

**Note:** 5D001.d.2.b. does not control ''software'' specially designed or modified for the ''development'' of commercial TV systems.

d.3. Equipment employing ''optical switching''; or

d.4. Radio equipment employing quadrature-amplitude-modulation (QAM) techniques above level 128;

**5E001 ''Technology'', (See List of Items Controlled)**

* * * * *

**List of Items Controlled**

*Unit:* $ value.

*Related Controls:* See also 5E101 and 5E991.

*Related Definitions:* N/A.

*Items:*

a. ''Technology'' according to the General Technology Note for the ''development'', ''production'' or ''use'' (excluding operation) of equipment, functions or features or ''software'' controlled by 5A001, 5B001 or 5D001.

b. Specific ''technologies'', as follows:

b.1. ''Required'' ''technology'' for the ''development'' or ''production'' of telecommunications equipment specially designed to be used on board satellites;

b.2. ''Technology'' for the ''development'' or ''use'' of ''laser'' communication techniques with the capability of automatically acquiring and tracking signals and maintaining communications through exoatmosphere or sub-surface (water) media;

b.3. ''Technology'' for the ''development'' of digital cellular radio systems;

b.4. ''Technology'' for the ''development'' of ''spread spectrum'' techniques, including ''frequency hopping'' techniques.

c. ''Technology'' according to the General Technology Note for the ''development'' or ''production'' of any of the following telecommunication transmission or ''stored program controlled'' switching equipment, functions or features:

c.1. Equipment employing digital techniques, including ''Asynchronous Transfer Mode'' (''ATM''), designed to operate at a ''total digital transfer rate'' exceeding 1.5 Gbit/s;

c.2. Equipment employing a ''laser'' and having any of the following:

c.2.a. A transmission wavelength exceeding 1750 nm;

c.2.b. Performing ''optical amplification'' using praseodymium-doped fluoride fiber amplifiers (PDFFA);

c.2.c. Employing coherent optical transmission or coherent optical detection techniques (also called optical heterodyne or homodyne techniques);

c.2.d. Employing wavelength division multiplexing techniques exceeding 8 optical carriers in a single optical window; or

c.2.e. Employing analog techniques and having a bandwidth exceeding 2.5 GHz;

**Note:** 5E001. c.2.e. does not control ''technology'' for the ''development'' or ''production'' of commercial TV systems.

c.3. Equipment employing ''optical switching'';

c.4. Radio equipment having any of the following:

c.4.a. Quadrature-amplitude-modulation (QAM) techniques above level 128; or

c.4.b. Operating at input or output frequencies exceeding 31 GHz; or

**Note:** 5E001.c.4.b. does not control ''technology'' for the ''development'' or ''production'' of equipment designed or modified for operation in any frequency band which is ''allocated by the ITU'' for radio-communications services, but not for radio-determination.

c.5. Equipment employing ''common channel signalling'' operating in either non-associated or quasi-associated mode of operation.

12. In Supplement No. 1 to part 774 (the Commerce Control List), Category

6—Sensors, the following Export Control Classification Numbers (ECCNs) are amended:

a. By revising the License Exception and List of Items Controlled sections for ECCNs 6A003 and 6A005;

b. By revising the List of Items Controlled section for ECCNs 6A995 and 6C002; and

c. By revising the Heading and the List of Items Controlled section for ECCN 6C992, to read as follows:

**6A003 Cameras**

* * * * *

**License Exceptions**

*LVS:* $1500, except N/A for 6A003.a.2 through a.6, b.1, b.3 and b.4.

*GBS:* Yes for 6A003.a.1.

*CIV:* Yes for 6A003.a.1.

**List of Items Controlled**

*Unit:* Number.

*Related Controls:* See also 6A203. See 8A002.d and .e for cameras specially designed or modified for underwater use.

*Related Definitions:* N/A.

*Items:*

a. Instrumentation cameras and specially designed components therefor, as follows:

**Note:** Instrumentation cameras, controlled by 6A003.a.3 to 6A003.a.5, with modular structures should be evaluated by their maximum capability, using plug-ins available according to the camera manufacturer's specifications.

a.1. High-speed cinema recording cameras using any film format from 8 mm to 16 mm inclusive, in which the film is continuously advanced throughout the recording period, and that are capable of recording at framing rates exceeding 13,150 frames/s;

**Note:** 6A003.a.1 does not control cinema recording cameras designed for civil purposes.

a.2. Mechanical high speed cameras, in which the film does not move, capable of recording at rates exceeding 1,000,000 frames/s for the full framing height of 35 mm film, or at proportionately higher rates for lesser frame heights, or at proportionately lower rates for greater frame heights;

a.3. Mechanical or electronic streak cameras having writing speeds exceeding 10 mm/μs;

a.4. Electronic framing cameras having a speed exceeding 1,000,000 frames/s;

a.5. Electronic cameras, having all of the following:

a.5.a. An electronic shutter speed (gating capability) of less than 1 μs per full frame; and

a.5.b. A read out time allowing a framing rate of more than 125 full frames per second.

a.6. Plug-ins, having all of the following characteristics:

a.6.a. Specially designed for instrumentation cameras which have modular structures and that are controlled by 6A003.a; *and*

a.6.b. Enabling these cameras to meet the characteristics specified in 6A003.a.3, 6A003.a.4 or 6A003.a.5, according to the manufacturer's specifications.

b. Imaging cameras, as follows:

**Note:** 6A003.b does not control television or video cameras specially designed for television broadcasting.

b.1. Video cameras incorporating solid state sensors, having any of the following:

b.1.a. More than 4 x 106 ''active pixels'' per solid state array for monochrome (black and white) cameras;

b.1.b. More than 4 x 106 ''active pixels'' per solid state array for color cameras incorporating three solid state arrays; or

b.1.c. More than 12 x 106 ''active pixels'' for solid state array color cameras incorporating one solid state array;

**Technical Note:** For the purposes of this entry, digital video cameras should be evaluated by the maximum number of ''active pixels'' used for capturing moving images.

b.2. Scanning cameras and scanning camera systems, having all of the following:

b.2.a. Linear detector arrays with more than 8,192 elements per array; and

b.2.b. Mechanical scanning in one direction;

b.3. Imaging cameras incorporating image intensifier tubes having the characteristics listed in 6A002.a.2.a;

b.4. Imaging cameras incorporating ''focal plane arrays'' having the characteristics listed in 6A002.a.3.

**Note:** 6A003.b.4 does not control imaging cameras incorporating linear ''focal plane arrays'' with twelve elements or fewer, not employing time-delay-and-integration within the element, designed for any of the following:

a. Industrial or civilian intrusion alarm, traffic or industrial movement control or counting systems;

b. Industrial equipment used for inspection or monitoring of heat flows in buildings, equipment or industrial processes;

c. Industrial equipment used for inspection, sorting or analysis of the properties of materials;

d. Equipment specially designed for laboratory use; or

e. Medical equipment.

**6A005 ''Lasers'', Components and Optical Equipment, As Follows (See List of Items Controlled)**

* * * * *

**License Exceptions**

*LVS:* N/A for NP items. $3000 for all other items.

*GBS:* Yes, for 6A005.d (except d.2.c), $CO_2$ or $CO/CO_2$ ''lasers'' having an output wavelength in the range from 9,000 to 11,000 nm and having a pulsed output not exceeding 2 J per pulse and a maximum rated average single or multimode output power not exceeding 5 kW; CO ''lasers'' having a CW maximum rated single or multimode output power not exceeding 10 kW; $CO_2$ ''lasers'' controlled by 6A005.a.4 that operate in CW multiple-transverse mode; and having a CW output power not exceeding 15 kW; Neodymium-doped (other than glass), pulse-excited, ''Q-switched lasers'' controlled by 6A005.c.2.b.2.b having a pulse duration equal to or more than 1 ns; and a multiple-transverse mode output with a ''peak power'' not exceeding 400 MW; Neodymium-doped (other than glass) ''lasers'' controlled by 6A005.c.2.b.3.b or 6A005.c.2.b.4.b that have an output wavelength exceeding 1,000 nm, but not exceeding 1,100 nm; and an average or CW output power not exceeding 2 kW; and operate in a pulse-excited, non-''Q-switched'' multiple-transverse mode; or in a continuously excited, multiple-transverse mode; and 6A005.f.1.

*CIV:* Yes, for 6A005.d (except d.2.c), $CO_2$ or $CO/CO_2$ ''lasers'' having an output wavelength in the range from 9,000 to 11,000 nm and having a pulsed output not exceeding 2 J per pulse and a maximum rated average single or multimode output power not exceeding 5 kW; CO ''lasers'' having a CW maximum rated single or multimode output power not exceeding 10 kW; $CO_2$ ''lasers'' controlled by 6A005.a.4 that operate in CW multiple-transverse mode; and having a CW output power not exceeding 15 kW; Neodymium-doped (other than glass), pulse-excited, ''Q-switched lasers'' controlled by 6A005.c.2.b.2.b having a pulse duration equal to or more than 1 ns; and a multiple-transverse mode output with a ''peak power'' not exceeding 400 MW; Neodymium-doped (other than glass) ''lasers'' controlled by 6A005.c.2.b.3.b or 6A005.c.2.b.4.b that have an output wavelength exceeding 1,000 nm, but not exceeding 1,100 nm; and an average or CW output power not exceeding 2 kW; and operate in a pulse-excited, non-''Q-switched'' multiple-transverse mode; or in a continuously excited, multiple-transverse mode; and 6A005.f.1.

**List of Items Controlled**

*Unit:* Equipment in number; parts and accessories in $ value.

*Related Controls:* (1.) See also 6A205, 6A995, 0B001.g.5 and 0B001.b.6. (2.) Shared aperture optical elements, capable of operating in ''super-high power laser'' applications are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (See 22 CFR part 121.)

*Related Definitions:* (1.) Pulsed ''lasers'' include those that run in a continuous wave (CW) mode with pulses superimposed. (2.) Pulse-excited ''lasers'' include those that run in a continuously excited mode with pulse excitation superimposed. (3.) The control status of Raman ''lasers'' is determined by the parameters of the pumping source ''lasers''. The pumping source ''lasers'' can be any of the ''lasers'' described as follows:

*Items:*

a. Gas ''lasers'', as follows:

a.1. Excimer ''lasers'', having any of the following:

a.1.a. An output wavelength not exceeding 150 nm and having any of the following:

a.1.a.1. An output energy exceeding 50 mJ per pulse; or

a.1.a.2. An average output power exceeding 1 W;

a.1.b. An output wavelength exceeding 150 nm but not exceeding 190 nm and having any of the following:

a.1.b.1. An output energy exceeding 1.5 J per pulse; or

a.1.b.2. An average output power exceeding 120 W;

a.1.c. An output wavelength exceeding 190 nm but not exceeding 360 nm and having any of the following:

a.1.c.1. An output energy exceeding 10 J per pulse; or

a.1.c.2. An average output power exceeding 500 W; or

a.1.d. An output wavelength exceeding 360 nm and having any of the following:

a.1.d.1. An output energy exceeding 1.5 J per pulse; or

a.1.d.2. An average output power exceeding 30 W;

N.B. For excimer ''lasers'' specially designed for lithography equipment, see 3B001.

a.2. Metal vapor ''lasers'', as follows:

a.2.a. Copper (Cu) ''lasers'' having an average output power exceeding 20 W;

a.2.b. Gold (Au) ''lasers'' having an average output power exceeding 5 W;

a.2.c. Sodium (Na) ''lasers'' having an output power exceeding 5 W;

a.2.d. Barium (Ba) ''lasers'' having an average output power exceeding 2 W;

a.3. Carbon monoxide (CO) ''lasers'' having any of the following:

a.3.a. An output energy exceeding 2 J per pulse and a pulsed ''peak power'' exceeding 5 kW; or

a.3.b. An average or CW output power exceeding 5 kW;

a.4. Carbon dioxide ($CO_2$) ''lasers'' having any of the following:

a.4.a. A CW output power exceeding 15 kW;

a.4.b. A pulsed output having a ''pulse duration'' exceeding 10 μs and having any of the following:

a.4.b.1. An average output power exceeding 10 kW; or

a.4.b.2. A pulsed ''peak power'' exceeding 100 kW; or

a.4.c. A pulsed output having a ''pulse duration'' equal to or less than 10 μs; and having any of the following:

a.4.c.1. A pulse energy exceeding 5 J per pulse; or

a.4.c.2. An average output power exceeding 2.5 kW;

a.5. ''Chemical lasers'', as follows:

a.5.a. Hydrogen Fluoride (HF) ''lasers'';

a.5.b. Deuterium Fluoride (DF) ''lasers'';

a.5.c. ''Transfer lasers'', as follows:

a.5.c.1. Oxygen Iodine ($O_2$-I) ''lasers'';

a.5.c.2. Deuterium Fluoride-Carbon dioxide (DF-$CO_2$) ''lasers'';

a.6. Krypton ion or argon ion ''lasers'' having any of the following:

a.6.a. An output energy exceeding 1.5 J per pulse and a pulsed ''peak power'' exceeding 50 W; or

a.6.b. An average or CW output power exceeding 50 W;

a.7. Other gas ''lasers'', having any of the following:

**Note:** 6A005.a.7 does not control nitrogen ''lasers''.

a.7.a. An output wavelength not exceeding 150 nm and having any of the following:

a.7.a.1. An output energy exceeding 50 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; or

a.7.a.2. An average or CW output power exceeding 1 W;

a.7.b. An output wavelength exceeding 150 nm but not exceeding 800 nm and having any of the following:

a.7.b.1. An output energy exceeding 1.5 J per pulse and a pulsed ''peak power'' exceeding 30 W; or

a.7.b.2. An average or CW output power exceeding 30 W;

a.7.c. An output wavelength exceeding 800 nm but not exceeding 1,400 nm and having any of the following:

a.7.c.1. An output energy exceeding 0.25 J per pulse and a pulsed ''peak power'' exceeding 10 W; or

a.7.c.2. An average or CW output power exceeding 10 W; or

a.7.d. An output wavelength exceeding 1,400 nm and an average or CW output power exceeding 1 W.

b. Semiconductor ''lasers'', as follows:

b.1. Individual single-transverse mode semiconductor ''lasers'' having all of the following:

b.1.a. A wavelength of less than 950 nm or more than 2000 nm; *and*

b.1.b. An average or CW output power exceeding 100 mW;

b.2. Individual, multiple-transverse mode semiconductor ''lasers'', having all of the following:

b.2.a. A wavelength of less than 950 nm or more than 2000 nm; *and*

b.2.b. An average or CW output power exceeding 10 W.

b.3. Individual arrays of individual semiconductor ''lasers'', having any of the following:

b.3.a. A wavelength of less than 950 nm and an average or CW output power exceeding 60 W; *or*

b.3.b. A wavelength equal to or greater than 2000 nm and an average or CW output power exceeding 10 W;

**Technical Note:** Semiconductor ''lasers'' are commonly called ''laser'' diodes.

**Note 1:** 6A005.b includes semiconductor ''lasers'' having optical output connectors (e.g. fiber optic pigtails).

**Note 2:** The control status of semiconductor ''lasers'' specially designed for other equipment is determined by the control status of the other equipment.

c. Solid state ''lasers'', as follows:

c.1. ''Tunable'' ''lasers'' having any of the following:

**Note:** 6A005.c.1 includes titanium—sapphire (Ti: $Al_2O_3$), thulium—YAG (Tm: YAG), thulium—YSGG (Tm: YSGG), alexandrite (Cr: $BeAl_2O_4$) and color center ''lasers''.

c.1.a. An output wavelength less than 600 nm and having any of the following:

c.1.a.1. An output energy exceeding 50 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; or

c.1.a.2. An average or CW output power exceeding 1 W;

c.1.b. An output wavelength of 600 nm or more but not exceeding 1,400 nm and having any of the following:

c.1.b.1. An output energy exceeding 1 J per pulse and a pulsed ''peak power'' exceeding 20 W; or

c.1.b.2. An average or CW output power exceeding 20 W; or

c.1.c. An output wavelength exceeding 1,400 nm and having any of the following:

c.1.c.1. An output energy exceeding 50 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; or

c.1.c.2. An average or CW output power exceeding 1 W;

c.2. Non-''tunable'' ''lasers'', as follows:

**Note:** 6A005.c.2 includes atomic transition solid state ''lasers''.

c.2.a. Neodymium glass ''lasers'', as follows:

c.2.a.1. ''Q-switched lasers'' having any of the following:

c.2.a.1.a. An output energy exceeding 20 J but not exceeding 50 J per pulse and an average output power exceeding 10 W; or

c.2.a.1.b. An output energy exceeding 50 J per pulse;

c.2.a.2. Non-''Q-switched lasers'' having any of the following:

c.2.a.2.a. An output energy exceeding 50 J but not exceeding 100 J per pulse and an average output power exceeding 20 W; or

c.2.a.2.b. An output energy exceeding 100 J per pulse;

c.2.b. Neodymium-doped (other than glass) ''lasers'', having an output wavelength exceeding 1,000 nm but not exceeding 1,100 nm, as follows:

**N.B.:** For neodymium-doped (other than glass) ''lasers'' having an output wavelength not exceeding 1,000 nm or exceeding 1,100 nm, see 6A005.c.2.c.

c.2.b.1. Pulse-excited, mode-locked, ''Q-switched lasers'' having a ''pulse duration'' of less than 1 ns and having any of the following:

c.2.b.1.a. A ''peak power'' exceeding 5 GW;

c.2.b.1.b. An average output power exceeding 10 W; or

c.2.b.1.c. A pulsed energy exceeding 0.1 J;

c.2.b.2. Pulse-excited, ''Q-switched lasers'' having a pulse duration equal to or more than 1 ns, and having any of the following:

c.2.b.2.a. A single-transverse mode output having:

c.2.b.2.a.1. A ''peak power'' exceeding 100 MW;

c.2.b.2.a.2. An average output power exceeding 20 W; or

c.2.b.2.a.3. A pulsed energy exceeding 2 J; or

c.2.b.2.b. A multiple-transverse mode output having:

c.2.b.2.b.1. A ''peak power'' exceeding 400 MW;

c.2.b.2.b.2. An average output power exceeding 2 kW; or

c.2.b.2.b.3. A pulsed energy exceeding 2 J;

c.2.b.3. Pulse-excited, non-''Q-switched lasers'', having:

c.2.b.3.a. A single-transverse mode output having:

c.2.b.3.a.1. A ''peak power'' exceeding 500 kW; or

c.2.b.3.a.2. An average output power exceeding 150 W; or

c.2.b.3.b. A multiple-transverse mode output having:

c.2.b.3.b.1. A ''peak power'' exceeding 1 MW; or

c.2.b.3.b.2. An average power exceeding 2 kW;

c.2.b.4. Continuously excited ''lasers'' having:

c.2.b.4.a. A single-transverse mode output having:

c.2.b.4.a.1. A ''peak power'' exceeding 500 kW; or

c.2.b.4.a.2. An average or CW output power exceeding 150 W; or

c.2.b.4.b. A multiple-transverse mode output having:

c.2.b.4.b.1. A ''peak power'' exceeding 1 MW; or

c.2.b.4.b.2. An average or CW output power exceeding 2 kW;

c.2.c. Other non-''tunable'' ''lasers'', having any of the following:

c.2.c.1. A wavelength less than 150 nm and having any of the following:

c.2.c.1.a. An output energy exceeding 50 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; or

c.2.c.1.b. An average or CW output power exceeding 1 W;

c.2.c.2. A wavelength of 150 nm or more but not exceeding 800 nm and having any of the following:

c.2.c.2.a. An output energy exceeding 1.5 J per pulse and a pulsed ''peak power'' exceeding 30 W; or

c.2.c.2.b. An average or CW output power exceeding 30 W;

c.2.c.3. A wavelength exceeding 800 nm but not exceeding 1,400 nm, as follows:

c.2.c.3.a. ''Q-switched lasers'' having:

c.2.c.3.a.1. An output energy exceeding 0.5 J per pulse and a pulsed ''peak power'' exceeding 50 W; or

c.2.c.3.a.2. An average output power exceeding:

c.2.c.3.a.2.a. 10 W for single-mode ''lasers'';

c.2.c.3.a.2.b. 30 W for multimode ''lasers'';

c.2.c.3.b. Non-''Q-switched lasers'' having:

c.2.c.3.b.1. An output energy exceeding 2 J per pulse and a pulsed ''peak power'' exceeding 50 W; or

c.2.c.3.b.2. An average or CW output power exceeding 50 W; or

c.2.c.4. A wavelength exceeding 1,400 nm and having any of the following:

c.2.c.4.a. An output energy exceeding 100 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; or

c.2.c.4.b. An average or CW output power exceeding 1 W;

d. Dye and other liquid ''lasers'', having any of the following:

d.1. A wavelength less than 150 nm and:

d.1.a. An output energy exceeding 50 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; or

d.1.b. An average or CW output power exceeding 1 W;

d.2. A wavelength of 150 nm or more but not exceeding 800 nm and having any of the following:

d.2.a. An output energy exceeding 1.5 J per pulse and a pulsed ''peak power'' exceeding 20 W;

d.2.b. An average or CW output power exceeding 20 W; or

d.2.c. A pulsed single longitudinal mode oscillator having an average output power exceeding 1 W and a repetition rate exceeding 1 kHz if the ''pulse duration'' is less than 100 ns;

d.3. A wavelength exceeding 800 nm but not exceeding 1,400 nm and having any of the following:

d.3.a. An output energy exceeding 0.5 J per pulse and a pulsed ''peak power'' exceeding 10 W; or

d.3.b. An average or CW output power exceeding 10 W; or

d.4. A wavelength exceeding 1,400 nm and having any of the following:

d.4.a. An output energy exceeding 100 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; or

d.4.b. An average or CW output power exceeding 1 W;

e. Components, as follows:

e.1. Mirrors cooled either by active cooling or by heat pipe cooling;

**Technical Note:** Active cooling is a cooling technique for optical components using flowing fluids within the subsurface (nominally less than 1 mm below the optical surface) of the optical component to remove heat from the optic.

e.2. Optical mirrors or transmissive or partially transmissive optical or electro-optical components specially designed for use with controlled ''lasers'';

f. Optical equipment, as follows:

N.B. For shared aperture optical elements, capable of operating in ''Super-High Power Laser'' (''SHPL'') applications, see the U.S. Munitions List (22 CFR part 121).

f.1. Dynamic wavefront (phase) measuring equipment capable of mapping at least 50 positions on a beam wavefront having any the following:

f.1.a. Frame rates equal to or more than 100 Hz and phase discrimination of at least 5% of the beam's wavelength; or

f.1.b. Frame rates equal to or more than 1,000 Hz and phase discrimination of at least 20% of the beam's wavelength;

f.2. ''Laser'' diagnostic equipment capable of measuring ''SHPL'' system angular beam steering errors of equal to or less than 10 μrad;

f.3. Optical equipment and components specially designed for a phased-array ''SHPL'' system for coherent beam combination to an

accuracy of lambda/10 at the designed wavelength, or 0.1 μm, whichever is the smaller;

f.4. Projection telescopes specially designed for use with ''SHPL'' systems.

**6A995 ''Lasers'', Not Controlled by 6A005 or 6A205**

* * * * *

**List of Items Controlled**

*Unit:* Equipment in number; parts and accessories in $ value.

*Related Controls:* N/A.

*Related Definitions:* N/A.

*Items:*

a. Carbon dioxide ($CO_2$) ''lasers'' having any of the following:

a.1. A CW output power exceeding 10 kW;

a.2. A pulsed output with a ''pulse duration'' exceeding 10 microseconds; and

a.2.a. An average output power exceeding 10 kW; or

a.2.b. A pulsed ''peak power'' exceeding 100 kW; or

a.3. A pulsed output with a ''pulse duration'' equal to or less than 10 microseconds; and

a.3.a. A pulse energy exceeding 5 J per pulse and ''peak power'' exceeding 2.5 kW; or

a.3.b. An average output power exceeding 2.5 kW;

b. Semiconductor lasers, as follows:

b.1. Individual, single-transverse mode semiconductor ''lasers'' having:

b.1.a. An average output power exceeding 100 mW; or

b.1.b. A wavelength exceeding 1,050 nm;

b.2. Individual, multiple-transverse mode semiconductor ''lasers'', or arrays of individual semiconductor ''lasers'', having a wavelength exceeding 1,050 nm;

c. Solid state, non-''tunable'' ''lasers'', as follows:

c.1. Ruby ''lasers'' having an output energy exceeding 20 J per pulse;

c.2. Neodymium-doped (other than glass) ''lasers'', as follows, with an output wavelength exceeding 1,000 nm but not exceeding 1,100 nm:

c.2.a. Pulse-excited, ''Q-switched lasers'', with a pulse duration equal to or more than 1 ns, and a multiple-transverse mode output with any of the following:

c.2.a.1. A ''peak power'' exceeding 200 MW; or

c.2.a.2. An average output power exceeding 50 W;

c.2.b. Pulse-excited, non-''Q-switched lasers'', having a multiple-transverse mode output with an average power exceeding 500 W; or

c.2.c. Continuously excited ''lasers'' having a multiple-transverse mode output with an average or CW output power exceeding 500 W;

d. Free electron ''lasers''.

*C. Materials*

**6C002 Optical Sensor Materials, As Follows (See List of Items Controlled)**

* * * * *

**List of Items Controlled**

*Unit:* Number.

*Related Controls:* See also 6C992.

*Related Definitions:* N/A.

*Items:*

a. Elemental tellurium (Te) of purity levels of 99.9995% or more;

b. Single crystals (including epitaxial wafers) of any of the following:

b.1. Cadmium zinc telluride (CdZnTe), with zinc content less than 6% by mole fraction;

b.2. Cadmium telluride (CdTe) of any purity level; *or*

b.3. Mercury cadmium telluride (HgCdTe) of any purity level.

**Technical Note:** Mole fraction is defined as the ratio of moles of ZnTe to the sum of the moles of CdTe and ZnTe present in the crystal.

**6C992 Optical Sensing Fibers Not Controlled by 6A002.d.3 Which Are Modified Structurally To Have a ''Beat Length'' of Less Than 500 mm (High Birefringence) or Optical Sensor Materials Not Described in 6C002.b and Having a Zinc Content of Equal to or More Than 6% by Mole Fraction**

* * * * *

**List of Items Controlled**

*Unit:* Equipment in number; parts and accessories in $ value.

*Related Controls:* N/A.

*Related Definitions:* Mole fraction is defined as the ratio of moles of ZnTe to the sum of the moles of CdTe and ZnTe present in the crystal.

*Items:*

The list of items controlled is contained in the ECCN heading.

13. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, is amended by revising the entry heading and the List of Items Controlled section for ECCNs 7A001 and 7A002, to read as follows:

**7A001 Linear Accelerometers Designed for Use in Inertial Navigation or Guidance Systems and Having Any of the Following Characteristics (See List of Items Controlled), and Specially Designed Components Therefor**

* * * * *

**List of Items Controlled**

*Unit:* $ value.

*Related Controls:* See also 7A101 and 7A994. For angular or rotational accelerometers, see 7A002. MT controls do not apply to accelerometers that are specially designed and developed as Measurement While Drilling (MWD) sensors for use in downhole well service applications.

*Related Definitions:* N/A.

*Items:*

a. A ''bias'' ''stability'' of less (better) than 130 micro g with respect to a fixed calibration value over a period of one year;

b. A ''scale factor'' ''stability'' of less (better) than 130 ppm with respect to a fixed calibration value over a period of one year; or

c. Specified to function at linear acceleration levels exceeding 100 g.

**7A002 Gyros, and Angular or Rotational Accelerometers, Having Any of the Following Characteristics (See List of Items Controlled), and Specially Designed Components Therefor**

* * * * *

**List of Items Controlled**

*Unit:* $ value.

*Related Controls*: See also 7A102 and 7A994. For linear accelerometers, see 7A001.

*Related Definitions:* N/A.

*Items*:

a. A ''drift rate'' ''stability'', when measured in a 1 g environment over a period of three months and with respect to a fixed calibration value, of:

a.1. Less (better) than 0.1° per hour when specified to function at linear acceleration levels below 10 g; or

a.2. Less (better) than 0.5° per hour when specified to function at linear acceleration levels from 10 g to 100 g inclusive; or

b. Specified to function at linear acceleration levels exceeding 100 g.

14. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, the following Export Control Classification numbers (ECCNs) are amended:

a. By revising the entry heading for ECCN 9B001; and

b. By revising the License Requirement section and the List of Items Controlled section for ECCN 9E003, to read as follows:

**9B001 Specially Designed Equipment, Tooling and Fixtures, As Follows (See List of Items Controlled), for Manufacturing Gas Turbine Blades, Vanes or Tip Shroud Castings**

* * * * *

**9E003 Other ''Technology'', As Follows (See List of Items Controlled)**

**License Requirements**

*Reason for Control*: NS, SI, AT.

| Control(s) | Country chart |
|---|---|
| NS applies to entire entry .... | NS Column 1. |
| SI applies to 9E003.a.1 through a.11, and h. See § 742.14 of the EAR for additional information.. | |
| AT applies to entire entry .... | AT Column 1. |

*License Requirement Notes*: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

* * * * *

**List of Items Controlled**

*Unit*: N/A.

Related Controls: (1.) Hot section ''technology'' specifically designed, modified, or equipped for military uses or purposes, or developed principally with U.S. Department of Defense funding, is subject to the licensing authority of the U.S. Department of State. (2.) ''Technology'' is subject to the EAR when actually applied to a commercial aircraft engine program. Exporters may seek to establish commercial application either on a case-by-case basis through submission of documentation demonstrating application to a commercial program in requesting an export license from the Department Commerce in respect to a specific export, or in the case of use for broad categories of aircraft, engines, or components, a commodity jurisdiction determination from the Department of State.

*Related Definitions:* N/A.

*Items*:

a. ''Technology'' ''required'' for the ''development'', ''production''of any of the following gas turbine engine components or systems:

a.1. Gas turbine blades, vanes or tip shrouds made from directionally solidified (DS) or single crystal (SC) alloys having (in the 001 Miller Index Direction) a stress-rupture life exceeding 400 hours at 1,273 K (1,000 °C) at a stress of 200 MPa, based on the average property values;

a.2. Multiple domed combustors operating at average burner outlet temperatures exceeding 1,813 K (1,540 ° C) or combustors incorporating thermally decoupled combustion liners, non-metallic liners or non-metallic shells;

a.3. Components manufactured from any of the following:

a.3.a. Organic ''composite'' materials designed to operate above 588 K (315 °C);

a.3.b. Metal ''matrix'' ''composite'', ceramic ''matrix'', intermetallic or intermetallic reinforced materials controlled by 1C007; or

a.3.c. ''Composite'' material controlled by 1C010 and manufactured with resins controlled by 1C008.

a.4. Uncooled turbine blades, vanes, tip-shrouds or other components designed to operate at gas path temperatures of 1,323 K (1,050 °C) or more;

a.5. Cooled turbine blades, vanes or tip-shrouds, other than those described in 9E003.a.1, exposed to gas path temperatures of 1,643 K (1,370 °C) or more;

a.6. Airfoil-to-disk blade combinations using solid state joining;

a.7. Gas turbine engine components using ''diffusion bonding'' ''technology'' controlled by 2E003.b;

a.8. Damage tolerant gas turbine engine rotating components using powder metallurgy materials controlled by 1C002.b;

a.9. Full authority digital electronic engine control (FADEC) for gas turbine and combined cycle engines and their related diagnostic components, sensors and specially designed components;

a.10. Adjustable flow path geometry and associated control systems for:

a.10.a. Gas generator turbines;

a.10.b. Fan or power turbines;

a.10.c. Propelling nozzles; *or*

**Note 1:** Adjustable flow path geometry and associated control systems in 9E003.a.10 do not include inlet guide vanes, variable pitch fans, variable stators or bleed valves for compressors.

**Note 2:** 9E003.a.10 does not control ''development'' or ''production'' ''technology'' for adjustable flow path geometry for reverse thrust.

a.11. Wide chord hollow fan blades without part-span support;

b. ''Technology'' ''required'' for the ''development'' or ''production'' of any of the following:

b.1. Wind tunnel aero-models equipped with non-intrusive sensors capable of transmitting data from the sensors to the data acquisition system; or

b.2. ''Composite'' propeller blades or propfans capable of absorbing more than 2,000 kW at flight speeds exceeding Mach 0.55;

c. ''Technology'' ''required'' for the ''development'' or ''production'' of gas turbine engine components using ''laser'', water jet, ECM or EDM hole drilling processes to produce holes having any of the following sets of characteristics:

c.1. All of the following:

c.1.a. Depths more than four times their diameter;

c.1.b. Diameters less than 0.76 mm; and

c.1.c. Incidence angles equal to or less than 25°; or

c.2. All of the following:

c.2.a. Depths more than five times their diameter;

c.2.b. Diameters less than 0.4 mm; and

c.2.c. Incidence angles of more than 25°;

**Technical Note:** For the purposes of 9E003.c, incidence angle is measured from a plane tangential to the airfoil surface at the point where the hole axis enters the airfoil surface.

d. ''Technology'' ''required'' for the ''development'' or ''production'' of helicopter power transfer systems or tilt rotor or tilt wing ''aircraft'' power transfer systems;

e. ''Technology'' for the ''development'' or ''production'' of reciprocating diesel engine ground vehicle propulsion systems having all of the following:

e.1. A box volume of 1.2 $m^3$ or less;

e.2. An overall power output of more than 750 kW based on 80/1269/EEC, ISO 2534 or national equivalents; and

e.3. A power density of more than 700 $kW/m^3$ of box volume;

**Technical Note:** Box volume: the product of three perpendicular dimensions measured in the following way:

Length: The length of the crankshaft from front flange to flywheel face;

Width: The widest of the following:

a. The outside dimension from valve cover to valve cover;

b. The dimensions of the outside edges of the cylinder heads; or

c. The diameter of the flywheel housing;

Height: The largest of the following:

a. The dimension of the crankshaft center-line to the top plane of the valve cover (or cylinder head) plus twice the stroke; or

b. The diameter of the flywheel housing.

f. ''Technology'' ''required'' for the ''production'' of specially designed components, as follows, for high output diesel engines:

f.1. ''Technology'' ''required'' for the ''production'' of engine systems having all of the following components employing ceramics materials controlled by 1C007:

f.1.a Cylinder liners;

f.1.b. Pistons;

f.1.c. Cylinder heads; and

f.1.d. One or more other components (including exhaust ports, turbochargers, valve guides, valve assemblies or insulated fuel injectors);

f.2. ''Technology'' ''required'' for the ''production'' of turbocharger systems, with single-stage compressors having all of the following:

f.2.a. Operating at pressure ratios of 4:1 or higher;

f.2.b. A mass flow in the range from 30 to 130 kg per minute; and

f.2.c. Variable flow area capability within the compressor or turbine sections;

f.3. ''Technology'' ''required'' for the ''production'' of fuel injection systems with a specially designed multifuel (e.g., diesel or jet fuel) capability covering a viscosity range from diesel fuel (2.5 cSt at 310.8 K (37.8 °C)) down to gasoline fuel (0.5 cSt at 310.8 K (37.8 °C)), having both of the following:

f.3.a. Injection amount in excess of 230 $mm^3$ per injection per cylinder; and

f.3.b. Specially designed electronic control features for switching governor characteristics automatically depending on fuel property to provide the same torque characteristics by using the appropriate sensors;

g. ''Technology'' ''required'' for the development'' or ''production'' of high output diesel engines for solid, gas phase or liquid film (or combinations thereof) cylinder wall lubrication, permitting operation to temperatures exceeding 723 K (450 °C), measured on the cylinder wall at the top limit of travel of the top ring of the piston.

h. ''Technology'' not otherwise controlled in 9E003.a.1 through a.10 and currently used in the ''development'', ''production'', or overhaul of hot section parts and components of civil derivatives of military engines controlled on the U.S. Munitions List.

Dated: December 17, 2001.

**James J. Jochum,**

*Assistant Secretary for Export Administration.*

[FR Doc. 02–10 Filed 1–2–02; 8:45 am]

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# Part III

# Department of Commerce

## Bureau of Export Administration

**15 CFR Parts 743, 752, et al.**

**Implementation of the Wassenaar Arrangement List of Dual-Use Items: Revisions to Categories 1, 2, 3, 4, 5, 6, 7 and 9 of the Commerce Control List and Revisions to Reporting Requirements; Final Rule**

**DEPARTMENT OF COMMERCE**

**Bureau of Export Administration**

**15 CFR Parts 743, 752, 772 and 774**

**[Docket No. 011026261–1261–01]**

**RIN 0694–AC44**

## Implementation of the Wassenaar Arrangement List of Dual-Use Items: Revisions to Categories 1, 2, 3, 4, 5, 6, 7 and 9 of the Commerce Control List and Revisions to Reporting Requirements

**AGENCY:** Bureau of Export Administration, Commerce

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Export Administration (BXA) maintains the Commerce Control List (CCL), which identifies items subject to Department of Commerce export controls. This final rule revises certain entries controlled for national security reasons in Categories 1, 2, 3, 4, 5 Part I (telecommunications), 6, 7 and 9 to conform with changes in the List of Dual-Use Goods and Technologies maintained and agreed to by governments participating in the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement). The Wassenaar Arrangement controls strategic items with the objective of improving regional and international security and stability.

The purpose of this final rule is to make the necessary changes to the Commerce Control List to implement revisions to the Wassenaar List that were agreed upon in the December 1, 2000 meeting and to make necessary revisions to reporting requirements. The majority of the changes that affected Category 4 items will be published in a separate rule.

**DATES:** This rule is effective January 3, 2002.

**FOR FURTHER INFORMATION CONTACT:** Tanya Hodge Mottley in the Office of Strategic Trade and Foreign Policy Controls, Bureau of Export Administration, U.S. Department of Commerce at (202) 482–1837.

**SUPPLEMENTARY INFORMATION:**

### Background

In July 1996, the United States and thirty-two other countries gave final approval to the establishment of a new multilateral export control arrangement, called the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement). The Wassenaar Arrangement contributes to regional and international security and stability by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilizing accumulations of such items. Participating states have committed to exchange information on exports of dual-use goods and technologies to non-participating states for the purposes of enhancing transparency and assisting in developing common understandings of the risks associated with the transfers of these items.

This final rule revises a number of national security controlled entries on the Commerce Control List (CCL) to conform with December 1, 2000 revisions to the Wassenaar List of Dual-Use Goods and Technologies. This rule also revises language to provide a complete or more accurate description of controls. A detailed description of the revisions to the CCL is provided below.

Specifically, this rule makes the following amendments to the Commerce Control List:

### Category 1—Materials, Chemicals, Microorganisms, and Toxins

1A002—amended by:

(1) Moving the exception contained in the NS control language for finished or semifinished items specially designed for civilian applications to two separate notes under paragraphs a. and b. of this entry. This revision clarifies that this entry does not control finished or semifinished items specially designed for purely civilian applications, as follows: sporting goods, automotive industry, machine tool industry, and medical applications; and

(2) Correcting a typographical error in note 2 of the Related Controls paragraph of this entry.

1B002—amended by:

(1) Clarifying that the equipment described by this entry is used for producing the highest performance ductile metal alloys in the entry heading; and

(2) Replacing the reference to controlled materials with a reference to the critical processes listed in 1C002.c.2. in the entry heading.

1C002—amended by:

(1) Reformatting the entry to specify the types of materials controlled (material in solid forms and powders/particulates suitable for making them). Specifically, each subparagraph has been revised to identify the main classes of controlled material, as follows:

(i) 1C002.a for aluminides;

(ii) 1C002.b for alloys made by powder metallurgy techniques;

(iii) 1C002.c for alloy powders suitable for re-melting to make controlled alloys; and

(iv) 1C002.d for material that has been refined to the correct composition for controlled alloys, which needs only to be mechanically reduced to powder in order to be suitable for re-melting to make controlled alloys; and

(2) Moving the Technical Notes that were after a.2.e to the beginning of the List of Items Controlled for this entry.

1C007—amended by:

(1) Clarifying that ceramic-ceramic ''composite'' materials are controlled when made from the listed ''materials'' instead of ''systems'' in paragraph (c);

(2) Clarifies that all the parameters in paragraph (c) must be met for the item to be subject to control; and

(3) Reformatting paragraph (c) to be consistent with the Wassenaar Information System.

### Category 2—Material Processing

2A001—amended by revising the tolerance standards for ball bearings and solid roller bearings described in 2A001.a and 2A002.b. These tolerance standards are revised to add greater precision. Specifically, in 2A001.a, the following standards ''ABEC 7, ABEC 7P, ABEC 7T or ISO Standard Class 4, or national equivalents, or better'' are revised to read ''ISO Tolerance Class 4 (or ANSI/ABMA Std 20 Tolerance Class ABEC–7 or RBEC–7, or other national equivalents), or better''. In 2A001.b, the following standards ''ABEC 9, ABEC 9P or ISO Standard Class 2, or national equivalents'' are revised to read ''ISO 492 Tolerance Class 2 (or ANSI/ABMA Std 20 Tolerance Class ABEC–9 or RBEC–9, or other national equivalents), or better''.

Technical Notes to Category 2 B—amended by:

(1) Redesignating technical notes 2 through 5 as technical notes 3 though 6; and

(2) Adding a new technical note 2 to clarify the meaning of the term ''contouring control''.

2B001—amended by:

(1) Adding two notes to decontrol special purpose machine tools that produce certain type parts. Specifically, Note 1 specifies that 2B001 does not control special purpose machine tools limited to the manufacture of gears. Note 2 specifies that 2B001 does not control special purpose machine tools limited to the manufacture of crank shafts or cam shafts, tools or cutters, extruder worms, or engraving or facetted jewelry parts;

(2) Adding a new national security control for fly cutting machine tools, as described by 2B001.b.4. This new

control introduces new parameters for the control of fly cutting machines, such as a spindle run-out and angular deviation of slide movement (2B001.b.4); and

(3) Adding clarifying text to paragraph (e), machine tools for removing metals, ceramics or ''composites'', to be consistent with the Wassenaar Information System.

2B008—amended by:

(1) Removing the reference to the term ''inserts'' in the entry heading. The term ''inserts'' has been removed because no inserts are contained in the List of Items Controlled;

(2) Replacing the phrase ''for equipment controlled by 2B006 or 2B007'' with the phrase ''dimensional inspection or measuring systems and equipment'' in the entry heading. The phrase referencing equipment controlled by 2B007 has been removed because the items listed in 2B008 are not key elements of robots controlled by 2B007; and

(3) Replacing the reference to 2B006 with the phrase ''dimensional inspection or measuring systems and equipment'' in the entry heading, in order to reduce the number of unnecessary cross-references to other entries.

2D002—amended by removing controls for ''real-time processing'' of data to modify tool path, feed rate and spindle data, during machining operation, by deleting 2D002.b. No such software currently is available. The parameters set forth in 2D002.a have been included in the entry heading and the List of Items Controlled has been removed.

2E003—Materials Processing Table for Deposition Techniques—Notes—amended by revising Note 17 to the Table by removing the exclusion from control for technology specially designed to deposit diamond like carbon on polycarbonate eyeglasses, bakery equipment and high quality lenses designed for cameras or telescopes.

**Category 3—Electronics**

3A001—amended by revising the following subparagraphs:

3A001.a.3.c—amended by clarifying that the control for this subparagraph applies only to the capability of processors directly interconnected with each other and by relaxing controls on the external interconnect transfer rate from 2.5 Mbytes/s to 150 Mbyte/s.

3A001.a.5.a.1—amended by relaxing controls for analog-to-digital converters by lowering the conversion time from 10 ns to 5 ns.

3A001.a.10—amended by:

(1) Relaxing controls for custom integrated circuits by increasing the control threshold on the number of terminals from 208 to 1,000 (3A001.a.10.a); and

(2) Decreasing the control threshold for basic gate propagation delay time from 0.35 ns to 0.1 ns (3A001.a.10.b).

3A001.a.12—amended by:

(1) Modifying the subparagraph to reflect advancements in Fast Fourier Transform (FFT) processors. The formula for determining the control parameters for FFT processors has been modified. This modification relaxes controls over the execution time from 1 millisecond to 500 microseconds for a 1024 point complex FFT; and

(2) Deleting the control parameter for butterfly throughput, because it is a software algorithm and does not describe performance levels of currently produced FFT processors.

3A001.b.1, b.2 and b.8—amended by revising the decontrol notes in these subparagraphs to clarify that bands within the frequency range between 0 to 31 GHz are not subject to national security controls.

3A001.b.1.a.1—amended by revising the phrase ''higher than 31 GHz'' to read ''exceeding 31 GHz''.

3A001.b.1.a.3—amended by replacing the term ''instantaneous bandwidth'' with ''fractional bandwidth''. The term ''fractional bandwidth'' more accurately reflects the appropriate control for this entry.

3A001.b.2—amended by:

(1) Adding the phrase ''having one or more active elements'' to further define the control of microwave integrated circuits and modules (3A001.b.2.a); and

(2) Adding a new decontrol note for certain satellite broadcast equipment.

3A002.b—amended by revising the phrase ''assemblies'' to read ''electronic assemblies'', to be consistent with the Wassenaar Arrangement.

3A002.c.2—amended by:

(1) Modifying controls for dynamic signal analyzers by increasing the control parameter for real-time bandwidth from 25.6 kHz to 500 kHz; and

(2) Moving the text of the technical note under paragraph c. (Constant percentage bandwidth filters are also known as octave or fractional octave filters) to the ''Related Definitions'' paragraph for the entry.

3A991—amended by:

(1) Adding a new parameter in paragraph (a) related to external interconnection for ''Microprocessor microcircuits'', ''microcomputer microcircuits'', and microcontroller microcircuits;

(2) Adding a new paragraph (c) to include analog-to-digital converters having a resolution of 8 bit or more, but less than 12 bit, with a total conversion time of less than 10 ns;

(3) Adding a new paragraph (e) to include Fast Fourier Transform (FFT) processors having a rated execution time for a 1,024 point complex FFT of less than 1 ms; and

(4) Redesignating paragraph (c) as paragraph (d), and paragraphs (d) through (l) as paragraphs (f) through (n).

3B002—amended by:

(1) Adding to the heading the phrase ''as follows (see List of Items Controlled)'';

(2) Modifying the note to 3B002.b to clarify that equipment to test memories are not controlled by 3B002.b; and

(3) Revising the phrase ''assemblies'' to read ''electronic assemblies'' to be consistent with the Wassenaar Arrangement.

3B991—amended by revising the phrase ''assemblies'' to read ''electronic assemblies'' in paragraph 3B991.b.

3B992—amended by revising the phrase ''assemblies'' to read ''electronic assemblies'' in paragraphs 3B992.b, 3B992.b.4.b, and in Note 1 to 3B992.b.4.b.

3C001—amended by:

(1) Adding silicon carbide to the list of controlled hetero-epitaxtial materials. Like silicon and germanium, silicon carbide is a Group IV material capable of producing strategic items (3C001.c); and

(2) Adding a note to clarify that equipment or material whose functionality has been unalterably disabled are not controlled by 3C001.

3D003—amended by modifying the control language to clarify the intent of computer-aided-design (CAD) software controls in order to remove any ambiguities in interpretation whether CAD software supplied without design rule libraries are subject to control under 3D003. Exports of CAD software with or without design rule libraries are both subject to national security controls.

3E001—amended by moving the Notes in the Related Controls paragraph to the List of Items Controlled to be consistent with the Wassenaar List.

3E002 and 3E003—amended by:

(1) Redesignating 3E002.a through 3E002.f as new ECCN 3E003;

(2) In the new ECCN 3E003, expanding eligibility under License Exception TSR to include silicon-on-insulator (SOI) technology as described in the new 3E003.e;

(3) Adding a Note to describe what 3E002 does not control to the List of Items Controlled in 3E002; and

(4) Redesignating 3E002.g as new ECCN 3E002.

**Category 4—Computers**

4D003—amended by removing national security controls for expert system software as described by 4D003.b.

**Category 5—Telecommunications, Part I**

5D001—amended by removing national security controls for software which provides the capability of recovering ''source code'' of telecommunications ''software'' controlled by 5D001 (5D001.c).

5E001—amended by adding a decontrol note to 5E001.c.4.b specifying that this entry does not control ''technology'' for the ''development'' or ''production'' of equipment designed or modified for operation in any frequency band which is ''allocated by the ITU'' for radio-communications services, but not for radio-determination.

**Category 6—Sensors and Lasers**

6A003—amended by:

(1) Revising the controls on instrumentation cameras specified in 6A003.a to include specially designed components therefor and by revising the note to 6A003.a to replace the term ''electronic assemblies'' with ''plug-ins''. This change is necessary to make the controls for instrumental cameras more complete, as plug-in modules are specially designed components of controlled cameras. Complementing this revision to 6A003.a, a new subparagraph 6A003.a.6 has been added to describe the control parameters for ''plug-ins''. In addition, License Exception LVS has been modified to exclude the new control for 6A003.a.6 ''plug-ins'' from eligibility; and

(2) Adding a new technical note to 6A003.b.1 to clarify that digital video cameras should be evaluated by the maximum number of ''active pixels'' used for capturing moving images.

6A005—amended by:

(1) Removing the phrase ''or CW'' from the control parameter for excimer lasers and metal vapor lasers, as described in 6A005.a.1 and 6A005.a.2. The deletion of the term ''CW'' from these subparagraphs more accurately describes the technical nature of control, as both excimer and metal vapor lasers are not physically capable of working the CW mode;

(2) Revising the control text for semiconductor lasers described by 6A005.b. Previously in 6A005.b.2, individual multiple-transverse mode semiconductor lasers and individual arrays of individual semiconductor lasers were controlled using the same threshold. However, since the output power of an array of semiconductor laser is greater than that of an individual semiconductor lasers it should be subject to a different control threshold. Therefore, a new subparagraph 6A005.b.3 has been added describing the control threshold for individual arrays of individual semiconductor lasers.

6A995—amended by correcting an abbreviation for a parameter for semiconductor lasers in b.1.a by revising ''MW'' to read ''mW'.

6C002—amended by revising 6C002.b to adopt the term ''percent by mole fraction'' rather than the term ''percent by weight'' for the control of zinc in cadmium zinc telluride (CdZnTe) substrates. The previous control language in 6C002.b incorrectly referred to the zinc percentage by weight. The formula for CdZnTe is an atomic formula which specifies the number of atoms of each constituent. Therefore, specifying the zinc percentage in terms of mole fraction percentage correctly relates the concentration of zinc to the concentration of cadmium in CdZnTe. In addition, a technical note is added to paragraph 6C002.b to define ''mole fraction''. Also, in 6C002.b text is added to clarify that Single crystals includes epitaxial wafers.

6C992—amended by revising the heading to adopt the term ''percent by mole fraction'' rather than the term ''percent by weight'' and adding the definition of ''mole fraction'' to the Related Definitions paragraph, to conform with changes to ECCN 6C002.

**Category 7—Avionics**

7A001—amended by:

(1) Revising the entry heading to limit control of this entry to certain linear accelerometers, rather than a broad category of accelerometers; and

(2) Adding a reference specifying that angular or rotational accelerometers are controlled under 7A002 in the Related Controls section.

7A002—amended by:

(1) Revising the entry heading to control certain angular or rotational accelerometers. Previously, accelerometers were controlled under 7A001; and

(2) Adding a reference specifying that linear accelerometers are controlled under 7A001 to the Related Controls section.

**Category 9—Propulsion Systems, Space Vehicles and Related Equipment**

9B001—amended by:

(1) Revising the entry heading to remove the phrase ''or measuring''. In 1999, the subparagraph that specifically referenced measuring equipment was deleted; and

(2) Removing the corresponding reference in the entry heading.

9E003—amended by:

(1) Removing the control for ''overhaul'' technology for gas turbine engine components or systems described in 9E003.a; and

(2) Revising the phrase ''of the following commercial aircraft engines, components or systems'' to read ''of any of the following gas turbine engine components or systems'' to more accurately describe the controls of paragraph a.

*Reformatting and conforming revisions to the structure of the entries on the CCL* This final rule makes a number of reformatting revisions to the CCL in order to conform certain entries and subparagraphs to the new Wassenaar Automated Information System (WAIS). These conforming revisions do not affect or change the scope of control, but merely provide standard consistency in structure within the CCL. Specific revisions on the CCL include: ECCNs 2B001.b.1, 2B001.c.1, 2B001.e, 2B001.e.1, 9E003.d and 9E003.e.

Items placed under control by this rule will be subject to both national security (NS) and antiterrorism (AT) controls. These actions are taken in consultation with the Departments of State and Defense and pursuant to agreements reached in the Wassenaar Arrangement.

All items removed from national security (NS) controls as a result of changes to the Wassenaar List of Dual-Use Goods and Technologies will continue to be controlled for antiterrorism (AT) reasons.

This final rule also revises the reporting and recordkeeping provisions of the Wassenaar Arrangement in § 743.1 by requiring reports for exports of sensitive list items made under the Special Comprehensive License Procedure. Conforming revisions are also made to the recordkeeping provisions in § 752.12. Extending Wassenaar Arrangement reporting requirements to the Special Comprehensive Licensing Procedure is necessary in order for the U.S. to fulfill its obligations in complying with the objectives of the regime.

This final rule also amends part 772 by adding two new definitions to § 772.1, they are ''Allocated by the ITU'' and ''Fractional bandwidth.'' These definitions are added pursuant to agreements reached in the Wassenaar Arrangement.

Although the Export Administration Act expired on August 20, 2001, the

President, through Executive Order 13222 of August 17, 2001 (66 Fed. Reg. 44025 (August 22, 2001)), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

**Saving Clause**

Shipments of items removed from eligibility for export or reexport without a license, under a particular License Exception authorization or the designator NLR, as a result of this regulatory action, may continue to be exported or reexported under that License Exception authorization or designator until February 4, 2002. In addition, this rule revises the numbering and structure of certain entries on the Commerce Control List. For items under such entries and for April 3, 2002, BXA will accept license applications for items described either by the entries in effect immediately before January 3, 2002 or the entries described in this rule.

**Rulemaking Requirements**

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of 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 requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) These collections has been approved by the Office of Management and Budget under control numbers 0694–0106, ''Reporting and Recordkeeping Requirements under the Wassenaar Arrangement,'' which carries a burden hour estimate of 5 minutes to record the information for each export and 1 minute to submit the report twice a year to BXA; and 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 40 minutes to prepare and submit electronically and 45 minutes to submit manually on form BXA–748P. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to the Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044

3. This rule does not contain policies with Federalism implications as this term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

**List of Subjects**

*15 CFR Parts 743 and 752*

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

*15 CFR Part 772*

Exports, Foreign trade.

*15 CFR Part 774*

Exports, Foreign Trade, Reporting and recordkeeping requirements.

Accordingly, parts 743, 752, 772 and 774 of the Export Administration Regulations (15 CFR parts 730 through 799) are amended as follows:

1. The authority citation for part 743 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq;* Pub.L. 106–508; 50 U.S.C. 1701 *et seq;* E.O. 13206, 66 FR 18397, April 9, 2001.

2. The authority citation for parts 752 and 772 are revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13222, 66 FR 44025, August 22, 2001.

3. The authority citation for part 774 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, August 22, 2001.

## PART 743—[AMENDED]

4. Section 743.1 is amended by adding a note immediately following paragraph (a) and by revising paragraph (b) to read as follows:

**§ 743.1 Wassenaar Arrangement.**

(a) * * *

**Note to paragraph (a) of this section:** For purposes of part 743, the term ''you'' has the same meaning as the term ''exporter'', as defined in part 772 of the EAR.

(b) *Requirements.* You must submit two (2) copies of each report required under the provisions of this section and maintain accurate supporting records (see § 762.2(b) of the EAR) for all exports of items specified in paragraph (c) of this section for the following:

(1) *Exports authorized under License Exceptions GBS, CIV, TSR, LVS, CTP and GOV* (see part 740 of the EAR). Note that exports of technology and source code under License Exception TSR to foreign nationals located in the U.S. should not be reported; and

(2) Exports authorized under the Special Comprehensive License procedure (see part 752 of the EAR).

* * * * *

## PART 752—[AMENDED]

5. Section 752.12 is amended by redesignating paragraph (b) as paragraph (c) and by adding a new paragraph (b) to read as follows:

**§ 752.12 Recordkeeping requirements.**

* * * * *

(b) *SCL holder.* The SCL holder is responsible for complying with the special reporting requirements for exports of certain commodities, software and technology under the Wassenaar Arrangement as described in § 743.1 of the EAR.

* * * * *

## PART 772—[AMENDED]

6. Part 772 is amended by adding a new definition ''Allocated by the ITU'' and a new definition ''Fractional bandwidth'' in alphabetical order to § 772.1, to read as follows:

**§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).**

* * * * *

''*Allocated by the ITU*''. (Cat 3 and Cat 5 part 1)—The allocation of frequency bands according to the ITU Radio Regulations (Edition 1998) for primary, permitted and secondary services.

N.B. Additional and alternative allocations are not included.

* * * * *

''*Fractional bandwidth*''. (Cat 3)—The ''instantaneous bandwidth'' divided by

the center frequency, expressed as a percentage.

* * * * *

## PART 774—[AMENDED]

7. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, Microorganisms, and Toxins, Export Control Classification Numbers (ECCNs) are amended:

a. By revising the License Requirements section and the List of Items Controlled section for ECCNs 1A002 and 1C002;

b. By revising the entry heading for ECCN 1B002; and

c. By revising the List of Items Controlled section for ECCN 1C007, to read as follows:

**1A002 ''Composite'' Structures or Laminates, Having Any of the Following (See List of Items Controlled)**

**License Requirements**

*Reason for Control:* NS, NP, AT.

| Control(s) | Country chart |
|---|---|
| NS applies to entire entry .... | NS Column 2. |
| NP applies to 1A002.b.1 in the form of tubes with an inside diameter between 75 mm and 400 mm. | NP Column 1. |
| 1 AT applies to entire entry | AT Column 1. |

*License Requirement Notes:* See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

* * * * *

**List of Items Controlled**

*Unit:* Kilograms.

*Related Controls:* (1) See also 1A202, 9A010, and 9A110. (2) Composite structures that are specially designed for missile application (including specially designed subsystems and components) are controlled by 9A110.

*Related Definitions:* N/A.

*Items:*

a. An organic ''matrix'' and made from materials controlled by 1C010.c, 1C010.d or 1C010.e; or

**Note:** 1A002.a does not control finished or semifinished items specially designed for purely civilian applications as follows:

a. Sporting goods;

b. Automotive industry;

c. Machine tool industry; and

d. Medical applications.

b. A metal or carbon ''matrix'' and made from:

b.1. Carbon ''fibrous or filamentary materials'' with:

b.1.a. A ''specific modulus'' exceeding $10.15 \times 10^6$ m; and

b.1.b. A ''specific tensile strength'' exceeding $17.7 \times 10^4$ m; or

b.2. Materials controlled by 1C010.c.

**Note:** 1A002.b does not control finished or semifinished items specially designed for purely civilian applications as follows:

a. Sporting goods;

b. Automotive industry;

c. Machine tool industry; and

d. Medical applications.

**Technical Notes:** (1) Specific modulus: Young's modulus in pascals, equivalent to $N/m^2$ divided by specific weight in $N/m^3$, measured at a temperature of (296±2) K ((23±2) °C) and a relative humidity of (50±5)%. (2) Specific tensile strength: ultimate tensile strength in pascals, equivalent to $N/m^2$ divided by specific weight in $N/m^3$, measured at a temperature of (296±2) K ((232) °C) and a relative humidity of (50±5)%.

**Note:** 1A002 does not control composite structures or laminates made from epoxy resin impregnated carbon ''fibrous or filamentary materials'' for the repair of aircraft structures of laminates, provided that the size does not exceed one square meter ($1 m^2$).

**1B002 Equipment for Producing Metal Alloys, Metal Alloy Powder or Alloyed Materials, Specially Designed to Avoid Contamination and Specially Designed for Use in One of the Processes Specified in 1C002.c.2**

* * * * *

**1C002 Metal Alloys, Metal Alloy Powder and Alloyed Materials, As Follows (See List of Items Controlled)**

**License Requirements**

*Reason for Control:* NS, NP, AT.

| Control(s) | Country chart |
|---|---|
| NS applies to entire entry .... | NS Column 2. |
| NP applies to 1C002.b.3 or b.4 if they exceed the parameters stated in 1C202. | NP Column 1. |
| AT applies to entire entry .... | AT Column 1. |

* * * * *

**List of Items Controlled**

*Unit:* Kilograms.

*Related Controls:* See also 1C202.

*Related Definition:* N/A.

*Items:*

**Note:** 1C002 does not control metal alloys, metal alloy powder or alloyed materials for coating substrates.

**Technical Note 1:** The metal alloys in 1C002 are those containing a higher percentage by weight of the stated metal than of any other element.

**Technical Note 2:** Stress-rupture life should be measured in accordance with ASTM standard E–139 or national equivalents.

**Technical Note 3:** Low cycle fatigue life should be measured in accordance with ASTM Standard E–606 ''Recommended Practice for Constant-Amplitude Low-Cycle Fatigue Testing'' or national equivalents. Testing should be axial with an average stress ratio equal to 1 and a stress-concentration factor ($K_t$) equal to 1. The average stress is defined as maximum stress minus minimum stress divided by maximum stress.

a. Aluminides, as follows:

a.1. Nickel aluminides containing a minimum of 15 weight percent aluminum, a maximum of 38 weight percent aluminum and at least one additional alloying element;

a.2. Titanium aluminides containing 10 weight percent or more aluminum and at least one additional alloying element;

b. Metal alloys, as follows, made from material controlled by 1C002.c:

b.1. Nickel alloys with:

b.1.a. A stress-rupture life of 10,000 hours or longer at 923 K (650 °C) at a stress of 676 MPa; or

b.1.b. A low cycle fatigue life of 10,000 cycles or more at 823 K (550 °C) at a maximum stress of 1,095 MPa;

b.2. Niobium alloys with:

b.2.a. A stress-rupture life of 10,000 hours or longer at 1,073 K (800 °C) at a stress of 400 MPa; or

b.2.b. A low cycle fatigue life of 10,000 cycles or more at 973 K (700 °C) at a maximum stress of 700 MPa;

b.3. Titanium alloys with:

b.3.a. A stress-rupture life of 10,000 hours or longer at 723 K (450 °C) at a stress of 200 MPa; or

b.3.b. A low cycle fatigue life of 10,000 cycles or more at 723 K (450 °C) at a maximum stress of 400 MPa;

b.4 Aluminum alloys with a tensile strength of:

b.4.a. 240 MPa or more at 473 K (200 °C); or

b.4.b. 415 MPa or more at 298 K (25 °C);

b.5. Magnesium alloys with:

b.5.a. A tensile strength of 345 MPa or more; and

b.5.b. A corrosion rate of less than 1 mm/year in 3% sodium chloride aqueous solution measured in accordance with ASTM standard G–31 or national equivalents;

c. Metal alloy powder or particulate material, having all of the following characteristics:

c.1. Made from any of the following composition systems:

**Technical Note:** X in the following equals one or more alloying elements.

c.1.a. Nickel alloys (Ni-Al-X, Ni-X-Al) qualified for turbine engine parts or components, i.e. with less than 3 non-metallic particles (introduced during the manufacturing process) larger than 100 µ in $10^9$ alloy particles;

c.1.b. Niobium alloys (Nb-Al-X or Nb-X-Al, Nb-Si-X or Nb-X-Si, Nb-Ti-X or Nb-X-Ti);

c.1.c. Titanium alloys (Ti-Al-X or Ti-X-Al);

c.1.d. Aluminum alloys (Al-Mg-X or Al-X-Mg, Al-Zn-X or Al-X-Zn, Al-Fe-X or Al-X-Fe); or

c.1.e. Magnesium alloys (Mg-Al-X or Mg-X-Al); and

c.2. Made in a controlled environment by any of the following processes:

c.2.a. ''Vacuum atomization'';

c.2.b. ''Gas atomization'';

c.2.c. ''Rotary atomization'';

c.2.d. ''Splat quenching'';

c.2.e. ''Melt spinning'' and ''comminution'';

c.2.f. ''Melt extraction'' and ''comminution''; or

c.2.g. ''Mechanical alloying'';

d. Alloyed materials, having all the following characteristics:

d.1. Made from any of the composition systems specified in 1C002.c.1;

d.2. In the form of uncomminuted flakes, ribbons or thin rods; *and*

d.3. Produced in a controlled environment by any of the following:

d.3.a. ''Splat quenching'';

d.3.b. ''Melt spinning''; or

d.3.c. ''Melt extraction''.

* * * * *

**1C007 Ceramic Base Materials, Non-''Composite'' Ceramic Materials, Ceramic-''Matrix'' ''Composite'' Materials and Precursor Materials, As Follows (See List of Items Controlled)**

* * * * *

**List of Items Controlled**

*Unit:* Kilograms.

*Related Controls:* See also 1C107.

*Related Definitions:* N/A.

*Items:*

a. Base materials of single or complex borides of titanium having total metallic impurities, excluding intentional additions, of less than 5,000 ppm, an average particle size equal to or less than 5 μm and no more than 10% of the particles larger than 10 μm;

b. Non-''composite'' ceramic materials in crude or semi-fabricated form, composed of borides of titanium with a density of 98% or more of the theoretical density;

**Note:** 1C007.b does not control abrasives.

c. Ceramic-ceramic ''composite'' materials with a glass or oxide-''matrix'' and reinforced with fibers having all the following:

c.1 Made from any of the following materials:

c.1.a. Si-N;

c.1.b. Si-C;

c.1.c. Si-Al-O-N; or

c.1.d. Si-O-N; and

c.2. Having a ''specific tensile strength'' exceeding 12.7 x $10^3$ m;

d. Ceramic-ceramic ''composite'' materials, with or without a continuous metallic phase, incorporating particles, whiskers or fibers, where carbides or nitrides of silicon, zirconium or boron form the ''matrix'';

e. Precursor materials (i.e., special purpose polymeric or metallo-organic materials) for producing any phase or phases of the materials controlled by 1C007.c, as follows:

e.1. Polydiorganosilanes (for producing silicon carbide);

e.2. Polysilazanes (for producing silicon nitride);

e.3. Polycarbosilazanes (for producing ceramics with silicon, carbon and nitrogen components);

f. Ceramic-ceramic ''composite'' materials with an oxide or glass ''matrix'' reinforced with continuous fibers from any of the following systems:

f.1. $Al_2O_3$; or

f.2. Si-C-N.

**Note:** 1C007.f does not control ''composites'' containing fibers from these systems with a fiber tensile strength of less than 700 MPa at 1,273 K (1,000 °C) or fiber tensile creep resistance of more than 1% creep strain at 100 MPa load and 1,273 K (1,000 °C) for 100 hours.

* * * * *

8. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Numbers (ECCNs) are amended:

a. By revising the List of Items Controlled section for ECCNs 2A001 and 2B001;

b. By adding the entry heading and Notes for Category 2B—Test, Inspection and Production Equipment immediately following ECCN 2A999;

c. By revising the entry heading for ECCN 2B008;

d. By revising the entry heading, the License Requirements section and the List of Items Controlled section for ECCN 2D002; and

e. By revising Note 17 of the Notes to ''Category 2E—Materials Processing Table; Deposition Techniques'', that follows ECCN 2E003, to read as follows:

**2A001 Anti-Friction Bearings and Bearing Systems, As Follows, (See List of Items Controlled) and Components Therefor**

* * * * *

**List of Items Controlled**

*Unit:* $ value.

*Related Controls:* (1) See also 2A991. (2) Quiet running bearings are subject to the export licensing authority of the Department of State, Office of Defense Trade Controls. (See 22 CFR part 121.)

*Related Definitions:* Annular Bearing Engineers Committee (ABEC).

*Items:*

**Note:** 2A001 does not control balls with tolerance specified by the manufacturer in accordance with ISO 3290 as grade 5 or worse.

a. Ball bearings and solid roller bearings having tolerances specified by the manufacturer in accordance with ISO 492 Tolerance Class 4 (or ANSI/ABMA Std 20 Tolerance Class ABEC–7 or RBEC–7, or other national equivalents), or better, and having rings, balls or rollers made from monel or beryllium;

**Note:** 2A001.a does not control tapered roller bearings.

b. Other ball bearings and solid roller bearings having tolerances specified by the manufacturer in accordance with ISO 492 Tolerance Class 2 (or ANSI/ABMA Std 20 Tolerance Class ABEC–9 or RBEC–9, or other national equivalents), or better;

**Note:** 2A001.b does not control tapered roller bearings.

c. Active magnetic bearing systems using any of the following:

c.1. Materials with flux densities of 2.0 T or greater and yield strengths greater than 414 MPa;

c.2. All-electromagnetic 3D homopolar bias designs for actuators; or

c.3. High temperature (450 K (177°C) and above) position sensors.

*B. Test, Inspection and Production Equipment*

Technical Notes for 2B001 to 2B009:

1. Secondary parallel contouring axes, (e.g., the w-axis on horizontal boring mills or a secondary rotary axis the center line of which is parallel to the primary rotary axis) are not counted in the total number of contouring axes. Rotary axes need not rotate over 360o. A rotary axis can be driven by a linear device (e.g., a screw or a rack-and-pinion).

2. The number of axes which can be co-ordinated simultaneously for ''contouring control'' is the number of axes which affect relative movement between any one workpiece and a tool, cutting head or grinding wheel which is cutting or removing material from the workpiece. This does not include any additional axes which affect other relative movement within the machine. Such axes include:

2.a. Wheel-dressing systems in grinding machines;

2.b. Parallel rotary axes designed for mounting of separate workpieces;

2.c. Co-linear rotary axes designed for manipulating the same workpiece by holding it in a chuck from different ends.

3. Axis nomenclature shall be in accordance with International Standard

ISO 841, ''Numerical Control Machines—Axis and Motion Nomenclature''.

4. A''tilting spindle'' is counted as a rotary axis.

5. Guaranteed ''positioning accuracy'' levels instead of individual test protocols may be used for each machine tool model using the agreed ISO test procedure.

6. The positioning accuracy of ''numerically controlled'' machine tools is to be determined and presented in accordance with ISO 230/2 (1988).

**2B001 Machine Tools and Any Combination Thereof, for Removing (or Cutting) Metals, Ceramics or ''Composites'', Which, According to the Manufacturer's Technical Specification, Can Be Equipped With Electronic Devices for ''Numerical Control''**

* * * * *

**List of Items Controlled**

*Unit:* Equipment in number; parts and accessories in $ value.

*Related Controls:* (1.) See also 2B290 and 2B991; (2.) See also 1B101.d for cutting equipment designed or modified for removing prepregs and preforms controlled by 9A110.

*Related Definitions:* N/A.

*Items:*

**Note 1:** 2B001 does not control special purpose machine tools limited to the manufacture of gears. For such machines, see 2B003.

**Note 2:** 2B001 does not control special purpose machine tools limited to the manufacture of any of the following parts:

a. Crank shafts or cam shafts;

b. Tools or cutters;

c. Extruder worms;

d. Engraved or facetted jewellery parts.

a. Machine tools for turning, having all of the following characteristics:

a.1. Positioning accuracy with ''all compensations available'' of less (better) than 6 μm along any linear axis; and

a.2. Two or more axes which can be coordinated simultaneously for ''contouring control'';

**Note:** 2B001.a does not control turning machines specially designed for the production of contact lenses.

b. Machine tools for milling, having any of the following characteristics:

b.1. Having all of the following:

b.1.a. Positioning accuracy with ''all compensations available'' of less (better) than 6 μm along any linear axis; and

b.1.b. Three linear axes plus one rotary axis which can be coordinated simultaneously for ''contouring control'';

b.2. Five or more axes which can be coordinated simultaneously for ''contouring control'';

b.3. A positioning accuracy for jig boring machines, with ''all compensations available'', of less (better) than 4 μm along any linear axis; or

b.4. Fly cutting machines, having all of the following characteristics: b.4.a. Spindle ''run-out'' and ''camming'' less (better) than 0.0004 mm TIR; *and*

b.4.b. Angular deviation of slide movement (yaw, pitch and roll) less (better) than 2 seconds of arc, TIR, over 300 mm of travel.

c. Machine tools for grinding, having any of the following characteristics:

c.1. Having all of the following:

c.1.a. Positioning accuracy with ''all compensations available'' of less (better) than 4 μm along any linear axis; and c.1.b. Three or more axes which can be coordinated simultaneously for ''contouring control''; or

c.2. Five or more axes which can be coordinated simultaneously for ''contouring control'';

**Notes:** 2B001.c does not control grinding machines, as follows:

1. Cylindrical external, internal, and external-internal grinding machines having all the following characteristics:

a. Limited to cylindrical grinding; and

b. Limited to a maximum workpiece capacity of 150 mm outside diameter or length.

2. Machines designed specifically as jig grinders having any of following characteristics:

a. The c-axis is used to maintain the grinding wheel normal to the work surface; or

b. The a-axis is configured to grind barrel cams.

3. Tool or cutter grinding machines limited to the production of tools or cutters.

4. Crank shaft or cam shaft grinding machines.

5. Surface grinders.

d. Electrical discharge machines (EDM) of the non-wire type which have two or more rotary axes which can be coordinated simultaneously for ''contouring control'';

e. Machine tools for removing metals, ceramics or ''composites'' having all of the following characteristics:

e.1. Removing material by means of any of the following:

e.1.a. Water or other liquid jets, including those employing abrasive additives;

e.1.b. Electron beam; or

e.1.c. ''Laser'' beam; and

e.2. Having two or more rotary axes which:

e.2.a. Can be coordinated simultaneously for ''contouring control''; and

e.2.b. Have a positioning accuracy of less (better) than 0.003°;

f. Deep-hole-drilling machines and turning machines modified for deep-hole-drilling, having a maximum depth-of-bore capability exceeding 5,000 mm and specially designed components therefor.

**2B008 Assemblies or Units, Specially Designed for Machine Tools, or Dimensional Inspection or Measuring Systems and Equipment, as Follows (See List of Items Controlled)**

* * * * *

**2D002 ''Software'' for Electronic Devices, Even When Residing in an Electronic Device or System, Enabling Such Devices or Systems to Function as a ''Numerical Control'' Unit, Capable of Coordinating Simultaneously More Than 4 Axes for ''Contouring Control''**

**License Requirements**

*Reason for Control:* NS, NP, AT.

| Control(s) | Country chart |
|---|---|
| NS applies to entire entry .... | NS Column 1. |
| NP applies to entire entry .... | NP Column 1. |
| AT applies to entire entry .... | AT Column 1. |

* * * * *

**List of Items Controlled**

*Unit:* $ value.

*Related Controls:* See also 2D202.

*Related Definitions:* N/A.

*Items:*

**Note:** 2D002 does not control ''software'' specially designed or modified for the operation of machine tools not controlled by Category 2.

The list of items controlled is contained in the ECCN heading.

* * * * *

*Category 2E—Materials Processing Table; Deposition Techniques*

* * * * *

Notes to Table on Deposition Techniques

* * * * *

17. ''Technology'' specially designed to deposit diamond-like carbon on any of the following is not controlled: magnetic disk drives and heads, equipment for the manufacture of disposables valves for faucets, acoustic diaphragms for speakers, engine parts for automobiles, cutting tools, punching-pressing dies, office automation equipment, microphones or medical devices.

* * * * *

9. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Numbers (ECCNS) are amended:

a. By revising the List of Items Controlled section for ECCNs 3A001, 3A002, 3A991, 3B991, 3B992, 3C001, and 3E001;

b. By revising the entry heading and the List of Items Controlled section for ECCNs 3B002 and 3D003;

c. By revising the entire entry for ECCN 3E002; and

d. By adding a new entry for ECCN 3E003, to read as follows:

**3A001 Electronic Components, As Follows (See List of Items Controlled)**

* * * * *

**List of Items Controlled**

*Unit:* Number.

*Related Controls:* See also 3A101, 3A201, and 3A991.

*Related Definitions:* For the purposes of integrated circuits in 3A001.a.1, 5 x $10^3$ Gy(Si) = 5 x $10^5$ Rads (Si); 5 x $10^6$ Gy (Si)/s = 5 x $10^8$ Rads (Si)/s.

*Items:*

a. General purpose integrated circuits, as follows:

**Note 1:** The control status of wafers (finished or unfinished), in which the function has been determined, is to be evaluated against the parameters of 3A001.a.

**Note 2:** Integrated circuits include the following types:

''Monolithic integrated circuits'';

''Hybrid integrated circuits'';

''Multichip integrated circuits'';

''Film type integrated circuits'', including silicon-on-sapphire integrated circuits;

''Optical integrated circuits''.

a.1. Integrated circuits, designed or rated as radiation hardened to withstand any of the following:

a.1.a. A total dose of 5 x $10^3$ Gy (Si), or higher; or

a.1.b. A dose rate upset of 5 x $10^6$ Gy (Si)/s, or higher;

a.2. ''Microprocessor microcircuits'', ''microcomputer microcircuits'', microcontroller microcircuits, storage integrated circuits manufactured from a compound semiconductor, analog-to-digital converters, digital-to-analog converters, electro-optical or ''optical integrated circuits'' designed for ''signal processing'', field programmable logic devices, neural network integrated circuits, custom integrated circuits for which either the function is unknown or the control status of the equipment in which the integrated circuit will be used in unknown, Fast Fourier Transform (FFT) processors, electrical erasable programmable read-only memories (EEPROMs), flash memories or static random-access memories (SRAMs), having any of the following:

a.2.a. Rated for operation at an ambient temperature above 398 K (125 °C);

a.2.b. Rated for operation at an ambient temperature below 218 K (−55 °C); or

a.2.c. Rated for operation over the entire ambient temperature range from 218 K (−55 °C) to 398 K (125 °C);

**Note:** 3A001.a.2 does not apply to integrated circuits for civil automobile or railway train applications.

a.3. ''Microprocessor microcircuits'', ''micro-computer microcircuits'' and microcontroller microcircuits, having any of the following characteristics:

**Note:** 3A001.a.3 includes digital signal processors, digital array processors and digital coprocessors.

a.3.a. A ''composite theoretical performance'' (''CTP'') of 6,500 million theoretical operations per second (MTOPS) or more and an arithmetic logic unit with an access width of 32 bit or more;

a.3.b. Manufactured from a compound semiconductor and operating at a clock frequency exceeding 40 MHz; or

a.3.c. More than one data or instruction bus or serial communication port that provides a direct external interconnection between parallel ''microprocessor microcircuits'' with a transfer rate exceeding 150 Mbyte/s;

a.4. Storage integrated circuits manufactured from a compound semiconductor;

a.5. Analog-to-digital and digital-to-analog converter integrated circuits, as follows:

a.5.a. Analog-to-digital converters having any of the following:

a.5.a.1. A resolution of 8 bit or more, but less than 12 bit, with a total conversion time of less than 5 ns;

a.5.a.2. A resolution of 12 bit with a total conversion time of less than 200 ns; or

a.5.a.3. A resolution of more than 12 bit with a total conversion time of less than 2 μs;

a.5.b. Digital-to-analog converters with a resolution of 12 bit or more, and a ''settling time'' of less than 10 ns;

**Technical Note:**

1. A resolution of n bit corresponds to a quantization of $2^n$ levels.

2. Total conversion time is the inverse of the sample rate.

a.6. Electro-optical and ''optical integrated circuits'' designed for ''signal processing'' having all of the following:

a.6.a. One or more than one internal ''laser'' diode;

a.6.b. One or more than one internal light detecting element; and

a.6.c. Optical waveguides;

a.7. Field programmable logic devices having any of the following:

a.7.a. An equivalent usable gate count of more than 30,000 (2 input gates);

a.7.b. A typical ''basic gate propagation delay time'' of less than 0.4 ns; or

a.7.c. A toggle frequency exceeding 133 MHz;

**Note:** 3A001.a.7 includes: Simple Programmable Logic Devices (SPLDs), Complex Programmable Logic Devices (CPLDs), Field Programmable Gate Arrays (FPGAs), Field Programmable Logic Arrays (FPLAs), and Field Programmable Interconnects (FPICs).

N.B.: Field programmable logic devices are also known as field programmable gate or field programmable logic arrays.

a.8. Reserved.

a.9. Neural network integrated circuits;

a.10. Custom integrated circuits for which the function is unknown, or the control status of the equipment in which the integrated circuits will be used is unknown to the manufacturer, having any of the following:

a.10.a. More than 1,000 terminals;

a.10.b. A typical ''basic gate propagation delay time'' of less than 0.1 ns; or

a.10.c. An operating frequency exceeding 3 GHz;

a.11. Digital integrated circuits, other than those described in 3A001.a.3 to 3A001.a.10 and 3A001.a.12, based upon any compound semiconductor and having any of the following:

a.11.a. An equivalent gate count of more than 3,000 (2 input gates); or

a.11.b. A toggle frequency exceeding 1.2 GHz;

a.12. Fast Fourier Transform (FFT) processors having a rated execution time for an N-point complex FFT of less than $(N \log_2 N)/20{,}480$ ms, where N is the number of points;

**Technical Note:** When N is equal to 1,024 points, the formula in 3A001.a.12 gives an execution time of 500 μs.

b. Microwave or millimeter wave components, as follows:

b.1. Electronic vacuum tubes and cathodes, as follows:

**Note:** 3A001.b.1 does not control tubes designed or rated for operation in any frequency band which meets all of the following characteristics:

(a) Does not exceed 31 GHz; *and*

(b) Is ''allocated by the ITU'' for radio-communications services, but not for radio-determination.

b.1.a. Traveling wave tubes, pulsed or continuous wave, as follows:

b.1.a.1. Operating at frequencies exceeding 31 GHz;

b.1.a.2. Having a cathode heater element with a turn on time to rated RF power of less than 3 seconds;

b.1.a.3. Coupled cavity tubes, or derivatives thereof, with a ''fractional bandwidth'' of more than 7% or a peak power exceeding 2.5 kW;

b.1.a.4. Helix tubes, or derivatives thereof, with any of the following characteristics:

b.1.a.4.a. An ''instantaneous bandwidth'' of more than one octave, and average power (expressed in kW) times frequency (expressed in GHz) of more than 0.5;

b.1.a.4.b. An ''instantaneous bandwidth'' of one octave or less, and average power (expressed in kW) times frequency (expressed in GHz) of more than 1; *or*

b.1.a.4.c. Being ''space qualified'';

b.1.b. Crossed-field amplifier tubes with a gain of more than 17 dB;

b.1.c. Impregnated cathodes designed for electronic tubes producing a continuous emission current density at rated operating conditions exceeding 5 $A/cm^2$;

b.2. Microwave integrated circuits or modules having all of the following:

b.2.a. Containing ''monolithic integrated circuits'' having one or more active circuit elements; *and*

b.2.b. Operating at frequencies above 3 GHz;

**Note 1:** 3A001.b.2 does not control circuits or modules for equipment designed or rated to operate in any frequency band which meets all of the following characteristics: (a.) Does not exceed 31 GHz; *and* (b.) Is ''allocated by the ITU'' for radio-communications services, but not for radio-determination.

**Note 2:** 3A001.b.2 does not control broadcast satellite equipment designed or rated to operate in the frequency range of 40.5 to 42.5 GHz. b.3.

Microwave transistors rated for operation at frequencies exceeding 31 GHz;

b.4. Microwave solid state amplifiers, having any of the following:

b.4.a. Operating frequencies exceeding 10.5 GHz and an ''instantaneous bandwidth'' of more than half an octave; *or*

b.4.b. Operating frequencies exceeding 31 GHz;

b.5. Electronically or magnetically tunable band-pass or band-stop filters having more than 5 tunable resonators capable of tuning across a 1.5:1 frequency band ($f_{max}/f_{min}$) in less than 10 µs having any of the following:

b.5.a. A band-pass bandwidth of more than 0.5% of center frequency; *or*

b.5.b. A band-stop bandwidth of less than 0.5% of center frequency;

b.6. Microwave ''assemblies'' capable of operating at frequencies exceeding 31 GHz;

b.7. Mixers and converters designed to extend the frequency range of equipment described in 3A002.c, 3A002.e or 3A002.f beyond the limits stated therein;

b.8. Microwave power amplifiers containing tubes controlled by 3A001.b and having all of the following:

b.8.a. Operating frequencies above 3 GHz;

b.8.b. An average output power density exceeding 80 W/kg; *and*

b.8.c. A volume of less than 400 $cm^3$;

**Note:** 3A001.b.8 does not control equipment designed or rated for operation in any frequency band which is ''allocated by the ITU'' for radio-communications services, but not for radio-determination.

c. Acoustic wave devices, as follows, and specially designed components therefor:

c.1. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (*i.e.,* ''signal processing'' devices employing elastic waves in materials), having any of the following:

c.1.a. A carrier frequency exceeding 2.5 GHz;

c.1.b. A carrier frequency exceeding 1 GHz, but not exceeding 2.5 GHz, and having any of the following:

c.1.b.1. A frequency side-lobe rejection exceeding 55 dB;

c.1.b.2. A product of the maximum delay time and the bandwidth (time in µs and bandwidth in MHz) of more than 100;

c.1.b.3. A bandwidth greater than 250 MHz; or

c.1.b.4. A dispersive delay of more than 10 µs; or

c.1.c. A carrier frequency of 1 GHz or less, having any of the following:

c.1.c.1. A product of the maximum delay time and the bandwidth (time in µs and bandwith in MHz) of more than 100;

c.1.c.2. A dispersive delay of more than 10 µs; or

c.1.c.3. A frequency side-lobe rejection exceeding 55 dB and a bandwidth greater than 50 MHz;

c.2. Bulk (volume) acoustic wave devices (i.e., ''signal processing'' devices employing elastic waves) that permit the direct processing of signals at frequencies exceeding 1 GHz;

c.3. Acoustic-optic ''signal processing'' devices employing interaction between acoustic waves (bulk wave or surface wave) and light waves that permit the direct processing of signals or images, including spectral analysis, correlation or convolution;

d. Electronic devices and circuits containing components, manufactured from ''superconductive'' materials specially designed for operation at temperatures below the ''critical temperature'' of at least one of the ''superconductive'' constituents, with any of the following:

d.1. Current switching for digital circuits using ''superconductive'' gates with a product of delay time per gate (in seconds) and power dissipation per gate (in watts) of less than $10^{-14}$ J; or

d.2. Frequency selection at all frequencies using resonant circuits with Q-values exceeding 10,000;

e. High energy devices, as follows:

e.1. Batteries and photovoltaic arrays, as follows:

**Note:** 3A001.e.1 does not control batteries with volumes equal to or less than 27 $cm^3$ (e.g., standard C-cells or R14 batteries).

e.1.a. Primary cells and batteries having an energy density exceeding 480 Wh/kg and rated for operation in the temperature range from below 243 K (−30 °C) to above 343 K (70°C);

e.1.b. Rechargeable cells and batteries having an energy density exceeding 150 Wh/kg after 75 charge/discharge cycles at a discharge current equal to C/5 hours (C being the nominal capacity in ampere hours) when operating in the temperature range from below 253 K (−20 °C) to above 333 K (60 °C);

**Technical Note:** Energy density is obtained by multiplying the average power in watts (average voltage in volts times average current in amperes) by the duration of the discharge in hours to 75% of the open circuit voltage divided by the total mass of the cell (or battery) in kg.

e.1.c. ''Space qualified'' and radiation hardened photovoltaic arrays with a specific power exceeding 160 $W/m^2$ at an operating temperature of 301 K (28 °C) under a tungsten illumination of 1 $kW/m^2$ at 2,800 K (2,527 °C);

e.2. High energy storage capacitors, as follows:

e.2.a. Capacitors with a repetition rate of less than 10 Hz (single shot capacitors) having all of the following:

e.2.a.1. A voltage rating equal to or more than 5 kV;

e.2.a.2. An energy density equal to or more than 250 J/kg; and

e.2.a.3. A total energy equal to or more than 25 kJ;

e.2.b. Capacitors with a repetition rate of 10 Hz or more (repetition rated capacitors) having all of the following:

e.2.b.1. A voltage rating equal to or more than 5 kV;

e.2.b.2. An energy density equal to or more than 50 J/kg;

e.2.b.3. A total energy equal to or more than 100 J; and

e.2.b.4. A charge/discharge cycle life equal to or more than 10,000;

e.3. ''Superconductive'' electromagnets and solenoids specially

designed to be fully charged or discharged in less than one second, having all of the following:

**Note:** 3A001.e.3 does not control ''superconductive'' electromagnets or solenoids specially designed for Magnetic Resonance Imaging (MRI) medical equipment.

e.3.a. Energy delivered during the discharge exceeding 10 kJ in the first second;

e.3.b. Inner diameter of the current carrying windings of more than 250 mm; and

e.3.c. Rated for a magnetic induction of more than 8 T or ''overall current density'' in the winding of more than 300 A/mm$^2$;

f. Rotary input type shaft absolute position encoders having any of the following:

f.1. A resolution of better than 1 part in 265,000 (18 bit resolution) of full scale; or

f.2. An accuracy better than ± 2.5 seconds of arc.

**3A002 General Purpose Electronic Equipment, as follows (See List of Items Controlled)**

* * * * *

**List of Items Controlled**

*Unit:* Number.

*Related Controls:* See also 3A292 and 3A992.

*Related Definitions:* Constant percentage bandwidth filters are also known as octave or fractional octave filters.

*Items:*

a. Recording equipment, as follows, and specially designed test tape therefor:

a.1. Analog instrumentation magnetic tape recorders, including those permitting the recording of digital signals (e.g., using a high density digital recording (HDDR) module), having any of the following:

a.1.a. A bandwidth exceeding 4 MHz per electronic channel or track;

a.1.b. A bandwidth exceeding 2 MHz per electronic channel or track and having more than 42 tracks; or

a.1.c. A time displacement (base) error, measured in accordance with applicable IRIG or EIA documents, of less than ± 0.1 μs;

**Note:** Analog magnetic tape recorders specially designed for civilian video purposes are not considered to be instrumentation tape recorders.

a.2. Digital video magnetic tape recorders having a maximum digital interface transfer rate exceeding 360 Mbit/s;

**Note:** 3A002.a.2 does not control digital video magnetic tape recorders specially designed for television recording using a signal format, which may include a compressed signal format, standardized or recommended by the ITU, the IEC, the SMPTE, the EBU or the IEEE for civil television applications.

a.3. Digital instrumentation magnetic tape data recorders employing helical scan techniques or fixed head techniques, having any of the following:

a.3.a. A maximum digital interface transfer rate exceeding 175 Mbit/s; or

a.3.b. Being ''space qualified'';

**Note:** 3A002.a.3 does not control analog magnetic tape recorders equipped with HDDR conversion electronics and configured to record only digital data.

a.4. Equipment, having a maximum digital interface transfer rate exceeding 175 Mbit/s, designed to convert digital video magnetic tape recorders for use as digital instrumentation data recorders;

a.5. Waveform digitizers and transient recorders having all of the following:

N.B.: See also 3A292.

a.5.a. Digitizing rates equal to or more than 200 million samples per second and a resolution of 10 bits or more; and

a.5.b. A continuous throughput of 2 Gbit/s or more;

**Technical Note:** For those instruments with a parallel bus architecture, the continuous throughput rate is the highest word rate multiplied by the number of bits in a word. Continuous throughput is the fastest data rate the instrument can output to mass storage without the loss of any information while sustaining the sampling rate and analog-to-digital conversion.

b. ''Frequency synthesizer'', ''electronic assemblies'' having a ''frequency switching time'' from one selected frequency to another of less than 1 ms;

c. ''Signal analyzers'', as follows:

c.1. ''Signal analyzers'' capable of analyzing frequencies exceeding 31 GHz;

c.2. ''Dynamic signal analyzers'' having a ''real-time bandwidth'' exceeding 500 kHz;

**Note:** 3A002.c.2 does not control those ''dynamic signal analyzers'' using only constant percentage bandwidth filters (also known as octave or fractional octave filters).

d. Frequency synthesized signal generators producing output frequencies, the accuracy and short term and long term stability of which are controlled, derived from or disciplined by the internal master frequency, and having any of the following:

d.1. A maximum synthesized frequency exceeding 31 GHz;

d.2. A ''frequency switching time'' from one selected frequency to another of less than 1 ms; or

d.3. A single sideband (SSB) phase noise better than $-(126 + 20 \log_{10}F - 20 \log_{10}f)$ in dBc/Hz, where F is the off-set from the operating frequency in Hz and f is the operating frequency in MHz;

**Note:** 3A002.d does not control equipment in which the output frequency is either produced by the addition or subtraction of two or more crystal oscillator frequencies, or by an addition or subtraction followed by a multiplication of the result.

e. Network analyzers with a maximum operating frequency exceeding 40 GHz;

f. Microwave test receivers having all of the following:

f.1. A maximum operating frequency exceeding 40 GHz; and

f.2. Being capable of measuring amplitude and phase simultaneously;

g. Atomic frequency standards having any of the following:

g.1. Long-term stability (aging) less (better) than $1 \times 10^{-11}$/month; or

g.2. Being ''space qualified''.

**Note:** 3A002.g.1 does not control non-''space qualified'' rubidium standards.

**3A991 Electronic Devices and Components Not Controlled by 3A001**

* * * * *

**List of Items Controlled**

*Unit:* Equipment in number.

*Related Controls:* N/A.

*Related Definitions:* N/A.

Items:

a. ''Microprocessor microcircuits'', ''microcomputer microcircuits'', and microcontroller microcircuits having any of the following:

a.1. A clock frequency rate exceeding 25 MHz; or

a.2. More than one date or instruction bus or serial communication port that provides a direct external interconnection between parallel ''microprocessor microcircuits'' with a transfer rate of 2.5 Mbyte/s.

b. Storage integrated circuits, as follows:

b.1. Electrical erasable programmable read-only memories (EEPROMs) with a storage capacity;

b.1.a. Exceeding 16 Mbits per package for flash memory types; or

b.1.b. Exceeding either of the following limits for all other EEPROM types:

b.1.b.1. Exceeding 1 Mbit per package; or

b.1.b.2. Exceeding 256 kbit per package and a maximum access time of less than 80 ns;

b.2. Static random access memories (SRAMs) with a storage capacity:

b.2.a. Exceeding 1 Mbit per package; or

b.2.b. Exceeding 256 kbit per package and a maximum access time of less than 25 ns;

c. Analog-to-digital converters having a resolution of 8 bit or more, but less

than 12 bit, with a total conversion time of less than 10 ns;

d. Field programmable logic devices having either of the following:

d.1. An equivalent gate count of more than 5000 (2 input gates); or

d.2. A toggle frequency exceeding 100 MHz;

e. Fast Fourier Transform (FFT) processors having a rated execution time for a 1,024 point complex FFT of less than 1 ms.

f. Custom integrated circuits for which either the function is unknown, or the control status of the equipment in which the integrated circuits will be used is unknown to the manufacturer, having any of the following:

f.1. More than 144 terminals; or

f.2. A typical ''basic propagation delay time'' of less than 0.4 ns.

g. Travelling wave tubes, pulsed or continuous wave, as follows:

g.1. Coupled cavity tubes, or derivatives thereof;

g.2. Helix tubes, or derivatives thereof, with any of the following:

g.2.a. An ''instantaneous bandwidth'' of half an octave or more; and

g.2.b. The product of the rated average output power (expressed in kW) and the maximum operating frequency (expressed in GHz) of more than 0.2;

g.2.c. An ''instantaneous bandwidth'' of less than half an octave; and

g.2.d. The product of the rated average output power (expressed in kW) and the maximum operating frequency (expressed in GHz) of more than 0.4;

h. Flexible waveguides designed for use at frequencies exceeding 40 GHz;

i. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (i.e., ''signal processing'' devices employing elastic waves in materials), having either of the following:

i.1. A carrier frequency exceeding 1 GHz; or

i.2. A carrier frequency of 1 GHz or less; and

i.2.a. A frequency side-lobe rejection exceeding 55 Db;

i.2.b. A product of the maximum delay time and bandwidth (time in microseconds and bandwidth in MHz) of more than 100; or

i.2.c. A dispersive delay of more than 10 microseconds.

j. Batteries, as follows:

**Note:** 3A991.j does not control batteries with volumes equal to or less than 26 $cm^3$ (e.g., standard C-cells or UM–2 batteries).

j.1. Primary cells and batteries having an energy density exceeding 350 Wh/kg and rated for operation in the temperature range from below 243 K (−30 °C) to above 343 K (70 °C);

j.2. Rechargeable cells and batteries having an energy density exceeding 150 Wh/kg after 75 charge/discharge cycles at a discharge current equal to C/5 hours (C being the nominal capacity in ampere hours) when operating in the temperature range from below 253 K (−20 °C) to above 333 K (60 °C);

**Technical Note:** Energy density is obtained by multiplying the average power in watts (average voltage in volts times average current in amperes) by the duration of the discharge in hours to 75 percent of the open circuit voltage divided by the total mass of the cell (or battery) in kg.

k. ''Superconductive'' electromagnets or solenoids specially designed to be fully charged or discharged in less than one minute, having all of the following:

**Note:** 3A991.k does not control ''superconductive'' electromagnets or solenoids designed for Magnetic Resonance Imaging (MRI) medical equipment.

k.1. Maximum energy delivered during the discharge divided by the duration of the discharge of more than 500 kJ per minute;

k.2. Inner diameter of the current carrying windings of more than 250 mm; and

k.3. Rated for a magnetic induction of more than 8T or ''overall current density'' in the winding of more than 300 $A/mm^2$.

l. Circuits or systems for electromagnetic energy storage, containing components manufactured from ''superconductive'' materials specially designed for operation at temperatures below the ''critical temperature'' of at least one of their ''superconductive'' constituents, having all of the following:

l.1. Resonant operating frequencies exceeding 1 MHz;

l.2. A stored energy density of 1 $MJ/M^3$ or more; and

l.3. A discharge time of less than 1 ms;

m. Hydrogen/hydrogen-isotope thyratrons of ceramic-metal construction and rate for a peak current of 500 A or more;

n. Digital integrated circuits based on any compound semiconductor having an equivalent gate count of more than 300 (2 input gates).

**3B002 ''Stored Program Controlled'' Test Equipment, Specially Designed for Testing Finished or Unfinished Semiconductor Devices, As Follows (See List of Items Controlled), and Specially Designed Components and Accessories Therefor**

* * * * *

**List of Items Controlled**

*Unit:* Number.
*Related Controls:* See also 3B992.
*Related Definitions:* N/A.
*Items:*

a. For testing S-parameters of transistor devices at frequencies exceeding 31 GHz;

b. For testing integrated circuits capable of performing functional (truth table) testing at a pattern rate of more than 333 MHz;

**Note:** 3B002.b does not control test equipment specially designed for testing:

1. ''Electronic assemblies'' or a class of ''electronic assemblies'' for home or entertainment applications;

2. Uncontrolled electronic components, ''electronic assemblies'' or integrated circuits;

3. Memories.

**Technical Note:** For purposes of 3B002.b, pattern rate is defined as the maximum frequency of digital operation of a tester. It is therefore equivalent to the highest data rate that a tester can provide in non-multiplexed mode. It is also referred to as test speed, maximum digital frequency or maximum digital speed.

c. For testing microwave integrated circuits controlled by 3A001.b.2.

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**3B991 Equipment Not Controlled by 3B001 for the Manufacture of Electronic Components and Materials, and Specially Designed Components and Accessories Therefor**

* * * * *

**List of Items Controlled**

*Unit:* Equipment in number.
*Related Controls:* N/A.
*Related Definitions:* N/A.
*Items:*

a. Equipment specially designed for the manufacture of electron tubes, optical elements and specially designed components therefor controlled by 3A001 or 3A991;

b. Equipment specially designed for the manufacture of semiconductor devices, integrated circuits and ''electronic assemblies'', as follows, and systems incorporating or having the characteristics of such equipment:

**Note:** 3B991.b also controls equipment used or modified for use in the manufacture of other devices, such as imaging devices, electro-optical devices, acoustic-wave devices.

b.1. Equipment for the processing of materials for the manufacture of devices and components as specified in the heading of 3B991.b, as follows:

**Note:** 3B991 does not control quartz furnace tubes, furnace liners, paddles, boats (except specially designed caged boats), bubblers, cassettes or crucibles specially designed for the processing equipment controlled by 3B991.b.1.

b.1.a. Equipment for producing polycrystalline silicon and materials controlled by 3C001;

b.1.b. Equipment specially designed for purifying or processing III/V and II/VI semiconductor materials controlled by 3C001, 3C002, 3C003, or 3C004, except crystal pullers, for which see 3B991.b.1.c below;

b.1.c. Crystal pullers and furnaces, as follows:

**Note:** 3B991.b.1.c does not control diffusion and oxidation furnaces.

b.1.c.1. Annealing or recrystallizing equipment other than constant temperature furnaces employing high rates of energy transfer capable of processing wafers at a rate exceeding 0.005 $m^2$ per minute;

b.1.c.2. ''Stored program controlled'' crystal pullers having any of the following characteristics:

b.1.c.2.a. Rechargeable without replacing the crucible container;

b.1.c.2.b. Capable of operation at pressures above $2.5 \times 10^5$ Pa; or

b.1.c.2.c. Capable of pulling crystals of a diameter exceeding 100 mm;

b.1.d. ''Stored program controlled'' equipment for epitaxial growth having any of the following characteristics:

b.1.d.1. Capable of producing a layer thickness uniformity across the wafer of equal to or better than ±3.5%; *or*

b.1.d.2. Rotation of individual wafers during processing;

b.1.e. Molecular beam epitaxial growth equipment;

b.1.f. Magnetically enhanced ''sputtering'' equipment with specially designed integral load locks capable of transferring wafers in an isolated vacuum environment;

b.1.g. Equipment specially designed for ion implantation, ion-enhanced or photo-enhanced diffusion, having any of the following characteristics:

b.1.g.1. Patterning capability;

b.1.g.2. Beam energy (accelerating voltage) exceeding 200 keV;

b.1.g.3. Optimized to operate at a beam energy (accelerating voltage) of less than 10 keV; or

b.1.g.4. Capable of high energy oxygen implant into a heated ''substrate'';

b.1.h. ''Stored program controlled'' equipment for the selective removal (etching) by means of anisotropic dry methods (e.g., plasma), as follows:

b.1.h.1. Batch types having either of the following:

b.1.h.1.a. End-point detection, other than optical emission spectroscopy types; or

b.1.h.1.b. Reactor operational (etching) pressure of 26.66 Pa or less;

b.1.h.2. Single wafer types having any of the following:

b.1.h.2.a. End-point detection, other than optical emission spectroscopy types;

b.1.h.2.b. Reactor operational (etching) pressure of 26.66 Pa or less; or

b.1.h.2.c. Cassette-to-cassette and load locks wafer handling;

**Notes:** 1. ''Batch types'' refers to machines not specially designed for production processing of single wafers. Such machines can process two or more wafers simultaneously with common process parameters, e.g., RF power, temperature, etch gas species, flow rates.

2. ''Single wafer types'' refers to machines specially designed for production processing of single wafers. These machines may use automatic wafer handling techniques to load a single wafer into the equipment for processing. The definition includes equipment that can load and process several wafers but where the etching parameters, e.g., RF power or end point, can be independently determined for each individual wafer.

b.1.i. ''Chemical vapor deposition'' (CVD) equipment, e.g., plasma-enhanced CVD (PECVD) or photo-enhanced CVD, for semiconductor device manufacturing, having either of the following capabilities, for deposition of oxides, nitrides, metals or polysilicon:

b.1.i.1. ''Chemical vapor deposition'' equipment operating below $10^5$ Pa; or

b.1.i.2. PECVD equipment operating either below 60 Pa (450 millitorr) or having automatic cassette-to-cassette and load lock wafer handling;

**Note:** 3B991.b.1.i does not control low pressure ''chemical vapor deposition'' (LPCVD) systems or reactive ''sputtering'' equipment.

b.1.j. Electron beam systems specially designed or modified for mask making or semiconductor device processing having any of the following characteristics:

b.1.j.1. Electrostatic beam deflection;

b.1.j.2. Shaped, non-Gaussian beam profile;

b.1.j.3. Digital-to-analog conversion rate exceeding 3 MHz;

b.1.j.4. Digital-to-analog conversion accuracy exceeding 12 bit; or

b.1.j.5. Target-to-beam position feedback control precision of 1 micrometer or finer;

**Note:** 3B991.b.1.j does not control electron beam deposition systems or general purpose scanning electron microscopes.

b.1.k. Surface finishing equipment for the processing of semiconductor wafers as follows:

b.1.k.1. Specially designed equipment for backside processing of wafers thinner than 100 micrometer and the subsequent separation thereof; or

b.1.k.2. Specially designed equipment for achieving a surface roughness of the active surface of a processed wafer with a two-sigma value of 2 micrometer or less, total indicator reading (TIR);

**Note:** 3B991.b.1.k does not control single-side lapping and polishing equipment for wafer surface finishing.

b.1.l. Interconnection equipment which includes common single or multiple vacuum chambers specially designed to permit the integration of any equipment controlled by 3B991 into a complete system;

b.1.m. ''Stored program controlled'' equipment using ''lasers'' for the repair or trimming of ''monolithic integrated circuits'' with either of the following characteristics:

b.1.m.1. Positioning accuracy less than ± 1 micrometer; or

b.1.m.2. Spot size (kerf width) less than 3 micrometer.

b.2. Masks, mask ''substrates'', mask-making equipment and image transfer equipment for the manufacture of devices and components as specified in the heading of 3B991, as follows:

**Note:** The term ''masks'' refers to those used in electron beam lithography, X-ray lithography, and ultraviolet lithography, as well as the usual ultraviolet and visible photo-lithography.

b.2.a. Finished masks, reticles and designs therefor, except:

b.2.a.1. Finished masks or reticles for the production of unembargoed integrated circuits; or

b.2.a.2. Masks or reticles, having both of the following characteristics:

b.2.a.2.a. Their design is based on geometries of 2.5 micrometer or more; and

b.2.a.2.b. The design does not include special features to alter the intended use by means of production equipment or ''software'';

b.2.b. Mask ''substrates'' as follows:

b.2.b.1. Hard surface (e.g., chromium, silicon, molybdenum) coated ''substrates'' (e.g., glass, quartz, sapphire) for the preparation of masks having dimensions exceeding 125 mm x 125 mm; or

b.2.b.2. ''Substrates'' specially designed for X-ray masks;

b.2.c. Equipment, other than general purpose computers, specially designed for computer aided design (CAD) of semiconductor devices or integrated circuits;

b.2.d. Equipment or machines, as follows, for mask or reticle fabrication:

b.2.d.1. Photo-optical step and repeat cameras capable of producing arrays larger than 100 mm x 100 mm, or capable of producing a single exposure larger than 6 mm x 6 mm in the image (i.e., focal) plane, or capable of producing line widths of less than 2.5 micrometer in the photoresist on the ''substrate'';

b.2.d.2. Mask or reticle fabrication equipment using ion or ''laser'' beam

lithography capable of producing line widths of less than 2.5 micrometer; or

b.2.d.3. Equipment or holders for altering masks or reticles or adding pellicles to remove defects;

**Note:** 3B991.b.2.d.1 and b.2.d.2 do not control mask fabrication equipment using photo-optical methods which was either commercially available before the 1st January, 1980, or has a performance no better than such equipment.

b.2.e. ''Stored program controlled'' equipment for the inspection of masks, reticles or pellicles with:

b.2.e.1. A resolution of 0.25 micrometer or finer; and

b.2.e.2. A precision of 0.75 micrometer or finer over a distance in one or two coordinates of 63.5 mm or more;

**Note:** 3B991.b.2.e does not control general purpose scanning electron microscopes except when specially designed and instrumented for automatic pattern inspection.

b.2.f. Align and expose equipment for wafer production using photo-optical or X-ray methods, including both projection image transfer equipment and step and repeat (direct step on wafer) or step and scan (scanner) equipment, capable of performing any of the following functions:

**Note:** 3B991.b.2.f does not control photo-optical contact and proximity mask align and expose equipment or contact image transfer equipment.

b.2.f.1. Production of a pattern size of less than 2.5 micrometer;

b.2.f.2. Alignment with a precision finer than ± 0.25 micrometer (3 sigma);

b.2.f.3. Machine-to-machine overlay no better than ±+ 0.3 micrometer; or

b.2.f.4. A light source wavelength shorter than 400 nm;

b.2.g. Electron beam, ion beam or X-ray equipment for projection image transfer capable of producing patterns less than 2.5 micrometer;

**Note:** For focussed, deflected-beam systems (direct write systems), see 3B991.b.1.j or b.10.

b.2.h. Equipment using ''lasers'' for direct write on wafers capable of producing patterns less than 2.5 micrometer.

b.3. Equipment for the assembly of integrated circuits, as follows:

b.3.a. ''Stored program controlled'' die bonders having all of the following characteristics:

b.3.a.1. Specially designed for ''hybrid integrated circuits'';

b.3.a.2. X–Y stage positioning travel exceeding 37.5 x 37.5 mm; and

b.3.a.3. Placement accuracy in the X–Y plane of finer than ± 10 micrometer;

b.3.b. ''Stored program controlled'' equipment for producing multiple bonds in a single operation (e.g., beam lead bonders, chip carrier bonders, tape bonders);

b.3.c. Semi-automatic or automatic hot cap sealers, in which the cap is heated locally to a higher temperature than the body of the package, specially designed for ceramic microcircuit packages controlled by 3A001 and that have a throughput equal to or more than one package per minute.

**Note:** 3B991.b.3 does not control general purpose resistance type spot welders.

b.4. Filters for clean rooms capable of providing an air environment of 10 or less particles of 0.3 micrometer or smaller per 0.02832 $m^3$ and filter materials therefor.

**3B992 Equipment Not Controlled by 3B002 for the Inspection or Testing of Electronic Components and Materials, and Specially Designed Components and Accessories Therefor**

* * * * *

**List of Items Controlled**

*Unit:* Equipment in number.

*Related Controls:* N/A.

*Related Definitions:* N/A.

*Items:*

a. Equipment specially designed for the inspection or testing of electron tubes, optical elements and specially designed components therefor controlled by 3A001 or 3A991;

b. Equipment specially designed for the inspection or testing of semiconductor devices, integrated circuits and ''electronic assemblies'', as follows, and systems incorporating or having the characteristics of such equipment:

**Note:** 3B992.b also controls equipment used or modified for use in the inspection or testing of other devices, such as imaging devices, electro-optical devices, acoustic-wave devices.

b.1. ''Stored program controlled'' inspection equipment for the automatic detection of defects, errors or contaminants of 0.6 micrometer or less in or on processed wafers, ''substrates'', other than printed circuit boards or chips, using optical image acquisition techniques for pattern comparison;

**Note:** 3B992.b.1 does not control general purpose scanning electron microscopes, except when specially designed and instrumented for automatic pattern inspection.

b.2. Specially designed ''stored program controlled'' measuring and analysis equipment, as follows:

b.2.a. Specially designed for the measurement of oxygen or carbon content in semiconductor materials;

b.2.b. Equipment for line width measurement with a resolution of 1 micrometer or finer;

b.2.c. Specially designed flatness measurement instruments capable of measuring deviations from flatness of 10 micrometer or less with a resolution of 1 micrometer or finer.

b.3. ''Stored program controlled'' wafer probing equipment having any of the following characteristics:

b.3.a. Positioning accuracy finer than 3.5 micrometer;

b.3.b. Capable of testing devices having more than 68 terminals; or

b.3.c. Capable of testing at a frequency exceeding 1 GHz;

b.4. Test equipment as follows:

b.4.a. ''Stored program controlled'' equipment specially designed for testing discrete semiconductor devices and unencapsulated dice, capable of testing at frequencies exceeding 18 GHz;

**Technical Note:** Discrete semiconductor devices include photocells and solar cells.

b.4.b. ''Stored program controlled'' equipment specially designed for testing integrated circuits and ''electronic assemblies'' thereof, capable of functional testing:

b.4.b.1. At a pattern rate exceeding 20 MHz; or

b.4.b.2. At a pattern rate exceeding 10 MHz but not exceeding 20 MHz and capable of testing packages of more than 68 terminals;

**Note:** 3B992.b.4.b does not control equipment specially designed for testing integrated circuits not controlled by 3A001 or 3A991.

**Notes:** 1. 3B992.b.4.b does not control test equipment specially designed for testing ''assemblies'' or a class of ''electronic assemblies'' for home and entertainment applications.

2. 3B992.b.4.b does not control test equipment specially designed for testing electronic components, ''assemblies'' and integrated circuits not controlled by 3A001 or 3A991 provided such test equipment does not incorporate computing facilities with ''user accessible programmability''.

b.4.c. Equipment specially designed for determining the performance of focal-plane arrays at wavelengths of more than 1,200 nm, using ''stored program controlled'' measurements or computer aided evaluation and having any of the following characteristics:

b.4.c.1. Using scanning light spot diameters of less than 0.12 mm;

b.4.c.2. Designed for measuring photosensitive performance parameters and for evaluating frequency response, modulation transfer function, uniformity of responsivity or noise; or

b.4.c.3. Designed for evaluating arrays capable of creating images with more than 32 x 32 line elements;

b.5. Electron beam test systems designed for operation at 3 keV or below, or ''laser'' beam systems, for non-

contactive probing of powered-up semiconductor devices having any of the following:

b.5.a. Stroboscopic capability with either beam blanking or detector strobing;

b.5.b. An electron spectrometer for voltage measurements with a resolution of less than 0.5 V; or

b.5.c. Electrical tests fixtures for performance analysis of integrated circuits;

**Note:** 3B992.b.5 does not control scanning electron microscopes, except when specially designed and instrumented for non-contactive probing of a powered-up semiconductor device.

b.6. ''Stored program controlled'' multifunctional focused ion beam systems specially designed for manufacturing, repairing, physical layout analysis and testing of masks or semiconductor devices and having either of the following characteristics:

b.6.a. Target-to-beam position feedback control precision of 1 micrometer or finer; or

b.6.b. Digital-to-analog conversion accuracy exceeding 12 bit;

b.7. Particle measuring systems employing ''lasers'' designed for measuring particle size and concentration in air having both of the following characteristics:

b.7.a. Capable of measuring particle sizes of 0.2 micrometer or less at a flow rate of 0.02832 $m^3$ per minute or more; and

b.7.b. Capable of characterizing Class 10 clean air or better.

**3C001 Hetero-Epitaxial Materials Consisting of a ''Substrate'' Having Stacked Epitaxially Grown Multiple Layers of Any of the Following (See List of Items Controlled)**

* * * * *

**List of Items Controlled**

*Unit:* $ value.

*Related Controls:* This entry does not control equipment or material whose functionality has been unalterably disabled are not controlled.

*Related Definitions:* III/V compounds are polycrystalline or binary or complex monocrystalline products consisting of elements of groups IIIA and VA of Mendeleyev's periodic classification table (e.g., gallium arsenide, gallium-aluminium arsenide, indium phosphide).

*Items:*

a. Silicon;

b. Germanium;

c. Silicon Carbide; *or*

d. III/V compounds of gallium or indium.

**3D003 Computer-Aided-Design (CAD) ''Software'', Having all of the Following (See List of Items Controlled)**

* * * * *

**List of Items Controlled**

*Unit:* $ value.

*Related Controls:* 3D003 does not control ''software'' specially designed for schematic entry, logic simulation, placing and routing, layout verification or pattern generation tape.

*Related Definitions:* (1.) Libraries, design attributes or associated data for the design of semiconductor devices or integrated circuits are considered as ''technology''. (2.) A lithographic processing simulator is a ''software'' package used in the design phase to define the sequence of lithographic, etching and deposition steps for translating masking patterns into specific topographical patterns in conductors, dielectrics or semiconductor material.

*Items:*

a. Designed for the ''development'' of semiconductor devices or integrated circuits; and

b. Designed to perform or use any of the following:

b.1. Design rules or circuit verification rules;

b.2. Simulation of the physically laid out circuits; or

b.3. Lithographic processing simulators for design.

**3E001 ''Technology'' According to the General Technology Note for the ''Development'' or ''Production'' of Equipment or Materials Controlled by 3A (Except 3A292, 3A980, 3A981, 3A991 or 3A992), 3B (except 3B991 and 3B992) or 3C**

* * * * *

**List of Items Controlled**

*Unit:* N/A.

*Related Controls:* See also 3E101 and 3E201.

*Related Definition:* N/A.

*Items:*

The list of items controlled is contained in the ECCN heading.

**Note:** 3E001 does not control ''technology'' for the ''development'' or ''production'' of:

(a) Microwave transistors operating at frequencies below 31 GHz;

(b) Integrated circuits controlled by 3A001.a.3 to a.12, having all of the following:

(b.1) Using ''technology'' of 0.7 micrometer or more; and

(b.2) Not incorporating multi-layer structures.

**Technical Note:** The term multi-layer structures in Note b.2 does not include devices incorporating a maximum of two metal layers and two polysilicon layers.

**3E002 ''Technology'' According to the General Technology Note Other Than That Controlled in 3E001 for the ''Development'' or ''Production'' of ''Microprocessor Microcircuits'', ''Micro-Computer Microcircuits'' and Microcontroller Microcircuits Having a ''Composite Theoretical Performance'' (''CTP'') of 530 Million Theoretical Operations Per Second (MTOPS) or More and an Arithmetic Logic Unit With an Access Width of 32 Bits or More**

**License Requirements**

*Reason for Control:* NS, AT.

| Control(s) | Country chart |
|---|---|
| NS applies to entire entry .... | NS Column 1. |
| AT applies to entire entry .... | AT Column 1. |

**License Exceptions**

*CIV:* N/A.

*TSR:* Yes.

**List of Items Controlled**

*Unit:* N/A.

*Related Controls:* N/A.

*Related Definitions:* N/A.

*Items:*

The list of items controlled is contained in the ECCN heading.

**Note:** 3E002 does not control ''technology'' for the ''development'' or ''production'' of:

(a) Microwave transistors operating at frequencies below 31 GHz;

(b) Integrated circuits controlled by 3A001.a.3 to a.12, having all of the following:

(b.1) Using ''technology'' of 0.7 micrometer or more; and

(b.2) Not incorporating multi-layer structures.

**Technical Note:** The term multi-layer structures in Note b.2 does not include devices incorporating a maximum of two metal layers and two polysilicon layers.

**3E003 Other ''Technology'' for the ''Development'' or ''Production'' of Items Described in the List of Items Controlled**

**License Requirements**

*Reason for Control:* NS, AT.

| Control(s) | Country chart |
|---|---|
| NS applies to entire entry .... | NS Column 1. |
| AT applies to entire entry .... | AT Column 1. |

**License Exceptions**

*CIV:* N/A.

*TSR:* Yes, except .f.

**List of Items Controlled**

*Unit:* N/A.

*Related Controls:* See 3E001 for silicon-on-insulation (SOI) technology for the ''development'' or ''production''

related to radiation hardening of integrated circuits.

*Related Definitions:* N/A.

*Items:*

a. Vacuum microelectronic devices;

b. Hetero-structure semiconductor devices such as high electron mobility transistors (HEMT), hetero-bipolar transistors (HBT), quantum well and super lattice devices;

c. ''Superconductive'' electronic devices;

d. Substrates of films of diamond for electronic components;

e. Substrates of silicon-on-insulator (SOI) for integrated circuits in which the insulator is silicon dioxide;

f. Substrates of silicon carbide for electronic components.

10. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4D003 is amended by revising the List of Items Controlled Section, to read as follows:

**4D003 Specific ''Software'', As Follows (See List of Items Controlled)**

* * * * *

**List of Items Controlled**

*Unit:* $ value.

*Related Controls:* N/A.

*Related Definitions:* N/A.

*Items:*

a. Operating system ''software'', ''software'' development tools and compilers specially designed for ''multi-data-stream processing'' equipment, in ''source code'';

b. [Reserved]

c. ''Software'' having characteristics or performing functions exceeding the limits in Category 5, Part 2 (''Information Security'');

d. Operating systems specially designed for ''real time processing'' equipment that guarantees a ''global interrupt latency time'' of less than 20 μs.

11. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and ''Information Security'', Part I—Telecommunications is amended by revising the List of Items Controlled section for Export Control Classification Numbers (ECCNs) 5D001 and 5E001, to read as follows:

**5D001 ''Software'', As Described in the List of Items Controlled**

* * * * *

**List of Items Controlled**

*Unit:* $ value.

*Related Controls:* See also 5D991.

*Related Definitions:* N/A.

*Items:*

a. ''Software'' specially designed or modified for the ''development'', ''production'' or ''use'' of equipment, functions or features controlled by 5A001 or 5B001.

b. ''Software'' specially designed or modified to support ''technology'' controlled by 5E001.

c. Specific ''software'' as follows:

c.1. ''Software'' specially designed or modified to provide characteristics, functions or features of equipment controlled by 5A001 or 5B001;

c.2. [Reserved];

c.3. ''Software'', other than in machine-executable form, specially designed for ''dynamic adaptive routing''.

d. ''Software'' specially designed or modified for the ''development'' of any of the following telecommunication transmission or ''stored program controlled'' switching equipment:

d.1. Equipment employing digital techniques, including ''Asynchronous Transfer Mode'' (''ATM''), designed to operate at a ''total digital transfer rate'' exceeding 1.5 Gbit/s;

d.2. Equipment employing a ''laser'' and having any of the following:

d.2.a. A transmission wavelength exceeding 1750 nm; or

d.2.b. Employing analog techniques and having a bandwidth exceeding 2.5 GHz;

**Note:** 5D001.d.2.b. does not control ''software'' specially designed or modified for the ''development'' of commercial TV systems.

d.3. Equipment employing ''optical switching''; or

d.4. Radio equipment employing quadrature-amplitude-modulation (QAM) techniques above level 128;

**5E001 ''Technology'', (See List of Items Controlled)**

* * * * *

**List of Items Controlled**

*Unit:* $ value.

*Related Controls:* See also 5E101 and 5E991.

*Related Definitions:* N/A.

*Items:*

a. ''Technology'' according to the General Technology Note for the ''development'', ''production'' or ''use'' (excluding operation) of equipment, functions or features or ''software'' controlled by 5A001, 5B001 or 5D001.

b. Specific ''technologies'', as follows:

b.1. ''Required'' ''technology'' for the ''development'' or ''production'' of telecommunications equipment specially designed to be used on board satellites;

b.2. ''Technology'' for the ''development'' or ''use'' of ''laser'' communication techniques with the capability of automatically acquiring and tracking signals and maintaining communications through exoatmosphere or sub-surface (water) media;

b.3. ''Technology'' for the ''development'' of digital cellular radio systems;

b.4. ''Technology'' for the ''development'' of ''spread spectrum'' techniques, including ''frequency hopping'' techniques.

c. ''Technology'' according to the General Technology Note for the ''development'' or ''production'' of any of the following telecommunication transmission or ''stored program controlled'' switching equipment, functions or features:

c.1. Equipment employing digital techniques, including ''Asynchronous Transfer Mode'' (''ATM''), designed to operate at a ''total digital transfer rate'' exceeding 1.5 Gbit/s;

c.2. Equipment employing a ''laser'' and having any of the following:

c.2.a. A transmission wavelength exceeding 1750 nm;

c.2.b. Performing ''optical amplification'' using praseodymium-doped fluoride fiber amplifiers (PDFFA);

c.2.c. Employing coherent optical transmission or coherent optical detection techniques (also called optical heterodyne or homodyne techniques);

c.2.d. Employing wavelength division multiplexing techniques exceeding 8 optical carriers in a single optical window; or

c.2.e. Employing analog techniques and having a bandwidth exceeding 2.5 GHz;

**Note:** 5E001. c.2.e. does not control ''technology'' for the ''development'' or ''production'' of commercial TV systems.

c.3. Equipment employing ''optical switching'';

c.4. Radio equipment having any of the following:

c.4.a. Quadrature-amplitude-modulation (QAM) techniques above level 128; or

c.4.b. Operating at input or output frequencies exceeding 31 GHz; or

**Note:** 5E001.c.4.b. does not control ''technology'' for the ''development'' or ''production'' of equipment designed or modified for operation in any frequency band which is ''allocated by the ITU'' for radio-communications services, but not for radio-determination.

c.5. Equipment employing ''common channel signalling'' operating in either non-associated or quasi-associated mode of operation.

12. In Supplement No. 1 to part 774 (the Commerce Control List), Category

6—Sensors, the following Export Control Classification Numbers (ECCNs) are amended:

a. By revising the License Exception and List of Items Controlled sections for ECCNs 6A003 and 6A005;

b. By revising the List of Items Controlled section for ECCNs 6A995 and 6C002; and

c. By revising the Heading and the List of Items Controlled section for ECCN 6C992, to read as follows:

**6A003 Cameras**

* * * * *

**License Exceptions**

*LVS:* $1500, except N/A for 6A003.a.2 through a.6, b.1, b.3 and b.4.

*GBS:* Yes for 6A003.a.1.

*CIV:* Yes for 6A003.a.1.

**List of Items Controlled**

*Unit:* Number.

*Related Controls:* See also 6A203. See 8A002.d and .e for cameras specially designed or modified for underwater use.

*Related Definitions:* N/A.

*Items:*

a. Instrumentation cameras and specially designed components therefor, as follows:

**Note:** Instrumentation cameras, controlled by 6A003.a.3 to 6A003.a.5, with modular structures should be evaluated by their maximum capability, using plug-ins available according to the camera manufacturer's specifications.

a.1. High-speed cinema recording cameras using any film format from 8 mm to 16 mm inclusive, in which the film is continuously advanced throughout the recording period, and that are capable of recording at framing rates exceeding 13,150 frames/s;

**Note:** 6A003.a.1 does not control cinema recording cameras designed for civil purposes.

a.2. Mechanical high speed cameras, in which the film does not move, capable of recording at rates exceeding 1,000,000 frames/s for the full framing height of 35 mm film, or at proportionately higher rates for lesser frame heights, or at proportionately lower rates for greater frame heights;

a.3. Mechanical or electronic streak cameras having writing speeds exceeding 10 mm/μs;

a.4. Electronic framing cameras having a speed exceeding 1,000,000 frames/s;

a.5. Electronic cameras, having all of the following:

a.5.a. An electronic shutter speed (gating capability) of less than 1 μs per full frame; and

a.5.b. A read out time allowing a framing rate of more than 125 full frames per second.

a.6. Plug-ins, having all of the following characteristics:

a.6.a. Specially designed for instrumentation cameras which have modular structures and that are controlled by 6A003.a; *and*

a.6.b. Enabling these cameras to meet the characteristics specified in 6A003.a.3, 6A003.a.4 or 6A003.a.5, according to the manufacturer's specifications.

b. Imaging cameras, as follows:

**Note:** 6A003.b does not control television or video cameras specially designed for television broadcasting.

b.1. Video cameras incorporating solid state sensors, having any of the following:

b.1.a. More than 4 x 106 ''active pixels'' per solid state array for monochrome (black and white) cameras;

b.1.b. More than 4 x 106 ''active pixels'' per solid state array for color cameras incorporating three solid state arrays; or

b.1.c. More than 12 x 106 ''active pixels'' for solid state array color cameras incorporating one solid state array;

**Technical Note:** For the purposes of this entry, digital video cameras should be evaluated by the maximum number of ''active pixels'' used for capturing moving images.

b.2. Scanning cameras and scanning camera systems, having all of the following:

b.2.a. Linear detector arrays with more than 8,192 elements per array; and

b.2.b. Mechanical scanning in one direction;

b.3. Imaging cameras incorporating image intensifier tubes having the characteristics listed in 6A002.a.2.a;

b.4. Imaging cameras incorporating ''focal plane arrays'' having the characteristics listed in 6A002.a.3.

**Note:** 6A003.b.4 does not control imaging cameras incorporating linear ''focal plane arrays'' with twelve elements or fewer, not employing time-delay-and-integration within the element, designed for any of the following:

a. Industrial or civilian intrusion alarm, traffic or industrial movement control or counting systems;

b. Industrial equipment used for inspection or monitoring of heat flows in buildings, equipment or industrial processes;

c. Industrial equipment used for inspection, sorting or analysis of the properties of materials;

d. Equipment specially designed for laboratory use; or

e. Medical equipment.

**6A005 ''Lasers'', Components and Optical Equipment, As Follows (See List of Items Controlled)**

* * * * *

**License Exceptions**

*LVS:* N/A for NP items. $3000 for all other items.

*GBS:* Yes, for 6A005.d (except d.2.c), $CO_2$ or $CO/CO_2$ ''lasers'' having an output wavelength in the range from 9,000 to 11,000 nm and having a pulsed output not exceeding 2 J per pulse and a maximum rated average single or multimode output power not exceeding 5 kW; CO ''lasers'' having a CW maximum rated single or multimode output power not exceeding 10 kW; $CO_2$ ''lasers'' controlled by 6A005.a.4 that operate in CW multiple-transverse mode; and having a CW output power not exceeding 15 kW; Neodymium-doped (other than glass), pulse-excited, ''Q-switched lasers'' controlled by 6A005.c.2.b.2.b having a pulse duration equal to or more than 1 ns; and a multiple-transverse mode output with a ''peak power'' not exceeding 400 MW; Neodymium-doped (other than glass) ''lasers'' controlled by 6A005.c.2.b.3.b or 6A005.c.2.b.4.b that have an output wavelength exceeding 1,000 nm, but not exceeding 1,100 nm; and an average or CW output power not exceeding 2 kW; and operate in a pulse-excited, non-''Q-switched'' multiple-transverse mode; or in a continuously excited, multiple-transverse mode; and 6A005.f.1.

*CIV:* Yes, for 6A005.d (except d.2.c), $CO_2$ or $CO/CO_2$ ''lasers'' having an output wavelength in the range from 9,000 to 11,000 nm and having a pulsed output not exceeding 2 J per pulse and a maximum rated average single or multimode output power not exceeding 5 kW; CO ''lasers'' having a CW maximum rated single or multimode output power not exceeding 10 kW; $CO_2$ ''lasers'' controlled by 6A005.a.4 that operate in CW multiple-transverse mode; and having a CW output power not exceeding 15 kW; Neodymium-doped (other than glass), pulse-excited, ''Q-switched lasers'' controlled by 6A005.c.2.b.2.b having a pulse duration equal to or more than 1 ns; and a multiple-transverse mode output with a ''peak power'' not exceeding 400 MW; Neodymium-doped (other than glass) ''lasers'' controlled by 6A005.c.2.b.3.b or 6A005.c.2.b.4.b that have an output wavelength exceeding 1,000 nm, but not exceeding 1,100 nm; and an average or CW output power not exceeding 2 kW; and operate in a pulse-excited, non-''Q-switched'' multiple-transverse mode; or in a continuously excited, multiple-transverse mode; and 6A005.f.1.

**List of Items Controlled**

*Unit:* Equipment in number; parts and accessories in $ value.

*Related Controls:* (1.) See also 6A205, 6A995, 0B001.g.5 and 0B001.b.6. (2.) Shared aperture optical elements, capable of operating in ''super-high power laser'' applications are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (See 22 CFR part 121.)

*Related Definitions:* (1.) Pulsed ''lasers'' include those that run in a continuous wave (CW) mode with pulses superimposed. (2.) Pulse-excited ''lasers'' include those that run in a continuously excited mode with pulse excitation superimposed. (3.) The control status of Raman ''lasers'' is determined by the parameters of the pumping source ''lasers''. The pumping source ''lasers'' can be any of the ''lasers'' described as follows:

*Items:*

a. Gas ''lasers'', as follows:

a.1. Excimer ''lasers'', having any of the following:

a.1.a. An output wavelength not exceeding 150 nm and having any of the following:

a.1.a.1. An output energy exceeding 50 mJ per pulse; or

a.1.a.2. An average output power exceeding 1 W;

a.1.b. An output wavelength exceeding 150 nm but not exceeding 190 nm and having any of the following:

a.1.b.1. An output energy exceeding 1.5 J per pulse; or

a.1.b.2. An average output power exceeding 120 W;

a.1.c. An output wavelength exceeding 190 nm but not exceeding 360 nm and having any of the following:

a.1.c.1. An output energy exceeding 10 J per pulse; or

a.1.c.2. An average output power exceeding 500 W; or

a.1.d. An output wavelength exceeding 360 nm and having any of the following:

a.1.d.1. An output energy exceeding 1.5 J per pulse; or

a.1.d.2. An average output power exceeding 30 W;

N.B. For excimer ''lasers'' specially designed for lithography equipment, see 3B001.

a.2. Metal vapor ''lasers'', as follows:

a.2.a. Copper (Cu) ''lasers'' having an average output power exceeding 20 W;

a.2.b. Gold (Au) ''lasers'' having an average output power exceeding 5 W;

a.2.c. Sodium (Na) ''lasers'' having an output power exceeding 5 W;

a.2.d. Barium (Ba) ''lasers'' having an average output power exceeding 2 W;

a.3. Carbon monoxide (CO) ''lasers'' having any of the following:

a.3.a. An output energy exceeding 2 J per pulse and a pulsed ''peak power'' exceeding 5 kW; or

a.3.b. An average or CW output power exceeding 5 kW;

a.4. Carbon dioxide ($CO_2$) ''lasers'' having any of the following:

a.4.a. A CW output power exceeding 15 kW;

a.4.b. A pulsed output having a ''pulse duration'' exceeding 10 μs and having any of the following:

a.4.b.1. An average output power exceeding 10 kW; or

a.4.b.2. A pulsed ''peak power'' exceeding 100 kW; or

a.4.c. A pulsed output having a ''pulse duration'' equal to or less than 10 μs; and having any of the following:

a.4.c.1. A pulse energy exceeding 5 J per pulse; or

a.4.c.2. An average output power exceeding 2.5 kW;

a.5. ''Chemical lasers'', as follows:

a.5.a. Hydrogen Fluoride (HF) ''lasers'';

a.5.b. Deuterium Fluoride (DF) ''lasers'';

a.5.c. ''Transfer lasers'', as follows:

a.5.c.1. Oxygen Iodine ($O_2$-I) ''lasers'';

a.5.c.2. Deuterium Fluoride-Carbon dioxide (DF-$CO_2$) ''lasers'';

a.6. Krypton ion or argon ion ''lasers'' having any of the following:

a.6.a. An output energy exceeding 1.5 J per pulse and a pulsed ''peak power'' exceeding 50 W; or

a.6.b. An average or CW output power exceeding 50 W;

a.7. Other gas ''lasers'', having any of the following:

**Note:** 6A005.a.7 does not control nitrogen ''lasers''.

a.7.a. An output wavelength not exceeding 150 nm and having any of the following:

a.7.a.1. An output energy exceeding 50 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; or

a.7.a.2. An average or CW output power exceeding 1 W;

a.7.b. An output wavelength exceeding 150 nm but not exceeding 800 nm and having any of the following:

a.7.b.1. An output energy exceeding 1.5 J per pulse and a pulsed ''peak power'' exceeding 30 W; or

a.7.b.2. An average or CW output power exceeding 30 W;

a.7.c. An output wavelength exceeding 800 nm but not exceeding 1,400 nm and having any of the following:

a.7.c.1. An output energy exceeding 0.25 J per pulse and a pulsed ''peak power'' exceeding 10 W; or

a.7.c.2. An average or CW output power exceeding 10 W; or

a.7.d. An output wavelength exceeding 1,400 nm and an average or CW output power exceeding 1 W.

b. Semiconductor ''lasers'', as follows:

b.1. Individual single-transverse mode semiconductor ''lasers'' having all of the following:

b.1.a. A wavelength of less than 950 nm or more than 2000 nm; *and*

b.1.b. An average or CW output power exceeding 100 mW;

b.2. Individual, multiple-transverse mode semiconductor ''lasers'', having all of the following:

b.2.a. A wavelength of less than 950 nm or more than 2000 nm; *and*

b.2.b. An average or CW output power exceeding 10 W.

b.3. Individual arrays of individual semiconductor ''lasers'', having any of the following:

b.3.a. A wavelength of less than 950 nm and an average or CW output power exceeding 60 W; *or*

b.3.b. A wavelength equal to or greater than 2000 nm and an average or CW output power exceeding 10 W;

**Technical Note:** Semiconductor ''lasers'' are commonly called ''laser'' diodes.

**Note 1:** 6A005.b includes semiconductor ''lasers'' having optical output connectors (e.g. fiber optic pigtails).

**Note 2:** The control status of semiconductor ''lasers'' specially designed for other equipment is determined by the control status of the other equipment.

c. Solid state ''lasers'', as follows:

c.1. ''Tunable'' ''lasers'' having any of the following:

**Note:** 6A005.c.1 includes titanium—sapphire (Ti: $Al_2O_3$), thulium—YAG (Tm: YAG), thulium—YSGG (Tm: YSGG), alexandrite (Cr: $BeAl_2O_4$) and color center ''lasers''.

c.1.a. An output wavelength less than 600 nm and having any of the following:

c.1.a.1. An output energy exceeding 50 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; or

c.1.a.2. An average or CW output power exceeding 1 W;

c.1.b. An output wavelength of 600 nm or more but not exceeding 1,400 nm and having any of the following:

c.1.b.1. An output energy exceeding 1 J per pulse and a pulsed ''peak power'' exceeding 20 W; or

c.1.b.2. An average or CW output power exceeding 20 W; or

c.1.c. An output wavelength exceeding 1,400 nm and having any of the following:

c.1.c.1. An output energy exceeding 50 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; or

c.1.c.2. An average or CW output power exceeding 1 W;

c.2. Non-''tunable'' ''lasers'', as follows:

**Note:** 6A005.c.2 includes atomic transition solid state ''lasers''.

c.2.a. Neodymium glass ''lasers'', as follows:

c.2.a.1. ''Q-switched lasers'' having any of the following:

c.2.a.1.a. An output energy exceeding 20 J but not exceeding 50 J per pulse and an average output power exceeding 10 W; or

c.2.a.1.b. An output energy exceeding 50 J per pulse;

c.2.a.2. Non-''Q-switched lasers'' having any of the following:

c.2.a.2.a. An output energy exceeding 50 J but not exceeding 100 J per pulse and an average output power exceeding 20 W; or

c.2.a.2.b. An output energy exceeding 100 J per pulse;

c.2.b. Neodymium-doped (other than glass) ''lasers'', having an output wavelength exceeding 1,000 nm but not exceeding 1,100 nm, as follows:

**N.B.:** For neodymium-doped (other than glass) ''lasers'' having an output wavelength not exceeding 1,000 nm or exceeding 1,100 nm, see 6A005.c.2.c.

c.2.b.1. Pulse-excited, mode-locked, ''Q-switched lasers'' having a ''pulse duration'' of less than 1 ns and having any of the following:

c.2.b.1.a. A ''peak power'' exceeding 5 GW;

c.2.b.1.b. An average output power exceeding 10 W; or

c.2.b.1.c. A pulsed energy exceeding 0.1 J;

c.2.b.2. Pulse-excited, ''Q-switched lasers'' having a pulse duration equal to or more than 1 ns, and having any of the following:

c.2.b.2.a. A single-transverse mode output having:

c.2.b.2.a.1. A ''peak power'' exceeding 100 MW;

c.2.b.2.a.2. An average output power exceeding 20 W; or

c.2.b.2.a.3. A pulsed energy exceeding 2 J; or

c.2.b.2.b. A multiple-transverse mode output having:

c.2.b.2.b.1. A ''peak power'' exceeding 400 MW;

c.2.b.2.b.2. An average output power exceeding 2 kW; or

c.2.b.2.b.3. A pulsed energy exceeding 2 J;

c.2.b.3. Pulse-excited, non-''Q-switched lasers'', having:

c.2.b.3.a. A single-transverse mode output having:

c.2.b.3.a.1. A ''peak power'' exceeding 500 kW; or

c.2.b.3.a.2. An average output power exceeding 150 W; or

c.2.b.3.b. A multiple-transverse mode output having:

c.2.b.3.b.1. A ''peak power'' exceeding 1 MW; or

c.2.b.3.b.2. An average power exceeding 2 kW;

c.2.b.4. Continuously excited ''lasers'' having:

c.2.b.4.a. A single-transverse mode output having:

c.2.b.4.a.1. A ''peak power'' exceeding 500 kW; or

c.2.b.4.a.2. An average or CW output power exceeding 150 W; or

c.2.b.4.b. A multiple-transverse mode output having:

c.2.b.4.b.1. A ''peak power'' exceeding 1 MW; or

c.2.b.4.b.2. An average or CW output power exceeding 2 kW;

c.2.c. Other non-''tunable'' ''lasers'', having any of the following:

c.2.c.1. A wavelength less than 150 nm and having any of the following:

c.2.c.1.a. An output energy exceeding 50 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; or

c.2.c.1.b. An average or CW output power exceeding 1 W;

c.2.c.2. A wavelength of 150 nm or more but not exceeding 800 nm and having any of the following:

c.2.c.2.a. An output energy exceeding 1.5 J per pulse and a pulsed ''peak power'' exceeding 30 W; or

c.2.c.2.b. An average or CW output power exceeding 30 W;

c.2.c.3. A wavelength exceeding 800 nm but not exceeding 1,400 nm, as follows:

c.2.c.3.a. ''Q-switched lasers'' having:

c.2.c.3.a.1. An output energy exceeding 0.5 J per pulse and a pulsed ''peak power'' exceeding 50 W; or

c.2.c.3.a.2. An average output power exceeding:

c.2.c.3.a.2.a. 10 W for single-mode ''lasers'';

c.2.c.3.a.2.b. 30 W for multimode ''lasers'';

c.2.c.3.b. Non-''Q-switched lasers'' having:

c.2.c.3.b.1. An output energy exceeding 2 J per pulse and a pulsed ''peak power'' exceeding 50 W; or

c.2.c.3.b.2. An average or CW output power exceeding 50 W; or

c.2.c.4. A wavelength exceeding 1,400 nm and having any of the following:

c.2.c.4.a. An output energy exceeding 100 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; or

c.2.c.4.b. An average or CW output power exceeding 1 W;

d. Dye and other liquid ''lasers'', having any of the following:

d.1. A wavelength less than 150 nm and:

d.1.a. An output energy exceeding 50 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; or

d.1.b. An average or CW output power exceeding 1 W;

d.2. A wavelength of 150 nm or more but not exceeding 800 nm and having any of the following:

d.2.a. An output energy exceeding 1.5 J per pulse and a pulsed ''peak power'' exceeding 20 W;

d.2.b. An average or CW output power exceeding 20 W; or

d.2.c. A pulsed single longitudinal mode oscillator having an average output power exceeding 1 W and a repetition rate exceeding 1 kHz if the ''pulse duration'' is less than 100 ns;

d.3. A wavelength exceeding 800 nm but not exceeding 1,400 nm and having any of the following:

d.3.a. An output energy exceeding 0.5 J per pulse and a pulsed ''peak power'' exceeding 10 W; or

d.3.b. An average or CW output power exceeding 10 W; or

d.4. A wavelength exceeding 1,400 nm and having any of the following:

d.4.a. An output energy exceeding 100 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; or

d.4.b. An average or CW output power exceeding 1 W;

e. Components, as follows:

e.1. Mirrors cooled either by active cooling or by heat pipe cooling;

**Technical Note:** Active cooling is a cooling technique for optical components using flowing fluids within the subsurface (nominally less than 1 mm below the optical surface) of the optical component to remove heat from the optic.

e.2. Optical mirrors or transmissive or partially transmissive optical or electro-optical components specially designed for use with controlled ''lasers'';

f. Optical equipment, as follows:

N.B. For shared aperture optical elements, capable of operating in ''Super-High Power Laser'' (''SHPL'') applications, see the U.S. Munitions List (22 CFR part 121).

f.1. Dynamic wavefront (phase) measuring equipment capable of mapping at least 50 positions on a beam wavefront having any the following:

f.1.a. Frame rates equal to or more than 100 Hz and phase discrimination of at least 5% of the beam's wavelength; or

f.1.b. Frame rates equal to or more than 1,000 Hz and phase discrimination of at least 20% of the beam's wavelength;

f.2. ''Laser'' diagnostic equipment capable of measuring ''SHPL'' system angular beam steering errors of equal to or less than 10 μrad;

f.3. Optical equipment and components specially designed for a phased-array ''SHPL'' system for coherent beam combination to an

accuracy of lambda/10 at the designed wavelength, or 0.1 μm, whichever is the smaller;

f.4. Projection telescopes specially designed for use with ''SHPL'' systems.

**6A995 ''Lasers'', Not Controlled by 6A005 or 6A205**

* * * * *

**List of Items Controlled**

*Unit:* Equipment in number; parts and accessories in $ value.

*Related Controls:* N/A.

*Related Definitions:* N/A.

*Items:*

a. Carbon dioxide ($CO_2$) ''lasers'' having any of the following:

a.1. A CW output power exceeding 10 kW;

a.2. A pulsed output with a ''pulse duration'' exceeding 10 microseconds; and

a.2.a. An average output power exceeding 10 kW; or

a.2.b. A pulsed ''peak power'' exceeding 100 kW; or

a.3. A pulsed output with a ''pulse duration'' equal to or less than 10 microseconds; and

a.3.a. A pulse energy exceeding 5 J per pulse and ''peak power'' exceeding 2.5 kW; or

a.3.b. An average output power exceeding 2.5 kW;

b. Semiconductor lasers, as follows:

b.1. Individual, single-transverse mode semiconductor ''lasers'' having:

b.1.a. An average output power exceeding 100 mW; or

b.1.b. A wavelength exceeding 1,050 nm;

b.2. Individual, multiple-transverse mode semiconductor ''lasers'', or arrays of individual semiconductor ''lasers'', having a wavelength exceeding 1,050 nm;

c. Solid state, non-''tunable'' ''lasers'', as follows:

c.1. Ruby ''lasers'' having an output energy exceeding 20 J per pulse;

c.2. Neodymium-doped (other than glass) ''lasers'', as follows, with an output wavelength exceeding 1,000 nm but not exceeding 1,100 nm:

c.2.a. Pulse-excited, ''Q-switched lasers'', with a pulse duration equal to or more than 1 ns, and a multiple-transverse mode output with any of the following:

c.2.a.1. A ''peak power'' exceeding 200 MW; or

c.2.a.2. An average output power exceeding 50 W;

c.2.b. Pulse-excited, non-''Q-switched lasers'', having a multiple-transverse mode output with an average power exceeding 500 W; or

c.2.c. Continuously excited ''lasers'' having a multiple-transverse mode output with an average or CW output power exceeding 500 W;

d. Free electron ''lasers''.

*C. Materials*

**6C002 Optical Sensor Materials, As Follows (See List of Items Controlled)**

* * * * *

**List of Items Controlled**

*Unit:* Number.

*Related Controls:* See also 6C992.

*Related Definitions:* N/A.

*Items:*

a. Elemental tellurium (Te) of purity levels of 99.9995% or more;

b. Single crystals (including epitaxial wafers) of any of the following:

b.1. Cadmium zinc telluride (CdZnTe), with zinc content less than 6% by mole fraction;

b.2. Cadmium telluride (CdTe) of any purity level; *or*

b.3. Mercury cadmium telluride (HgCdTe) of any purity level.

**Technical Note:** Mole fraction is defined as the ratio of moles of ZnTe to the sum of the moles of CdTe and ZnTe present in the crystal.

**6C992 Optical Sensing Fibers Not Controlled by 6A002.d.3 Which Are Modified Structurally To Have a ''Beat Length'' of Less Than 500 mm (High Birefringence) or Optical Sensor Materials Not Described in 6C002.b and Having a Zinc Content of Equal to or More Than 6% by Mole Fraction**

* * * * *

**List of Items Controlled**

*Unit:* Equipment in number; parts and accessories in $ value.

*Related Controls:* N/A.

*Related Definitions:* Mole fraction is defined as the ratio of moles of ZnTe to the sum of the moles of CdTe and ZnTe present in the crystal.

*Items:*

The list of items controlled is contained in the ECCN heading.

13. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, is amended by revising the entry heading and the List of Items Controlled section for ECCNs 7A001 and 7A002, to read as follows:

**7A001 Linear Accelerometers Designed for Use in Inertial Navigation or Guidance Systems and Having Any of the Following Characteristics (See List of Items Controlled), and Specially Designed Components Therefor**

* * * * *

**List of Items Controlled**

*Unit:* $ value.

*Related Controls:* See also 7A101 and 7A994. For angular or rotational accelerometers, see 7A002. MT controls do not apply to accelerometers that are specially designed and developed as Measurement While Drilling (MWD) sensors for use in downhole well service applications.

*Related Definitions:* N/A.

*Items:*

a. A ''bias'' ''stability'' of less (better) than 130 micro g with respect to a fixed calibration value over a period of one year;

b. A ''scale factor'' ''stability'' of less (better) than 130 ppm with respect to a fixed calibration value over a period of one year; or

c. Specified to function at linear acceleration levels exceeding 100 g.

**7A002 Gyros, and Angular or Rotational Accelerometers, Having Any of the Following Characteristics (See List of Items Controlled), and Specially Designed Components Therefor**

* * * * *

**List of Items Controlled**

*Unit:* $ value.

*Related Controls*: See also 7A102 and 7A994. For linear accelerometers, see 7A001.

*Related Definitions:* N/A.

*Items*:

a. A ''drift rate'' ''stability'', when measured in a 1 g environment over a period of three months and with respect to a fixed calibration value, of:

a.1. Less (better) than 0.1° per hour when specified to function at linear acceleration levels below 10 g; or

a.2. Less (better) than 0.5° per hour when specified to function at linear acceleration levels from 10 g to 100 g inclusive; or

b. Specified to function at linear acceleration levels exceeding 100 g.

14. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, the following Export Control Classification numbers (ECCNs) are amended:

a. By revising the entry heading for ECCN 9B001; and

b. By revising the License Requirement section and the List of Items Controlled section for ECCN 9E003, to read as follows:

**9B001 Specially Designed Equipment, Tooling and Fixtures, As Follows (See List of Items Controlled), for Manufacturing Gas Turbine Blades, Vanes or Tip Shroud Castings**

* * * * *

**9E003 Other ''Technology'', As Follows (See List of Items Controlled)**

**License Requirements**

*Reason for Control*: NS, SI, AT.

| Control(s) | Country chart |
|---|---|
| NS applies to entire entry .... | NS Column 1. |
| SI applies to 9E003.a.1 through a.11, and h. See § 742.14 of the EAR for additional information.. | |
| AT applies to entire entry .... | AT Column 1. |

*License Requirement Notes*: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

* * * * *

**List of Items Controlled**

*Unit*: N/A.

Related Controls: (1.) Hot section ''technology'' specifically designed, modified, or equipped for military uses or purposes, or developed principally with U.S. Department of Defense funding, is subject to the licensing authority of the U.S. Department of State. (2.) ''Technology'' is subject to the EAR when actually applied to a commercial aircraft engine program. Exporters may seek to establish commercial application either on a case-by-case basis through submission of documentation demonstrating application to a commercial program in requesting an export license from the Department Commerce in respect to a specific export, or in the case of use for broad categories of aircraft, engines, or components, a commodity jurisdiction determination from the Department of State.

*Related Definitions:* N/A.

*Items*:

a. ''Technology'' ''required'' for the ''development'', ''production''of any of the following gas turbine engine components or systems:

a.1. Gas turbine blades, vanes or tip shrouds made from directionally solidified (DS) or single crystal (SC) alloys having (in the 001 Miller Index Direction) a stress-rupture life exceeding 400 hours at 1,273 K (1,000 °C) at a stress of 200 MPa, based on the average property values;

a.2. Multiple domed combustors operating at average burner outlet temperatures exceeding 1,813 K (1,540 ° C) or combustors incorporating thermally decoupled combustion liners, non-metallic liners or non-metallic shells;

a.3. Components manufactured from any of the following:

a.3.a. Organic ''composite'' materials designed to operate above 588 K (315 °C);

a.3.b. Metal ''matrix'' ''composite'', ceramic ''matrix'', intermetallic or intermetallic reinforced materials controlled by 1C007; or

a.3.c. ''Composite'' material controlled by 1C010 and manufactured with resins controlled by 1C008.

a.4. Uncooled turbine blades, vanes, tip-shrouds or other components designed to operate at gas path temperatures of 1,323 K (1,050 °C) or more;

a.5. Cooled turbine blades, vanes or tip-shrouds, other than those described in 9E003.a.1, exposed to gas path temperatures of 1,643 K (1,370 °C) or more;

a.6. Airfoil-to-disk blade combinations using solid state joining;

a.7. Gas turbine engine components using ''diffusion bonding'' ''technology'' controlled by 2E003.b;

a.8. Damage tolerant gas turbine engine rotating components using powder metallurgy materials controlled by 1C002.b;

a.9. Full authority digital electronic engine control (FADEC) for gas turbine and combined cycle engines and their related diagnostic components, sensors and specially designed components;

a.10. Adjustable flow path geometry and associated control systems for:

a.10.a. Gas generator turbines;

a.10.b. Fan or power turbines;

a.10.c. Propelling nozzles; *or*

**Note 1:** Adjustable flow path geometry and associated control systems in 9E003.a.10 do not include inlet guide vanes, variable pitch fans, variable stators or bleed valves for compressors.

**Note 2:** 9E003.a.10 does not control ''development'' or ''production'' ''technology'' for adjustable flow path geometry for reverse thrust.

a.11. Wide chord hollow fan blades without part-span support;

b. ''Technology'' ''required'' for the ''development'' or ''production'' of any of the following:

b.1. Wind tunnel aero-models equipped with non-intrusive sensors capable of transmitting data from the sensors to the data acquisition system; or

b.2. ''Composite'' propeller blades or propfans capable of absorbing more than 2,000 kW at flight speeds exceeding Mach 0.55;

c. ''Technology'' ''required'' for the ''development'' or ''production'' of gas turbine engine components using ''laser'', water jet, ECM or EDM hole drilling processes to produce holes having any of the following sets of characteristics:

c.1. All of the following:

c.1.a. Depths more than four times their diameter;

c.1.b. Diameters less than 0.76 mm; and

c.1.c. Incidence angles equal to or less than 25°; or

c.2. All of the following:

c.2.a. Depths more than five times their diameter;

c.2.b. Diameters less than 0.4 mm; and

c.2.c. Incidence angles of more than 25°;

**Technical Note:** For the purposes of 9E003.c, incidence angle is measured from a plane tangential to the airfoil surface at the point where the hole axis enters the airfoil surface.

d. ''Technology'' ''required'' for the ''development'' or ''production'' of helicopter power transfer systems or tilt rotor or tilt wing ''aircraft'' power transfer systems;

e. ''Technology'' for the ''development'' or ''production'' of reciprocating diesel engine ground vehicle propulsion systems having all of the following:

e.1. A box volume of 1.2 $m^3$ or less;

e.2. An overall power output of more than 750 kW based on 80/1269/EEC, ISO 2534 or national equivalents; and

e.3. A power density of more than 700 $kW/m^3$ of box volume;

**Technical Note:** Box volume: the product of three perpendicular dimensions measured in the following way:

Length: The length of the crankshaft from front flange to flywheel face;

Width: The widest of the following:

a. The outside dimension from valve cover to valve cover;

b. The dimensions of the outside edges of the cylinder heads; or

c. The diameter of the flywheel housing;

Height: The largest of the following:

a. The dimension of the crankshaft center-line to the top plane of the valve cover (or cylinder head) plus twice the stroke; or

b. The diameter of the flywheel housing.

f. ''Technology'' ''required'' for the ''production'' of specially designed components, as follows, for high output diesel engines:

f.1. ''Technology'' ''required'' for the ''production'' of engine systems having all of the following components employing ceramics materials controlled by 1C007:

f.1.a Cylinder liners;

f.1.b. Pistons;

f.1.c. Cylinder heads; and

f.1.d. One or more other components (including exhaust ports, turbochargers, valve guides, valve assemblies or insulated fuel injectors);

f.2. ''Technology'' ''required'' for the ''production'' of turbocharger systems, with single-stage compressors having all of the following:

f.2.a. Operating at pressure ratios of 4:1 or higher;

f.2.b. A mass flow in the range from 30 to 130 kg per minute; and

f.2.c. Variable flow area capability within the compressor or turbine sections;

f.3. ''Technology'' ''required'' for the ''production'' of fuel injection systems with a specially designed multifuel (e.g., diesel or jet fuel) capability covering a viscosity range from diesel fuel (2.5 cSt at 310.8 K (37.8 °C)) down to gasoline fuel (0.5 cSt at 310.8 K (37.8 °C)), having both of the following:

f.3.a. Injection amount in excess of 230 $mm^3$ per injection per cylinder; and

f.3.b. Specially designed electronic control features for switching governor characteristics automatically depending on fuel property to provide the same torque characteristics by using the appropriate sensors;

g. ''Technology'' ''required'' for the development'' or ''production'' of high output diesel engines for solid, gas phase or liquid film (or combinations thereof) cylinder wall lubrication, permitting operation to temperatures exceeding 723 K (450 °C), measured on the cylinder wall at the top limit of travel of the top ring of the piston.

h. ''Technology'' not otherwise controlled in 9E003.a.1 through a.10 and currently used in the ''development'', ''production'', or overhaul of hot section parts and components of civil derivatives of military engines controlled on the U.S. Munitions List.

Dated: December 17, 2001.

**James J. Jochum,**

*Assistant Secretary for Export Administration.*

[FR Doc. 02–10 Filed 1–2–02; 8:45 am]

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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.

**H.R. 483/P.L. 107–102**

Regarding the use of the trust land and resources of the Confederated Tribes of the Warm Springs Reservation of Oregon. (Dec. 27, 2001; 115 Stat. 974)

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**H.R. 2559/P.L. 107–104**

To amend chapter 90 of title 5, United States Code, relating to Federal long-term care insurance. (Dec. 27, 2001; 115 Stat. 1001)

**H.R. 3323/P.L. 107–105**

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