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Proclamation 7570 of June 4, 2002

The President

National Homeownership Month, 2002

By the President of the United States of America

A Proclamation

Homeownership is an important part of the American Dream. As President, I am committed to helping many more Americans achieve that dream. A home provides shelter and a safe place where families can prosper and children can thrive. For many Americans, their home is an important financial investment, and it can be a source of great personal pride and an important part of community stability.

Homeownership encourages personal responsibility and the values necessary for strong families. Where homeownership flourishes, neighborhoods are more stable, residents are more civic-minded, schools are better, and crime rates decline. Thanks to the resources available in our Nation, more Americans own homes today than at any time in our history. However, among African American and Hispanic families, fewer than half are home owners. My Administration is working to provide all families with the tools and information they need to accumulate wealth and overcome barriers to homeownership.

The Department of Housing and Urban Development is partnering with State and local governments, community groups, and the private sector to make the most effective use of Federal funds. Through a combination of down payment assistance, tax incentives, and education about the process and responsibilities of homeownership, we are helping thousands of Americans buy homes and pursue a better quality of life.

During National Homeownership Month, I encourage all Americans to learn more about financial management and to explore homeownership opportunities in their communities. By taking this important step, individuals and families help safeguard their financial futures and contribute to the strength of our Nation.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim June 2002 as National Homeownership Month. I call upon the people of the United States to join me in recognizing the importance of providing all our citizens a chance to achieve the American Dream.

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

A handwritten signature in black ink, appearing to read "George W. Bush". The signature is written in a cursive style with a large, prominent "G" and "B".

[FR Doc. 02-14534

Filed 6-6-02; 8:45 am]

Billing code 3195-01-P

Presidential Documents

Executive Order 13264 of June 4, 2002

Amendment to Executive Order 13180, Air Traffic Performance-Based Organization

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered that Executive Order 13180 of December 7, 2000, is amended as follows:

Section 1. The first sentence of that order is amended by deleting “, an inherently governmental function,”.

Sect. 2. Section 6 of that order is amended to read as follows: “This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it, create any right to administrative or judicial review, or any right, whether substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.”



THE WHITE HOUSE,
Washington, June 4, 2002.

Presidential Documents

Presidential Determination No. 02-19 of May 27, 2002

Presidential Determination on Eligibility of East Timor to Receive Defense Articles and Services Under the Foreign Assistance Act of 1961, as amended, and the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by the laws and Constitution of the United States, including section 503(a) of the Foreign Assistance Act of 1961, as amended, and section 3(a)(1) of the Arms Export Control Act, I hereby find that the furnishing of Defense articles and services to East Timor will strengthen the security of the United States and promote world peace.

You are authorized and directed to report this finding to the Congress and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, May 27, 2002.

Presidential Documents

Presidential Determination No. 02-20 of May 30, 2002

Provision of \$25.5 Million to Support a Train and Equip Program in Georgia

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by the laws and Constitution of the United States, including sections 614(a)(2) and 506(a)(1) of the Foreign Assistance Act of 1961, as amended, I hereby determine that it is vital to the national security interests of the United States to provide up to \$4.5 million in fiscal year 1997 and 1998 Foreign Military Financing Funds for assistance to Georgia under section 23 of the Arms Export Control Act without regard to any provision of law that might otherwise restrict provision of such funds. I further determine that an unforeseen emergency exists requiring immediate military assistance for Georgia that cannot be met under the Arms Control Export Act or any other law, and hereby direct the draw-down of defense articles and services from the stocks of the Department of Defense, and military education and training of the aggregate value of \$21 million to meet that emergency requirement. I hereby authorize the furnishing of this assistance.

The Secretary of State is authorized and directed to report this determination to the Congress and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, May 30, 2002.

Rules and Regulations

Federal Register

Vol. 67, No. 110

Friday, June 7, 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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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 534, 591, and 930

RIN 3206-AJ44

Pay for Administrative Appeals Judge Positions

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to implement a new pay system for administrative appeals judge positions. The administrative appeals judge pay system covers positions which are not classifiable above GS-15 and for which the duties primarily involve reviewing decisions of administrative law judges. OPM is issuing rules to ensure that agencies administer the new administrative appeals judge pay system in a consistent and equitable manner. These final regulations also implement changes in law regarding the manner in which the administrative law judge basic pay schedule is adjusted.

EFFECTIVE DATE: The regulations are effective on July 8, 2002.

FOR FURTHER INFORMATION CONTACT: David Sweeney, (202) 606-2858, FAX: (202) 606-4264, or e-mail: payleave@opm.gov.

SUPPLEMENTARY INFORMATION: On December 11, 2001, the Office of Personnel Management (OPM) issued interim regulations to implement a new pay system for administrative appeals judges (AAJs) (66 FR 63907). Section 645 of the Treasury and General Government Appropriations Act, 2001, as incorporated in Public Law 106-544 by section 101(a)(3) of that Public Law, established the AAJ pay system effective on the first day of the first pay period beginning on or after April 20, 2001.

The AAJ pay system is authorized under 5 U.S.C. 5372b. Section 5372b authorizes OPM to issue regulations under which the head of an Executive agency must fix the rate of basic pay for each AAJ position.

The 60-day comment period for the interim regulations ended on February 11, 2002. We received no formal comments from either agencies or individuals. In informal comments, agency representatives expressed their satisfaction with the regulations. As a result, we believe no changes are necessary. Therefore, we are adopting as final the rules for agencies to administer the new AAJ pay system under 5 CFR part 534, subpart F. We are also adopting as final the changes in the interim regulations to 5 CFR part 591, subpart B (regarding nonforeign area cost-of-living allowances and post differentials), and 5 CFR part 930, subpart B (regarding the pay of administrative law judges).

Executive Order 12866, Regulatory Review

The Office of Management and Budget has reviewed this rule in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Parts 534, 591, and 930

Administrative practice and procedure, Computer technology, Government employees, Hospitals, Motor vehicles, Students, Travel and transportation expenses, Wages.

Accordingly, the Office of Personnel Management adopts the interim regulations amending 5 CFR parts 534, 591, and 930, published at 66 FR 63907 on December 11, 2001, as final.

Kay Coles James,

Office of Personnel Management, Director.
[FR Doc. 02-14168 Filed 6-6-02; 8:45 am]

BILLING CODE 6325-39-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1280

[No. LS-02-05]

Lamb Promotion, Research, and Information Program: Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule implements provisions of the Lamb Promotion, Research, and Information Order (Order), which established a national and industry-funded lamb promotion, research, and information program pursuant to the Commodity Promotion, Research, and Information Act of 1996 (Act). This rule will implement Order provisions concerning the collection and remittance of assessments, procedures for obtaining a refund, reporting, and books and records. In addition, comments are requested on a new form for certification of exempt transactions. Since the Lamb Promotion, Research, and Information Board (Board) is not in place, this rule provides for the Department of Agriculture (Department) to receive assessments and reports beginning July 1, 2002.

DATES: This rule is effective July 1, 2002. Comments must be received by August 6, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Send a copy of your comments to Marlene Betts, Acting Chief; Marketing Programs Branch, Room 2627-S; Livestock and Seed Program; Agricultural Marketing Service (AMS), USDA; STOP 0251; 1400 Independence Avenue, SW., Washington, DC 20250-0251. Telephone number 202/720-1115. Comments may also be submitted electronically to: Marlene.Betts@usda.gov or by fax at 202/720-1125. All comments should reference the docket number (LS-02-05), the date, and page number of the issue of the **Federal Register**. Comments will be available for public inspection via the Internet at <http://www.ams.usda.gov/lsg/mpb/rp->

lamb.htm. or during regular business hours, 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, at the same address.

Pursuant to the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. Chapter 35), send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information to the above address.

Comments concerning the information collection under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Marlene Betts, Acting Chief, Marketing Programs Branch, 202/720-1115.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Invitation to submit proposals—November 23, 1999 (64 FR 65665), and January 12, 2000 (65 FR 1825); proposed Lamb Promotion, Research, and Information Order—September 21, 2001 (66 FR 48764); final Lamb Promotion, Research, and Information Order—April 11, 2002 (67 FR 17848).

Executive Orders 12866 and 12988

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under § 519 of the Act, a person subject to the Order may file a petition with the Department stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with the law, and requesting a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order, or any obligation imposed in connection with the Order, shall be filed within 2 years after the effective date of the Order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Department will issue a ruling on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts

business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Department's final ruling. Service of process in a proceeding may be made on the Department by delivering a copy of the complaint to the Department. If the court determines that the ruling is not in accordance with the law, the court shall remand the matter to the Department with direction to make such ruling as the court determining to be in accordance with the law or to take such further action as, in the opinion of the court the law requires. The pendency of a petition filed or an action commenced shall not operate as a stay of any action authorized by section 520 of the Act to be taken to enforce, including any rule, order, or penalty in effect.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) (5 United States Code (U.S.C.) 601 *et seq.*), the Agency is required to examine the impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

There are approximately 51,800 producers, 15,000 seedstock producers, 100 feeders, 571 first handlers, and 15 exporters of lamb who will be subject to the program. Most of the lamb producers, seedstock producers, feeders, and exporters would be classified as small businesses under the criteria established by the Small Business Administration (SBA) (13 CFR 121.201). Most first handlers would not be classified as small businesses. SBA defines small agricultural service firms as those whose annual receipts are less than \$5 million and small agricultural producers are defined as those having annual receipts of less than \$750,000. This number and size data remains the same as it appeared in the earlier analyses for the Order. Further, for purposes of this discussion and the prior Order analyses, there are approximately 3,318 market agencies, which include commission merchants, auction markets, brokers, or livestock markets in the business of receiving lambs for sale or commission. Most market agencies would be classified under SBA criteria as small businesses. Also, under the program, there are 20 national, State, or regional associations or organizations that are made up of and represent the producers, feeders, and first handlers previously discussed.

The Act authorizes generic programs of promotion, research, and information

for agricultural commodities. Congress found that it is in the national public interest and vital to the welfare of the agricultural economy of the United States to maintain and expand existing markets and develop new markets and uses for agricultural commodities through industry-funded, Government-supervised, generic commodity promotion programs.

The Order will develop and finance an effective and coordinated program of promotion, research, and information to maintain and expand the markets for lamb and lamb products. A proposed Order was published in the **Federal Register** on September 21, 2001 (66 FR 48764). The comment period ended on November 20, 2001. The final Order was published in the **Federal Register** on April 11, 2002 (67 FR 17848).

The April 11, 2002 publication included a regulatory flexibility analysis concerning the provisions of the final Order. That analysis took into account Order provisions concerning the establishment, collection and remittance of assessments, refunds, reports, and books and records. This rule will implement Order provisions concerning these requirements. To a great extent, this rule provides for the Department to receive assessments and reports until the Board is established and becomes functional. In addition, a new form for certification of exempt transactions is submitted for comment.

In this interim final rule, the section on assessments contains provisions on sharing proceeds of sale, market agencies, failure to collect, death, bankruptcy, receivership or incapacity to act, remittance of assessments, and non-producer status for certain transactions. The section on refunds includes provisions concerning the procedure for obtaining a refund, refund application forms, submission of refund applications to the Department, proof of payment of assessments, and payment of refunds. In addition, there are provisions on reporting and books and records.

With the exception of the form, Statement of Certification of Non-Producer Status, this rule does not increase the burden on the industry from that previously imposed by the Order. The information collection burden in connection with this form is minimal and is discussed in the following section concerning the Paperwork Reduction Act.

Accordingly, the Administrator has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with OMB regulations (5 CFR part 1320) that implement the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. Chapter 35), this interim final rule announces that AMS has obtained emergency approval for a new information collection request for the Lamb Promotion, Research, and Information Program: Rules and Regulations. The emergency request was necessary because insufficient time was available to follow normal clearance procedures. This collection will be merged into 0581-0198.

Otherwise the information collection requirements that appear in the Order and the regulations contained in this interim final rule have been previously approved under OMB control number 0581-0198, except that the OMB control number for the nominee background form is 0505-0001.

Title: Lamb Promotion, Research, and Information Program: Rules and Regulations.

OMB Number: 0581-new.

Expiration Date of Approval: 3 years after date of approval.

Type of Request: Approval of new information collection.

Abstract: The information collection requirements in the request are essential to carry out the intent of the Act and Order.

Persons who are market agencies, which include commission merchants, auction markets, brokers, or livestock markets in the business of receiving lambs for sale or commission, are generally exempt from paying the assessment. The program requires that any market agency seeking an exemption must complete a form when lambs are resold not later than 10 days from the date on which the market agency acquired ownership.

The information required from market agencies will be to certify that they meet the following requirements: (1) The respondents only share in proceeds of a sale of lambs is a sales commission, handling fee, or other service fee; (2) the person acquired ownership of the lambs to facilitate the transfer of ownership of such lambs from the seller to a third party; or (3) the person resold such lambs no later than 10 days from the date on which the person acquired ownership. Additionally, the market agency will certify information that they collected the assessment and passed it on to the subsequent purchaser, and: (1) Purchased lambs from another market agency; or (2) purchased lambs in a transaction in which they are not responsible for paying the assessment.

The form will require the minimum information necessary to effectively

carry out the requirements of the program, its use is necessary to fulfill the intent of the Act. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out the form and submitting it to the Secretary or the Board. The form will be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

The timing and frequency of collecting information are intended to meet the needs of the industry while minimizing the amount of work necessary to fill out the required form. In addition, the information to be included on this form is not available from other sources because such information relates specifically to market agencies that are subject to the provisions of the Act. Therefore, there is no practical method for collecting the required information without the use of this form.

Information collection requirements that are included in this rule include:

Certification of Non-Producer Status Form

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .03 hours per response.

Respondents: Market agencies.

Estimated Number of Respondents: 3,318.

Estimated Number of Responses per Respondent: 12.

Estimated Total Annual Burden on Respondents: 1,195 hours.

Total Cost: \$23,900.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of functions of the Order and the Department's oversight of the program, including whether the information will have practical utility; (b) the accuracy of Department's estimate of the burden of the collection of information, including the validity of the methodology and assumption used; (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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments concerning the information collection requirements contained in this action should reference the Docket Number LS-02-05, together with the date and page number

of this issue of the **Federal Register**. Comments should be sent to Marlene Betts, Acting Chief; Marketing Programs Branch, Room 2627-S; Livestock and Seed Program, AMS, USDA; STOP 0251; 1400 Independence Avenue, SW., Washington, DC 20250-0251; by fax at 202/720-1125, or by e-mail at Marlene.Betts@usda.gov. Comments should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, OMB, Washington, DC 20503. All comments received will be available for public inspection via the Internet at <http://www.ams.usda.gov/lsg/mpb/rp-lamb.htm> during regular business hours, 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, at the same address.

OMB is required to make a decision concerning the collection of information contained in this rule between 30 days and 60 days after publication. Therefore, a comment to OMB is best assured of being considered if OMB receives it within 30 days after publication.

Background

The Act (7 U.S.C. 7411-7425) authorizes the Department to establish generic programs of promotion, research, and information for agricultural commodities designed to strengthen an industry's position in the marketplace, to maintain and expand existing domestic and foreign markets and uses for agricultural commodities. Pursuant to the Act, a proposed Order was published in the **Federal Register** on September 21, 2001 (66 FR 48764). The final Order was published in the **Federal Register** on April 11, 2002 (67 FR 17848). This program will be funded by assessments on domestic lamb producers, lamb feeders, exporters, and seedstock producers, in the amount of one-half cent (\$.005) per pound when live lambs are sold. First handlers, which means the packer or other person who buys or takes possession of lambs from a producer or feeder for slaughter, including custom slaughter, will be assessed an additional \$.30 cents per head of lambs purchased for slaughter or slaughtered by such first handler pursuant to a custom slaughter arrangement. Each person who processes or causes to be processed lamb or lamb products of that person's own production and markets the processed products will be assessed one-half cent (\$.005) per pound on the live weight at the time of slaughter and will be required to pay an additional assessment of \$.30 per head. Exporters who directly export lambs of their own production will be assessed in the amount of one-half cent (\$.005) per

pound of live lambs exported. Assessment rates may be adjusted in accordance with applicable provisions of the Act and the Order.

The Order also requires persons to collect and remit assessments to the Board. Each producer, feeder, or seedstock producer is obligated to pay that portion of the assessments that is equivalent to that producer's, feeder's, or seedstock producer's proportionate share and pass it on to the subsequent purchaser, if applicable, and ultimately on to the first handler or exporter who will remit the total assessment to the Board. Any person who processes or causes to be processed lamb or lamb products of the person's own production and markets the processed products will be required to pay an assessment and remit the assessment to the Board. Each first handler who buys or takes possession of lambs from a producer or feeder for slaughter will be required to pay an additional assessment and remit the total assessment to the Board. Any person who exports live lambs will be required to collect and remit the total assessment to the Board at the time of export. Any exporter who directly exports lambs of their own production will pay an assessment to the Board. Additionally, a person who is a market agency; i.e., commission merchant, auction market, or livestock market in the business of receiving such lamb or lamb products for sale on commission for or on behalf of a producer, feeder, or seedstock producer will be required to collect an assessment and shall pass the collected assessment on to the subsequent purchaser(s) and ultimately on to the first handler or exporter who will remit the total assessment to the Board. Subsequent purchasers may include other market agencies, feeders, or other entities in the marketing chain.

The Order imposes certain recordkeeping and reporting requirements on persons subject to the Order. First handlers and exporters will collect and remit the assessments on lamb and lamb products to the Board. Their responsibilities will include accurate recordkeeping and accounting of the number of lambs purchased, total weight in pounds, the names of the producers, seedstock producers, and feeders, the purchase date, the amount of assessment remitted, and the date the assessment was paid. The required reporting forms require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act. Such records and reports shall be retained for at least 2 years beyond the fiscal year of their

applicability. These requirements are already being conducted as a normal business practice. In addition, a person who is a market agency; i.e., commission merchant, auction market, or livestock market in the business of receiving lambs for sale on commission for or on behalf of a producer, seedstock producer, or feeder, will be required to collect an assessment and pass the collected assessments on to the subsequent purchaser(s) and ultimately on to the first handler or exporter who will remit the total assessment to the Board. There will be a minimal burden on persons who are market agencies. It is not anticipated that they will be required to submit records of their transactions involving lamb purchases and the required assessment collection to the Board. Information on such transactions can be obtained through an audit of the market agencies' records. Such records are already being maintained as a normal business practice. This will include such records or documents that evidence payment of an assessment pursuant to the requirements in § 1280.225(b). In addition, market agencies must certify as required by regulations prescribed by the Department that the provisions of § 1280.217(b) have been met. This interim final rule includes these regulations.

Discussion of Regulations

This interim final rule includes provisions concerning assessments, refunds, reporting, and books and records. The section on assessments contain provisions on sharing proceeds of sale, market agencies, failure to collect, death, bankruptcy, receivership or incapacity to act, remittance of assessments, and non-producer status for certain transactions. The section on refunds includes provisions concerning the procedure for obtaining a refund, refund application forms, submission of refund applications to the Department, proof of payment of assessments, and payment of refunds. There are also provisions on reporting and books and records. This includes setting a reporting period on a calendar month basis.

This rule provides for the Department to receive assessments and reports until the Board is established and becomes functional. With the exception of the form, Statement of Certification of Non-Producer Status, this rule does not increase the industry's burden from that previously imposed by the Order.

Under these regulations market agencies will be required to certify that they meet the following requirements: (1) The respondents only share in

proceeds of a sale of lambs is a sales commission, handling fee, or other service fee; (2) the person acquired ownership of the lambs to facilitate the transfer of ownership of such lambs from the seller to a third party; or

(3) the person resold such lambs no later than 10 days from the date on which the person acquired ownership. Additionally, the market agency will certify information that they collected the assessment and passed it on to the subsequent purchaser, and (1) purchased lambs from another market agency; or (2) purchased lambs in a transaction in which they are not responsible for paying the assessment.

The Order provides that if the Board is not in place by the date the first assessments are to be collected, then the Department may receive assessments and invest them on behalf of the Board. The regulations in this rulemaking take this situation into account since it has been determined that collection and remittance of assessments and applicable reporting should begin on July 1, 2002. This date would maximize the amount of assessments that may be collected during the marketing period so that the industry can more readily begin a national promotion and research program.

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**. This rule implements the provisions of the Order. Specifically, this rule will implement the Order's provisions concerning the collection and remittance of assessments, procedures for obtaining a refund, reporting, and books and records. In addition, the Department has determined that July 1, 2002, will be the day that the collection and remittance of assessments will begin. Such date will provide the Department and industry organizations the opportunity to educate those persons subject to the assessment and collection provisions of the Order and allow adequate time to distribute the required reporting forms to those affected persons. By implementing this rule in a timely manner, the domestic lamb industry can more readily begin a marketing program to improve production efficiency and increase demand. This rule is effective July 1, 2002. A 60-day period is provided for interested persons to comment on this rule.

List of Subjects in 7 CFR Part 1280

Administrative practice and procedure, Advertising, Consumer Information, Marketing agreements, Lamb and lamb products, Reporting and record keeping requirements.

For the reason set forth in the preamble, Title 7 of Chapter XI of the Code of Federal Regulations is amended as follows:

PART 1280—LAMB PROMOTION, RESEARCH, AND INFORMATION

1. The authority citation for 7 CFR part 1280 continues to read as follows:

Authority: 7 U.S.C. 7411–7425.

2. In part 1280, a new subpart C consisting of § 1280.401 through § 1280.405 is added to read as follows:

Subpart C—Rules and Regulations

Sec.

1280.401	Terms defined.
1280.402	Assessments.
1280.403	Refunds.
1280.404	Reporting.
1280.405	Books and records.

Subpart C—Rules and Regulations**§ 1280.401 Terms defined.**

As used throughout this subpart, unless the context otherwise requires, terms shall have the same meaning as the definition of such terms in subpart A of this part.

§ 1280.402 Assessments.

(a) *Sharing proceeds of sale.* If more than one producer, feeder, or seedstock producer shares the proceeds received for the lamb or lamb products sold, each such producer, feeder, or seedstock producer is obligated to pay that portion of the assessments that is equivalent to that producer's, feeder's, or seedstock producer's proportionate share of the proceeds.

(b) *Market agencies.* A person who is a market agency; i.e., commission merchant, auction market, or livestock market in the business of receiving lambs or lamb products for sale on commission for or on behalf of a producer, feeder, or seedstock producer, will be required to collect an assessment from the producer, feeder, or seedstock producer and pass the collected assessment on to the subsequent purchaser(s) until remitted by a first handler or exporter responsible for submitting assessments under this part.

(c) *Failure to collect.* Failure of a person to collect the assessment on lambs purchased from a producer, feeder, or seedstock producer shall not relieve the producer, feeder, or seedstock producer of their obligation to

pay the assessment and to remit the assessment to the Secretary.

(d) *Death, bankruptcy, receivership or incapacity to act.* In the event of a producer's, feeder's, seedstock producer's, or exporter's death, bankruptcy, receivership or incapacity to act, the representative of such producer's, feeder's, seedstock producer's, or exporter's estate, the person acting on behalf of creditors or other person acting in such person's stead, shall be considered the producer, feeder, or seedstock producer and shall be required to pay an assessment or collect an assessment.

(e) *Remittance of assessments.* (1) Assessments shall be remitted to the Lamb Promotion, Research, and Information Program, c/o the Secretary at USDA, 23029 Network Place, Chicago, Illinois 60673–1230, with a "Monthly Remittance Report" form LS–81 not later than the 15th day of the following month in which lambs or lamb products were purchased for slaughter or export, or marketed, if a first handler markets lambs or lamb products directly to consumers, in order to avoid late payment charges.

(2) In cases where a producer or feeder sells lambs as part of a custom slaughter operation, the producer or feeder shall be responsible for remitting the assessments pursuant to § 1280.219.

(3) Each person processing or causing to be processed lamb or lamb products of that person's own production and marketing such lamb or lamb products shall be responsible for remitting the assessments pursuant to § 1280.217(c).

(4) Late payment charges. Any unpaid assessments due to the Board pursuant to § 1280.217 shall be increased 2 percent each month beginning with the day following the date such assessments were due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this paragraph, shall be increased at the same rate on the corresponding day of each month thereafter until paid. Any assessment received at a date later than the date prescribed by this part, because of a person's failure to submit a timely report to the Secretary, shall be considered to have been payable by the date it would have been due if the report had been filed in a timely manner. The timeliness of a payment to the Secretary shall be based on the applicable postmark date or the date actually received by the Secretary, whichever is earlier.

(5) Weekends and holidays. If the 15th day of the month falls on a Saturday, Sunday, or a federally recognized holiday then the required reports and assessment will be due the

next business day in order to avoid late payment charges.

(f) *Non-producer status for certain transactions.* (1) Each person seeking non-producer status pursuant to § 1280.217 shall provide the person remitting the assessment a Statement of Certification of Non-Producer Status form (LS–78).

(2) A copy of the Statement of Certification of Non-Producer Status shall be forwarded by the person collecting the assessment to the Secretary.

§ 1280.403 Refunds.

(a) *Procedure for obtaining a refund.* Any producer, seedstock producer, feeder, first handler, or exporter from whom an assessment is collected and remitted to the Secretary, or who pays an assessment directly to the Secretary, under the authority of the Act and the Order through the announcement of the results of the required referendum, shall have a right to receive a refund of such assessment, or pro rata share thereof, upon submission of proof satisfactory that such person paid the assessment for which the refund is sought. Any such demand shall be made in accordance with the provision of the Order and this subpart.

(b) *Refund application form.* A producer shall obtain an approved application from the Secretary. Such form may be obtained by written request to the Lamb Promotion, Research, and Information Program, c/o the Secretary at USDA, P.O. Box 23198, Washington, DC 20026–3198.

(c) *Submission of refund application to the Secretary.* Any producer, seedstock producer, feeder, first handler, or exporter requesting a refund shall submit an application on the prescribed form to the Secretary within 60 days from the date the assessments were paid by such producer, seedstock producer, feeder, first handler, or exporter but no later than the date the results of the required referendum are announced by the Secretary.

(d) *Proof of payment of assessments.* The documentation provided pursuant to § 1280.225(b) to the producer, seedstock producer, feeder, first handler, or exporter by the person responsible for collecting an assessment pursuant to the Order and this subpart or such other evidence deemed satisfactory to the Secretary, shall accompany the producer's, seedstock producer's, feeder's, first handler's, or exporter's refund application.

(e) *Payment of refunds.* Refunds will be paid pursuant to § 1280.216(d).

§ 1280.404 Reporting.

(a) Each first handler required to submit assessments for live lambs pursuant to § 1280.217, each first handler marketing lamb products of that person's own production, and each exporter of lambs, shall report to the Secretary the following information on form LS-81.

(1) The number of lambs purchased, initially transferred or which, in any other manner, is subject to the collection of assessment, the total weight in pounds, and the dates of such transactions;

(2) The number of lambs exported and the total weight in pounds of lambs exported;

(3) The amount of assessment remitted;

(4) The basis, if necessary, to show why the remittance is less than the total weight in pounds of lamb multiplied by the assessment rate; and

(5) The date any assessment was paid.

(b) *Reporting periods.* For reports required pursuant to § 1280.223, each calendar month shall be a reporting period.

§ 1280.405 Books and records.

(a) Each first handler, exporter of lambs, and market agency shall maintain and, during normal business hours, make available for inspection by representatives of the Secretary, such books and records as are necessary to carry out the provisions of this part, including such books and records as are necessary to verify any required reports.

(b) *Documents evidencing payments of assessments.* Each person, including first handlers, exporters, and market agencies, responsible for collecting an assessment paid pursuant to this part is required to give the person from whom the assessment was collected, written evidence of payment of the assessments paid. Such written evidence serving as a receipt shall include the following information:

(1) Name and address of the person collecting the assessment.

(2) Name of person who paid assessment.

(3) Number of head of lambs sold.

(4) Total weight in pounds of lamb sold.

(5) Total assessments paid by the producer, seedstock producer, or feeder.

(6) Date of sale.

(7) Such other information as the Secretary may require.

Dated: June 4, 2002.

A.J. Yates,

Administrator.

[FR Doc. 02-14457 Filed 6-5-02; 11:44 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE**Commodity Credit Corporation****7 CFR Part 1467**

RIN 0578-AA16

Wetlands Reserve Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Farm Security and Rural Investment Act of 2002 amended the authority of the Secretary of Agriculture under the Wetlands Reserve Program to broaden the ability of landowners subject to foreclosure to remain eligible for participation in the program. This change, the terms of which are not subject to agency discretion, is mandatory.

EFFECTIVE DATE: June 7, 2002.

FOR FURTHER INFORMATION CONTACT: Roger L. Bensey at (202) 720-3534.

SUPPLEMENTARY INFORMATION:

Discussion

The Wetlands Reserve Program is authorized under Subtitle D, Title XII of the Food Security Act of 1985 (16 U.S.C. 3837-3837f) and provides wetland conservation assistance through long-term easements and restoration agreements. NRCS published the current regulations for the Wetlands Reserve Program, 7 CFR part 1467, as a final rule on August 14, 1996 (61 FR 42137). The regulations, based upon statutory mandate, prohibited the Secretary from creating an easement on land that had changed ownership within the 12 months preceding the application for enrollment in the program. However, the Secretary could waive this ownership requirement if the new ownership was acquired by will or succession, or if the Secretary determined that the land was acquired under circumstances that gave adequate assurances that such land was not acquired for the purposes of placing it in the program. The Farm Security and Rural Investment Act of 2002, Public Law 107-171, expands the ability of the Secretary to grant a waiver if the "ownership change occurred due to foreclosure on the land and the owner of the land immediately before the foreclosure exercises a right of redemption from the mortgage holder in accordance with State law."

This final rule incorporates this mandated statutory change into the Wetlands Reserve Program regulations. This change is non-discretionary on the part of the agency, and thus no public comments are being solicited.

Executive Order 12866

This document does not meet the criteria for a significant regulatory action as specified in Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because Natural Resources Conservation Service (NRCS) is not required by 5 U.S.C. 553, or any other provision of law, to publish a notice of proposed rule making with respect to the subject matter of this rule.

Paperwork Reduction Act

No recordkeeping or reporting burden is associated with this rule.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule are not retroactive. Furthermore, the provisions of this final rule preempt State and local laws to the extent such laws are inconsistent with this final rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR part 614 must be exhausted.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104-4, NRCS assessed the affects of this rulemaking action on State, local, and tribal governments, and the public. This action does not compel the expenditure of \$100 million or more by any State, local or tribal governments, or anyone in the private sector, and therefore, a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Federal Domestic Assistance Program

The title and number of the Federal Domestic Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Wetlands Reserve Program—10.072.

List of Subjects in 7 CFR Part 1467

Administrative practice and procedure, Agriculture, Soil conservation, Wetlands.

Accordingly, 7 CFR part 1467 is amended as follows:

PART 1467—WETLANDS RESERVE PROGRAM

1. The authority citation for part 1467 is revised to read as follows:

Authority: 16 U.S.C. 3837, *et seq.*

2. Section 1467.4 is amended by revising paragraph (c)(2) to read as follows:

§ 1467.4 Program requirements.

* * * * *

(c) * * *

(2) Have been the landowner of such land for the 12 months prior to the time the intention to participate is declared unless it is determined by the State Conservationist that the land was acquired by will or success as a result of the death of the previous landowner, the ownership change occurred due to foreclosure on the land and the owner of the land immediately before the foreclosure exercises a right of redemption from the mortgage holder in accordance with State law, or that adequate assurances have been presented to the State Conservationist that the new landowner of such land did not acquire such land for the purpose of placing it in the WRP; and

* * * * *

Signed in Washington, DC on May 24, 2002.

Bruce I. Knight,

Vice President, Commodity Credit Corporation, and Chief, Natural Resources Conservation Service.

[FR Doc. 02-14142 Filed 6-6-02; 8:45 am]

BILLING CODE 3410-16-P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 212, 236, 238, 239, 240, 241, and 287

[INS No. 2206-02]

RIN 1115-AG69

Delegation of Authorities for Various Detention and Removal Authorities and the Parole, Detention, Care and Custody of Alien Juveniles

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: As part of the ongoing restructuring of the Immigration and Naturalization Service (Service or INS), the chain of command for many functions related to the detention and removal of aliens, including the detention, care and custody of juveniles, will be centralized. Currently, these functions are overseen by Service districts and regions which report to the Executive Associate Commissioner for Field Operations. Under the reorganization, the daily oversight of overall detention and removal functions

will transfer to the Deputy Executive Associate Commissioner for Detention and Removal who will still report to the Executive Associate Commissioner for Field Operations. The daily oversight of functions relating to alien juveniles in the custody and care of the Service is transferred to the Director of the Office of Juvenile Affairs who reports to the Commissioner of the INS. This rule ensures that the appropriate immigration officials will have the necessary authority to carry out the daily oversight of the detention and removal of aliens consistent with the changes in responsibility.

DATES: This rule is effective June 7, 2002.

FOR FURTHER INFORMATION CONTACT: For overall detention and removal issues contact: Rachel Canty, Special Assistant, Office of Detention and Removal, Immigration and Naturalization Service, 801 I Street, NW Room 900, Washington, DC 20536, telephone number 202-305-1518. For issues specifically related to the detention, care and custody of juveniles, contact: John J. Pogash, National Juvenile Coordinator, Immigration and Naturalization Service, 801 I Street, NW., Room 800, Washington, DC 20536, telephone number 202-305-1518.

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act (Act) conveys authority to perform various functions on the Attorney General, and that authority, with some limitations, is delegated to the INS Commissioner pursuant to Department of Justice regulations at 28 CFR 0.105 and 8 CFR 2.1. The latter provision further authorizes the INS Commissioner to issue regulations and redelegate authority to any officer or employee of the Service. This final rule delegates authority to grant parole, make decisions on the expedited removal of aggravated felons, issue and cancel notices to appear, issue warrants of removal, continue detention of inadmissible criminals or other aliens beyond the removal period, issue administrative stays of removal, grant extensions of time to depart, issue subpoenas, and issue warrants of arrest to the Deputy Executive Associate Commissioner for Detention and Removal, the Directors of the Detention and Removal Field Offices (who report to the Deputy Executive Associate Commissioner for Detention and Removal), and the Director of the Office of Juvenile Affairs, as appropriate. This rule does not change any substantive rules relating to the implementation of these authorities, and therefore individuals who might be affected by

any of the listed actions will not be disadvantaged by this change.

As part of the ongoing restructuring of the Service, the chain of command for many functions related to the detention and removal of aliens, including the detention, care and custody of juveniles, will be centralized. Currently, these functions are overseen by Service districts and regions which report to the Executive Associate Commissioner for Field Operations. Under the reorganization, the daily oversight of the overall detention and removal functions will transfer to the Deputy Executive Associate Commissioner for Detention and Removal who will report to the Executive Associate Commissioner for Field Operations. In turn, field level oversight of detention and removal functions in a given geographical area will be overseen by Directors of Detention and Removal Field Offices. The daily oversight of certain functions as related to juveniles in the custody and care of the Service is transferred to the Director of the Office of Juvenile Affairs who reports to the Commissioner of the INS. This rule ensures that the appropriate immigration officials will have the necessary authority to carry out the daily oversight of the detention and removal of aliens, consistent with the changes in responsibility. This is accomplished by amending the listing of officials authorized to grant parole, make decisions on the expedited removal of aggravated felons, issue and cancel notices to appear, issue warrants of removal, continue detention of inadmissible criminals or other aliens beyond the removal period, issue administrative stays of removal, issue subpoenas, grant extensions of time to depart and issue warrants of arrest.

The provisions of 8 CFR 212.5(a), (c), (d) and (e), 236.3(b)(4), (e) and (f), 238.1(a), 239.1(a), 240.25(a), 240.26(f), 241.2(a), 241.4, 241.6(a) and (b), 241.7, 287.4(a) and (c), and 287.5(e)(2), are being amended to add the Deputy Executive Associate Commissioner for Detention and Removal, the Director of the Detention and Removal Field Office, and the Director of the Office of Juvenile Affairs, as appropriate to the list of officials authorized to engage in such functions. This amendment does not otherwise alter who is authorized to exercise these authorities except that district directors and chief patrol agents have been removed from 8 CFR 212.5(b)(3) and 8 CFR 236.3 relating to parole and release of juveniles. This authority is being transferred to the Director of the Office of Juvenile Affairs. In particular, under this rule, the Deputy Executive Associate Commissioner for Detention and

Removal, and the Director of the Office of Juvenile Affairs may grant parole (8 CFR 212.5), make decisions on the expedited removal of aggravated felons (8 CFR 238.1(a)), issue and cancel notices to appear (8 CFR 239.1(a)), grant voluntary departure (8 CFR 240.25), grant extensions of time to depart (8 CFR 240.26(f)), issue warrants of removal (8 CFR 241.2), issue administrative stays of removal (8 CFR 241.6), grant self removal (8 CFR 241.7), issue subpoenas (8 CFR 287.4), and issue warrants of arrest (8 CFR 287.5). The Director of the Office of Juvenile Affairs is also specifically given the sole authority to determine parole for juveniles (8 CFR 212.5(a)(3)) and issues concerning the detention and release of juveniles (8 CFR 236.3). District directors and chief patrol agents will no longer have this authority. Directors of the Detention and Removal Field Offices are delegated the authority to continue detention of inadmissible criminals or other aliens beyond the removal period (8 CFR 241.4).

This rule also adds a new paragraph in 8 CFR 103.1(g) to delegate authority to the Deputy Executive Associate Commissioner for Detention and Removal within the Office of Field Operations for the Service. This position, created in calendar year 2000, working under the direction and supervision of the Executive Associate Commissioner for Field Operations, has responsibility for planning, directing, managing and coordinating all Service operational functions relating to the detention and removal of aliens from the United States. See Meissner, Commissioner, *Establishment of Headquarters Office of Detention and Removal*, INS Mem. HQOPS 50/10 (Oct. 25, 2000).

Additionally, this rule adds a new paragraph in 8 CFR 103.1(k) to delegate authority to the Director for the Office of Juvenile Affairs. This position, created in April 2002, working under the direction and supervision of the Commissioner, has responsibility for planning, directing, managing and coordinating all Service operational, adjudicative, and policy functions relating to alien juveniles in the custody and care of the Service. See Ziglar, Commissioner, *Initial Restructuring Measures*, INS Mem. HQOU 90/20 (April 17, 2002).

Congressional Review Act

This action pertains to agency organization, practice, and procedure and does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a "rule" as that term is used by the

Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Act of 1996). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

Good Cause Exception

The Service's implementation of this rule as a final rule is based on the "good cause" exception found at 5 U.S.C. 553(a)(2). The amendments contained herein relate to agency management and are necessary to ensure that the appropriate immigration officials will have the necessary authority to carry out the daily oversight of the detention and removal of aliens. Accordingly, it would be contrary to the public interest to issue this rule as a proposed rule because doing so would delay its implementation.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that since this rule pertains to internal agency management, it will not have a significant economic impact on a substantial number of small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 13132

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. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this

rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104-13, 109 Stat. 163, all departments are required to submit to OMB, for review and approval, any reporting requirements inherent in a final rule. This rule does not impose any new reporting and recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Reporting and record keeping requirements.

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Reporting and record keeping requirements.

8 CFR Part 236

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 238

Air Carriers, Aliens, Government contracts, Maritime carriers.

8 CFR Part 239

Air carriers, Aircraft, Airports, Aliens.

8 CFR Part 240

Administrative practice and procedure, Immigration.

8 CFR Part 241

Aliens.

8 CFR Part 287

Immigration, Law enforcement officers.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. Section 103.1 is amended by adding paragraphs (g)(4) and (k) to read as follows:

§ 103.1 Delegation of authority.

* * * * *

(g) * * *

(4) *Deputy Executive Associate Commissioner for Detention and Removal.* Under the direction and supervision of the Executive Associate Commissioner for Field Operations, the Deputy Executive Associate Commissioner for Detention and Removal is delegated authority to plan, direct, manage and coordinate all Service operational functions relating to the detention and removal of aliens from the United States and for liaison with Departmental and interagency partners on these issues.

* * * * *

(k) *Director of the Office of Juvenile Affairs.* Under the direction and supervision of the Commissioner, the Director of the Office of Juvenile Affairs is delegated authority to plan, direct, manage and coordinate all Service operational, adjudicative and policy functions relating to alien juveniles in the custody and care of the Service and to conduct liaison with the Departmental and interagency partners on these issues.

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSABLE ALIENS; PAROLE

3. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227; 8 CFR part 2.

4. Section 212.5 is amended by:

- a. Revising paragraph (a);
- b. Revising paragraph (b)(3) introductory text and paragraph (b)(5);
- c. Revising paragraph (c);
- d. Revising paragraph (d) introductory text;

- e. Revising paragraph (d)(1); and by
- f. Revising paragraph (e)(2)(i).

The revision reads as follows:

§ 212.5 Parole of aliens into the United States.

(a) The authority of the Commissioner to continue an alien in custody or grant parole under section 212(d)(5)(A) of the Act shall be exercised by the Deputy Executive Associate Commissioner for Detention and Removal, the Director of the Office of Juvenile Affairs, the district director, or the chief patrol agent, subject to the parole and detention authority of the Commissioner or his designees. The Commissioner or his designees, which include the Deputy Commissioner, the Executive Associate Commissioner for Field Operations, and the regional director, may invoke, in the exercise of discretion, the authority under section 212(d)(5)(A) of the Act.

* * * * *

(b) * * *

(3) Aliens who are defined as juveniles in § 236.3(a) of this chapter. The Director of the Office of Juvenile Affairs shall follow the guidelines set forth in § 236.3(a) of this chapter and paragraphs (b)(3)(i) through (b)(3)(iii) of this section, in determining under what conditions a juvenile shall be paroled from detention:

* * * * *

(5) Aliens whose continued detention is not in the public interest as determined by the district director, chief patrol agent, the Deputy Executive Associate Commissioner for Detention and Removal, or the Director of the Office of Juvenile Affairs.

(c) In the case of all other arriving aliens, except those detained under § 235.3(b) or (c) of this chapter and paragraph (b) of this section, the district director, chief patrol agent, the Deputy Executive Associate Commissioner for Detention and Removal, or the Director of the Office of Juvenile Affairs may, after review of the individual case, parole into the United States temporarily in accordance with section 212(d)(5)(A) of the Act, any alien applicant for admission, under such terms and conditions, including those set forth in paragraph (d) of this section, as he or she may deem appropriate. An alien who arrives at a port-of-entry and applies for parole into the United States for the sole purpose of seeking adjustment of status under section 245A of the Act, without benefit of advance authorization as described in paragraph (f) of this section shall be denied parole and detained for removal in accordance with the provisions of § 235.3(b) or (c) of this chapter. An alien seeking to enter the United States for sole purpose of

applying for adjustment of status under section 210 of the Act shall be denied parole and detained for removal under § 235.3(b) or (c) of this chapter, unless the alien has been recommended for approval of such application for adjustment by a consular officer at an Overseas Processing Office.

(d) *Conditions.* In any case where an alien is paroled under paragraph (b) or (c) of this section, the district director, chief patrol agent, the Deputy Executive Associate Commissioner for Detention and Removal, or the Director of the Office of Juvenile Affairs may require reasonable assurances that the alien will appear at all hearings and/or depart the United States when required to do so. Not all factors listed need be present for parole to be exercised. The district director, chief patrol agent, the Deputy Executive Associate Commissioner for Detention and Removal, or the Director of the Office of Juvenile Affairs should apply reasonable discretion. The consideration of all relevant factors includes:

(1) The giving of an undertaking by the applicant, counsel, or a sponsor to ensure appearances or departure, and a bond may be required on Form I-352 in such amount as the district director, chief patrol agent, the Deputy Executive Associate Commissioner for Detention and Removal, or the Director of the Office of Juvenile Affairs may deem appropriate;

* * * * *

(e) * * *

(2)(i) *On notice.* In cases not covered by paragraph (e)(1) of this section, upon accomplishment of the purpose for which parole was authorized or when in the opinion of the district director or chief patrol agent in charge of the area in which the alien is located, the Deputy Executive Associate Commissioner for Detention and Removal, or the Director of the Office of Juvenile Affairs, neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States, parole shall be terminated upon written notice to the alien and he or she shall be restored to the status that he or she had at the time of parole. When a charging document is served on the alien, the charging document will constitute written notice of termination of parole, unless otherwise specified. Any further inspection or hearing shall be conducted under section 235 or 240 of the Act and this chapter, or any order of exclusion, deportation, or removal previously entered shall be executed. If the exclusion, deportation, or removal order cannot be executed within a reasonable time, the alien shall again be

released on parole unless in the opinion of the district director, chief patrol agent, the Deputy Executive Associate Commissioner for Detention and Removal, or the Director of the Office of Juvenile Affairs the public interest requires that the alien be continued in custody.

* * * * *

PART 236—APPREHENSION AND DETENTION OF INADMISSABLE AND DEPORTABLE ALIENS; REMOVAL OF ALIENS ORDERED REMOVED

5. The authority citation for part 236 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1227, 1362; sec. 303(b) of Div. C of Pub. L. No. 104-208; 8 CFR part 2.

6. Section 236.3 is amended by revising paragraphs (b)(4), (e) and (f) to read as follows:

§ 236.3 Detention and release of juveniles.

* * * * *

(b) * * *

(4) In unusual and compelling circumstances and in the discretion of the Director of the Office of Juvenile Affairs, a juvenile may be released to an adult, other than those identified in paragraphs (b)(1)(i) through (b)(1)(iii) of this section, who executes an agreement to care for the juvenile's well-being and to ensure the juvenile's presence at all future proceedings before the Service or an immigration judge.

* * * * *

(e) *Refusal of release.* If a parent of a juvenile detained by the Service can be located, and is otherwise suitable to receive custody of the juvenile, and the juvenile indicates a refusal to be released to his or her parent, the parent(s) shall be notified of the juvenile's refusal to be released to the parent(s), and they shall be afforded the opportunity to present their views to the district director, chief patrol agent, Director of the Office of Juvenile Affairs or immigration judge before a custody determination is made.

(f) *Notice to parent of application for relief.* If a juvenile seeks release from detention, voluntary departure, parole, or any form of relief from removal, where it appears that the grant of such relief may effectively terminate some interest inherent in the parent-child relationship and/or the juvenile's rights and interests are adverse with those of the parent, and the parent is presently residing in the United States, the parent shall be given notice of the juvenile's application for relief, and shall be afforded an opportunity to present his or her views and assert his or her interest to the district director, Director

of the Office of Juvenile Affairs or immigration judge before a determination is made as to the merits of the request for relief.

* * * * *

PART 238—EXPEDITED REMOVAL OF AGGRAVATED FELONS

7. The authority citation for part 238 continues to read as follows:

Authority: 8 U.S.C. 1228; 8 CFR part 2.

8. Section 238.1(a) is revised to read as follows:

§ 238.1 Proceedings under section 238(b) of the Act.

(a) *Definitions.* As used in this part the term:

Deciding Service officer means a district director, chief patrol agent, or another immigration officer designated by a district director, chief patrol agent, the Deputy Executive Associate Commissioner for Detention and Removal, or the Director of the Office of Juvenile Affairs, so long as that person is not the same person as the Issuing Service Officer.

Issuing Service officer means any Service officer listed in § 239.1 of this chapter as authorized to issue notices to appear.

* * * * *

PART 239—INITIATION OF REMOVAL PROCEEDINGS

9. The authority citation for part 239 continues to read as follows:

Authority: 8 U.S.C. 1103, 1221, 1229; 8 CFR part 2.

10. Section 239.1 is amended by:

a. Removing the word "or" from the end of paragraph (a)(21);

b. Removing the period from the end of paragraph (a)(22) and adding a ";" in its place; and by

c. Adding paragraphs (a)(23) and (a)(24).

The additions read as follows:

§ 239.1 Notice to appear.

(a) * * *

(23) The Director of the Office of Juvenile Affairs; or

(24) The Deputy Executive Associate Commissioner for Detention and Removal.

* * * * *

PART 240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

11. The authority citation for part 240 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note,

1252a, 1252b, 1362; sec. 202, Pub. L. 105-100 (111 Stat. 2160, 2193); 8 CFR part 2.

12. Section 240.25(a) is revised to read as follows:

§ 240.25 Voluntary departure—authority of the Service.

(a) *Authorized officers.* The authority contained in section 240B(a) of the Act to permit aliens to depart voluntarily from the United States may be exercised in lieu of being subject to proceedings under section 240 of the Act by district directors, assistant district directors for investigations, assistant district directors for examinations, officers in charge, chief patrol agents, the Deputy Executive Associate Commissioner for Detention and Removal, the Director of the Office of Juvenile Affairs, service center directors, and assistant service center directors for examinations.

* * * * *

13. Section 240.26(f) is revised to read as follows:

§ 240.26 Voluntary departure— authority of the Executive Office for Immigration Review.

* * * * *

(f) *Extension of time to depart.* Authority to extend the time within which to depart voluntarily specified initially by an immigration judge or the Board is only within the jurisdiction of the district director, the Deputy Executive Associate Commissioner for Detention and Removal, or the Director of the Office of Juvenile Affairs. An immigration judge or the Board may reinstate voluntary departure in a removal proceeding that has been reopened for a purpose other than solely making an application for voluntarily departure if reopening was granted prior to the expiration of the original period of voluntary departure. In no event can the total period of time, including any extension, exceed 120 days or 60 days as set forth in section 240B of the Act.

* * * * *

PART 241—APPREHENSION AND DETENTION OF ALIENS ORDERED REMOVED

14. The authority citation for part 241 continues to read as follows:

Authority: 8 U.S.C. 1103, 1223, 1227, 1231, 1253, 1255, and 1330; 8 CFR part 2.

15. Section 241.2(a) is revised to read as follows:

§ 241.2 Warrant of removal.

(a) *Issuance of a warrant of removal.* A Form I-205, Warrant of Removal, based upon the final administrative removal order in the alien's case shall

be issued by a district director, the Deputy Executive Associate Commissioner for Detention and Removal, or the Director of the Office of Juvenile Affairs. The district director, the Deputy Executive Associate Commissioner for Detention and Removal, or the Director of the Office of Juvenile Affairs, shall exercise the authority contained in section 241 of the Act to determine at whose expense the alien shall be removed and whether his or her mental or physical condition requires personal care and attention en route to his or her destination.

* * * * *

16. Section 241.4 is amended by:
a. Revising paragraph (a) introductory text;

b. Revising paragraph (c)(1);

c. Revising paragraph (c)(4);

d. Revising paragraph (h)(5); and by

e. Revising paragraph (j)(3).

The revision reads as follows:

§ 241.4 Continued detention of inadmissible, criminal, and other aliens beyond the removal period.

(a) *Scope.* The authority to continue an alien in custody or grant release or parole under sections 241(a)(6) and 212(d)(5)(A) of the Act shall be exercised by the Commissioner or Deputy Commissioner, as follows: Except as otherwise directed by the Commissioner or his or her designee, the Executive Associate Commissioner for Field Operations (Executive Associate Commissioner), the Deputy Executive Associate Commissioner for Detention and Removal, the Director of the Detention and Removal Field Office or the district director may continue an alien in custody beyond the removal period described in section 241(a)(1) of the Act pursuant to the procedures described in this section. Except as provided for in paragraph (b)(2) of this section, the provisions of this section apply to the custody determinations for the following group of aliens:

* * * * *

(c) * * *

(1) *District Directors and Directors of Detention and Removal Field Offices.* The initial custody determination described in paragraph (h) of this section and any further custody determination concluded in the 3 month period immediately following the expiration of the 90-day removal period, subject to the provisions of paragraph (c)(2) of this section, will be made by the district director or the Director of the Detention and Removal Field Office having jurisdiction over the alien. The district director or the Director of the Detention and Removal Field Office

shall maintain appropriate files respecting each detained alien reviewed for possible release, and shall have authority to determine the order in which the cases shall be reviewed, and to coordinate activities associated with these reviews in his or her respective jurisdictional area.

* * * * *

(4) *Additional delegation of authority.* All references to the Executive Associate Commissioner, the Director of the Detention and Removal Field Office, and the district director in this section shall be deemed to include any person or persons (including a committee) designated in writing by the Executive Associate Commissioner, the Director of the Detention and Removal Field Office, or the district director to exercise powers under this section.

* * * * *

(h) * * *

(5) *District office or Detention and Removal Field office staff.* The district director or the Director of the Detention and Removal Field Office may delegate the authority to conduct the custody review, develop recommendations, or render the custody or release decisions to those persons directly responsible for detention within his or her geographical areas of responsibility. This includes the deputy district director, the assistant director for detention and deportation, the officer-in-charge of a detention center, the assistant director of the detention and removal field office, the director of the detention and removal resident office, the assistant director of the detention and removal resident office, officers in charge of service processing centers, or such other persons as the district director or the Director of the Detention and Removal Field Office may designate from the professional staff of the Service.

* * * * *

(j) * * *

(3) *Employment authorization.* The district director, Director of the Detention and Removal Field Office, and the Executive Associate Commissioner, may, in the exercise of discretion, grant employment authorization under the same conditions set forth in § 241.5(c) for aliens released under an order of supervision.

* * * * *

§ 241.4 [Amended]

17. Section 241.4 is further amended by revising the term “district director or Executive Associate Commissioner” to read “district director, Director of the Detention and Removal Field Office, or Executive Associate Commissioner”

whenever that term appears in the following places:

a. Paragraph (d) introductory text;

b. Paragraph (d)(2);

c. Paragraph (j)(1);

d. Paragraph (j)(2);

e. Paragraph (j)(4); and

18. Section 241.4 is further amended by revising the term “district director or the Executive Associate Commissioner” to read “district director, Director of the Detention and Removal Field Office, or Executive Associate Commissioner” whenever that term appears in the following places:

a. Paragraph (d)(1); and

b. Paragraph (l)(3).

19. Section 241.4 is further amended by revising the term “district director’s” to read “district director’s or Director of the Detention and Removal Field Office’s” whenever that term appears in the following places:

a. *Paragraph (h) paragraph heading;*

b. Paragraph (h) introductory text;

c. Paragraph (h)(3);

d. *Paragraph (h)(4) paragraph heading.*

20. Section 241.4 is further amended by revising the term “district director” to read “district director or Director of the Detention and Removal Field Office” whenever that term appears in the following places:

a. Paragraph (h)(1);

b. Paragraph (h)(2);

c. Paragraph (h)(4);

d. Paragraph (j)(2).

e. *Paragraph (k)(1) heading;*

f. Paragraph (k)(1)(i);

g. Paragraph (k)(1)(ii);

h. *Paragraph (k)(2)(i) heading;*

i. Paragraph (k)(2)(i);

j. *Paragraph (k)(2)(ii) heading;* and

k. Paragraph (k)(2)(ii).

21. Section 241.6 is amended by revising paragraphs (a) and (b) to read as follows:

§ 241.6 Administrative stay of removal.

(a) Any request of an alien under a final order of deportation or removal for a stay of deportation or removal shall be filed on Form I-246, Stay of Removal, with the district director having jurisdiction over the place where the alien is at the time of filing. The Commissioner, Deputy Commissioner, Executive Associate Commissioner for Field Operations, Deputy Executive Associate Commissioner for Detention and Removal, the Director of the Office of Juvenile Affairs, regional directors, or district director, in his or her discretion and in consideration of factors listed in 8 CFR 212.5 and section 241(c) of the Act, may grant a stay of removal or deportation for such time and under

such conditions as he or she may deem appropriate. Neither the request nor failure to receive notice of disposition of the request shall delay removal or relieve the alien from strict compliance with any outstanding notice to surrender for deportation or removal.

(b) Denial by the Commissioner, Deputy Commissioner, Executive Associate Commissioner for Field Operations, Deputy Executive Associate Commissioner for Detention and Removal, Director of the Office of Juvenile Affairs, regional director, or district director of a request for a stay is not appealable, but such denial shall not preclude an immigration judge or the Board from granting a stay in connection with a previously filed motion to reopen or a motion to reconsider as provided in 8 CFR part 3.

* * * * *

22. Section 241.7 is revised to read as follows:

§ 241.7 Self-removal.

A district director, the Deputy Executive Associate Commissioner for Detention and Removal, or the Director of the Office of Juvenile Affairs may permit an alien ordered removed (including an alien ordered excluded or deported in proceedings prior to April 1, 1997) to depart at his or her own expense to a destination of his or her own choice. Any alien who has departed from the United States while an order of deportation or removal is outstanding shall be considered to have been deported, excluded and deported, or removed, except that an alien who departed before the expiration of the voluntary departure period granted in connection with an alternate order of deportation or removal shall not be considered to be so deported or removed.

PART 287—FIELD OFFICERS; POWERS AND DUTIES

23. The authority citation for part 287 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1225, 1226, 1251, 1252, 1357; 8 CFR part 2.

24. Section 287.4 is amended by revising paragraphs (a)(1), (a)(2)(i) and (c) to read as follows:

§ 287.4 Subpoena.

(a) * * *

(1) *Criminal or civil investigations.* All District Directors, Deputy District Directors, Chief Patrol Agents, Deputy Chief Patrol Agents, Assistant Chief Patrol Agents, Officers in Charge, Patrol Agents in Charge, Assistant District Directors, Investigations, Supervisory

Criminal Investigators (Anti-Smuggling), Regional Directors, Office of Professional Responsibility, Service Center Directors, Assistant District Directors for Examinations, the Deputy Executive Associate Commissioner for Detention and Removal, and the Director of the Office of Juvenile Affairs, may issue a subpoena requiring the production of records and evidence for use in criminal or civil investigations.

(2) * * *

(i) *Prior to commencement of proceedings.* All District Directors, Deputy District Directors, Chief Patrol Agents, Deputy Chief Patrol Agents, Officers-in-Charge, the Deputy Executive Associate Commissioner for Detention and Removal, and the Director of the Office of Juvenile Affairs, may issue a subpoena requiring the attendance of witnesses or the production of documentary evidence, or both, for use in any proceeding under this chapter, other than under 8 CFR part 355, or any application made ancillary to the proceeding.

* * * * *

(c) *Service.* A subpoena issued under this section may be served by any person, over 18 years of age not a party to the case, designated to make such service by the District Director, Deputy District Director, Chief Patrol Agent, Deputy Chief Patrol Agent, Assistant Chief Patrol Agent, Patrol Agent in Charge, Officer-in-Charge, Assistant District Director, Investigations, Supervisory Criminal Investigator (Anti-Smuggling), Regional Director and the Office of Professional Responsibility, having administrative jurisdiction over the office in which the subpoena is issued. The Deputy Executive Associate Commissioner for Detention and Removal and the Director of the Office of Juvenile Affairs shall also have the authority to make such designation. Service of the subpoena shall be made by delivering a copy thereof to the person named therein and by tendering to him/her the fee for one day's attendance and the mileage allowed by law by the United States District Court for the district in which the testimony is to be taken. When the subpoena is issued on behalf of the Service, fee and mileage need not be tendered at the time of service. A record of such service shall be made and attached to the original copy of the subpoena.

* * * * *

25. Section 287.5 is amended by:

- a. Removing the word "or" from the end of paragraph (e)(2)(xix);
- b. Removing the period from the end of paragraph (e)(2)(xx) and adding a ";" in its place; and by

c. Adding paragraphs (e)(2)(xxi) and (e)(2)(xxii).

The additions read as follows:

§ 287.5 Exercise of power by immigration officers.

* * * * *

(e) * * *

(2) * * *

(xxi) the Director of the Office of Juvenile Affairs; or
(xxii) the Deputy Executive Associate Commissioner for Detention and Removal.

* * * * *

Dated: June 3, 2002.

James W. Ziglar,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 02-14348 Filed 6-4-02; 2:52 pm]

BILLING CODE 4410-10-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150-AG97

List of Approved Spent Fuel Storage Casks: HI-STORM 100 Revision; Withdrawal of Direct Final Rule

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; withdrawal.

SUMMARY: The Nuclear Regulatory Commission (NRC) is withdrawing a direct final rule that would have revised the Holtec International HI-STORM 100 cask system listing within the list of approved spent fuel storage casks to include Amendment No. 1 to the Certificate of Compliance. The NRC is taking this action because it has received a significant adverse comment in response to an identical proposed rule which was concurrently published with the direct final rule.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415-6219 (e-mail: jmm2@nrc.gov).

SUPPLEMENTARY INFORMATION: On March 27, 2002 (67 FR 14627), the NRC published in the **Federal Register** a direct final rule amending its regulations in 10 CFR 72.214 to revise the Holtec International HI-STORM 100 cask system listing within the "List of approved spent fuel storage casks" to include Amendment No. 1 to the Certificate of Compliance. Amendment No. 1 would have modified the present cask system design to: Add four new

multipurpose canisters; add new containers for damaged fuel; add the HI-STORM 100S overpack and the 100A and 100SA high-seismic anchored overpacks; allow the storage of high-burnup fuel; delete the Technical Specifications for special requirements for the first systems in place and for training requirements and relocate these requirements to the main body of CoC 1014; and allow the storage of selected nonfuel hardware. The amendment would also have used revised thermal analysis tools to include natural convection heat transfer; revised the helium backfill requirements to allow a helium density measurement to be used; allowed a helium drying system rather than the existing vacuum drying system; and required soluble boron during canister loading for certain higher enriched fuels. In addition, modifications would have been made to applicable CoC conditions and sections of Appendices A and B to the CoC to reflect the changes. The direct final rule was to become effective on June 10, 2002. The NRC also concurrently published a companion proposed rule on March 27, 2002 (67 FR 14662).

In the March 27, 2002, direct final rule, NRC stated that if any significant adverse comments were received, a notice of timely withdrawal of the direct final rule would be published in the **Federal Register**.

The NRC received a significant adverse comment on the direct final rule; therefore, the NRC is withdrawing the direct final rule. The significant adverse comment related to concern with (1) interactions between the non-fuel hardware and the fuel and (2) the absence of documentation of NRC's analysis to accept the storage of the non-fuel hardware. As stated in the March 27, 2002, direct final rule, NRC will address the comments received on the March 27, 2002, companion proposed rule in a subsequent final rule. The NRC will not initiate a second comment period on this action.

Dated at Rockville, Maryland, this 31st day of May, 2002.

For the Nuclear Regulatory Commission.

William F. Kane,

Acting Executive Director for Operations.

[FR Doc. 02-14341 Filed 6-6-02; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE173; Special Conditions No. 23-121-SC]

Special Conditions: Eclipse Aviation Corporation, Model 500 Airplane; Electronic Engine Control System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Eclipse Aviation Corporation, Model 500 airplane. This airplane will have a novel or unusual design feature(s) associated with the use of an electronic engine control system instead of a traditional mechanical control system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: July 8, 2002.

FOR FURTHER INFORMATION CONTACT:

Ervin Dvorak Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE-111, 901 Locust, Room 301, Kansas City, Missouri 64106; 816-329-4123 fax 816-329-4090.

SUPPLEMENTARY INFORMATION:

Background

On July 12, 2001, Eclipse Aviation Corporation applied for a type certificate for their Model 500 airplane.

The Eclipse Model 500 airplane design includes digital electronic engine control systems, which were not envisaged and are not adequately addressed in 14 CFR part 23. The applicable existing regulations do not address electronic control systems since those were not envisioned at the time. Even though the engine control system will be certificated as part of the engine, the installation of an engine with an electronic control system requires evaluation due to the possible effects on or by other airplane systems (e.g., radio interference with other airplane electronic systems, shared engine and airplane power sources). The regulatory requirements were not applicable to systems certificated as part of the engine (ref. § 23.1309(f)(1)). Also, electronic control systems often require inputs from airplane data and power sources

and outputs to other airplane systems. Although the parts of the system that are not certificated with the engine could be evaluated using the criteria of § 23.1309, the integral nature of systems such as these makes it unfeasible to evaluate the airplane portion of the system without including the engine portion of the system. However, § 23.1309(f)(1) again prevents complete evaluation of the installed airplane system since evaluation of the engine system's effects is not required.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Eclipse Aviation Corporation must show that the Eclipse Model 500 airplane meets the following:

(1) Applicable provisions of 14 CFR part 23, effective December 18, 1964, as amended by Amendments 23-1 through 23-54 (September 14, 2000).

(2) Part 34 of the Federal Aviation Regulations effective September 10, 1990, plus any amendments in effect on the date of type certification.

(3) Part 36 of the Federal Aviation Regulations effective December 1, 1969, as amended by Amendment 36-1 through the amendment in effect on the date of type certification.

(4) Noise Control Act of 1972.

(5) Special conditions that are not relevant to these proposed special conditions, if any;

(6) Exemptions, if any;

(7) Equivalent level of safety findings, if any; and

(8) Special conditions adopted by this rulemaking action.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 23 do not contain adequate or appropriate safety standards for the Model 500 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model 500 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92-574, the "Noise Control Act of 1972."

Special conditions, as appropriate, as defined in 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that

incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

The Model 500 will incorporate the following novel or unusual design features:

Digital electronic engine control systems. This notice proposes a special condition for a digital electronic engine control system on the Eclipse Model 500 airplane.

Discussion of Comments

Notice of proposed special conditions No. 23-01-05-SC for the Eclipse Model 500 airplanes was published on March 11, 2002 (67 FR 10857). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Eclipse Model 500 airplane. Should Eclipse Aviation Corporation apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model of airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Eclipse Aviation Corporation Model 500, airplane.

1. Electronic Engine Control System

The installation of the electronic engine control system must comply with the requirements of § 23.1309(a) through (e) at Amendment 23-49. The

intent of this requirement is not to re-evaluate the inherent hardware reliability of the control itself, but rather determine the effects, including environmental effects addressed in § 23.1309(e), on the airplane systems and engine control system when installing the control on the airplane. When appropriate, engine certification data may be used when showing compliance with this requirement.

Issued in Kansas City, Missouri, on May 28, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02-14353 Filed 6-6-02; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE175; Special Conditions No. 23-120-SC]

Special Conditions: The Lancair Company, Model LC40-550FG-E Airplane; Installation of Full Authority Digital Engine Control (FADEC) System and the Protection of the System From the Effects of High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for The Lancair Company Model LC40-550FG-E airplane. This airplane will have a novel or unusual design feature(s) associated with the installation of an engine that uses an electronic engine control system in place of the engine's mechanical system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: July 8, 2002.

FOR FURTHER INFORMATION CONTACT:

Ervin Dvorak, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE-111, 901 Locust, Room 301, Kansas City, Missouri 64106; 816-329-4123, fax 816-329-4090.

SUPPLEMENTARY INFORMATION:

Background

On November 8, 2001, The Lancair Company applied to amend Type Certificate A0003SE for the addition of the Model LC40-550FG-E airplane. The Model LC40-550FG-E is a small, utility category airplane. The airplane is powered by one reciprocating engine equipped with an electronic engine control system with full authority capability in place of the hydromechanical control system.

Type Certification Basis

Under the provisions of 14 CFR 21.101(c), The Lancair Company must show that the Model LC40-550FG-E meets the applicable provisions of the certification basis specified in Amendment 6 to TCDS A00003SE except as follows:

- FAR 23.1305 as of Amendment 52
- FAR 23.1359 as of Amendment 49
- Special conditions will be applied to the FADEC installation for protection against high intensity radiated fields (HIRF) and for installed system reliability (FAR 23.1309 applicability).

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 23) do not contain adequate or appropriate safety standards for the LC40-550FG-E because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model LC40-550FG-E airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as appropriate, as defined in 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

The Model LC40-550FG-E airplane will incorporate the following novel or unusual design features:

The Lancair Company, Model LC40-550FG-E airplane will use an engine

that includes an electronic control system with full engine authority capability.

Many advanced electronic systems are prone to either upsets or damage, or both, at energy levels lower than analog systems. The increasing use of high power radio frequency emitters mandates requirements for improved high intensity radiated fields (HIRF) protection for electrical and electronic equipment. Since the electronic engine control system used on The Lancair Company, Model LC40-550FG-E will perform critical functions, provisions for protection from the effects of HIRF fields should be considered and, if necessary, incorporated into the airplane design data. The FAA policy contained in Notice 8110.71, dated April 2, 1998, establishes the HIRF energy levels that airplanes will be exposed to in service. The guidelines set forth in this Notice are the result of an Aircraft Certification Service review of existing policy on HIRF, in light of the ongoing work of the ARAC Electromagnetic Effects Harmonization Working Group (EEHWG). The EEHWG adopted a set of HIRF environment levels in November 1997 that were agreed upon by the FAA, JAA, and industry participants. As a result, the HIRF environments in this notice reflect the environment levels recommended by this working group. This notice states that a full authority digital engine control is an example of a system that should address the HIRF environments.

Even though the control system will be certificated as part of the engine, the installation of an engine with an electronic control system requires evaluation due to the possible effects on or by other airplane systems (e.g., radio interference with other airplane electronic systems, shared engine and airplane power sources). The regulatory requirements in 14 CFR part 23 for evaluating the installation of complex systems, including electronic systems, are contained in § 23.1309. However, when § 23.1309 was developed, the use of electronic control systems for engines was not envisioned; therefore, the § 23.1309 requirements were not applicable to systems certificated as part of the engine (reference § 23.1309(f)(1)). Also, electronic control systems often require inputs from airplane data and power sources and outputs to other airplane systems (e.g., automated cockpit powerplant controls such as mixture setting). Although the parts of the system that are not certificated with the engine could be evaluated using the criteria of § 23.1309, the integral nature of systems such as these makes it unfeasible to evaluate the airplane

portion of the system without including the engine portion of the system. However, § 23.1309(f)(1) again prevents complete evaluation of the installed airplane system since evaluation of the engine system's effects is not required.

Therefore, these special conditions for The Lancair Company, Model LC40-550FG-E will provide HIRF protection and evaluate the installation of the electronic engine control system for compliance with the requirements of § 23.1309(a) through (e) at Amendment 23-46.

Discussion of Comments

Notice of proposed special conditions No. 23-02-02-SC for The Lancair Company Model LC40-550FG-E airplane was published on March 28, 2002 (67 FR 14884). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Model LC40-550FG-E. Should The Lancair Company apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one Model LC40-550FG-E airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for The Lancair Company Model LC40-550FG-E airplane.

1. *High Intensity Radiated Fields (HIRF) Protection.* In showing compliance with 14 CFR part 21 and the airworthiness requirements of 14 CFR part 23, protection against hazards

caused by exposure to HIRF fields for the full authority digital engine control system, which performs critical functions, must be considered. To prevent this occurrence, the electronic engine control system must be designed and installed to ensure that the operation and operational capabilities of this critical system are not adversely affected when the airplane is exposed to high energy radio fields.

At this time, the FAA and other airworthiness authorities are unable to precisely define or control the HIRF energy level to which the airplane will be exposed in service; therefore, the FAA hereby defines two acceptable interim methods for complying with the requirement for protection of systems that perform critical functions.

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the external HIRF threat environment defined in the following table:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz-100 kHz	50	50
100 kHz-500 kHz	50	50
500 kHz-2 MHz	50	50
2 MHz-30 MHz	100	100
30 MHz-70 MHz	50	50
70 MHz-100 MHz	50	50
100 MHz-200 MHz	100	100
200 MHz-400 MHz	100	100
400 MHz-700 MHz	700	50
700 MHz-1 GHz	700	100
1 GHz-2 GHz	2000	200
2 GHz-4 GHz	3000	200
4 GHz-6 GHz	3000	200
6 GHz-8 GHz	1000	200
8 GHz-12 GHz	3000	300
12 GHz-18 GHz	2000	200
18 GHz-40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter peak electrical strength, without the benefit of airplane structural shielding, in the frequency range of 10 KHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation. Data used for engine certification may be used, when appropriate, for airplane certification.

2. *Electronic Engine Control System.*

The installation of the electronic engine control system must comply with the requirements of § 23.1309(a) through (e) at Amendment 23–46. The intent of this requirement is not to re-evaluate the inherent hardware reliability of the control itself, but rather determine the effects, including environmental effects addressed in § 23.1309(e), on the airplane systems and engine control system when installing the control on the airplane. When appropriate, engine certification data may be used when showing compliance with this requirement.

Issued in Kansas City, Missouri, on May 30, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–14352 Filed 6–6–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE174; Special Conditions No. 23–119–SC]

Special Conditions: Liberty Aerospace, Model XL–2 Airplane, Installation of Full Authority Digital Engine Control (FADEC) System and the Protection of the System From the Effects of High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Liberty Aerospace Model XL–2 airplane. This airplane will have a novel or unusual design feature(s) associated with the installation of an engine that uses an electronic engine control system in place of the engine's mechanical system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: July 8, 2002.

FOR FURTHER INFORMATION CONTACT:

Ervin Dvorak, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Room 301, Kansas City, Missouri 64106; 816–329–4123, fax 816–329–4090.

SUPPLEMENTARY INFORMATION:

Background

On October 26, 2000, Liberty Aerospace applied for a type certificate for their new Model XL–2. The Model XL–2 is powered by one reciprocating engine equipped with an electronic engine control system with full authority capability in place of the hydromechanical control system.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Liberty Aerospace must show that the Model XL–2 meets the applicable provisions of 14 CFR part 23, as amended by Amendments 23–1 through 23–53 thereto.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 23) do not contain adequate or appropriate safety standards for the Model XL–2 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model XL–2 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the “Noise Control Act of 1972.”

Special conditions, as appropriate, as defined in 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Model XL–2 will incorporate the following novel or unusual design features:

Liberty Aerospace, Model XL–2 airplane will use an engine that includes an electronic control system with full engine authority capability.

Many advanced electronic systems are prone to either upsets or damage, or both, at energy levels lower than analog systems. The increasing use of high power radio frequency emitters mandates requirements for improved high intensity radiated fields (HIRF) protection for electrical and electronic

equipment. Since the electronic engine control system used on the Liberty Aerospace, Model XL–2 will perform critical functions, provisions for protection from the effects of HIRF fields should be considered and, if necessary, incorporated into the airplane design data. The FAA policy contained in Notice 8110.71, dated April 2, 1998, establishes the HIRF energy levels that airplanes will be exposed to in service. The guidelines set forth in this Notice are the result of an Aircraft Certification Service review of existing policy on HIRF, in light of the ongoing work of the ARAC Electromagnetic Effects Harmonization Working Group (EEHWG). The EEHWG adopted a set of HIRF environment levels in November 1997 that were agreed upon by the FAA, JAA, and industry participants. As a result, the HIRF environments in this notice reflect the environment levels recommended by this working group. This notice states that a full authority digital engine control is an example of a system that should address the HIRF environments.

Even though the control system will be certificated as part of the engine, the installation of an engine with an electronic control system requires evaluation due to the possible effects on or by other airplane systems (e.g., radio interference with other airplane electronic systems, shared engine and airplane power sources). The regulatory requirements in 14 CFR part 23 for evaluating the installation of complex systems, including electronic systems, are contained in § 23.1309. However, when § 23.1309 was developed, the use of electronic control systems for engines was not envisioned; therefore, the § 23.1309 requirements were not applicable to systems certificated as part of the engine (reference § 23.1309(f)(1)). Also, electronic control systems often require inputs from airplane data and power sources and outputs to other airplane systems (e.g., automated cockpit powerplant controls such as mixture setting). Although the parts of the system that are not certificated with the engine could be evaluated using the criteria of § 23.1309, the integral nature of systems such as these makes it unfeasible to evaluate the airplane portion of the system without including the engine portion of the system. However, § 23.1309(f)(1) again prevents complete evaluation of the installed airplane system since evaluation of the engine system's effects is not required.

Therefore, special conditions are proposed for the Liberty Aerospace, Model XL–2 to provide HIRF protection and to evaluate the installation of the electronic engine control system for

compliance with the requirements of § 23.1309(a) through (e) at Amendment 23-46.

Discussion of Comments

Notice of proposed special conditions No. 23-02-01-SC for the Liberty Aerospace Model XL-2 airplanes was published on March 14, 2002 (67 FR 11451). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Model XL-2. Should Liberty Aerospace apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model XL-2 of airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Liberty Aerospace Model XL-2 airplanes.

1. High Intensity Radiated Fields (HIRF) Protection. In showing compliance with 14 CFR part 21 and the airworthiness requirements of 14 CFR part 23, protection against hazards caused by exposure to HIRF fields for the full authority digital engine control system, which performs critical functions, must be considered. To prevent this occurrence, the electronic engine control system must be designed and installed to ensure that the operation and operational capabilities of this critical system are not adversely affected when the airplane is exposed to high energy radio fields.

At this time, the FAA and other airworthiness authorities are unable to

precisely define or control the HIRF energy level to which the airplane will be exposed in service; therefore, the FAA hereby defines two acceptable interim methods for complying with the requirement for protection of systems that perform critical functions.

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the external HIRF threat environment defined in the following table:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz-100 kHz	50	50
100 kHz-500 kHz	50	50
500 kHz-2 MHz	50	50
2 MHz-30 MHz	100	100
30 MHz-70 MHz	50	50
70 MHz-100 MHz	50	50
100 MHz-200 MHz ...	100	100
200 MHz-400 MHz ...	100	100
400 MHz-700 MHz ...	700	50
700 MHz-1 GHz	700	100
1 GHz-2 GHz	2000	200
2 GHz-4 GHz	3000	200
4 GHz-6 GHz	3000	200
6 GHz-8 GHz	1000	200
8 GHz-12 GHz	3000	300
12 GHz-18 GHz	2000	200
18 GHz-40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter peak electrical strength, without the benefit of airplane structural shielding, in the frequency range of 10 KHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation. Data used for engine certification may be used, when appropriate, for airplane certification.

2. Electronic Engine Control System. The installation of the electronic engine control system must comply with the requirements of § 23.1309(a) through (e) at Amendment 23-46. The intent of this requirement is not to re-evaluate the inherent hardware reliability of the control itself, but rather determine the effects, including environmental effects addressed in § 23.1309(e), on the airplane systems and engine control system when installing the control on the airplane. When appropriate, engine certification data may be used when

showing compliance with this requirement.

Issued in Kansas City, Missouri on May 29, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02-14351 Filed 6-6-02; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002-NM-133-AD; Amendment 39-12772; AD 2002-11-11]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 767-200, -300, and -300F 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 767-200, -300, and -300F series airplanes. This action requires an inspection of visually accessible areas for indications of overheating of the heater tape attached to the potable water fill and drain lines in the forward and aft cargo compartments, exposed foam insulation or missing or damaged protective tape around the potable water fill and drain lines, and debris or contaminants on or near the potable water fill and drain lines. It also requires corrective action, as necessary. This action is necessary to prevent overheating of the heater tape on potable water fill and drain lines, which may ignite accumulated debris or contaminants on or near the potable water fill and drain lines, resulting in a fire in the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective June 24, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 24, 2002.

Comments for inclusion in the Rules Docket must be received on or before August 6, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2002-NM-133-AD, 1601 Lind Avenue, SW.,

Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002-NM-133-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:

Donald Eiford, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2788; fax (425) 227-1181.

SUPPLEMENTARY INFORMATION: The FAA has received a report of a fire in the aft cargo compartment of a Boeing Model 767 series airplane. The fire was detected and extinguished. Investigation by the operator of the airplane indicated that heater tape on a water fill line overheated, igniting debris accumulated on or near the heater tape. The operator also inspected several other airplanes and found heater tape which failed a continuity test, evidence of heat damage on foam insulation or protective tape, and similar accumulated debris on or near heater tape in potable water fill and drain lines in both the forward and aft cargo compartments. This combination of failed heater tape on the potable water fill and drain lines and the accumulation of ignitable debris or contamination on or near one of those lines, if left uncorrected, may lead to a fire in the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 767-30A0037, dated May 28, 2002, which describes procedures for the following:

- Inspection of visually accessible areas in the forward and aft cargo compartments for accumulated debris and contaminants on or near the potable

water fill and drain lines and removal of such debris or contaminants;

- Inspection of visually accessible portions of the potable water fill and drain lines in the forward and aft cargo compartments for indications of overheating of the heater tape and replacement of heater tape where such indications are found; and

- Inspection of visually accessible portions of the potable water fill and drain lines in the forward and aft cargo compartments or missing or damaged protective tape or exposed foam insulation and replacement of the missing or damaged protective tape.

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 a fire in the airplane due to overheating of the heater tape on potable water fill and drain lines, which may ignite combustible debris. This AD requires accomplishment of the actions specified in the service bulletin described previously, except as specified below.

The FAA is investigating the extent to which the heater tape addressed in this AD is used on other Boeing airplane models and may consider additional rulemaking based on our findings.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting 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 2002-NM-133-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:

2002-11-11 Boeing: Amendment 39-12772. Docket 2002-NM-133-AD.

Applicability: Model 767-200, -300, and -300F series airplanes with non-fully-enclosed cargo floors in the lower cargo areas; certificated in any category. A fully enclosed cargo floor is a floor with panels installed between all roller trays in the cargo compartment. A non-fully-enclosed cargo floor is a floor without panels installed between all roller trays in the cargo compartment.

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 (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a fire in the airplane due to overheating of heater tape on potable water lines and drain lines, which may ignite combustible debris or contaminants which have accumulated on or near the potable water and drain lines, accomplish the following:

Compliance Time

(a) Within 18 months after date of delivery of the airplane, or within 90 days after the effective date of this AD, whichever occurs later: Accomplish paragraphs (b) and (c) of this AD.

Removal of Debris

(b) Perform a one-time general visual inspection for foreign object debris (FOD) or contamination in visually accessible areas on or near potable water and drain lines located below the cargo floor in the forward and aft cargo compartments, in accordance with Boeing Alert Service Bulletin 767-30A0037, dated May 28, 2002. If FOD or contamination is observed on or near the potable water or drain lines, prior to further flight, remove it in accordance with the service bulletin.

Note 2: The visual inspection of potable water and drain lines in visually accessible areas does not require removal of floor panels.

Note 3: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Inspection of Potable Water and Drain Lines

(c) As indicated in paragraphs (c)(1) and (c)(2) of this AD, perform a general visual inspection of visually accessible areas for discrepancies of potable water and drain lines located below the cargo floor in the forward and aft cargo compartments, in accordance with Boeing Alert Service Bulletin 767-30A0037, dated May 28, 2002.

(1) Inspect potable water and drain lines for indications of overheating of the heater tape, such as localized darkening of foam insulation or protective tape. If such an indication of overheating is observed, prior to further flight, replace the defective heater tape in accordance with the service bulletin, removing floor panels as necessary to replace the defective heater tape.

(2) Inspect potable water and drain lines for missing or damaged protective tape and exposed foam insulation. If exposed foam insulation is observed, prior to further flight, cover the foam insulation with a continuous wrap of protective tape, in accordance with the service bulletin. If protective tape is observed to be missing or damaged, prior to further flight, replace the protective tape in accessible areas in accordance with the service bulletin. It is not necessary to remove floor panels to replace the protective tape.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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

(e) Special flight permits may be issued in accordance with §§ 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

(f) The actions shall be done in accordance with Boeing Alert Service Bulletin 767-30A0037, dated May 28, 2002. 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

(g) This amendment becomes effective on June 24, 2002.

Issued in Renton, Washington, on May 29, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02-14129 Filed 6-6-02; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002-SW-10-AD; Amendment 39-12771; AD 2002-11-10]

RIN 2120-AA64

Airworthiness Directives; Sikorsky Model S-70A and S-70C Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) for Sikorsky Model S-70A and S-70C helicopters. That AD currently requires inspecting a certain part-numbered main landing gear drag beam (beam) for a crack, removing any cracked beam before further flight, and reducing the torque of the jackpad mounting bolt retention nut (nut) of each beam. This amendment contains the same actions but requires those actions for another beam part number (P/N). This amendment is prompted by the inadvertent omission in the current AD

of the additional beam that is susceptible to failure due to stress corrosion resulting from sustained excessive tensile stress due to excessive torque of the nut. The actions specified by this AD are intended to prevent excessive torque of the nut, failure of a beam, and subsequent loss of control of the helicopter during takeoff or landing.

DATES: Effective June 24, 2002.

Comments for inclusion in the Rules Docket must be received on or before August 6, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002-SW-10-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*.

FOR FURTHER INFORMATION CONTACT:

Terry Fahr, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238-7155, fax (781) 238-7199.

SUPPLEMENTARY INFORMATION: On December 11, 2001, the FAA issued AD 2001-25-08, Amendment 39-12561 (66 FR 65102, December 18, 2001), to require certain inspections of each beam, P/N 70250-32105, for a crack, removing any cracked beam before further flight, and reducing the torque of the nut on each beam. That action was prompted by the failure of a beam due to stress corrosion resulting from sustained excessive tensile stress due to excessive torque on the nut. That condition, if not corrected, could result in excessive torque of the nut, failure of a beam, and subsequent loss of control of the helicopter during takeoff or landing.

Since the issuance of that AD, the FAA received a comment from the manufacturer stating that paragraph (a) of the AD should also apply to beam, P/N 70250-12105. The FAA agrees, and this superseding AD adds beam, P/N 70250-12105, to paragraph (a).

This unsafe condition is likely to exist or develop on other helicopters of these same type designs. Therefore, this AD supersedes AD 2001-25-08 to contain the same requirements but to add the beam, P/N 70250-12105, to paragraph (a) of this AD.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability and structural integrity of the helicopter. Therefore, within 30 hours time-in-service, the following actions are

required, and this AD must be issued immediately:

- Visually inspect each beam for a crack.
- If a crack is found, remove the beam before further flight.
- If a crack is suspected, dye-penetrant inspect the beam, and if a crack is found, remove the beam before further flight.
- If no crack is found, reduce the torque on the nut.

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.

The FAA estimates that 3 helicopters currently type certificated in the United States (U.S.) will be affected by this AD, that it will take approximately 4 work hours to inspect the beam, to reduce the torque on each nut, and to replace a cracked beam. The average labor rate is \$60 per work hour. Required parts will cost approximately \$18,600 per beam. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$56,520, assuming you replace one beam on each U.S. helicopter and assuming that no other helicopter listed in the "applicability" will be type certificated in the U.S.

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 should 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.

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 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 No. 2002-SW-10-AD." The postcard will be date stamped and returned to the commenter.

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, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-12561 (66 FR 65102, December 18, 2001), and by adding a new airworthiness directive (AD), Amendment 39-12771, to read as follows:

2002-11-10 Sikorsky Aircraft Corporation:
Amendment 39-12771. Docket No. 2002-SW-10-AD. Supersedes AD 2001-25-08, Amendment 39-12561, Docket No. 2001-SW-18-AD.

Applicability: Model S-70A helicopters, serial numbers (S/N) 700029, 701129, 701322, 701325, 701327, 701329, 701331, 701333, 701592, 701593, 701594, 701595, 701613, 701614, 701825, 701835, 702127, and 702129, and Model S-70C helicopters, S/ N 70583, 70785, 70788, 70792, 70793, 70794, 70797, 70798, 70799, 70800, 70811, 70812, 70813, 70830, 70831, 70836, 70837, 70848, 70855, 70856, 70867, 70868, 70879, 70884, 70892, 70910, 70918, 70927, 70928, 70929, 70949, 70950, 70951, 70954, 70957, 70958, 70959, 70965, 70966, and 701029, certificated in any category.

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

Compliance: Required within 30 hours time-in-service, unless accomplished previously.

To prevent excessive torque on a jackpad mounting bolt retention nut (nut), failure of a main landing gear drag beam (beam), and subsequent loss of control of the helicopter during takeoff or landing, accomplish the following:

(a) With jackpad installed, using a 10X or higher magnifying glass, visually inspect each beam, part number (P/N) 70250-12105 or 70250-32105, for a crack at a 3.0-inch radius around the upper and lower jackpad holes.

(1) If a crack is found, remove the beam.

(2) If a crack is suspected, dye-penetrant inspect the beam, and if a crack is found, remove the beam.

Note 2: Temporary Revision No. 19 of Sikorsky Aircraft Model S-70 Maintenance Manual, dated January 23, 2001, pertains to the subject of this AD.

(b) If a crack is not found while accomplishing the requirements of paragraph (a) of this AD, retorque the nut, P/N MS21245-L12, on each beam as follows:

(1) Restrain the jackpad and rotate the nut counterclockwise to release the torque on the nut. If movement of the jackpad occurs, remove and replace the sealant from the lower surface of the jackpad/beam interface.

(2) Retorque the nut to 45-50 ft-lbs.

(3) Apply sealant to the nut and the immediate area.

(4) After sealant has dried, touch up the paint as required.

(5) After the paint has dried, apply a slippage mark (of a contrasting color) to the nut as follows:

(i) Wipe the area to be marked with a clean-lint-free cloth.

(ii) Apply F1000 Sentry Seal, or equivalent, with a width of approximately one half the diameter of the nut (to a maximum width of $\frac{3}{16}$ inch) and extending a minimum of $\frac{1}{2}$ inch on the base part (or to the edge of the part, whichever is smaller).

Note 3: Sikorsky Alert Service Bulletin No. 70-03-2, dated July 26, 1999, pertains to the subject of this AD.

(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, Boston Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Inspector, who may concur or comment and then send it to the Manager, Boston Aircraft Certification Office.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Boston Aircraft Certification Office.

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

(e) This amendment becomes effective on June 24, 2002.

Issued in Fort Worth, Texas, on May 28, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02-14249 Filed 6-6-02; 8:45 am]

BILLING CODE 4910-13-P

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule")

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission ("Commission") amends the Commission's Appliance Labeling Rule ("Rule") to incorporate the latest figures for average unit energy costs as published by the Department of Energy ("DOE") in the **Federal Register** on April 24, 2002. This rule sets forth the representative average unit energy costs

for five residential energy sources, which the Commission revises periodically on the basis of updated information provided by DOE.

DATES: The amendments are effective June 7, 2002. The mandatory dates for using these revised DOE cost figures in connection with the Appliance Labeling Rule are detailed in the Supplementary Information Section.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, 202-326-2889, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580; E-mail: hnewsome@ftc.gov.

SUPPLEMENTARY INFORMATION: On November 19, 1979, the Commission issued a final rule in response to a directive in section 324 of the Energy Policy and Conservation Act ("EPCA"), 42 U.S.C. 6201.¹ The Rule requires the disclosure of energy efficiency, consumption, or cost information on labels and in retail sales catalogs for eight categories of appliances, and mandates that the energy costs, consumption, or efficiency ratings be based on standardized test procedures developed by DOE. The cost information obtained by following the test procedures is derived by using the representative average unit energy costs provided by DOE. Table 1 in section 305.9(a) of the Rule sets forth the representative average unit energy costs to be used for all cost-related requirements of the Rule. As stated in section 305.9(b), the Table is to be revised periodically on the basis of updated information provided by DOE.

I. Representative Average Unit Energy Costs

On April 24, 2002, DOE published the most recent figures for representative average unit energy costs (67 FR 20104). These energy cost figures are for manufacturers to use, in accordance with the guidelines that appear below, to calculate the required secondary annual operating cost figures at the

¹ 44 FR 66466. Since its promulgation, the Rule has been amended five times to include new product categories—central air conditioners (52 FR 46888, Dec. 10, 1987), fluorescent lamp ballasts (54 FR 1182, Jan. 12, 1989), certain plumbing products (58 FR 54955, Oct. 25, 1993), certain lamp products (59 FR 25176, May 13, 1994), and pool heaters and certain residential water heater types (59 FR 49556, Sept. 28, 1994). Obligations under the Rule concerning fluorescent lamp ballasts, lighting products, plumbing products and pool heaters are not affected by the cost figures in this notice.

bottom of required Energy Guides for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, and room air conditioners. The energy cost figures also are for manufacturers of central air conditioners and heat pumps to use, also in accordance with the below guidelines, to calculate annual operating cost for required fact sheets and in approved industry directories listing these products.² The Commission is revising Table 1 to reflect these latest cost figures, as set forth below. The current and future obligations of manufacturers with respect to the use of DOE's cost figures are as follows:

*A. For Labeling of Refrigerators, Refrigerator-Freezers, Freezers, Clothes Washers, Dishwashers, Water Heaters, and Room Air Conditioners*³

Manufacturers of refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, water heaters, and room air conditioners must use the National Average Representative Unit Costs published today on labels for their products only after the Commission publishes new ranges of comparability for those products that are based on today's cost figures. In the meantime, they must continue to use past DOE cost figures as follows:

1. Refrigerators, Refrigerator-Freezers, and Freezers

Manufacturers of refrigerators, refrigerator-freezers, and freezers must continue to derive the operating cost disclosures on labels by using the 2001 National Average Representative Unit Costs (8.29 cents per kiloWatt-hour for electricity) published by DOE on March 8, 2001 (66 FR 13917), and by the Commission on May 21, 2001 (66 FR 27856), and that were in effect when the

² The DOE cost figures are not necessary for making data submissions to the Commission. The required energy use information that manufacturers of refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, and water heaters must submit under section 305.8 of the Rule is no longer operating cost; it is now energy consumption (kilowatt-hour use per year for electricity, therms per year for natural gas, or gallons per year for propane and oil).

³ Sections 305.11(a)(5)(i)(H)(2) and (3) of the Rule (16 CFR 305.11(a)(5)(i)(H)(2) and (3)) require that labels for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, water heaters, and room air conditioners contain a secondary energy usage disclosure in terms of an estimated annual operating cost (labels for clothes washers and dishwashers will show two such secondary disclosures—one based on operation with water heated by natural gas, and one on operation with water heated by electricity). The labels also must disclose, below this secondary estimated annual operating cost, the fact that the estimated annual operating cost is based on the appropriate DOE energy cost figure, and must identify the year in which the cost figure was published.

current 2001 ranges of comparability for these products were published.⁴ Manufacturers must continue to use the foregoing DOE cost figures until such time as the Commission publishes new ranges of comparability and states that operating cost disclosures must be based on the DOE cost figure for electricity then in effect.

2. Room Air Conditioners

Manufacturers of room air conditioners must continue to derive the operating cost disclosures on labels by using the 1995 National Average Representative Unit Costs for electricity (8.67 cents per kiloWatt-hour) that were published by DOE on January 5, 1995 (60 FR 1773), and by the Commission on February 17, 1995 (60 FR 9296), and that were in effect when the current (1995) ranges of comparability for these products were published.⁵ Manufacturers of room air conditioners must continue to use the 1995 DOE cost figures until such time as the Commission publishes new ranges of comparability and states that operating cost disclosures must be based on the DOE cost figure for electricity then in effect.

3. Storage-Type Water Heaters

Manufacturers of storage-type water heaters must continue to use the 1994 DOE cost figures (8.41 cents per kiloWatt-hour for electricity, 60.4 cents per therm for natural gas, \$1.05 per gallon for No. 2 heating oil, and 98.3 cents per gallon for propane) in determining the operating cost disclosures on the labels on their products. This is because the 1994 DOE cost figures were in effect when the 1994 ranges of comparability for storage-type water heaters were published, and those 1994 ranges are still in effect for those products.⁶ Manufacturers of

⁴ The current (2001) ranges for refrigerators, refrigerator-freezers, and freezers were published on November 19, 2001 (66 FR 57867).

⁵ The current (1995) ranges for room air conditioners were published on November 13, 1995 (60 FR 56945). On September 16, 1996 (61 FR 48620), August 25, 1997 (62 FR 44890), August 28, 1998 (63 FR 45941), December 20, 1999 (64 FR 71019), September 1, 2000 (65 FR 53163), and August 2, 2001 (66 FR 40110), the Commission announced that the 1995 ranges for room air conditioners would continue to remain in effect.

⁶ The 1994 DOE cost figures were published by DOE on December 29, 1993 (58 FR 68901), and by the Commission on February 8, 1994 (59 FR 5699). The current (1994) ranges of comparability for storage-type water heaters were published on September 23, 1994 (59 FR 48796). On August 21, 1995 (60 FR 43367), September 16, 1996 (61 FR 48620), August 25, 1997 (62 FR 44890), August 28, 1998 (63 FR 45941), December 20, 1999 (64 FR 71019), September 1, 2000 (65 FR 53163), and August 2, 2001 (66 FR 40110), the Commission announced that the 1994 ranges for storage-type water heaters would continue to remain in effect.

storage-type water heaters must continue to use the 1994 DOE cost figures until such time as the Commission publishes new ranges of comparability and states that operating cost disclosures must be based on the DOE cost figure for electricity then in effect.

4. Heat Pump Water Heaters

Manufacturers of heat pump water heaters must continue to derive the operating cost disclosures on labels by using the 2000 National Average Representative Unit Costs for electricity (8.03 cents per kiloWatt-hour) that were published by DOE on February 7, 2000 (65 FR 5860), and by the Commission on April 17, 2000 (65 FR 20352), and that were in effect when the current (2000) ranges of comparability for these products were published.⁷ Manufacturers of heat pump water heaters must continue to use the 2000 DOE cost figures until such time as the Commission publishes new ranges of comparability and states that operating cost disclosures must be based on the DOE cost figure for electricity then in effect.

5. Gas-Fired Instantaneous Water Heaters

Manufacturers of gas-fired instantaneous water heaters must continue to base the required secondary operating cost disclosures on labels on the 1999 National Average Representative Unit Costs for natural gas (68.8 cents per therm) and propane (77 cents per therm) that were published by DOE on January 5, 1999 (64 FR 487), and by the Commission on February 17, 1999 (64 FR 7783), and that were in effect when the 1999 ranges of comparability for these products were published.⁸ Manufacturers must continue to use the 1999 DOE cost figures until such time as the Commission publishes new ranges of comparability and states that operating cost disclosures must be based on the DOE cost figure for electricity then in effect.

⁷ The current (2000) ranges of comparability for heat pump water heaters were published on September 1, 2000 (65 FR 53163). On August 2, 2001 (66 FR 40110), the Commission announced that the 2000 ranges for heat pump water heaters would continue to remain in effect.

⁸ The current ranges for gas-fired instantaneous water heaters were published on December 20, 1999 (64 FR 71019). On September 1, 2000 (65 FR 53165) and on August 2, 2001 (66 FR 40110), the Commission announced that the 1999 ranges for gas-fired instantaneous water heaters would continue to remain in effect.

6. Standard-Size Dishwashers

Manufacturers of standard-size dishwashers must continue to base the required secondary operating cost disclosures on labels on the 1997 National Average Representative Unit Costs for electricity (8.31 cents per kiloWatt-hour) and natural gas (61.2 cents per therm) that were published by DOE on November 18, 1996 (61 FR 58679), and by the Commission on February 5, 1997 (62 FR 5316), and that were in effect when the 1997 ranges of comparability for these products were published.⁹ Manufacturers of standard-size dishwashers must continue to use the 1997 DOE cost figures until such time as the Commission publishes new ranges of comparability and states that operating cost disclosures must be based on the DOE cost figure for electricity then in effect.

7. Compact-Size Dishwashers

Manufacturers of compact-size dishwashers must continue to derive the operating cost disclosures on labels by using the 2001 National Average Representative Unit Costs for electricity (8.29 cents per kiloWatt-hour) and natural gas (83.7 cents per therm) that were published by DOE on March 8, 2001 (66 FR 13917), and by the Commission on May 21, 2001 (66 FR 27856), and that were in effect when the current (2001) ranges of comparability for these products were published.¹⁰ Manufacturers of compact dishwashers must continue to use the 2001 DOE cost figures until such time as the Commission publishes new ranges of comparability and states that operating cost disclosures must be based on the DOE cost figure for electricity then in effect.

8. Clothes Washers

Manufacturers of clothes washers must continue to derive the operating cost disclosures on labels by using the 2000 National Average Representative Unit Costs for electricity (8.03 cents per kiloWatt-hour) and natural gas (68.8 cents per therm) that were published by DOE on February 7, 2000 (65 FR 5860), and by the Commission on April 17, 2000 (65 FR 20352), and that were in

effect when the current (2000) ranges of comparability for these products were published.¹¹ Manufacturers of clothes washers must continue to use the 2000 DOE cost figures until such time as the Commission publishes new ranges of comparability and states that operating cost disclosures must be based on the DOE cost figure for electricity then in effect.

B. For Operating Cost Information Relating to Central Air Conditioners and Heat Pumps Disclosed on Fact Sheets and In Industry Directories

In the 2002 notice announcing whether there will be new ranges of comparability for central air conditioners and heat pumps, the Commission also will announce that operating cost disclosures for these products on fact sheets and in industry directories must be based on the 2002 DOE cost figure for electricity beginning on the effective date of that notice.

C. For Operating Cost Representations Respecting Products Covered By EPCA but Not By the Commission's Rule

Manufacturers of products covered by section 323(c) of EPCA, 42 U.S.C. 6293(c), but not by the Appliance Labeling Rule (clothes dryers, television sets, kitchen ranges and ovens, and space heaters) must use the 2002 DOE energy costs in all operating cost representations beginning September 5, 2002.

II. Administrative Procedure Act

The amendments published in this notice involve routine, technical and minor, or conforming changes to the Rule's labeling requirements. These technical amendments merely provide a routine change to the cost information in the Rule. Accordingly, the Commission finds for good cause that public comment and a 30-day effective date for these technical, procedural amendments are impractical and unnecessary (5 U.S.C. 553(b)(A)(B) and (d)).

III. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a Regulatory Flexibility Act analysis (5 U.S.C. 603–604) are not applicable to this proceeding because the amendments do not impose any new obligations on entities regulated by the Appliance

Labeling Rule. These technical amendments merely provide a routine change to the cost information in the Rule. Thus, the amendments will not have a “significant economic impact on a substantial number of small entities.” 5 U.S.C. 605. The Commission has concluded, therefore, that a regulatory flexibility analysis is not necessary, and certifies, under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendments announced today will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

In the 1988 NPR, the Commission stated that the Rule contains disclosure and reporting requirements that constitute “information collection requirements” as defined by 5 CFR 1320.7(c), the regulation that implements the Paperwork Reduction Act (“PRA”).¹² The Commission noted that the Rule had been reviewed and approved in 1984 by the Office of Management and Budget (“OMB”) and assigned OMB Control No. 3084–0068. OMB has extended its approval for its recordkeeping and reporting requirements until September 30, 2004. The amendments now being adopted do not change the substance or frequency of the recordkeeping, disclosure, or reporting requirements and, therefore, do not require further OMB clearance.

List of Subjects in 16 CFR part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Accordingly, 16 CFR part 305 is amended as follows:

PART 305—[AMENDED]

1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

2. Section 305.9(a) is revised to read as follows:

§ 305.9 Representative average unit energy costs.

(a) Table 1, to this paragraph contains the representative unit energy costs to be utilized for all requirements of this part.

¹² 44 U.S.C. 3501–3520.

⁹ The current ranges for standard-size dishwashers were published on August 25, 1997 (62 FR 44890). On August 28, 1998 (63 FR 45941), December 20, 1999 (64 FR 71019), September 1, 2000 (65 FR 53165), and September 28, 2001 (66 FR 49529), the Commission announced that the 1997 ranges for standard-size dishwashers would continue to remain in effect.

¹⁰ The current (2001) ranges of comparability for compact-size dishwashers were published on September 28, 2001 (66 Fed. Reg. 49529).

¹¹ The current (2000) ranges of comparability for clothes washers were published on May 11, 2000 (65 FR 30351). On April 16, 2001 (66 FR 19389) and on April 12, 2002 (67 FR 17936), the Commission announced that the 2000 ranges for clothes washers would continue to remain in effect.

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES (2002)

Type of energy	In commonly used terms	As required by DOE test procedure	Dollars per million Btu ¹
Electricity	8.28¢/kWh ^{2, 3}	\$0.0828/kWh	\$24.27
Natural Gas	65.6¢/therm ⁴ or \$6.74/MCF ^{5, 6}	\$0.00000656/Btu	6.56
No. 2 heating oil	\$1.08/gallon ⁷	\$0.00000779/Btu	7.79
Propane	\$0.87/gallon ⁸	\$0.00000953/Btu	9.53
Kerosene	\$1.23/gallon ⁹	\$0.00000911/Btu	9.11

¹ Btu stands for British thermal unit.

² kWh stands for kiloWatt hour.

³ 1 kWh = 3,412 Btu.

⁴ 1 therm = 100,000 Btu. Natural gas prices include taxes.

⁵ MCF stands for 1,000 cubic feet.

⁶ For the purposes of this table, 1 cubic foot of natural gas has an energy equivalence of 1,027 Btu.

⁷ For the purposes of this table, 1 gallon of No. 2 heating oil has an energy equivalence of 138,690 Btu.

⁸ For the purposes of this table, 1 gallon of liquid propane has an energy equivalence of 91,333 Btu.

⁹ For the purposes of this table, 1 gallon of kerosene has an energy equivalence of 135,000 Btu.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02-14333 Filed 6-6-02; 8:45 am]

BILLING CODE 6750-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM01-8-000]

Revised Public Utility Filing Requirements

Issued May 31, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order Issuing Interim Instruction Manual for Electronic Filing of Electric Quarterly Reports.

SUMMARY: In this order, the Federal Energy Regulatory Commission (the Commission) issues an instruction manual for public utilities to use to file their Electric Quarterly Reports on or before July 31, 2002 and October 31, 2002.

FOR FURTHER INFORMATION CONTACT: H. Keith Pierce (Technical Information), Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. (202) 208-0525.

Barbara D. Bourque (Information Technology Information), Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 208-2338.

Gary D. Cohen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888

First Street, NE., Washington, DC 20426. (202) 208-0321.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, Linda Breathitt, And Nora Mead Brownell.

Order Issuing Instruction Manual for Public Utilities To Use To File Their Electric Quarterly Reports

Issued May 31, 2002.

In Revised Public Utility Filing Requirements, Final Rule, Order No. 2001, 67 FR 31043, FERC Stats. & Regs. ¶ 31,127 (April 25, 2002), the Commission stated that, in the near future, it would issue an instruction manual to govern the filing of the Electric Quarterly Reports covering the second and third calendar quarters of 2002. In this order, the Commission does so.

Order No. 2001 also explained that, for the reports public utilities file on or before July 31, 2002 and October 31, 2002, respondents will use the FERC electronic filing system (available on the FERC Internet site, *www.ferc.gov*) using the link labeled e-Filing. "Contract data" for agreements entered into and under which service was first rendered between April 1, 2002 and June 30, 2002 will be reported in the filing due by July 31, 2002, and will be reported thereafter until the contracts expire.¹ Contract data for agreements entered into and under which service was first rendered between July 1, 2002 and September 30, 2002 will be reported in the filing due by October 31, 2002, and will be reported thereafter until the contracts expire. Electric Quarterly Reports filed by July 31, 2002 will include "transaction data" for all power sales made between April 1, 2002 and June 30, 2002. Electric Quarterly Reports

¹ Order No. 2001, Attachment C, specifies the contract data elements to be included in Electric Quarterly Reports.

filed by October 31, 2002 will include transaction data for all power sales made between July 1, 2002 and September 30, 2002.² The public will be able to view and download filed documents from the FERC Internet site using either the RIMS or FERRIS document management systems.³

When making the first two Electric Quarterly Reports, respondents must go to the FERC Web site (*www.ferc.gov*) select "e-Filing," and log in.⁴ At the "Filing Type Selection" page, filers must select the option for "Electric Quarterly Report" from the file types listed under "Other." Respondents will, at the "Enter Docket Number" page, specify Docket No. ER02-2001-000. Respondents will file a single document in either Microsoft Excel or ASCII Comma Separated Values (CSV) format exactly as detailed in the attached "Instruction Manual for Electronic Filing of Electric Quarterly Reports for the Reporting Periods Ending on June 30, 2002 and September 30, 2002." Respondents providing large amounts of data may wish to file separately for each corporate entity to avoid the 5 megabyte e-filing size constraint. Concurrent with the issuance of this order, the Commission will post a sample Microsoft Excel template file on the FERC Internet site that may be used in preparing the filings due on or before July 31, 2002 and October 31, 2002. Filed documents must not contain computer formulas or macros.

For reports filed after October 31, 2002, this interim filing format will be replaced by an automated Electric Quarterly Report filing system now under development. Utilities wishing to

² Order No. 2001, Attachment C, also specifies the Transaction data elements to be included in Electric Quarterly Reports.

³ The RIMS option may be superseded by FERRIS before July 31, 2002.

⁴ Filers who have never made an electronic filing with FERC must register on-line at the e-filing page.

participate in beta testing should e-mail Barbara Bourque at *Barbara.Bourque@ferc.gov*. The final format will be implemented in a subsequent order. The final format will incorporate the same data sets adopted in Order No. 2001.

The Commission orders:

The attached "Instruction Manual for Electronic Filing of Electric Quarterly Reports for the Reporting Periods Ending on June 30, 2002 and September 30, 2002" is hereby adopted for use by public utilities in preparing their Electric Quarterly Reports to be filed on

or before July 31, 2002 and October 31, 2002, as discussed in the body of this order.

By the Commission.

Magalie R. Salas,
Secretary.

BILLING CODE 6717-01-P

Attachment

FEDERAL ENERGY REGULATORY COMMISSION
Office of Markets, Tariffs and Rates



**Instruction Manual for Electronic Filing of
 Electric Quarterly Reports for the Reporting Periods
 Ending on June 30, 2002 and September 30, 2002**

BILLING CODE 6717-01-C

I. Purpose

In Order No. 2001,¹ the Commission revised its regulations to add 18 CFR 35.10b,² which requires each public utility to file electronically with the Commission an Electric Quarterly Report each calendar quarter, in accordance with the schedule prescribed in the regulation.³ As

¹ Revised Public Utility Filing Requirements, Final Rule, Order No. 2001, 67 FR 31043, FERC Stats. & Regs. ¶ 31,127 (2002).

² Under the authority of the Federal Power Act, 16 U.S.C. 791a, *et seq.*

³ 18 CFR 35.10b prescribes the following schedule for the filing of Electric Quarterly Reports: for the period from January 1st through March 31st of each year, each public utility must file its Electric Quarterly Report by the following April 30th; for the period from April 1st through June 30th of each year, each public utility must file its Electric Quarterly Report by the following July 31st; for the period July 1st through September 30th of each

provided in Order No. 2001, all of a public utility's transmission services, cost-based power sales, market-based power sales and other services will be covered in its Electric Quarterly Reports. Electric Quarterly Reports will summarize the pertinent terms and conditions of a public utility's current contractual agreements and provide specified data (*e.g.*, price, quantity, parties, *etc.*) about the power sale transactions the public utility made during the reporting period.

Order No. 2001 provides that the first two Electric Quarterly Reports (*i.e.*, those to be filed by July 31, 2002 and October 31, 2002) will be governed by

year, each public utility must file its Electric Quarterly Report by the following October 31st; and, for the period October 1st through December 31st of each year, each public utility must file its Electric Quarterly Report by the following January 31st.

interim reporting requirements. Thus, these instructions apply to these first two reporting periods only. The Commission expects to complete its development of an automated Electric Quarterly Report filing system in time for use in Electric Quarterly Reports filed after October 31, 2002.

The Electric Quarterly Report will include two groups of data, contracts and power sale transactions:

- Contract data about each agreement (including, but not limited to, electric power sales agreements and other services under 18 CFR part 35, such as transmission agreements and interconnection agreements) not previously filed with the Commission under which service was first rendered between April 1, 2002 and June 30, 2002 will be reported in the filing due by July 31, 2002, and thereafter until the contracts expire. Contract data about

each agreement not previously filed with the Commission under which service was first rendered between July 1, 2002 and September 30, 2002 will be reported in the filing due by October 31, 2002, and thereafter until the contracts expire.⁴

- Pertinent data about each wholesale power sale transaction made by the public utility during the respective reporting periods will be included in the filings.

A public utility may also report contract data for its other effective contracts.

II. Who Must Submit

Each public utility as defined in section 201(e) of the Federal Power Act, 16 U.S.C. 824 (e) and subject to Part 35 of the Commission's regulations must comply with the requirement to file Electric Quarterly Reports.

III. What To Submit

The Electric Quarterly Report is an electronic file that is classified as a "qualified document." As a qualified document, no paper copy version of the filing is required. The internal structure of the file is described below for files submitted in an ASCII Comma Separated Values (CSV) format. Additionally, a template is provided at www.ferc.gov for files submitted using Microsoft Excel.

As explained in Order No. 2001,⁵ the information required to be reported in Electric Quarterly Reports must be made public to achieve the purposes for which it is collected.

There is no paper format required for data reported in Electric Quarterly Reports. If a respondent submits a revised filing, the respondent must restate the original file with all additions, deletions, revisions, and corrections incorporated.

IV. When To Submit

As explained in Order No. 2001, a public utility must submit its Electric Quarterly Report for the period April 1, 2002 through June 30, 2002 by July 31, 2002. In addition, a public utility must submit its Electric Quarterly Report for the period July 1, 2002 through September 30, 2002 by October 31, 2002. The filing dates for subsequent filings will be governed by 18 CFR 35.10b.

V. Where To Submit Electric Quarterly Report Filings

Submit the electronic filing to www.ferc.gov using the e-filing link.

VI. General Instructions

The Commission defined the data elements to be used in Electric Quarterly Reports in Order No. 2001, Attachment C. These data elements are applicable to the Electric Quarterly Reports to be filed by July 31, 2002 and October 31, 2002.

The information required for Electric Quarterly Reports to be filed by July 31, 2002 and October 31, 2002 must be recorded in either ASCII Comma Separated Values (CSV) or Microsoft Excel format. CSV formatted data consists of ASCII text separated by commas. Text containing commas must be enclosed within quotes. Numeric values shall not contain any commas and do not require leading zeroes. Records are separated by a carriage return plus line feed. If a data item is not applicable, the data item must be omitted, but the associated comma character for that item must be recorded. An example CSV file that adheres to the prescribed electronic filing formats is provided as the Appendix to this manual.

All information required to be filed should be recorded in one file. The file name must not be longer than 25 characters, must not contain spaces or ampersands, and must be appended with ".csv" (for CSV format files) or ".xls" or ".xlsx" (for Microsoft Excel files).

Instructions for filing using the FERC e-Filing system are publicly posted at www.ferc.gov at the e-Filing link and are titled "User Guide." At the FERC e-Filing "Enter Docket Number" page, respondents must enter ER02-2001-000 and click the "Add Docket to List" link. Comments may be filed via the internet in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at www.ferc.gov and click on "e-Filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-mail address upon receipt of comments.

Electric Quarterly Reports documents filed with the FERC e-Filing system will be indexed in the FERC RIMS or FERRIS system with the title "Electric Quarterly Report of <filer's organization name> under ER02-2001-000." If it is necessary to file a revised report, respondents shall file the revised document using the FERC e-Filing system, changing the filing title at the "Electric Quarterly Report" page from "Electric Quarterly Report of <filer's organization name> under ER02-2001-

000" to "Electric Quarterly Report of <filer's organization name> under ER02-2001-000 Revision <n>" where <n> is a sequential numeric or character identifier such as 1, 2, 3 or A, B, C.

User assistance for electronic filing is available at 202-208-0258 or by e-mail to efiling@ferc.gov. Comments should not be submitted to the e-mail address. All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington DC 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet through FERC's home page using the RIMS link. User assistance for RIMS is available at 202-208-2222, or by e-mail to RimsMaster@ferc.gov.

VII. Data Specifications

The information below is intended to clarify the data elements listed in the sample CSV format attached and the sample Excel spreadsheet template posted on the FERC Web site, www.ferc.gov.

The first field listed in the Header Information is "FA" on the first line, "FR" on the second line, and "FS1" on the third line.

- FA denotes Filing Agent, and the data entered on that line should be applicable to the filing agent;
- FR denotes Filing Respondent, and the data entered on that line should be applicable to the respondent; and
- FS denotes Filing Seller and the number immediately following the "FS" will differentiate multiple sellers. Filers should begin at FS1 and increment the numbers (*i.e.*, FS2, FS3, *etc.*) for each additional seller they are listing. Filing agent, respondent, and seller may be identical. Contact name and address information is mandatory for the respondent, but may also be entered for the agent and/or seller.

Similarly, the first field listed in the Contract Information is the Contract Identifier ("C1" on the first line, and incremented for other contracts listed). Each contract product must be listed separately on its own line with the unique product specifications detailed. All products sold under a contract must have the same Contract Identifier as the rest of the products sold under that contract.

The same format is used to distinguish unique transactions. Since a transaction can be composed of numerous transaction products (power, ancillary services, *etc.*), each transaction is given a unique Transaction Identifier (TR1, TR2, TR3, *etc.*). Each transaction

⁴ The final system will include all contracts under Part 35 pursuant to electric service.

⁵ Order No. 2001 at n.81.

product should be listed separately on its own line with the unique specifications detailed. All transaction products sold under a single transaction should have the same Transaction Identifier as the rest of the transaction components.

To identify the respondent, seller and customer, use of the unique Data Universal Numbering System (D-U-N-S®) Number assigned by the Dunn & Bradstreet Corporation is a mandatory field. The DUNS number is optional for identifying the filing agent.

Numerous fields are identified as mandatory fields in the attached format. If a data element is not pertinent to a contract or transaction, filers should enter N/A in the field. Additionally, if

there is a list of restricted values, to the greatest extent possible, filers should enter one of the values listed. Restricted values are listed on the attached CSV format template in the Appendix. In the restricted values lists, the term {registered} is used. This term indicates that the Commission expects additional values to be entered into this category. When the full system becomes available, entries will be limited to those values that are listed as being available for that field. If filers wish to include other values, they will need to register them as provided for in Order No. 2001. In the interim filers are requested to list the suggested values in a document and file the document as a Comment in

Docket ER02-2001-000 via the Internet; this will help staff develop a comprehensive list for the ultimate system. Comments may be filed via the internet in WordPerfect, MS Word, Portable Document Format, or ASCII format.

All rate fields (rate, rate minimum, and rate maximum) must be reported to a minimum of two decimal places, and a maximum of four decimal places. Total transmission charge and total transaction charge must be reported to two decimal places. The units field on the transaction report must define the pricing quantity units for the transaction.

BILLING CODE 6717-01-P

Appendix
File Record Structures for CSV format files

Record	Field Position	Data Type	Format or Acceptable Values	Description of Content	Sample Content
Filer	1	Alphanumeric*	(FA,FR,FSn) where 1 <= n <= 99	Filer Unique Identifier (Relationship to Identifier) – FA=agent submitting filing, FR = filer (respondent responsible for filing), FSn=seller reported in filing.	FA
	2	Alphanumeric*		Company Name	“John & Doe, P.C.”
	3	Numeric*D	NNNNNNNN	Company DUNS	305000777
	4	Alphanumeric*		Contact Name	John Doe
	5	Alphanumeric		Contact Title	Attorney
	6	Alphanumeric*		Contact Address	“1200 W. Doe St., Suite 1200”
	7	Alphanumeric*		Contact City	Doeville
	8	Alphanumeric*	XX	Contact State	MD
	9	Alphanumeric*		Contact Zip - (last 4 digits optional)	20850-0000
	10	Alphanumeric*	(US,CA,MX)	Contact Country Name – US=United States, CA=Canada, MX=Mexico	US
	11	Alphanumeric*		Contact Phone	202-208-0000X34
	12	Alphanumeric*		Contact E-mail	john DOE@johndoe.com

Appendix
File Record Structures for CSV format files

	13	Alphanumeric*	YYYYMM	Filing Quarter - Year and Last Month of Filing Period	200206
Contract/Products	1 (14)	Alphanumeric*	Cn where 1 <= n <= 999	Contract Unique Identifier - Increment last three characters when reporting multiple contracts; repeat when reporting multiple products for a given contract.)	C1
	2 (15)	Alphanumeric*C		Seller Company Name	"Buck Energy, LLC."
	3 (16)	Alphanumeric*C		Customer Company Name	Fawn Industries
	4 (17)	Numeric	NNNNNNNN	Customer DUNS Number	309000777
	5 (18)	Alphanumeric*C	(Y,N,)	Contract Affiliate	Y
	6 (19)	Alphanumeric*C		FERC Tariff Reference	FERC Electric Tariff Original Volume No. 10
	7 (20)	Alphanumeric*C		Contract Service Agreement ID	Service Agreement No. 2
	8 (21)	Alphanumeric*C	YYYYMMDD	Contract Execution Date	20020401
	9 (22)	Alphanumeric*C	YYYYMMDD	Contract Commencement Date	20020405
	10 (23)	Alphanumeric	YYYYMMDD	Contract Termination Date	20030405

Appendix
File Record Structures for CSV format files

11 (24)	Alphanumeric	YYYYMMDD	Actual Termination Date	20020505
12 (25)	Alphanumeric*C		Extension Provision Description – Descriptive text or ‘None’	Good until terminated
13 (26)	Alphanumeric*C	(F,NF,S,N/A, {registered})	Class Name – F=Firm, NF=Non-Firm, S=Secondary, N/A=Not Applicable	F
14 (27)	Alphanumeric*C	(L,T,ST,N/A, {registered})	Term Name – LT=Long,ST=Short, N/A=Not Applicable	LT
15 (28)	Alphanumeric*C	(H,D,W,M,Y, N/A, {registered})	Increment Name - H=Hourly,D=Daily, W=Weekly,M=Monthly, Y=Yearly, N/A =Not Applicable	D
16 (29)	Alphanumeric*C	(P,OP,FP,N/A, {registered})	Increment Peaking Name - P=On Peak, OP=Off Peak, FP=Full Period, N/A =Not Applicable	P
17 (30)	Alphanumeric*C	(T,MB,CB,S, {registered})	Product Type Name - T= Transmission, MB=Market Based, CB=Cost Based, S=Services-Other	MB
18 (31)	Alphanumeric*C	(see list of product names at end of this document)	Product Name – list of product, e.g. Point-To-Point, Network, Capacity, Installed Capacity, Ancillary Services, SC	Point-To-Point
19 (32)	Numeric		Quantity – Number of units provided for in the contract with up to four significant decimals.	450.0200

Appendix
File Record Structures for CSV format files

20 (33)	Alphanumeric	(MW,MWh,MW-day,MW-wk,MW-mo,MW-yr,kW,kWh,kV,Fat Rate,{registered})	Units (for Contract Quantity) – Units qualifier provided for in the contract expressed in the same terms as are expressed in the Transaction Price field of associated transactions record	kVolts
21 (34)	Numeric		Rate - Rate applied to each product or time frame for a product in US dollars with two to four significant decimals	3200.1100
22 (35)	Numeric		Rate Minimum - Minimum rate applied to each product or time frame for a product in US dollars with two to four significant decimals	3200.1100
23 (36)	Numeric		Rate Maximum – List maximum rate applied to each product or time frame for a product in US dollars with two to four significant decimals	3200.1100
24 (37)	Alphanumeric		Rate Description	Taken under OATT

Appendix
File Record Structures for CSV format files

		Alphanumeric	(\$/kW,\$/MW,\$/MWh, \$/MW-day, \$/MW-wk, \$MW-mo,\$/MW-yr,¢/kWh,Flat Rate, {registered})	Units (for Rate)	\$KW
25 (38)					
26 (39)		Alphanumeric		Point of Receipt Control Area	PJM
27 (40)		Alphanumeric		Point of Receipt Specific Location	Antler Substation
28 (41)		Alphanumeric		Point of Delivery Control Area	NEISO
29 (42)		Alphanumeric		Point of Delivery Specific Location	Pennsylvania New York Border
30 (43)		Alphanumeric	YYYYMMDDH Hmm	Begin Date (of product specified)	200204051305
31 (44)		Alphanumeric	YYYYMMDDH Hmm	End Date (of product specified)	200204051405

**Appendix
File Record Structures for CSV format files**

	32 (45)	Alphanumeric*	TZ Where TZ in (AD,AS,ED,ES, CD,CS,MD,MS, PD,PS,UT)	Time Zone – AD=Atlantic Daylight Savings Time,AS=Atlantic Standard Time, ED=Eastern Daylight Savings Time,ES=Eastern Standard Time, CD=Central Daylight Savings Time,CS=Central Standard Time, MD=Mountain Daylight Savings Time,MS=Mountain Standard Time, PD=Pacific Daylight Savings Time,PS=Pacific Standard Time,UT=Universal Time	ED
Trans- action	1 (46)	Alphanumeric*	Tn where 1 <=n<= 999999999	Transaction Unique Identifier - Increment value when reporting multiple transactions; repeat value when reporting multiple components or component variations for a given transaction	T1
	2 (47)	Alphanumeric*T		Seller Company Name	"Buck Energy, LLC."
	3 (48)	Alphanumeric*T		Customer Company Name	Fawn Industries
	4 (49)	Numeric	NNNNNNNN	Customer DUNS	309000777
	5 (50)	Alphanumeric*T		FERC Tariff Reference	FERC Electric Tariff Original Volume No. 10
	6 (51)	Alphanumeric*T		Contract Service Agreement ID	Service Agreement No. 2

Appendix
File Record Structures for CSV format files

7	Alphanumeric*		Transaction ID - Company selected unique designation for a transaction	4X8700003
8	Alphanumeric*T	YYYYMMDDH Hmmm	Transaction Begin Date	200204051235
9	Alphanumeric*T	YYYYMMDDH Hmmm	Transaction End Date	200204051255
10	Alphanumeric*T	TZ Where TZ in (AD,AS,ED,ES, CD,CS,MD,MS, PD,PS,UT)	Time Zone - AD=Atlantic Daylight Savings Time, AS=Atlantic Standard Time, ED=Eastern Daylight Savings Time, ES=Eastern Standard Time, CD=Central Daylight Savings Time, CS=Central Standard Time, MD=Mountain Daylight Savings Time, MS=Mountain Standard Time, PD=Pacific Daylight Savings Time, PS=Pacific Standard Time, UT=Universal Time	ED
11	Alphanumeric*T		Point of Delivery Control Area - (may be left blank if Point of Delivery Specific Location reported)	NEISO
12	Alphanumeric*T		Point of Delivery Specific Location (may be left blank if Point of Delivery Control Area reported)	Pennsylvania New York Border

Appendix
File Record Structures for CSV format files

13 (58)	Alphanumeric*T	(F,NF,S,N/A, {registered})	Class Name – F=Firm, NF=Non-Firm,S=Secondary, N/A=Not Applicable	F
14 (59)	Alphanumeric*T	(LT,ST,N/A, {registered})	Term Name – LT=Long, ST=Short, N/A=Not Applicable	LT
15 (60)	Alphanumeric*T	(H,D,W,M,Y, N/A, {registered})	Increment Name - H=Hourly, D=Daily, W=Weekly, M=Monthly, Y=Yearly, N/A =Not Applicable	D
16 (61)	Alphanumeric*T	(P,OP,FP,N/A, {registered})	Increment Peaking Name - P=On Peak, OP=Off Peak, FP=Full Period, N/A =Not Applicable	P
17 (62)	Alphanumeric*T		Product Name – list of product, e.g. Point-To-Point, Network, Capacity, Installed Capacity, Ancillary Services, Scheduled System Control and Dispatch	Point-To-Point
18 (63)	Numeric*T		Transaction Quantity - number or units billed for a transaction component with two to four significant decimals.	345.1236
19 (64)	Numeric*T		Price – Actual rate charged (pricing qualifier provided expressed in the same terms as expressed in the associated contract record Rate) in US dollars with two to four significant digits.	35.2020

Appendix
File Record Structures for CSV format files

	Numeric*T	(\$/kW, \$/MW, \$/ MWh, \$/MW-day, \$/MW-wk, \$/MW-mo, \$/MW-yr, ¢/kWh, Flat Rate, registered)	Units (for Price)	\$/MW-day
20 (65)	Numeric*T			
21 (66)	Numeric*T		Total Transmission Charge - in US dollars with two significant digits	5444.02
22 (67)	Numeric*T		Total Transaction Charge – in US dollars with two significant digits	78232.76

Note: Numbers in parentheses in Field Position represent column numbers in Microsoft Excel template published by FERC.

Legend

*—in the Data Type column indicates a value must be supplied;

*D—in the Data Type column indicates a value must be supplied for all records (rows) reported except records (rows) reporting the agent submitting the filing (FA);

*C—in the Data Type column indicates a value must be supplied for the first Contract record for a given contract;

*T—in the Data Type column indicates a value must be supplied for the first Transaction record for a given transaction;

{registered} in “Format or Acceptable Values” in a list of valid values means a filer may supply a value not included in the field description (FERC will subsequently consider including the value in the list). The following is the current list for the product name field:

Cost-Based Power Sales:
 Cost-Based Power/Capacity
 Economy Power/Capacity
 Emergency Energy/Capacity
 General Purpose Energy
 Unit Power Sale

Exchange
 Non-Displacement
 Displacement
 Peaking

Sale with exchange
 Supplemental
 Capacity

Energy
 Back-up Power
 System Black Start Capability
 Energy furnished without charge
 Fuel Replacement Energy
 Interchange Power
 SC—Schedule System Control &
 Dispatch

RV—Reactive Supply & Voltage Control
 RF—Regulation & Frequency Response
 EI—Energy Imbalance
 SP—Spinning Reserve
 SU—Supplemental Reserve
 DT—Dynamic Transfer

Market-Based Power Sales:
 Load Following
 Marginal Peaking
 Indexed Peaking
 Capacity

Energy
 SC—Schedule System Control &
 Dispatch
 RV—Reactive Supply & Voltage Control
 RF—Regulation & Frequency Response
 EI—Energy Imbalance
 SP—Spinning Reserve
 SU—Supplemental Reserve
 DT—Dynamic Transfer

Transmission:
 Point-to-Point
 Network

Capacity
 Installed Capacity
 SC—Schedule System Control &
 Dispatch
 RV—Reactive Supply & Voltage Control
 RF—Regulation & Frequency Response
 EI—Energy Imbalance
 SP—Spinning Reserve
 SU—Supplemental Reserve
 DT—Dynamic Transfer
 Real Power Transmission Tx Loss
 System Black Start Capability
 Must Run
 Specialized affiliate transactions
 System Impact and/or Facilities Study
 Charge(s)
 Direct Assignment Facilities Charge
 Interconnection Agreement
 Standards of Conduct
 Network Operating Agreement
Services—Other:
 Return in Kind Transactions Between
 Control Areas
 System Operating Agreements
 Reliability Agreement
 Transmission Owners Agreement.

[FR Doc. 02-14282 Filed 6-6-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF THE TREASURY**Customs Service****19 CFR Part 10**

[T.D. 02-31]

RIN 1515-AC59

Civil Aircraft

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations concerning the duty-free entry of civil aircraft merchandise to reflect amendments to General Note 6 of the Harmonized Tariff Schedule of the United States made by the Miscellaneous Trade and Technical Corrections Act of 1996. The amendments allow an importer to claim duty-free admission of civil aircraft merchandise without submitting a certificate, or having one on file at Customs, at the time of entry. The amendments also allow an importer to make a post-entry claim for duty-free admission by filing a statement prior to liquidation of the entry or before the liquidation becomes final.

EFFECTIVE DATE: July 8, 2002.

FOR FURTHER INFORMATION CONTACT: Richard Wallio, Office of Field Operations, at (202) 927-9704.

SUPPLEMENTARY INFORMATION:

Background

This document amends § 10.183 of the Customs Regulations (19 CFR 10.183), which concerns Customs duty-free treatment of civil aircraft merchandise. Section 10.183 implements General Note 6 of the Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), which implements the Agreement on Trade in Civil Aircraft (Title VI of the Trade Agreements Act of 1979, Public Law 96-39, 93 Stat. 144, July 26, 1979), to provide duty-free treatment for qualifying civil aircraft merchandise upon compliance with certain requirements. The term “civil aircraft merchandise” as used in this document covers merchandise that qualifies as “civil aircraft” under paragraph (b) of General Note 6, HTSUS, and thus is aircraft, aircraft engines, or ground flight simulators, including their parts, components, and subassemblies, that otherwise meet the requirements of paragraph (b).

General Note 6 of the HTSUS was amended by section 12 of the Miscellaneous Trade and Technical Corrections Act of 1996 (the Act), Public Law 104-295, 110 Stat. 3514 (October 11, 1996). Prior to the amendment, General Note 6 required that an importer entering merchandise duty-free under the General Note must file with Customs a written statement certifying that the merchandise: (i) Is civil aircraft or has been imported for use in civil aircraft; (ii) will be so used; and (iii) has been approved for civil aircraft use by, or an application for approval has been submitted to, the Administrator of the Federal Aviation Administration (FAA) or by an airworthiness authority in the country of exportation (foreign airworthiness authority) if such approval is recognized by the FAA. General Note 6 defined the term “civil aircraft” as all aircraft other than aircraft purchased for use by the Department of Defense or the United States Coast Guard.

The Act amended General Note 6 to expand the definition of “civil aircraft.” The Act also eliminated the statement (certification) filing requirement. The Act provided that a claim for duty-free treatment under General Note 6 is made by the importer by entering the merchandise under a tariff provision for which the program indicator “Free (C)” appears in the “Special” subcolumn of the tariff. (This is accomplished by placing the program indicator “C” on the entry summary.) This claim is deemed the importer’s certification that the merchandise being entered is a civil aircraft or has been imported for use in

a civil aircraft and will be so used. No additional statement is necessary to file.

Although the amendment eliminated the statement filing requirement, it requires that an importer maintain documentation to support the claim. It also provides that an importer may amend an entry or file a written statement to claim duty-free treatment under General Note 6 any time before the liquidation of the entry becomes final. A liquidation becomes final 90 days after the date notice of liquidation is given or transmitted to the importer (or its agent or consignee).

On June 29, 2000, Customs published a notice of proposed rulemaking (the NPRM) in the **Federal Register** (65 FR 40067) proposing to amend § 10.183 to reflect the statutory amendments made to General Note 6 by the Act. Section 10.183 of the Customs Regulations (19 CFR 10.183) currently provides that a written statement must be filed, along with supporting documentation, with each entry summary or be on file with Customs at the time of entry as a blanket statement at the port where the entry is filed (19 CFR 10.183(c)). The regulation also provides that the statement could not be treated as a missing document that could be produced later under bond (under 19 CFR 141.66) and that failure to timely file the statement or to have a valid blanket statement on file at the port would result in a dutiable entry (19 CFR 10.183(c)(2)).

Summary of Proposed Amendment

The proposed amendment to § 10.183 was intended to conform the regulation to the statutory amendments made to General Note 6 by the Act. Thus, the proposed amendments: (1) Expanded the regulation's coverage by broadening the description of civil aircraft; (2) eliminated the requirement that supporting documentation be filed with each entry summary; (3) required that supporting documentation be maintained in the importer's records; (4) eliminated the statement (certification) filing requirement; (5) allowed an importer to make a claim for duty-free admission under General Note 6 after the filing of an entry (that did not make a claim) but before its liquidation becomes final; and (6) provided that no interest attaches to refunds of duty resulting from post-entry claims.

Discussion of Comments

The NPRM requested comments on the proposed amendments. Two commenters responded with various comments and recommendations that are summarized and responded to below.

Comment: One comment concerned the meaning of proposed § 10.183(e), which provides that proof of end use of the entered merchandise in a qualifying manner (as or for use in civil aircraft) need not be maintained. The commenter asked whether this means that the importer's intent regarding imported civil aircraft merchandise, rather than the importer's actual use of that merchandise, is the qualifying factor for free entry under this provision.

Customs Response: When an importer makes a claim for duty-free admission under General Note 6 by placing the "C" indicator on the entry summary to enter an article under a tariff provision for which the rate of duty "Free C" appears in the "Special" subcolumn, the importer, under General Note 6, is deemed to certify that the article is being imported for use in civil aircraft and will be so used. While General Note 6 does not mention the intent of the importer, this claim (deemed certification) is an expression of intent. Accordingly, it is the intent of the importer, as embodied in its claim for duty-free admission, that is determinative.

Tariff provisions that implement General Note 6 (which have the "Free C" designation in the "Special" subcolumn) are not actual use tariff provisions (as described in Additional U.S. Rule of Interpretation 1(b)). Therefore, there is no requirement to furnish proof of end use within three years after the date the civil aircraft merchandise is entered, as required under Additional U.S. Rule 1(b). Also, there is no time limit as to when imported merchandise must be used in civil aircraft.

Customs notes that under 19 U.S.C. 1484(a), importers are obligated to enter merchandise using reasonable care. This obligation extends to how an importer classifies entered merchandise and determines the duty owed to Customs. This obligation certainly applies to importers entering merchandise under a claim of eligibility for duty-free civil aircraft treatment.

Comment: Both commenters inquired about what documentation is acceptable to show the importer's intent to use entered merchandise in a qualifying manner.

Customs Response: Initially, Customs notes that documentation is not required to be filed with the entry summary under General Note 6 but must be maintained in accordance with part 163 of the Customs Regulations (19 CFR part 163).

Regarding acceptable documentation, paragraph (b)(i)(A) of General Note 6 provides, as an eligibility requirement

for claiming civil aircraft as duty-free under these provisions, that there be certification or approval of the merchandise by an appropriate airworthiness authority. Having documents that show certification or approval of the merchandise by an appropriate airworthiness authority would be acceptable to demonstrate the importer's intent. Specifically, an importer of civil aircraft merchandise that meets the requirements of General Note 6(b)(i)(B)(1) would possess either a certificate issued by the FAA or a comparable document issued by, and showing the approval of, an airworthiness authority in the country of exportation (foreign airworthiness authority). In the latter instance, an importer should be able to show that the FAA recognizes the approval as an acceptable substitute for FAA certification.

An importer of civil aircraft merchandise that meets the requirements of General Note 6(b)(i)(B)(2) would possess an application (or copy of an application) for an FAA airworthiness certificate submitted to (and accepted by) the FAA by an existing "type and production certificate holder" under FAA law (49 U.S.C. 44702) and the type and production certificate of the certificate holder.

An importer of civil aircraft merchandise that meets the requirements of General Note 6(b)(i)(B)(3) faces a somewhat different situation, as an application for an FAA certificate or for the approval of a foreign airworthiness authority relative to that merchandise will be submitted in the future. Thus, this importer will not possess a certificate or an approval, nor evidence that an application for a certificate or an approval has been submitted. However, this importer should possess the following documentation: (1) Evidence tending to show that an existing type and production certificate holder will submit an application for certification to the FAA or will seek approval from a foreign airworthiness authority; (2) the type and production certificate of the type and production certificate holder issued by the FAA; and (3) evidence showing that there is pending the completion of design or other technical requirements stipulated by the FAA.

Some additional evidence may be available and, if so, must be maintained in accordance with General Note 6(a)(i), such as evidence having to do with the importer's estimate of the quantities of parts, components, and subassemblies as are required to meet the design and technical requirements stipulated by the

FAA, in accordance with the limitation of General Note 6(b)(iii).

Importers should endeavor to have and maintain whatever evidence is available in all of these cases to show compliance with the requirements of General Note 6 and the regulations.

Comment: A comment concerned whether FAA approval is required for all imported goods for which duty-free admission is claimed. The commenter noted that a recent Customs audit interpretation concluded that a part not covered by a certificate would qualify for duty-free treatment if it could be shown that the part went into an aircraft qualifying as a civil aircraft under General Note 6.

Customs Response: All merchandise entered under General Note 6 requires an FAA airworthiness certification or the approval of a foreign airworthiness authority recognized as acceptable by the FAA in accordance with paragraph (b)(i)(B)(1) of General Note 6, or evidence that airworthiness certification/approval has been or will be applied for in accordance with paragraphs (b)(i)(B)(2) or (b)(i)(B)(3) of the general note. Merchandise must comply with one of these airworthiness certification provisions in order to meet the definition of General Note 6(b). Merchandise that fails to so comply is not eligible for duty-free treatment under these provisions.

Comment: Another comment concerned safeguards for ensuring that merchandise entered duty-free as civil aircraft merchandise is used as intended. Specifically, the commenter asked if there will be measures in place to guarantee that merchandise imported by a party with the intent that it be used in civil aircraft will be so used when it is sold after entry to a distributor rather than an end user.

Customs Response: There will be no special measures to ensure that merchandise imported with the intent to be used in a qualifying manner under the general note are so used in the future. As tariff provisions affected by the general note are not actual use tariff provisions, importers entering merchandise under these provisions are not required to submit proof of actual use. Customs will enforce General Note 6 with audits and the port director's authority to request verifying documentation at any time.

Customs believes that the safeguards reside in the certification process itself, as the airworthiness certification or approval measures provide reasonable assurance that merchandise imported duty-free as civil aircraft merchandise is likely intended for such use and will likely be used in accordance with that

certificate or approval (including those situations where the certificate or approval has been applied for or will be applied for in the future). Of course, importers who mistakenly enter merchandise duty-free under the general note should report the correction to Customs in accordance with the regulations.

Comment: Another comment concerned proposed § 10.183(c), which pertains to making a claim for duty-free admission under General Note 6. Under this section, merchandise previously exported with benefit of drawback is not precluded from qualifying for duty-free treatment as civil aircraft merchandise. The commenter stated that this principle should be expanded to assure importers that free entry of civil aircraft merchandise will not be precluded where qualifying merchandise has previously been exported in the following circumstances: (1) From continuous Customs custody with remission, abatement, or refund of duty; (2) in compliance with any law of the United States or regulation of any federal agency requiring exportation; or (3) after manufacture or production in the United States in a Customs bonded warehouse or foreign trade zone or under heading 9813.00.05, HTSUS, pertaining to articles admitted into the United States free of duty and under bond to be repaired, altered, or processed. The commenter stated that previous exportation under the foregoing various circumstances precludes free entry under other provisions of law (such as Chapter 98, HTSUS, subchapter II, U.S. Note 1).

The commenter requested the addition of language to proposed § 10.183(c) to prevent the preclusion of free entry of civil aircraft parts previously exported under any of the circumstances described above.

Customs Response: Customs does not see the need to add to the regulation the recommended language. Free entry under the civil aircraft agreement is not expressly precluded under any of these circumstances, and Customs is not aware of, nor has the commenter cited, instances when free entry was denied on account of merchandise having been previously exported as described.

Comment: A commenter requested that the first sentence of proposed § 10.183(e) be changed by deleting the words "any additional documentation Customs may require to verify the claim for duty-free admission, including." As changed, the only documentary requirement will be the written order or contract and the evidence of FAA (or other airworthiness authority) certification. The commenter contended

that these documents serve to verify the claim sufficiently and that the "additional documentation" language creates uncertainty as to whether other documentation will be required. If Customs desires other documentation, stated the commenter, it should specify the nature of that documentation.

Customs Response: It is possible that additional documentation, other than the order or contract and an FAA certification (or foreign airworthiness authority approval), may be involved. The importer may have to show possession of a type or production certificate, for example. In addition, other documentation may be required in instances where an application for an airworthiness certification or approval has not yet been filed. The demand for additional information is limited to documentation tending to sustain the duty-free claim under the program. While Customs believes that this will not lead to uncertainty, it is amending the language of proposed § 10.183(e) to be more precise.

Comment: A commenter requested the deletion of the third sentence of proposed § 10.183(e) pertaining to the proscription of a claim for duty-free treatment under General Note 6 when the importer is not in possession of required documentation at the time of entry. This section of the proposed regulation provides that if an importer is not in possession of required documents at the time of entry, it should not then make a claim for duty-free admission, but may later make the claim under § 10.183(f) which allows a post-entry claim.

The commenter contended that the physical possession of supporting documentation should not be a prerequisite to the claim for duty-free treatment. Physical possession of documentation required to support other duty-free claims under part 10 is not required, stated the commenter, and there is no legitimate need to include such a requirement here. Such a requirement, claimed the commenter, is tantamount to reinstating the certification filing requirement that Congress removed when it amended General Note 6.

Customs Response: Customs agrees that other duty-free provisions under part 10 of the regulations do not explicitly provide that importers must possess required documents at the time of entry. Rather, these provisions provide that the importer must maintain the required documentation in accordance with part 163 of the regulations and produce it upon Customs request. Some provisions under part 10 provide that failure to

produce documentation upon request results in denial of duty-free treatment. Customs therefore believes that the civil aircraft program under General Note 6 can be administered and enforced adequately using similar measures.

Thus, proposed § 10.183(e) is modified in this document by removing language specifying that importers must be in possession of required documents at the time of entry in order to claim duty-free treatment under the general note. The regulation, as amended in this document, retains the requirement that importers must maintain supporting documentation in accordance with part 163 of the regulations and adds that maintenance of these records is also in accordance with paragraph (a)(i) of General Note 6. The amended regulation also adds language providing that port directors may request production of supporting documentation at any time and that failure to produce sufficient documentation upon request, during the five year retention period, will result in the loss of duty-free treatment.

Customs modifies the proposed regulation in this way to notify the public that the civil aircraft program under General Note 6 will be administered and enforced through document review under the authority of Customs audits or a demand by the port director in circumstances the port director deems appropriate. It is Customs position, however, that importers must be able to verify claims for duty-free admission under the general note at any time Customs calls upon them to do so, including at the time of entry should that occur. It is thus best that importers have possession of supporting documentation at the time of entry.

Comment: The last sentence of proposed § 10.183(e) provides that proof of the imported civil aircraft merchandise's end use need not be maintained by the importer. A commenter requested that this sentence be amended to provide that proof of end use also need not be furnished to Customs. This change, stated the commenter, will further confirm that civil aircraft tariff provisions (those with the indicator "Free C" in the Special subcolumn designating duty free entry under General Note 6) are not "actual use" provisions subject to the requirements of Additional U.S. Rule of Interpretation 1(b), HTSUS, which requires that proof of end use of the merchandise be submitted to Customs within three years of entry.

Customs Response: Customs disagrees. None of the civil aircraft provisions in the HTSUS are actual use provisions, and the language of

proposed § 10.183(e) is not ambiguous in this regard. Customs believes that this requested change is unnecessary.

Comment: A commenter asserted that proposed § 10.183(g) should be deleted, as proposed § 10.183(e) already makes clear that documentation supporting duty-free admission must be maintained in accordance with part 163 of the Customs Regulations (19 CFR part 163). The commenter pointed out that under the provisions of part 163, documentation is subject to Customs requests for information, compliance assessments, investigations, and other forms of Customs inquiry. Accordingly, there is no reason for special monitoring or auditing under § 10.183. Civil aircraft importers should not be subject to any greater or lesser scrutiny than any other importers.

Customs Response: Customs disagrees. Customs has always been charged with the obligation to enforce the provisions of the civil aircraft agreement (as implemented by General Note 6, HTSUS) to protect the revenue, and there is nothing improper in making explicit in the regulation Customs intent to do so by monitoring and auditing entries. At worst, § 10.183(g) is redundant, but Customs believes it is worthy to set forth in the regulation that entries will be monitored.

Conclusion

After analysis of the comments received, as set forth above, and further review of the matter, Customs has determined that the proposed amendments should be adopted as a final rule with the changes discussed above and as set forth below.

Executive Order 12866

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

Regulatory Flexibility Act

This amendment will make importations of civil aircraft merchandise less burdensome for importers than is the case under current regulations. Accordingly, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments to the Customs Regulations in this final rule will not have a significant economic impact on a substantial number of small entities. Thus, these amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collection of information contained in this notice has previously

been reviewed and approved by the Office of Management and Budget (OMB) under OMB control number 1515-0065 (Entry Summary), 1515-0069 (Immediate Delivery Application), and 1515-0144 (Customs Bond Structure). This rule does not substantially change the existing approved information collection. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Drafting Information

The principal author of this document was Bill Conrad, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices contributed in its development.

List of Subjects in 19 CFR Part 10

Aircraft, Customs duties and inspection, Entry, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons stated in the preamble, Part 10 of the Customs Regulations (19 CFR Part 10) is amended as follows:

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

1. The general authority citation for part 10 is revised, and the specific authority citation for § 10.183 is added, to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

Section 10.183 also issued under 19 U.S.C. 1202 (General Note 6, HTSUS);

* * * * *

2. Section 10.183 is revised to read as follows:

§ 10.183 Duty-free entry of civil aircraft, aircraft engines, ground flight simulators, parts, components, and subassemblies.

(a) *Applicability.* Except as provided in paragraph (b) of this section, this section applies to aircraft, aircraft engines, and ground flight simulators, including their parts, components, and subassemblies, that qualify as civil aircraft under General Note 6(b) of the Harmonized Tariff Schedule of the United States (HTSUS) by meeting the following requirements:

(1) The aircraft, aircraft engines, ground flight simulators, or their parts, components, and subassemblies, are used as original or replacement

equipment in the design, development, testing, evaluation, manufacture, repair, maintenance, rebuilding, modification, or conversion of aircraft; and

(2) They are either:

(i) Manufactured or operated pursuant to a certificate issued by the Administrator of the Federal Aviation Administration (FAA) under 49 U.S.C. 44704 or pursuant to the approval of the airworthiness authority in the country of exportation, if that approval is recognized by the FAA as an acceptable substitute for the FAA certificate;

(ii) Covered by an application for such certificate, submitted to and accepted by the FAA, filed by an existing type and production certificate holder pursuant to 49 U.S.C. 44702 and implementing regulations (Federal Aviation Administration Regulations, title 14, Code of Federal Regulations); or

(iii) Covered by an application for such approval or certificate which will be submitted in the future by an existing type and production certificate holder, pending the completion of design or other technical requirements stipulated by the FAA (applicable only to the quantities of parts, components, and subassemblies as are required to meet the stipulation).

(b) *Department of Defense or U.S. Coast Guard use.* If purchased for use by the Department of Defense or the United States Coast Guard, aircraft, aircraft engines, and ground flight simulators, including their parts, components, and subassemblies, are subject to this section only if they are used as original or replacement equipment in the design, development, testing, evaluation, manufacture, repair, maintenance, rebuilding, modification, or conversion of aircraft and meet the requirements of either paragraph (a)(2)(i) or (a)(2)(ii) of this section.

(c) *Claim for admission free of duty.* Merchandise qualifying under paragraph (a) or paragraph (b) of this section is entitled to duty-free admission in accordance with General Note 6, HTSUS, upon meeting the requirements of this section. An importer will make a claim for duty-free admission under this section and General Note 6, HTSUS, by properly entering qualifying merchandise under a provision for which the rate of duty "Free (C)" appears in the "Special" subcolumn of the HTSUS and by placing the special indicator "C" on the entry summary. The fact that qualifying merchandise has previously been exported with benefit of drawback does not preclude free entry under this section.

(d) *Importer certification.* In making a claim for duty-free admission as

provided for under paragraph (c) of this section, the importer is deemed to certify, in accordance with General Note 6(a)(ii), HTSUS, that the imported merchandise is, as described in paragraph (a) or paragraph (b) of this section, a civil aircraft or has been imported for use in a civil aircraft and will be so used.

(e) *Documentation.* Each entry summary claiming duty-free admission for imported merchandise in accordance with paragraph (c) of this section must be supported by documentation to verify the claim for duty-free admission, including the written order or contract and other evidence that the merchandise entered qualifies under General Note 6, HTSUS, as a civil aircraft, aircraft engine, or ground flight simulator, or their parts, components, and subassemblies. Evidence that the merchandise qualifies under the general note includes evidence of compliance with paragraph (a)(1) of this section concerning use of the merchandise and evidence of compliance with the airworthiness certification requirement of paragraph (a)(2)(i), (a)(2)(ii), or (a)(2)(iii) of this section, including, as appropriate in the circumstances, an FAA certification; approval of airworthiness by an airworthiness authority in the country of export and evidence that the FAA recognizes that approval as an acceptable substitute for an FAA certification; an application for a certification submitted to and accepted by the FAA; a type and production certificate issued by the FAA; and/or evidence that a type and production certificate holder will submit an application for certification or approval in the future pending completion of design or other technical requirements stipulated by the FAA and of estimates of quantities of parts, components, and subassemblies as are required to meet design and technical requirements stipulated by the FAA. This documentation need not be filed with the entry summary but must be maintained in accordance with the general note and with the recordkeeping provisions of Part 163 of this chapter. Customs may request production of documentation at any time to verify the claim for duty-free admission. Failure to produce documentation sufficient to satisfy the port director that the merchandise qualifies for duty-free admission will result in a denial of duty-free treatment and may result in such other measures permitted under the regulations as the port director finds necessary to more closely monitor the importer's importations of merchandise claimed to be duty-free under this

section. Proof of end use of the entered merchandise need not be maintained.

(f) *Post-entry claim.* An importer may file a claim for duty-free treatment under General Note 6, HTSUS, after filing an entry that made no such duty-free claim, by filing a written statement with Customs any time prior to liquidation of the entry or prior to the liquidation becoming final. When filed, the written statement constitutes the importer's claim for duty-free treatment under the general note and its certification that the entered merchandise is a civil aircraft or has been imported for use in a civil aircraft and will be so used. In accordance with General Note 6, HTSUS, any refund resulting from a claim made under this paragraph will be without interest, notwithstanding the provision of 19 U.S.C. 1505(c).

(g) *Verification.* The port director will monitor and periodically audit selected entries made under this section.

Robert C. Bonner,
Commissioner of Customs.

Approved: June 3, 2002.

Timothy E. Skud,
Deputy Assistant Secretary of the Treasury.
[FR Doc. 02-14285 Filed 6-6-02; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY-235-FOR]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; technical amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing the removal of two instructions to the State of Kentucky pertaining to required amendments to the Kentucky regulatory program (the "Kentucky program"). The Kentucky program was established under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) and authorizes Kentucky to regulate surface coal mining and reclamation operations in Kentucky. We are removing the instructions because the actions required by our instructions were previously satisfied and nothing further is required by the state.

EFFECTIVE DATE: June 7, 2002.

FOR FURTHER INFORMATION CONTACT:

William J. Kovacic, Field Office Director; Telephone: (859) 260-8400; E-mail: bkovacic@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Kentucky Program
- II. Purpose of the Rule
- III. Procedural Determinations

I. Background on the Kentucky Program

Section 503(a) of the Act permits a state to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval in the May 18, 1982, **Federal Register** (47 FR 21404). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

II. Purpose of the Rule

During the course of implementing SMCRA, we occasionally issue new regulations that may result in the state having to amend its approved program. A state on its own initiative may also amend its approved program. When either situation occurs, we review the amendment submitted by the state and determine if it meets the requirements of SMCRA. When it does, it is approved and when it does not, it is not approved and instructions are issued to the state on new amendments that are required. These instructions are codified in our regulations at 30 CFR 917.16 for the Kentucky program. The instructions should be removed once the requirement is satisfied either by the submission and approval of a new amendment, or by a change in circumstances such as the issuance of new regulations by OSM or the enactment of new legislation. Occasionally, we neglect to remove the instruction and by this rulemaking will remove instructions that are no longer required for the reasons that follow.

At 30 CFR 917.16(d)(1), Kentucky was required to remove the word "abated" or otherwise clarify that the rule at 405 Kentucky Administrative Regulations (KAR)7:090 section 3(4)(a) applies to abated and unabated violations to comply with the Federal regulations at 30 CFR 845.20. The Federal regulations require any person who chooses not to contest the fact of a violation (whether abated or not) or the assessment to pay the assessment in full within 30 days of the date the final assessment order was mailed. Kentucky has since made numerous changes to its hearing regulations, including the removal of 405 KAR 7:090. We approved the changes on August 6, 1993 (58 FR 42601). Kentucky's current regulations at 405 KAR 7:092 section 3(4)(a) state, in part, that if a person chooses not to contest the assessment, a finding will be made that the person has waived all rights to an administrative hearing, and the fact of the violation is deemed admitted. Because Kentucky no longer refers to "abated" violations, the requirement codified at 30 CFR 917.16(d)(1) is hereby satisfied and the instruction should be removed. 30 CFR 917.16(f) required a program change to 405 KAR 8:010 sections 5(1)(c) and (d) to require that information required by sections 2 and 3 of 405 KAR 8:030 and 8:040 be submitted on any format prescribed by OSM, as well as any format prescribed by the Cabinet. On December 19, 2000 (65 FR 79582), we removed the requirement that states must submit information on forms approved by OSM. The requirement codified at 30 CFR 917.16(f) is no longer necessary and the instruction should have been removed.

III. Procedural Determinations*Administrative Procedure Act*

This final rule has been issued without prior public notice or opportunity for public comment. The Administrative Procedure Act (APA) (5 U.S.C. 553) provides an exception to the notice and comment procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary or contrary to the public interest. We have determined that under 5 U.S.C. 553(b)(3)(B), good cause exists for dispensing with notice of proposed rulemaking and an opportunity for public comment. This rule is technical in nature and non-controversial. It merely removes from our regulations instructions to the state pertaining to amendments to the Kentucky program that were required. As previously mentioned, Kentucky satisfied one

requirement, and the Federal regulations no longer contain the other. The instructions in our regulations should, therefore, be removed. For these same reasons, we believe there is good cause under 5 U.S.C. 553(d)(3) of the APA to have the rule become effective on a date that is less than 30 days after the date of publication in the **Federal Register**.

Executive Order 12630—Takings

This rule is a technical amendment and does not have takings implications.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section.

Executive Order 13132—Federalism

This rule is a technical amendment and does not have Federalism implications.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and will not have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed state regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the

Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior 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.*). The rule is a technical amendment that does not impose any additional requirements on small entities.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons stated above, this rule: (a) Does not have an annual effect on the economy of \$100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates

This rule is a technical amendment and will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 8, 2002.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR part 917 is amended as set forth below:

PART 917—KENTUCKY

1. The authority citation for part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 917.16 [Amended]

2. Section 917.16 is amended by removing and reserving paragraphs (d)(1) and (f).

[FR Doc. 02-14076 Filed 6-6-02; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09-02-008]

RIN 2115-AA97

Security Zones; Captain of the Port Chicago Zone, Lake Michigan

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; change in effective period.

SUMMARY: The Coast Guard is revising the effective period for the temporary security zones on the navigable waters of the Kankakee River, the Rock River, and Lake Michigan in the Captain of the Port Chicago zone. These security zones are necessary to protect the nuclear power plants, water intake cribs water filtration plants, and Navy Pier from possible sabotage or other subversive acts, accidents, or possible acts of terrorism. These security zones are intended to restrict vessel traffic from portions of the Kankakee and Rock River and Lake Michigan.

DATES: The amendment to § 165.T09-002 is effective on June 7, 2002. Section 165.T09-002, added at 67 FR 19676, April 23, 2002, effective March 25, 2002 until June 15, 2002, is extended in effect through August 1, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being in available in the docket, are part of docket CGD09-02-008 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Chicago, 215 W. 83rd Street, Burr Ridge, IL 60521 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Al Echols, U.S. Coast Guard Marine Safety Office Chicago, at telephone number (630) 986-2175.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 23, 2002, we published a temporary final rule entitled Security Zones: Captain of the Port Chicago Zone, Lake Michigan in the **Federal Register** (67 FR 19676). The temporary final rule established nine temporary security zones in the Captain of the Port Chicago zone for the nuclear power plants, water intake cribs water filtration plants, and Navy Pier from possible sabotage or other subversive acts, accidents, or possible acts of terrorism.

We are extending the effective period of the temporary final rule so that we can complete a rulemaking CGD09-02-001 Security Zones; Captain of the Port Chicago Zone, Lake Michigan, to establish a permanent security zone the nuclear power plants, water intake cribs water filtration plants, and Navy Pier. Extending the effective date until August 1, 2002 should provide us enough time to complete the rulemaking.

We did not publish a notice of proposed rulemaking (NPRM) for this rule and it is being made effective less than 30 days after publication in the **Federal Register**. When we promulgated the rule published April 23, 2002, we intended to either allow it to expire on June 15, 2002, or to cancel it if we made permanent changes before that date. We published an NPRM on May 22, 2002 to make permanent changes to the temporary final rule (67 FR 35939). That rulemaking will follow normal notice and comment procedures, and a final rule should be published before August 1, 2002.

Continuing the temporary final rule in effect while the permanent rulemaking is in progress will help ensure the safety of critical infrastructure that may be the subject of subversive activity. Nuclear power plants are an important means of electrical energy in the region. In addition, they could be a source of severe radiological contamination throughout the region. Therefore, the Coast Guard finds good cause under 5 U.S.C. 553 (b)(B) and (d)(3) for why a notice of proposed rulemaking and opportunity for comment is not required and why this rule will be made effective fewer than 30 days after publication in the **Federal Register**.

Background and Purpose

A temporary security zone is necessary to ensure the security for the following nine facilities: (1) Navy Pier and the Jardine Water Filtration Plant; (2) Dresden Nuclear Power Plant Water Intake; (3) Donald C. Cook Nuclear Power Plant; (4) Palisades Nuclear Power Plant; (5) Byron Nuclear Power Plant; (6) Zion Nuclear Power Plant; (7) 68th Street Water Intake Crib; (8) Dever Water Intake Crib; and (9) 79th Street Water Filtration Plant, as a result of the terrorist attacks on the United States on September 11, 2001.

The following nine security zones consist of:

(1) All waters between the Navy Pier and the Jardine Water Filtration Plant shoreward of a line starting at the southeast corner of the Jardine Water Filtration Plant at 41°53'36" N, 87°36'17" W and ending at the northeast

corner of the Navy Pier at 41°53'33" N, 87°35'55" W, and shoreward of a line starting at the southeast corner of the Navy Pier at 41°53'29" N, 87°35'55" W thence to the east end of Dime Pier at 41°53'23" N, 87°35'58" W thence along the south side of Dime Pier to the west end of Dime Pier at 41°53'23" N, 87°36'29" W thence southeast to the corner of the seawall at 41°53'22" N 87°36'28" W;

(2) All waters in the vicinity of the Dresden Nuclear Power Plant south of a line starting at the Illinois River shore at approximate position 41°23'45" N, 88°16'18" W thence east to shore at approximate position 41°23'39" N, 88°16'09" W;

(3) All waters of Lake Michigan around the Donald C. Cook Nuclear Power Plant water intakes within a line starting at the shoreline at 41°58.656' N, 86°33.972' W, thence northwest to 41°58.769' N, 86°34.525' W, thence southwest to 41°58.589' N, 86°34.591' W, thence southeast to the shoreline at 41°58.476' N, 86°34.038' W;

(4) All waters of Lake Michigan around the Palisades Nuclear Power Plant within a line starting at the shoreline in approximate position 42°19'02" N, 86°19'05" W, thence northwest to 42°20'10" N, 86°20'01" W, thence northeast to 42°19'43" N, 86°19'52" W, thence to the shoreline at 42°19'26" N, 86°18'55" W;

(5) All waters of the Rock River within a 100 yard radius of the Byron Nuclear Power Plant; with its center in approximate position 42°05'01" N, 89°19'27" W;

(6) All waters 100 yards in all directions of the 68th Street Crib, with its center in approximate position 41°47'10" N, 87°31'51" W;

(7) All waters 100 yards in all directions of the Dever Crib; with its center in approximate position 41°54'55" N, 87°33'20" W;

(8) All waters of Lake Michigan around the Zion Nuclear Power Plant within a line starting from the shoreline in approximate position 42°26'36" N, 87°48'03" W, thence southeast to 42°26'20" N, 87°47'35" W, thence northeast to 42°26'53" N, 87°47'22" W, thence to the shoreline at 42°27'06" N, 87°48'00" W;

(9) All waters of Lake Michigan within an arc of a circle with a 100-yard radius centered on the 79th Street Water Filtration Plant, approximate position 41°45'30" N, 87°33'32" W.

These coordinates are based upon North American Datum 1983 (NAD 83). Entry into, transit through or anchoring within these security zones is prohibited unless authorized by the Captain of the Port Chicago or his

designated on-scene representative. The designated on-scene representative will be the Patrol Commander and may be contacted via VHF/FM Marine Channel 16.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

Small Entities

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

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Chicago (see **ADDRESSES.**)

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that, under figure 2-1, paragraph (34)(g) of Commandant Instruction M16475.1C, it is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subject in 33 CFR Part 165

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

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. In § 165.T09-002, paragraph (d) is added to read as follows:

§ 165.T09-002 Security Zones; Captain of the Port Chicago Zone, Lake Michigan.

* * * * *

(d) *Effective time and date.* This section is effective from March 25, 2002, through August 1, 2002.

Dated: May 30 2002.

R.E. Seebald,

Captain, Coast Guard, Captain of the Port, Chicago.

[FR Doc. 02-14269 Filed 6-6-02; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09-02-004]

RIN 2115-AA97

Security Zones; Captain of the Port Detroit Zone, Selfridge Air National Guard Base, Lake St. Clair

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent security zone on the navigable waters of Lake St. Clair, in the Captain of the Port Detroit Zone. This security zone is necessary to protect the Selfridge Army National Guard Base from possible acts of terrorism. This security zone is intended to restrict vessel traffic from predetermined and specific areas off of Selfridge Army National Guard Base in Lake St. Clair.

DATES: This rule is effective June 7, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD09-02-004 and are available for inspection or copying at Coast Guard Marine Safety Office, 110 Mt. Elliott Ave, Detroit, Michigan between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays. The telephone number is (313) 568-9580.

FOR FURTHER INFORMATION CONTACT: LTJG Brandon Sullivan, U.S. Coast Guard Marine Safety Office Detroit, at (313) 568-9580.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 11, 2002, we published a Notice of Proposed Rulemaking (NPRM) entitled Security Zone; Selfridge Army National Guard Base, MI. in the **Federal Register** (67 FR 17667). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. In response to the terrorists attacks on September 11, 2001, the Coast Guard implemented temporary security zones around critical facilities throughout the U.S. One such facility was the Selfridge Army National Guard Base. A security zone around the Selfridge Army National Guard Base

helps protect against the subversive type of activity that resulted in the World Trade Center and Pentagon attacks. Since the temporary security zone will expire on June 15, 2002, in order to continue ensuring security at the Selfridge Army National Guard Base, this final rule must be implemented prior to the June 15 expiration. (See 66 FR 52851, October 18, 2001). As such, it is necessary to make this rule effective less than 30 days after publication.

Background and Purpose

On September 11, 2001, the United States was the target of coordinated attacks by international terrorists resulting in catastrophic loss of life, the destruction of the World Trade Center, and significant damage to the Pentagon. National security and intelligence officials warn that future terrorists attacks are likely. To protect from such, this regulation will establish a permanent security zone off the waters of Selfridge Army National Guard Base in Harrison Township, Michigan.

This security zone is necessary to protect the public, facilities, and the surrounding area from possible sabotage or other subversive acts. All persons other than those approved by the Captain of the Port Detroit, or his authorized representative, are prohibited from entering or moving within this zone. The Captain of the Port Detroit may be contacted via VHF Channel 16 for further instructions before transiting through the restricted area. The Captain of the Port Detroit's on-scene representative will be the patrol commander. In addition to publication in the **Federal Register**, the public will be made aware of the existence of this security zone, exact location and the restrictions involved via Broadcast Notice to Mariners.

Discussion of Final Rule

Following the catastrophic nature and extent of damage realized from the attacks of September 11, this rulemaking is necessary to protect the national security interests of the United States against future public and governmental targets.

On April 11, 2002 the Coast Guard published a Notice of Proposed Rulemaking for a permanent security zone off of the Army National Guard Base (33 CFR 165.910) This regulation will establish a permanent security zone on the waters off of Selfridge Army National Guard Base in Michigan, commencing at the northeast corner of Selfridge Army National Guard Base at 42°37.8' N, 082°49.1' W; east to 42°37.8' N, 082°48.45' W (approximately one half mile from shore; south to 42°37.2'

N, 082°48.45' W; then southeast to 42°36.8' N, 082°47.2' W; then southwest to 42°36.4' N, 082°47.9' W (northeast corner of the Westside breakwall at the entrance to Mac and Rays Marina); then following the shoreline back to the beginning. The south and western boundaries are the shoreline of Selfridge Army National Guard Base.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has exempted it from review under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

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

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

This security zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will not obstruct the regular flow of commercial traffic and will allow vessel traffic to pass around the security zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the office listed in **ADDRESSES** in this preamble.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this final rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This final rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

We have analyzed this final rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to

safety that might disproportionately affect children.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

Environment

We have considered the environmental impact of this final rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.IC, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

§ 165.T09–998 [Removed]

2. Remove § 165.T09–998

3. Add § 165.910 to read as follows:

§ 165.908 Security Zones; Captain of the Port Detroit Zone, Selfridge Army National Guard Base.

(a) *Location.* The following is a security zone: All waters and adjacent shoreline of Lake St. Clair encompassed

by a line commencing at the northeast corner of Selfridge Army National Guard Base at 42°37.8' N, 082°49.1' W; east to 42°37.8' N, 082°48.45' W (approximately one half mile from shore); south to 42°37.2' N, 082°48.45' W; then southeast to 42°36.8' N, 082°47.2' W; then southwest to 42°36.4' N, 082°47.9' W (northeast corner of the Westside breakwall at the entrance to Mac and Rays Marina); then following the shoreline back to the beginning.

(b) *Regulations.* (1) In accordance with § 165.33, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Detroit. Section 165.33 also contains other general requirements.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number (313) 568-9580, or on VHF channel 16 to seek permission to transit the area. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: May 31, 2002.

P.G. Gerrity,

Commander, Coast Guard, Captain of the Port Detroit.

[FR Doc. 02-14268 Filed 6-6-02; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 02-003]

RIN 2115-AA97

Safety Zone; Carquinez Strait, Vallejo and Crockett, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of the Carquinez Strait surrounding the construction site of the new U.S. Interstate 80 bridge (Alfred Zampa Memorial Bridge) over a 30-day period. The purpose of this safety zone is to protect persons and vessels from hazards associated with bridge construction activities. The safety zone temporarily prohibits use of the Carquinez Strait waters surrounding the Alfred Zampa Memorial Bridge.

DATES: This rule is effective from 7:30 a.m. June 17, 2002 to 12 (noon) July 16, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (COTP San Francisco Bay 02-003) and are available for inspection or copying at the Waterways Management Branch of the U.S. Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Building 14, Alameda, California 94501-5100, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Lieutenant Ross Sargent, Chief, Waterways Management Branch, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437-3073.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 16, 2002, we published a notice of proposed rulemaking (NPRM) entitled "Safety Zone; Carquinez Strait, Vallejo and Crockett, California" in the *Federal Register* (67 FR 18523). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the *Federal Register*. The rulemaking process began in April 2002 when construction planning reached a stage of specificity sufficient for publishing the channel closure schedule. The publication of that schedule in the notice of proposed rulemaking (67 FR 18523) initiated a rulemaking process that encroached on the first channel closure periods. Accordingly, since timely cable stringing (discussed in Background and Purpose section) is crucial to the success of the entire bridge construction project, the channel closures must begin on June 17, 2002, less than 30 days after publication of this final rule.

Background and Purpose

The State of California Department of Transportation (CALTRANS) has determined that the original bridge spanning the Carquinez Strait must be replaced. CALTRANS has begun construction on the new bridge (Alfred Zampa Memorial Bridge) and is nearing a phase that will involve stringing steel cables across the Carquinez Strait. More specifically, the cable stringing process will involve attaching an approximately 1.5-inch diameter steel cable at the bridge's southern terminus and deploying the cable from a reel-equipped barge as it is towed northward. The cable itself will be partially submerged in the Carquinez

Strait until it is connected to the northern terminus, winched upward and secured approximately 150 feet above the Carquinez Strait. The deployment phase will take approximately five hours for each cable.

In February 2002, CALTRANS advised the Coast Guard Captain of the Port that a series of channel closures would be necessary in order to accomplish the cable stringing. The Coast Guard, along with CALTRANS, the contractor, a joint venture of FCI Constructors, Inc./Cleveland Bridge California, Inc. (FCI/CB), and the San Francisco Bar Pilots, planned the logistics for the closures in order to ensure minimal impacts on involved and potentially involved entities. On April 16, 2002, the Coast Guard published a notice of proposed rulemaking (NPRM) titled "Safety Zone; Carquinez Strait, Vallejo and Crockett, California" in the *Federal Register* (67 FR 18523). We received no letters commenting on the proposed rule.

The purpose of this safety zone is to protect persons and vessels from hazards, injury and damage associated with the bridge construction activities, and cable stringing in particular. One of the dangers during the cable deployment phase is the partially submerged cable that could inflict serious injury or death to mariners, as well as cause major damage to the hull, propeller and rudder of vessels, attempting to pass over it. Similarly, the cable deployment barge, its towing vessel and towing line all pose significant collision dangers to vessels transiting the area. In addition, when the heavy 1.5-inch thick steel cable is being winched to approximately 150 feet above the Strait, it may part or break loose and fall upon vessels below.

This temporary safety zone in the navigable waters of the Carquinez Strait surrounding the construction site of the Alfred Zampa Memorial Bridge will be in effect during the course of a 30-day period, but will only be enforced for approximately five hours in a given day. The times will be different for each day based on factors that will be explained in detail in the *Discussion of Rule* section of this preamble. In addition, this safety zone will not be enforced every day during the 30-day period.

Discussion of Comments and Changes

On April 16, 2002, we published a notice of proposed rulemaking (NPRM) entitled "Safety Zone; Carquinez Strait, Vallejo and Crockett, California" in the *Federal Register* (67 FR 18523). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held. Several

minor changes in the channel closure schedule (closure times on several days) were incorporated into the temporary final rule based on further planning with the San Francisco Bar Pilots and CALTRANS, minor errors in tide times, and to accommodate minor changes in the cable stringing process. These changes should lessen the impact on vessel traffic. With one exception, these changes consist of a 30 to 60 minute shift of the five-hour period on several days. These dates are June 27, 2002; June 28, 2002; June 29, 2002 and July 10, 2002. The other change consists of a shift in time, six and a half hours earlier in the morning on June 26, 2002, which should accommodate vessel traffic better than the originally published closure time for that date.

Discussion of Rule

The Coast Guard is establishing a safety zone that will be enforced for approximately five hours per day on certain days between June 17, 2002 and July 16, 2002. The safety zone is necessary to protect persons and vessels from hazards, injury and damage associated with the bridge construction activities, and cable stringing in particular. The safety zone will encompass the navigable waters, from the surface to the bottom, within two lines; one line drawn from the westernmost pier at Crockett Marina [38°03'28" N, 122°13'42" W] extending due north to the opposite shore [38°03'56" N, 122°13'42" W], and the other line drawn from the western end of the C & H Sugar facility [38°03'28" N, 122°13'26" W] extending due north to the opposite shore [38°03'54" N, 122°13'26" W][Datum: NAD 83].

The dates and approximate enforcement times are based on certain factors that were considered by the U.S. Coast Guard, San Francisco Bar Pilots, and the contractor, FCI/CB. These factors included working with favorable tides and currents; and minimizing closures during darkness, and the Fourth of July holiday. The safety zone will be enforced for approximately five hours at a time. On some days the safety zone may be enforced for less than five hours. The approximate period of five hours is based on the time required to string each of the cables from the bridge's southern terminus to its northern terminus. Although the approximate times set forth below are for a duration of approximately four and a half hours in length, more precise times will be known during the first few days that the safety zone will be enforced.

CALTRANS selected the channel closure periods to provide adequate

safety to construction crews and vessels transiting the area, while minimizing the impact on vessels transiting through the Strait. As with other construction projects, there are certain unknown factors, such as weather conditions and possible unforeseen problems that will only be known on a particular day during the cable stringing process. Therefore, the safety zone enforcement periods are approximate times only. During the days of construction, when further information becomes available about the exact times that the safety zone will be enforced, the Captain of the Port will advise the public in several ways. Mariners that will or could be effected by the channel closures are advised to monitor for broadcast notice to mariners alerts on VHF-FM marine channel 16 or contact the Captain of the Port representative on scene via VHF-FM marine channel 22. Vessel Movement Reporting System users (VMRS users) will be similarly advised by Coast Guard Vessel Traffic Service San Francisco via VHF-FM marine channel 14. The safety zone dates and approximate enforcement times are as follows:

Date	Safety zone in effect	Safety zone expires
June 17, 2002	7:30 a.m.	12 (noon).
June 18, 2002	9 a.m.	1:30 p.m.
June 19, 2002	10 a.m.	2:30 p.m.
June 20, 2002	11:30 a.m.	4 p.m.
June 21, 2002	1 p.m.	5:30 p.m.
June 22, 2002	8 a.m.	12:30 p.m.
June 23, 2002	9 a.m.	1:30 p.m.
June 24, 2002	9:30 a.m.	2 p.m.
June 25, 2002	10 a.m.	2:30 p.m.
June 26, 2002	4 a.m.	8:30 a.m.
June 27, 2002	4:30 a.m.	9 a.m.
June 28, 2002	5:30 a.m.	10 a.m.
June 29, 2002	6:30 a.m.	11 a.m.
June 30, 2002	6:30 a.m.	11 a.m.
July 1, 2002	7:30 a.m.	12 (noon).
July 2, 2002	8:30 a.m.	1 p.m.
July 3, 2002	5 a.m.	9:30 a.m.
July 4, 2002	No safety zone enforced	
July 5, 2002	No safety zone enforced	
July 6, 2002	No safety zone enforced	
July 7, 2002	No safety zone enforced	
July 8, 2002	8:30 a.m.	1 p.m.
July 9, 2002	9:30 a.m.	2 p.m.
July 10, 2002	10 a.m.	2:30 p.m.
July 11, 2002	10:30 a.m.	3 p.m.
July 12, 2002	4 a.m.	8:30 a.m.
July 13, 2002	5 a.m.	9:30 a.m.
July 14, 2002	5:30 a.m.	10 a.m.
July 15, 2002	7 a.m.	11:30 a.m.
July 16, 2002	7:30 a.m.	12 (noon).

Regulatory Evaluation

This temporary final rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of

potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

We expect the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The effect of this rule will not be significant for several reasons. The San Francisco Bar Pilots, responsible for guiding all deep draft commercial vessels in the area of the safety zone, have worked closely with CALTRANS, the contractor, and the U.S. Coast Guard in order to ensure minimal impact to deep draft commercial vessel traffic. The safety zone will be enforced for approximately five hours per day, taking into account tides, currents, daylight and vessel traffic patterns. In addition, we have attempted to minimize impacts on the regional commercial and sport fishing industries. Finally, advance notifications of the channel closures will be made to the local maritime community by broadcast notice to mariner alerts over marine band radio, on-scene Captain of the Port representatives and Coast Guard Vessel Traffic Service radio communications.

The changes to the regulatory text in the notice of proposed rulemaking are minor. The temporary final rule reflects several changes in channel closure times based on further planning with the San Francisco Bar Pilots and CALTRANS, minor errors in tide times, and to accommodate minor changes in the cable stringing process. These changes consist of a 30 to 60 minute shift of the five-hour period on several days, with one exception, and thus do not significantly impact vessel transits through the area. The other change consists of a shift in time, six and a half hours earlier in the morning on June 26, 2002, which should accommodate vessel traffic better than the originally published closure time for that date.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this final rule will have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and

governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this temporary final rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: the owners or operators of commercial shrimp or charter fishing vessels intending to transit through the Alfred Zampa Memorial Bridge construction area during safety zone enforcement periods (temporary channel closures). Additionally, since recreational sport fishing vessels will not be able to transit the channel during temporary channel closures, and thus possibly divert to fish at other places and times, local bait and tackle businesses may be impacted.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. Although the safety zone will apply to the entire width of the Carquinez Strait, the rule will normally be enforced for five hours usually early in the day, during the height of the day's first tidal cycle. Such predictability will enable fishing vessels to schedule transits through the safety zone area before or after the 5-hour safety zone enforcement periods. Before and during the enforcement periods, Captain of the Port representatives in patrol vessels will assume their stations to the east and west of the safety zone to provide notice and enforcement of the zone. The Coast Guard will also issue broadcast notice to mariners alerts via VHF-FM marine channel 16 before the safety zone is enforced.

Several minor changes in the channel closure schedule (closure times on several days) were incorporated into the temporary final rule to accommodate changes in the cable stringing plan. These changes should not significantly impact vessel traffic or small entities, as discussed in the Regulatory Evaluation section.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment (*see ADDRESSES*) explaining why you think it qualifies and how and to what degree this rule will economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them

and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this final rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this temporary final rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This temporary final rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

We have analyzed this final rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order.

Energy Effects

We have analyzed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this final rule and concluded that, under figure 2-1, paragraph (34)(g), of Commandant Instruction M16475.ID, this rule is categorically excluded from further environmental documentation because it is a safety zone. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. From 7:30 a.m., June 17, 2002 until 12 (noon), July 16, 2002, add new § 165.T11–078 to read as follows:

§ 165.T11–078 Safety Zone; Carquinez Strait, Vallejo and Crockett, CA.

(a) *Location.* The safety zone encompasses the navigable waters, from the surface to the bottom, within two lines; one line drawn from the westernmost pier at Crockett Marina [38°03'28" N, 122°13'42" W] extending due north to the opposite shore [38°03'56" N, 122°13'42" W], and the other line drawn from the western end of the C & H Sugar facility [38°03'28" N, 122°13'26" W] extending due north to the opposite shore [38°03'54" N, 122°13'26" W]. [Datum: NAD 83].

(b) *Effective period.* This section is effective from 7:30 a.m., June 17, 2002 to 12 (noon), July 16, 2002.

(c) *Enforcement periods.* The Coast Guard will notify the maritime public of the precise times for enforcement of the safety zone via broadcast notice to mariners, Vessel Traffic Service radio communications, and Captain of the Port representatives on scene. If the safety zone is no longer needed prior to the scheduled termination times, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via broadcast notice to mariners. The safety zone enforcement dates and times are as follows:

Date	Safety zone in effect	Safety zone expires
June 17, 2002	7:30 a.m.	12 (noon).
June 18, 2002	9 a.m.	1:30 p.m.
June 19, 2002	10 a.m.	2:30 p.m.
June 20, 2002	11:30 a.m.	4 p.m.
June 21, 2002	1 p.m.	5:30 p.m.
June 22, 2002	8 a.m.	12:30 p.m.
June 23, 2002	9 a.m.	1:30 p.m.
June 24, 2002	9:30 a.m.	2 p.m.
June 25, 2002	10 a.m.	2:30 p.m.
June 26, 2002	4 a.m.	8:30 a.m.
June 27, 2002	4:30 a.m.	9 a.m.
June 28, 2002	5:30 a.m.	10 a.m.
June 29, 2002	6:30 a.m.	11 a.m.
June 30, 2002	6:30 a.m.	11 a.m.
July 1, 2002	7:30 a.m.	12 (noon).
July 2, 2002	8:30 a.m.	1 p.m.
July 3, 2002	5 a.m.	9:30 a.m.

Date	Safety zone in effect	Safety zone expires
July 4, 2002	No safety zone enforced	
July 5, 2002	No safety zone enforced	
July 6, 2002	No safety zone enforced	
July 7, 2002	No safety zone enforced	
July 8, 2002	8:30 a.m.	1 p.m.
July 9, 2002	9:30 a.m.	2 p.m.
July 10, 2002	10 a.m.	2:30 p.m.
July 11, 2002	10:30 a.m.	3 p.m.
July 12, 2002	4 a.m.	8:30 a.m.
July 13, 2002	5 a.m.	9:30 a.m.
July 14, 2002	5:30 a.m.	10 a.m.
July 15, 2002	7 a.m.	11:30 a.m.
July 16, 2002	7:30 a.m.	12 (noon).

(d) *Regulations.* In accordance with the general regulations in § 165.23 of this part, no person or vessel may enter, transit through, or anchor within this safety zone unless authorized by the Captain of the Port, or his designated representative.

Dated: May 23, 2002.

L.L. Hereth,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay.

[FR Doc. 02–14358 Filed 6–6–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Corpus Christi–02–001]

RIN 2115–AA97

Security Zone; Corpus Christi Inner Harbor, Corpus Christi, TX

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is extending the effective period of the Corpus Christi Inner Harbor security zone published March 18, 2002. This change will extend the effective period for the established security zone until October 15, 2002, allowing adequate time for a proposed permanent rule to be developed through informal rulemaking. This temporary rule prohibits entry of recreational vessels, passenger vessels, or commercial fishing vessels into this zone unless specifically authorized by the Captain of the Port Corpus Christi.

DATES: Section 165.T08–016, added at 67 FR 11922, March 18, 2002, effective February 20, 2002, until June 15, 2002 is extended and will remain in effect through 8 a.m. October 15, 2002.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at U.S. Coast

Guard Marine Safety Office Corpus Christi, 555 N. Carancahua Street, Suite 500, Corpus Christi, Texas, 78478 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade (LTJG) T. J. Hopkins, Chief, Waterways Section, Coast Guard Captain of the Port Corpus Christi, at (361) 888–3162.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 18, 2002, we published a temporary final rule entitled “Security Zone; Corpus Christi Inner Harbor, Corpus Christi, TX” in the **Federal Register** (67 FR 11920). The effective period for this rule was from February 20, 2002 until June 15, 2002.

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553 (b) (B), the Coast Guard finds that good cause exists for not publishing an NPRM. The original temporary final rule was urgently required to respond to potential security risks associated with recreational, passenger, or commercial fishing vessels entering the Corpus Christi Inner Harbor. It was anticipated that we would assess the security environment at the end of the effective period to determine whether continuing security measures were required. We have determined that the need for a continued security zone regulation exists and we published an NPRM on May 10, 2002 (67 FR 31750), which included a proposal to make the existing Corpus Christi Inner Harbor Security Zone permanent. The Coast Guard will utilize the extended effective period of this temporary final rule to continue to engage in notice and comment rulemaking for the proposed permanent rule.

Under 5 U.S.C. 553 (d) (3), good cause exists for making this temporary rule effective less than 30 days after publication in the **Federal Register**. This extension preserves the status quo within the Port of Corpus Christi while permanent rules are developed. There is no indication that the present temporary final rule has been burdensome on the public. Delaying the effective date of the rule would be contrary to public interest since action is needed to continue to respond to existing security risks.

Background and Purpose

On September 11, 2001, both towers of the World Trade Center and the Pentagon were attacked by terrorists. National security and intelligence officials have warned that future terrorist attacks against civilian targets

may be anticipated. In response to these terrorist acts, heightened awareness and security of our ports and harbors is necessary therefore, the Captain of the Port, Corpus Christi is extending the temporary security zone within the Corpus Christi Inner Harbor. The Port of Corpus Christi is the fourth largest petro-chemical port within the United States. A large number of these petro-chemical waterfront facilities are located within the Inner Harbor that serves as a major industrial channel. These petro-chemical waterfront facilities conduct business with both United States and foreign deep draft vessels. The Port of Corpus Christi is also designated as an alternate military strategic load-out port with docks and facilities located within the Inner Harbor. These docks and facilities are vital to the national security interest of the United States.

The Inner Harbor channel is approximately 8 miles long and 300–800 feet wide, and has a controlling depth of 45 feet. Restricting the access of recreational, passenger and commercial fishing vessels reduces potential methods of attack on a vessel or waterfront facility within the zone. This security zone is designed to limit the access of vessels that do not have business to conduct with facilities or structures within the Corpus Christi Inner Harbor. Entry of recreational vessels, passenger vessels, or commercial fishing vessels into this zone is prohibited unless specifically authorized by the Captain of the Port Corpus Christi.

The temporary security zone was to expire on June 15, 2002. In order to provide continuous protection while a permanent zone is being promulgated through notice and comment rulemaking, the Coast Guard is extending the effective date of this zone until October 15, 2002.

Regulatory Evaluation

This rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not “significant” under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. Recreational vessels, passenger vessels, and

commercial fishing vessels do not frequent the Corpus Christi Inner Harbor. The Inner Harbor is an industrial area primarily used for bulk material transfers. Should a recreational vessel, passenger vessel, or commercial fishing vessel need to enter the Inner Harbor to conduct business with a small entity, there is no cost and little burden associated with obtaining permission from the Captain of the Port prior to entry.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities for the reasons enumerated under the Regulatory Evaluation above. If you are a small business entity and are significantly affected by this regulation please contact LTJG T.J. Hopkins, Chief Waterways Section, Coast Guard Captain of the Port Corpus Christi at (361) 888–3162.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effect

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That

Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2-1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. In temporary § 165.T08-016, revise paragraph (b) to read as follows:

§ 165.T08-016 Security Zone; Corpus Christi Inner Harbor, Corpus Christi, Texas.

* * * * *

(b) *Effective dates.* This section is effective from 8 a.m. on February 20, 2002 through 8 a.m. on October 15, 2002.

* * * * *

Dated: May 29, 2002.

M.E. Maes,

Commander, Coast Guard, Acting, Captain of the Port Corpus Christi.

[FR Doc. 02-14357 Filed 6-6-02; 8:45 am]

BILLING CODE 4910-15-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL-7222-3]

RIN 2060-AG91

National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: On June 29, 1999, we published the National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology (Generic MACT) Standards, which promulgated standards for four major hazardous air pollutants (HAP) source categories (*i.e.*, acetal resins (AR) production, acrylic and modacrylic fiber (AMF) production, hydrogen fluoride (HF) production, and polycarbonate (PC) production). In September 1999, a petition for review of the June 1999 Generic MACT rule was filed by the General Electric Company in the U.S. Court of Appeals for the District of Columbia Circuit. The petitioner raised a concern regarding a recordkeeping provision in the promulgated rule. Subsequently, the petitioner raised an additional issue concerning the promulgated definition for "process vent," and identified some editorial, cross-reference, and wording errors. Pursuant to a settlement agreement, EPA has agreed to revisions addressing each of these issues. EPA is effectuating this agreement through a direct final rule because we consider these revisions to be noncontroversial, and we anticipate no adverse comment.

DATES: This direct final rule will be effective on July 29, 2002 without further notice, unless significant adverse comments are received by July 8, 2002, or by July 22, 2002, if a public hearing is requested. See the proposed rule in this **Federal Register** for information on the hearing. If significant adverse comments are received, we will publish a timely withdrawal of this direct final rule in the **Federal Register** informing the public that this direct final rule will not take effect.

ADDRESSES: *Comments.* By U.S. Postal Service, submit written comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention: Docket No. A-97-17, U.S. EPA, 1200 Pennsylvania

Avenue, NW., Washington, DC 20460. In person or by courier, submit comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention: Docket No. A-97-17, Room M-1500, U.S. EPA, 401 M Street, SW., Washington, DC 20460. We request that a separate copy of each public comment also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Mr. David W. Markwordt, Policy, Planning, and Standards Group (MC439-04), Emission Standards Division, Research Triangle Park, NC 27711, telephone number: (919) 541-0837, electronic mail (e-mail): *markwordt.david@epa.gov*.

SUPPLEMENTARY INFORMATION:

Comments. We are publishing this action as a direct final rule because we view the amendments as noncontroversial and do not anticipate adverse comments. However, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal in the event that adverse comments are filed.

If we receive any significant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this direct final rule. Any parties interested in commenting must do so at this time.

Docket. The docket is an organized and complete file of the administrative record compiled by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (CAA).) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260-7548. A reasonable fee may be charged for copying docket materials. You may also obtain docket indexes by facsimile, as described on the Office of Air and Radiation, Docket and

Information Center Website at <http://www.epa.gov/airprog/oar/docket/faxlist.html>. Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this action will also be available through the WWW. Following signature, a copy of

the action will be posted on the EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules at <http://www.epa.gov/ttn/oarpg>. The TTN at EPA's web site provides information and technology exchange in various

areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541-5384.
Regulated Entities. The regulated categories and entities affected by this action include:

Category	NAICS*	Regulated entities
Industry	25199	Producers of homopolymers and/or copolymers of alternating oxymethylene units. Producers of either acrylic fiber or modacrylic fiber synthetics composed of acrylonitrile (AN) units. Producers of polycarbonate.
Industry	325188	Producers of, and recoverers of HF by reacting calcium fluoride with sulfuric acid. For the purpose of implementing the rule, HF production is not a process that produces gaseous HF for direct reaction with hydrated aluminum to form aluminum fluoride (i.e., the HF is not recovered as an intermediate or final product prior to reacting with the hydrated aluminum).

* North American Information Classification System

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the revisions to the regulation. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in 40 CFR § 63.1103 of the promulgated rule. If you have any questions regarding the applicability of these amendments to a particular entity, consult the appropriate EPA Regional Office representative. *Judicial Review.* Under section 307(b)(1) of the CAA, judicial review of this direct final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia by August 6, 2002. Under section 307(d)(7)(B) of the CAA, only an objection to this rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by this direct final rule may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

I. What Is the Background for the Proposed Amendments?

On June 29, 1999, we published the National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology (Generic MACT) Standards, 40 CFR Part 63, Subpart YY, which promulgated standards for four major hazardous air pollutants (HAP) source categories (i.e., acetal resins (AR) production, acrylic and modacrylic fiber (AMF) production, hydrogen fluoride (HF) production, and polycarbonate (PC) production). 64 FR 34921. On November 22, 1999, we

published some corrections to the final rule. 64 FR 63709.

In September 1999, the General Electric Company (GE) filed a petition for review of the June 1999 Generic MACT rule in the U.S. Court of Appeals for the District of Columbia Circuit. *General Electric Co. v. U.S. Environmental Protection Agency*, No. 99-1353 (D.C. Circuit). In its petition, GE raised an initial concern regarding the recordkeeping provision in 40 CFR 63.1109(c). Subsequently, GE also raised an issue concerning the promulgated definition for "process vent" in 40 CFR 63.1101, which EPA determined could only be properly resolved in conjunction with similar issues which were being considered with respect to some other MACT standards. GE also identified some other editorial, cross-reference, and wording errors which had not been corrected in the November 22, 1999 rulemaking.

GE and EPA subsequently entered into settlement discussions. In a settlement agreement which was lodged with the D.C. Circuit Court on March 13, 2002, EPA agreed to propose changes to the Generic MACT standards addressing each of the issues raised by GE. EPA also stated its intention to effectuate these changes through direct final rulemaking. EPA provided notice and an opportunity for comment on the proposed settlement agreement on March 22, 2002. 67 FR 13326.

II. What Are the Proposed Amendments?

1. Recordkeeping Requirements

In its petition for review, GE initially cited only one issue, which involves a change in the recordkeeping provisions in Section 63.1109(c) that we made between the proposed and final rules. As currently promulgated, that section

states that "all records required to be maintained by this subpart or a subpart referenced by this subpart shall be maintained in such a manner that they can be accessed within 2 hours and are suitable for inspection." At proposal, Section 63.1109(c) stated that "all records required to be maintained by this subpart or a subpart referenced by this subpart shall be maintained in such a manner that they can be readily accessed and are suitable for inspection." We added the 2-hour time constraint between proposal and promulgation, rather than allowing records to be "readily accessed," believing that we were introducing a reasonable time constraint that clarified what we meant by "readily accessed." Based on feedback from the petitioners, we agreed to remove this time constraint as it was demonstrated to us that the 2-hour time constraint is not reasonable in all cases. Therefore, today's action restores the language we originally proposed.

2. Process Vent Definition

On October 14, 1998, we proposed the following "process vent" definition (63 FR 55178):

Process vent means a gas stream that is continuously discharged during operation of the unit within a manufacturing process unit that meets the applicability criteria of this subpart. Process vents include gas streams that are either discharged directly to the atmosphere or after diversion through a product recovery device. Process vents exclude relief valve discharges and leaks from equipment regulated under this subpart.

We received comments on the proposed definition from two commenters. One commenter stated that a process vent is a piece of equipment but that our proposed definition defined a process vent as a continuous gas stream. The commenter requested that

the definition be modified to become a definition for a process vent stream.

Another commenter requested that the term "organic HAP" be used in the definition of process vent. This commenter also requested that storage vessels be expressly excluded from the definition, along with low organic HAP streams, and suggested an alternative definition. The alternative definition that the commenter provided follows:

Process vent means a gas stream containing greater than 0.005 weight percent organic HAP that is continuously discharged during operation of the unit within a manufacturing process unit that meets the applicability criteria of this subpart. Process vents include gas streams that are either discharged directly to the atmosphere or are discharged to the atmosphere after diversion through a product recovery device. Process vents exclude relief valve dischargers, emissions from storage tanks, and leaks from equipment regulated under this subpart.

After considering the comments, we revised the definition at promulgation to the following:

Process vent means a piece of equipment that processes a gas stream (both batch and continuous streams) during operation of the unit within a manufacturing process unit that meets the applicability criteria of this subpart. Process vents process gas streams that are either discharged directly to the atmosphere or are discharged to the atmosphere after diversion through a product recovery device. Process vents include vents from distillate receivers, product separators, and ejector-condensers. Process vents exclude relief valve discharges and leaks from equipment regulated under this subpart. Process vents that process gas streams containing less than or equal to 0.005 weight-percent organic HAP are not subject to the process vent requirements of this subpart.

During settlement discussions, GE raised certain concerns regarding the effect of the process vent definition as it was promulgated. At the time, EPA was also considering similar issues with respect to the national emission standards for organic hazardous air pollutants from the synthetic organic chemical manufacturing industry for process vent, storage vessels, transfer operation, and wastewater. EPA and GE ultimately agreed on a revised definition which addresses the concerns expressed by GE and is also consistent with the approach we adopted in the other rulemakings.

We agreed to propose changes to the definition of "process vent" as follows: (1) Amending the definition to specifically exclude gas streams subject to other requirements under the Generic MACT (40 CFR part 63, subpart YY) (e.g., gas streams from waste management units); (2) deleting the second sentence of the promulgated

definition for process vent, which does not add anything that the definition for "unit operation" does not already address; and (3) making some clarifying grammatical changes. After incorporating these revisions, the new definition will read as follows:

Process vent means the point of discharge to the atmosphere (or the point of entry into a control device, if any) of a gas stream from a unit operation within a source category subject to this subpart. Process vents exclude the following gas stream discharges:

- (1) Relief valve discharges;
- (2) Leaks from equipment subject to this subpart;
- (3) Gas streams exiting a control device complying with this subpart;
- (4) Gas streams transferred to other processes (on-site or off-site) for reaction or other use in another process (i.e., for chemical value as a product, isolated intermediate, byproduct, or co-product for heat value);
- (5) Gas streams transferred for fuel value (i.e., net positive heating value), use, reuse, or sale for fuel value, use, or reuse;
- (6) Gas streams from storage vessels or transfer racks subject to this subpart;
- (7) Gas streams from waste management units subject to this subpart;
- (8) Gas streams from wastewater streams subject to this subpart; and
- (9) Gas streams exiting process analyzers; and
- (10) Gas stream discharges that contain less than or equal to 0.005 weight-percent total organic HAP.

The revised "process vent" definition is consistent with our original intent, and we believe that the revision will not change the number of affected sources, the number of emission points subject to control, or the required level of control. The clearer definition also may preclude the need for certain applicability determinations, thereby reducing the burden on State and local agencies implementing the rule.

3. Cross-Reference, Editorial and Wording Amendments

GE also identified some editorial (e.g., typos, type set), cross-reference and wording errors in the final rule which were not corrected in the technical corrections we promulgated on November 22, 1999. We are amending the rule to correct these errors with today's action.

For example, as promulgated, § 63.1104(d)(3) incorrectly uses the word "produce." The correct and intended word is "product." For another example, Table 5 of § 63.1103(d), item 6, uses the mathematical symbol of "≤." The correct and intended mathematical symbol is "≥." Table 5 of § 63.1103(d), item 6, also contains a superscript error, where a letter should be superscript that

is not. Today's action corrects these typeset errors.

III. Why Are We Publishing These amendments as a Direct Final Rule?

EPA has decided that it is appropriate to effectuate the proposed changes to the Generic MACT standards through direct final rulemaking. We think that these amendments are consistent with our original intent, and we do not expect them to affect which sources are subject to the rule, or to alter the control requirements applicable to those sources. Because we view these amendments as noncontroversial, we do not anticipate any adverse comment. Moreover, because the compliance date for many facilities subject to the standards is July 1, 2002, we think the public interest will be served if these changes can be made effective prior to that compliance date.

IV. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether a regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that the amendments do not constitute a "significant regulatory action" because they do not meet any of the above criteria. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Paperwork Reduction Act

The information collection requirements for the Generic MACT

standards for acetal resins production, acrylic and modacrylic fiber production, hydrogen fluoride production, and polycarbonate production were submitted to and approved by the Office of Management and Budget. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1891.03) and a copy may be obtained from Susan Auby by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by email at auby.susan@epa.gov, or by calling (202) 566-1672. By U.S. Postal Service, send comments on the ICR to the Director, Collection Strategies Division, U.S. EPA (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or by courier, send comments on the ICR to the Director, Collection Strategies Division, U.S. EPA (2822T), 1301 Constitution Avenue, NW., Room 6143, Washington, DC 20460 (202) 566-1700; a copy may also be downloaded at <http://www.epa.gov/icr>. This approval expires September 30, 2002.

Today's direct final rule amendments have no impact on the information collection burden estimates made previously. Consequently, the ICR has not been revised.

C. Executive Order 13132, Federalism

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

The direct final rule amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's action corrects errors and clarifies the applicability of the rule. There are minimal, if any, impacts associated with this action. Thus, Executive Order 13132 does not apply to the direct final rule amendments.

D. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications."

The direct final rule amendments do not have tribal implications, as specified in Executive Order 13175. No tribal governments own or operate facilities affected by the Generic MACT. Thus, Executive Order 13175 does not apply to the direct final rule amendments.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and

informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the direct final rule amendments contain no Federal mandates that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Thus, the amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that the amendments contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, the direct final rule amendments are not subject to the requirements of section 203 of the UMRA.

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

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

For purposes of assessing the impacts of today's direct final rule amendments on small entities, a small entity is defined as: (1) A small business whose parent company has fewer than 1000 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

We believe there will be little or no impact on any small entities because the direct final rule amendments do not impose additional requirements but instead either eliminate cross-referencing, editorial, and wording errors or clarify the applicability of existing requirements of the MACT standards established for acetal resins production, acrylic and modacrylic fiber production, hydrogen fluoride production, and polycarbonate production. We have, therefore, concluded that today's direct final rule amendments will not have a significant

economic impact on a substantial number of small entities.

G. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), (Pub. L. 104-113) (March 7, 1996) (15 U.S.C. 272 note), directs all Federal agencies to use voluntary consensus standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. The NTTAA requires Federal agencies like EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The direct final rule amendments do not establish or modify technical standards in the existing rule and do not require sources to take substantive steps that are appropriate to the use of voluntary consensus standards.

H. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The direct final rule amendments are not subject to Executive Order 13045 because they are not an economically significant regulatory action as defined by Executive Order 12866. In addition, the EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks. The direct final rule amendments are not subject to Executive Order 13045 because they are based on technology performance and not on health or safety risks.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the

Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the direct rule amendments and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

J. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

The direct final rule amendments are not subject to Executive Order 13211, "Actions Concerning Regulation That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous air pollutants, Hazardous substances, Reporting and recordkeeping requirements.

Dated: May 23, 2002.

Christine Todd Whitman,
Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

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

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

Subpart YY—National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards

2. Section 63.1101 is amended by revising the definitions for "combined vent stream", "process unit" and "process vent" to read as follows:

§ 63.1101 Definitions.

* * * * *

Combined vent stream means a process vent that is comprised of at least one gas stream from a batch unit

operation manifolded with at least one gas stream from a continuous unit operation.

* * * * *

Process unit means the equipment assembled and connected by pipes or ducts to process raw and/or intermediate materials and to manufacture an intended product. A process unit includes more than one unit operation.

* * * * *

Process vent means the point of discharge to the atmosphere (or the point of entry into a control device, if any) of a gas stream from a unit operation within a source category subject to this subpart.

Process vent excludes the following gas stream discharges:

- (1) Relief valve discharges;
- (2) Leaks from equipment subject to this subpart;
- (3) Gas streams exiting a control device complying with this subpart;
- (4) Gas streams transferred to other processes (on-site or off-site) for reaction or other use in another process (i.e., for chemical value as a product, isolated intermediate, byproduct, or co-product for heat value);
- (5) Gas streams transferred for fuel value (i.e., net positive heating value), use, reuse, or sale for fuel value, use, or reuse;
- (6) Gas streams from storage vessels or transfer racks subject to this subpart;
- (7) Gas streams from waste management units subject to this subpart;
- (8) Gas streams from wastewater streams subject to this subpart;
- (9) Gas streams exiting process analyzers; and
- (10) Gas stream discharges that contain less than or equal to 0.005 weight-percent total organic HAP.

* * * * *

3. In § 63.1103, paragraph (d)(3) is amended by:

- a. Revising entry "6" of Table 5 to Sec. 63.1103(d);
- b. Revising entries "4" and "5" of Table 6 to Sec. 63.1103(d); and
- c. Revising footnote "b" of Table 6 to Sec. 63.1103(d).

The revisions read as follows:

§ 63.1103 Source category-specific applicability, definitions, and requirements.

* * * * *

- (d) * * *
- (3) * * *

TABLE 5 TO § 63.1103(D).—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE A POLYCARBONATE PRODUCTION EXISTING AFFECTED SOURCE?

If you own or operate * * *	And if * * *	Then you must * * *
* * *	* * *	* * *
6. Equipment as defined under § 63.1101	The equipment contains or contacts ≥ 5 weight-percent total organic HAP ^e , and operates ≥ 300 hours per year.	Comply with the requirements of subpart TT (national emission standards for equipment leaks (control level 1)) or subpart UU (national emission standards for equipment leaks (control level 2)) of this part.
* * *	* * *	* * *

TABLE 6 TO § 63.1103(D).—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE A POLYCARBONATE PRODUCTION NEW AFFECTED SOURCE?

If you own or operate * * *	And if * * *	Then you must * * *
* * *	* * *	* * *
4. A process vent from continuous unit operations or a combined vent stream ^a .	The vent stream has a TRE ^{b,c} ≤ 9.6	<p>a. Reduce emissions of total organic HAP by 98 weight-percent; or reduce total organic HAP to a concentration of 20 parts per million by volume; whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices meeting the requirements of subpart SS, as specified in § 63.982(a)(2) (process vent requirements) of this part; and Vent emissions through a closed vent system to a halogen reduction device meeting the requirements of subpart SS, § 63.994, of this part that reduces hydrogen halides and halogens by 99 weight-percent or to less than 0.45 kilograms per hour^d, whichever is less stringent; or</p> <p>b. Reduce the process vent halogen atom mass emission rate to less than 0.45 kilograms per hour by venting emissions through a closed vent system to a halogen reduction device meeting the requirements of subpart SS, § 63.994 (halogen reduction device requirements) of this part; and Reduce emissions of total organic HAP or TOC to a concentration of 20 parts per million by volume; whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices meeting the requirements of subpart SS, as specified in § 63.982(a)(2) (process vent requirements) of this part; or</p> <p>c. Achieve and maintain a TRE index value greater than 9.6.</p>
5. Equipment as defined under § 63.1101	The equipment contains or contacts ≥ 5 weight-percent total organic HPA ^e , and operates ≥ 300 hours per year.	Comply with the requirements of subpart TT (national emission standards for equipment leaks (control level 1)) or subpart UU (national emission standards for equipment leaks (control level 2)) of this part.
* * *	* * *	* * *

^b The TRE equation coefficients for halogenated streams (Table 1 of § 63.1104(j)(1) of this subpart) shall be used to calculate the TRE index value.

^c The TRE is determined according to the procedures specified in § 63.1104(j). If a dryer is manifolded with such vents, and the vent is routed to a recovery, recapture, or combustion device, then the TRE index value for the vent must be calculated based on the properties of the vent stream (including the contribution of the dryer). If a dryer is manifolded with other vents and not routed to a recovery, recapture, or combustion device, then the TRE index value must be calculated excluding the contributions of the dryer. The TRE index value for the dryer must be calculated separately in this case.

^d The mass emission rate of halogen atoms contained in organic compounds is determined according to the procedures specified in § 63.1104(i).

* * * * *

- 4. Section 63.1104 is amended by:
 - a. Revising the first sentence of paragraph (c);
 - b. Revising paragraph (d)(3);
 - c. Revising the definition of the term for D_j in paragraph (g)(1); and
 - d. Revising Table 1 in paragraph (j)(1).
- The revisions read as follows:

§ 63.1104 Process vents from continuous unit operations: applicability assessment procedures and methods.

(c) Applicability assessment requirement. The TOC or organic HAP concentrations, process vent volumetric flow rates, process vent heating values,

process vent TOC or organic HAP emission rates, halogenated process vent determinations, process vent TRE index values, and engineering assessments for process vent control applicability assessment requirements are to be determined during maximum representative operating conditions for the process, except as provided in paragraph (d) of this section, or unless the Administrator specifies or approves alternate operating conditions. * * *

(d) * * *
 (3) Necessitating that the owner or operator make product in excess of demand.

- (g) * * *
- (1) * * *

D_j =Concentration on a wet basis of compound j in parts per million, as measured by procedures indicated in paragraph (e)(2) of this section. For process vents that pass through a final steam jet and are not condensed, the moisture is assumed to be 2.3 percent by volume.

- * * * * *
- (j) * * *
- (1) * * *

TABLE 1 OF § 63.1104(J)(1).—COEFFICIENTS FOR TOTAL RESOURCE EFFECTIVENESS^a

Existing or new?	Halogenated vent stream?	Control device basis	Values of coefficients			
			A	B	C	D
Existing	Yes	Thermal Incinerator and Scrubber.	3.995	5.200×10^{-2}	-1.769×10^{-3}	9.700×10^{-4}
	No	Flare	1.935	3.660×10^{-1}	-7.687×10^{-3}	-7.333×10^{-4}
		Thermal Incinerator 0 Percent Recovery.	1.492	6.267×10^{-2}	3.177×10^{-2}	-1.159×10^{-3}
		Thermal Incinerator 70 Percent Recovery.	2.519	1.183×10^{-2}	1.300×10^{-2}	4.790×10^{-2}
New	Yes	Thermal Incinerator and Scrubber.	1.0895	1.417×10^{-2}	-4.822×10^{-4}	2.645×10^{-4}
	No	Flare	5.276×10^{-1}	9.98×10^{-2}	-2.096×10^{-3}	2.000×10^{-4}
		Thermal Incinerator 0 Percent Recovery.	4.068×10^{-1}	1.71×10^{-2}	8.664×10^{-3}	-3.162×10^{-4}
Thermal Incinerator 70 Percent Recovery.		6.868×10^{-1}	3.209×10^{-3}	3.546×10^{-3}	1.306×10^{-2}	

^a Use according to procedures outlined in this section.
 MJ/scm = Mega Joules per standard cubic meter.
 scm/min = Standard cubic meters per minute.

- * * * * *
- 5. Section 63.1109 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 63.1109 Recordkeeping requirements.

(c) *Availability of records.* All records required to be maintained by this subpart or a subpart referenced by this subpart shall be maintained in such a manner that they can be readily accessed and are suitable for inspection. * * *

* * * * *

[FR Doc. 02-13800 Filed 6-6-02; 8:45 am]
 BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 25

[ET Docket No. 97-214; FCC 02-131]

Allocation of 45-456 MHz and 459-460 MHz Bands to the Mobile Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; termination of proceeding.

SUMMARY: This document terminates this proceeding and retain the existing fixed and mobile allocations. The Commission concludes that it should not move forward with these proposals prior to the 2003 World Radiocommunication Conference ("WRC-2003").

FOR FURTHER INFORMATION CONTACT: Jamison Prime, Office of Engineering and Technology, (202) 418-7474, TTY (202) 418-2989, e-mail: jprime@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, ET Docket 97-214, FCC 02-131, adopted April 29, 2002, and released May 13, 2002. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW, Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room, CY-B402, Washington, DC 20554. The full text may also be downloaded at: www.fcc.gov. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365.

Summary of Order

1. On October 14, 1997, the Commission released a *Notice of Proposed Rule Making (NPRM)*, 62 FR 58932, October 31, 1997, in response to a Region 2 MSS allocation that was established at the 1995 World

Radiocommunication Conference ("WRC-95"). The NPRM proposed allocation of the 455-456 MHz and 459-460 MHz bands on a co-primary basis to non-voice, non-geostationary MSS Earth-to-space operations (also referred to as Little LEO services), consistent with the Region 2 MSS allocation. Under the proposal, Little LEO mobile earth station ("MES") terminals would be able to use the spectrum for Earth-to-space ("uplink") transmissions, including service and feeder links. The Commission proposed that Little LEO operations in these bands protect incumbent stations in the fixed and mobile services that already occupy the spectrum. This proposed allocation would supplement the 4.05 megahertz of spectrum previously allocated for Little LEO services.

2. We find that with the passage of time, the NPRM and record in this proceeding has become outdated. In particular, we find that the proposals and comments therein do not adequately reflect recent developments that may have altered the needs and plans of the Little LEO community and the current views and needs of incumbents in the bands.

3. Specifically, in the recent government transfer band spectrum reallocation proceeding, we allocated the 1390-1392 MHz band to the fixed-satellite service for Little LEO feeder uplinks and the 1430-1432 MHz band for Little LEO feeder downlinks on a co-primary basis. The allocation is contingent on completion of ongoing studies and adoption of an international allocation for this spectrum. Without this allocation, feeder links would continue to have to share the same bands as service links. The new feeder link spectrum would allow Little LEO operators to more efficiently use existing service link spectrum to provide service to customers. The upcoming WRC-2003 is expected to consider whether additional service and feeder link spectrum should be allocated for the Little LEO service. The United States, in its preliminary view, supports such an allocation.

4. Any consideration at this time of the spectrum needs of Little LEOs must take into account the WRC-2003 preparations, any changes in the Little LEO industry, and current industry needs in light of our decision in the government transfer band spectrum reallocation proceeding. The record in this docket does not encompass these factors. Accordingly, we conclude that it would be premature for us to take any action with respect to Little LEO allocations in advance of WRC-2003. After WRC-03, we will evaluate any

new allocations for this service that may arise. Considering Little LEO service and feeder link spectrum requirements at that time would allow us to make spectrum management decisions in a manner that best accommodates Little LEO spectrum needs, as well as the needs of incumbent operations.

5. We note that in previous cases where the record has been overtaken by events, the Commission has concluded that the public interest is best served by the termination of the proceeding. The present circumstances of this proceeding are of the same character, and we terminate it without prejudice to the substantive merits. We note that in other circumstances, the Commission has sometimes sought to refresh a stale record. We decline to do so here because we believe that any Little LEO allocation issues that remain after the *Government Transfer Bands*, R&O, 67 FR 6172, February 11, 2002, should be addressed in this proceeding would not accomplish this objective. We make no decision with respect to the underlying allocation proposals contained in the *NPRM*. To the extent that these issues are still relevant notwithstanding the passage of time, nothing precludes us from independently evaluating them in the context of a separate proceeding. Petitioners are free to file an updated petition for rulemaking if they consider the relief the requested to remain relevant to their needs. See, e.g., *Petition to Authorize Co-Primary Sharing of the 450 MHz Air-to-Ground Radiotelephone Service with BETRS*, MO&O at paragraph 4, DA 00-72, *Memorandum Opinion and Order*, 15 FCC Rcd 1859 (2000).

6. Pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C 154(i) and (j), and § 1.425 of the Commission's rules, 47 CFR 1.425, the proceeding in ET Docket No. 97-214 is *terminated*.

Federal Communications Commission .

Marlene H. Dortch,

Secretary.

[FR Doc. 02-14272 Filed 6-6-02; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[CC Docket 92-297; FCC 01-172]

Rules To Redesignate the 27.5-29.5 GHz Frequency Band, To Reallocate the 29.5-30.0 GHz Frequency Band, To Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission (FCC) has adopted an order disposing of petitions for clarification or reconsideration of rules for the licensing and operation of communication satellite systems using the Ka Band for transmission between space stations and earth stations. We tentatively agree, however, that greater specificity in the service-coverage rule for Ka-Band systems may be desirable, and we intend to review this subject in the forthcoming rulemaking concerning the second-round Ka-Band applications.

DATES: Effective June 7, 2002.

FOR FURTHER INFORMATION CONTACT:

William Bell at (202) 418-0741; internet: wbell@fcc.gov, International Bureau, Federal Communications Commission, Washington, DC 20554.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order (MO&O) in CC Docket No. 92-297; FCC 00-172, adopted May 22, 2001 and released on May 24, 2001. The complete text of this MO&O is available for inspection and copying during normal business hours in the FCC Reference Center (Room), 445 12th Street, SW., Room, CY-A257, Washington, DC 20554, and also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room, CY-B402, Washington, DC 20554, telephone (202) 863-2893m facsimile (202) 863-2893 or via email qualexint@aol.com. It is also available on the Commission's website at <http://www.fcc.gov>.

Summary of Memorandum Opinion and Order

Coverage Requirements

The FCC established service rules for Fixed Satellite Service ("FSS") systems transmitting in the Ka-Band in the *Third Report and Order* in Docket No. 92-297, 62 FR 61448, November 18, 1997. Motorola Global Communications, Inc. filed a petition asking the FCC to revise

a rule adopted in the *Third Report and Order* that prescribes coverage requirements for non-geostationary-orbit (“NGSO”) systems. The rule provision in question, 47 CFR 25.145(c), states that an applicant for an NGSO FSS Ka-Band authorization must demonstrate that the proposed system could provide continuous service throughout the United States, Puerto Rico, and the U.S. Virgin Islands and must also show that the system could provide service for at least 18 hours in any 24-hour period anywhere outside the United States between 70 degrees North latitude and 55 degrees South latitude. Motorola asked the FCC to insert provisions defining required service coverage in terms of a five-degree minimum above-horizon elevation angle for the earth-station-to-satellite sight-line. Motorola contended that by establishing a measurable performance threshold the proposed amendment would make it possible for the coverage requirement to be consistently applied. The FCC pointed out, however, that propagation in the Ka Band is highly susceptible to rain attenuation and that the duration and intensity of rain fade affecting a satellite link are inverse functions of the time-averaged elevation angle formed by the sight-line from the earth station to the satellite; the lower the angle, the greater the rain-fade effect. The FCC said that defining “service” in terms of a five-degree minimum elevation angle would have a bearing on quality of service everywhere within the defined coverage area, including locations where rainfall is generally plentiful. As there was no evidence of record that broadband NGSO FSS Ka-Band service could be reliably provided at elevation angles as low as five degrees in areas where rainfall is plentiful, the FCC declined to adopt the proposed rule amendment.

Construction Milestones

A number of the license applicants involved in the first Ka-Band FSS processing round, including Hughes Communications Galaxy, Inc., proposed to use inter-satellite links (“ISLs”) to interconnect the satellites in their networks. Because of unresolved interference and allocation issues, the FCC’s International Bureau withheld authority for ISLs when it granted initial system authorizations to those applicants, and the Commission said in the *Third Report and Order* that it would refrain from imposing construction-progress “milestone” deadlines for those licensees until the issues concerning ISL authorization were resolved. Hughes pointed out that the milestone rule did not fully reflect

that policy determination, as it said that GSO FSS licensees would be required to commence construction within one year of receiving a license and launch at least one satellite within five years of that date. The FCC agreed with Hughes and accordingly revised the text of the milestone rule to conform more clearly to the intent expressed in the *Third Report and Order* in this regard.

Additional Spectrum Assignments for Links With Earth Stations Outside the United States

In addition to requesting authority for Ka-Band satellite links with earth stations within the United States, Hughes requested authority to operate in wider frequency bands to link with earth stations in foreign countries. The Bureau did not assign spectrum to Hughes specifically for links with foreign-based earth stations but indicated in the initial license order that the Commission would undertake coordination on Hughes’ behalf with respect to such non-domestic operation in consultation with foreign administrations and noted that the Commission intended to address issues concerning international coordination of Ka-Band FSS systems in a future rulemaking order. In its petition for reconsideration, Hughes pointed out that although the *Third Report and Order* established policies for coordinating international operation of FCC-licensed Ka-Band satellite systems, the Commission had yet to grant explicit authority for Hughes to use spectrum for service links with earth stations in foreign countries. Hughes asked for issuance of a clarifying statement that it could use the frequency bands 17.7–18.8 GHz, 19.7–20.2 GHz, 27.5–28.6 GHz, and 29.25–30.0 GHz for that purpose. In supporting comments, GE American Communications, Inc. agreed that the Commission should clarify the rights of GSO FSS licensees to operate internationally. The FCC accordingly directed its International Bureau to issue an order modifying Hughes’ space-station license to add authority for such operation, subject to appropriate conditions. The FCC said, however, that before undertaking international coordination of proposed use of the 17.7–18.3 GHz band for FSS downlink transmission to earth stations in foreign countries it would require any licensee requesting such coordination to show that it has coordinated such proposed operation with other FCC licensees with authority for global operation in that frequency band.

Deviations From Band Plan Necessitated by Prior Coordination Agreements

Hughes also requested clarification of the FCC’s policy regarding international coordination of FCC-licensed Ka-Band satellite systems. The FCC said in the *Third Report and Order* that it would adhere to its domestic allocation plan when coordinating international operations of FCC-licensed Ka-Band FSS systems, except insofar as the plan was incompatible with coordination agreements that had been negotiated with other administrations before the plan was adopted. Hughes maintained that it could not “finalize” its system design and proceed with satellite construction without knowing how, and to what extent, such prior international agreements necessitate departure from the domestic allocation plan. As the *Third Report and Order* did not disclose such information, Hughes asked the FCC to “specify in detail the extent to which GSO [Ka-Band] licensees will have to modify their international operations * * * to comply with deviations from the * * * [domestic] band plan [due to] preexisting * * * coordination agreements.” In response to this request, the FCC pointed out that the information Hughes sought was already a matter of public record.

Anti-trafficking Rule

On its own motion, the FCC amended the anti-trafficking rule for Ka-Band satellite systems, 47 CFR 25.145(d), to correct a cross-reference that appeared to limit the applicability of the rule to licenses for NGSO systems, contrary to the Commission’s plainly-stated intention in the *Third Report and Order* to prohibit “any Ka-band licensee from selling a bare license for a profit.”

Ordering Clauses

It Is Further Ordered that § 25.145 of the Commission’s rules is amended as specified in the rule changes, effective June 7, 2002. This action is taken pursuant to 47 U.S.C. 154(i) and 303(r).

It is further Ordered that the “Petition for Clarification and/or Reconsideration” filed on December 18, 1997 by Teledesic Corporation shall be temporarily held in abeyance, as provided herein.

List of Subjects in 47 CFR Part 25

Satellites.

Federal Communications Commission.
Marlene H. Dortch,
Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 25 as follows:

PART 25—SATELLITE COMMUNICATIONS

1. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303; 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

2. Section 25.145 is amended by revising paragraphs (d)(1), (d)(2) and (f) to read as follows:

§ 25.145 Licensing conditions for the Fixed-Satellite Service in the 20/30GHz Bands.

* * * * *

(d) * * *

(1) “Trafficking” in bare licenses is prohibited, except with respect to licenses obtained through a competitive bidding procedure.

(2) The Commission will review a proposed transaction to determine if the circumstances indicate trafficking in licenses whenever applications (except those involving *pro forma* assignment or transfer of control) for consent to assignment of a license, or for transfer of control of a licensee, involve facilities licensed for the Fixed-Satellite Service in the 20/30 GHz bands.

* * * * *

(f) *Implementation milestone schedule.* Unless otherwise specified in the license, each GSO FSS licensee in the 20/30 GHz band will be required to begin construction of its first satellite within one year of grant of all space station frequency assignments, to begin

construction of the remainder within two years of such authorization, to launch at least one satellite into each of its assigned orbit locations within five years of such authorization, and to launch the remainder of its satellites by the date required by the International Telecommunication Union to assure international recognition and protection of those satellites. Unless otherwise specified in the license, each NGSO FSS licensee in the 20/30 GHz band will be required to begin construction of its first two satellites within one year of the grant of all space station frequency assignments and complete construction of those first two satellites within four years of such authorization.

Construction of the remaining authorized operating satellites in the constellation must begin within three years of such authorization, and the entire authorized system must be operational within six years.

* * * * *

[FR Doc. 02–14271 Filed 6–6–02; 8:45 am]

BILLING CODE 6712-01-P

Proposed Rules

Federal Register

Vol. 67, No. 110

Friday, June 7, 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.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice of intent to waive the Nonmanufacturer Rule for small arms ammunition manufacturing.

SUMMARY: The Small Business Administration (SBA) is considering granting a waiver of the Nonmanufacturer Rule for small arms ammunition manufacturing. The basis for waivers is that no small business manufacturers are supplying these classes of products to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program. The purpose of this notice of intent is to solicit comments and potential source information from interested parties.

DATES: Comments and sources must be submitted on or before June 19, 2002.

ADDRESSES: Address comments to Edith Butler, Program Analyst, U.S. Small Business Administration, 409 3rd Street, SW, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Edith Butler, Program Analyst, (202) 619-0422, FAX (202) 205-7280.

SUPPLEMENTARY INFORMATION: Public Law 100-656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small businesses or SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 303(h) of the law provides for waiver of

this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors in the Federal market.

To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines "class of products" based on six digit coding systems.

The first coding system is the Office of Management and Budget *North American Industry Classification System (NAICS)*. The second is the Product and Service Code established by the Federal Procurement Data System.

The Small Business Administration is currently processing a request to waive the Nonmanufacturer Rule for Small Arms Ammunition Manufacturing, North American Industry Classification System (NAICS) 332992. The public is invited to comment or provide source information to SBA on the proposed waiver of the nonmanufacturer rule for this NAICS code.

Luz A. Hopewell,

Associate Administrator for Government Contracting.

[FR Doc. 02-14246 Filed 6-6-02; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000-NE-58-AD]

RIN 2120-AA64

Airworthiness Directives; Britax Sell Gmbh & Co. OHG Water Boilers, Coffee Makers, and Beverage Makers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to supersede an existing airworthiness directive (AD), applicable to Britax Sell Gmbh & Co. OHG water boilers, coffee makers, and beverage makers. That AD

currently requires inspecting the wiring for indications of overheating or electrical arcing, and if indications are found, replacing the wiring. This proposal would require replacing the wiring on those water boilers, coffee makers, and beverage makers whether or not they show indications of overheating or electrical arcing. This proposal is prompted by revisions to the manufacturer's service bulletins. The actions specified by the proposed AD are intended to prevent a fire in the galley compartment due to inadequate crimping of the electrical terminal contact pins, which could result in smoke in the cockpit and cabin and loss of control of the airplane.

DATES: Comments must be received by August 6, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000-NE-58-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The service information referenced in the proposed rule may be obtained from Britax Sell GmbH & Co. OHG, MPL Mr. H.D. Poggensee, P.O. Box 1161, 35721 Herborn Germany, telephone international code 49-2772-707-0; fax international code 49-2772-707-141. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7155; fax (781) 238-7170.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket

number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000-NE-58-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000-NE-58-AD, 12 New England Executive Park, Burlington, MA 01803-5299.

Discussion

On May 17, 2001, the FAA issued AD 2001-10-13, Amendment 39-12239 (66 FR 29467, May 31, 2001), to require an inspection for discoloration or melting of the wires, and if discolored or melted, the replacement of wires on the temperature limiters installed on certain water boilers, coffee makers, and beverage makers with part numbers (P/N's) that are listed in this AD.

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on Britax Sell Gmbh & Co. OHG water boilers, coffee makers, and beverage makers. The LBA informed the FAA that there have been 10 reports of discolored wires and two reports of partially melted wires. The crimping of the presently installed Faston Terminals P/N 3-520133-2 with blue nylon insulation may be insufficient for carrying the full electrical current flowing through that terminal. The insufficient crimping could cause an increased contact resistance in the terminal. The increased contact resistance could result in an

increased terminal temperature, discoloration of the insulation, and a melting of the terminal insulation.

Since AD 2001-10-13 was issued, Britax Sell Gmbh & Co. OHG has issued revised service bulletins (SB's) that require replacing all affected wire harnesses, change the serial number effectivities, the modification kit P/N's, and a tank assembly P/N callout.

Manufacturer's Service Information

Britax Sell Gmbh & Co. OHG has issued SB's No E33-4-011SB, Revision 2, dated January 31, 2001; E33-4-012SB, Revision 1, dated November 20, 2000; and E33-4-015SB, Revision 1, dated November 15, 2000, that specify procedures for replacing the wiring on certain P/N water boilers, coffee makers, and beverage makers. The LBA classified these SB's as mandatory and issued AD 2000-379, dated November 13, 2000, in order to assure the airworthiness of these Britax Sell Gmbh & Co. OHG water boilers, coffee makers, and beverage makers in the Federal Republic of Germany.

Bilateral Agreement Information

These appliances are manufactured in the Federal Republic of Germany, and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Proposed Requirements of This AD

Since an unsafe condition has been identified that is likely to exist or develop on other Britax Sell Gmbh & Co. OHG water boilers, coffee makers, and beverage makers of the same type design that are used on airplanes registered in the United States, the proposed AD would require replacing the wiring on certain P/N water boilers, coffee makers, and beverage makers during the next repair, maintenance, or descaling of the product, during the next airplane check that allows for replacing the wiring, or within one calendar year after the effective date of the proposed AD, whichever occurs earlier. The actions would be required to be done in accordance with the service bulletins described previously.

Economic Analysis

The FAA estimates that 175 products installed on airplanes of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 10 work hours per product to do the proposed replacement, and that the average labor rate is \$60 per work hour. Required parts would cost approximately \$20 per product. Based on these figures, the total cost of the proposed AD to U.S. operators is estimated to be \$21,700.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-12239 (66 FR

29467, May 31, 2001), and by adding a new airworthiness directive:

Britax Sell Gmbh & Co. OHG: Docket No. 2000-NE-58-AD. Supersedes AD 2001-10-13, Amendment 39-12239.

Applicability

This airworthiness directive (AD) is applicable to Britax Sell Gmbh & Co. OHG water boilers, coffee makers, and beverage makers, listed by part number (P/N) and serial number (SN) in Table 1 of this AD. These products are installed on, but not limited to, Airbus Industrie A319, A320, A330, AVRO RJ, Bombardier DHC-8-400, and Boeing Company 717, 737, 747, 757, 767, 777 airplanes.

Note 1: This AD applies to each product 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 products 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 (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent a fire in the galley compartment due to inadequate crimping of the electrical terminal contact pins, which could result in smoke in the cockpit and cabin and loss of control of the airplane, do the following:

(a) Replace wiring on temperature limiters of remote water boilers, coffee makers, water boilers, and beverage makers that are listed by P/N in Table 1 of this AD during the next repair, maintenance, or descaling of the product, during the next airplane check that allows for replacing the wiring, or within one calendar year after the effective date of this AD, whichever occurs earlier, in accordance with the applicable service bulletin (SB) specified for the appliance in Table 1 as follows:

TABLE 1.—APPLIANCE P/N AND APPLICABLE SB FOR WIRE REPLACEMENT

Appliance	Appliance P/N	SN	Tank assembly P/N	Replace wiring in accordance with SB
(1) Remote Water Boiler ...	62204-001-00-029, 62204-001-031, 62204-001-037, 62204-001-043, 62204-001-047, and 62204-001-049.	00-04-001 thru 00-07-0033 and 00-07-0038.	62203-001-005 and 62203-001-007.	E33-4-007SB, Revision 2, dated December 4, 2000, Accomplishment Instructions 3.A. through 3.O.
(2) Coffee Maker	(i) 64755	00-05-0001 and 00-09-0003.	64761-025-001	E33-4-009SB, dated October 24, 2000, Accomplish Instructions 3.A. through 3.J.
	(ii) 64753-001-003	00-01-0001 thru 00-09-0079, 00-09-0100, and 00-09-0101.	64761-025-001	E33-4-011SB, Revision 2, dated January 31, 2001, Accomplish Instructions 3.A. through 3.J.
	(iii) 64753-201-003	00-05-0001, 00-05-0002, 00-07-0003, and 00-07-0004.	64761-025-001	E33-4-012SB, Revision 1, dated November 20, 2000, Accomplish Instructions 3.A. through 3.J.
	(iv) 64769-001-005 and 64769-001-007.	00-04-0001 thru 00-09-0033.	64769-025-003	E33-4-013SB, dated October 23, 2000, Accomplish Instructions 3.A. through 3.Q.
	(v) 64790-1	00-08-0001 thru 00-08-0003.	64790-393-101	E33-4-015SB, Revision 1, dated November 15, 2000, Accomplish Instructions 3.A. through 3.L.
(3) Water Boiler	62197-001-001	00-04-0001 thru 00-05-0023, 00-08-0026, thru 00-09-0052 and 00-09-0055.	62197-015-001	E33-4-010SB, dated October 20, 2000, Accomplish Instructions 3.A. through 3.S.
(4) Beverage Maker	(i) 64771-001-001	00-04-0013 thru 00-04-0039, 00-04-0043 thru 00-08-0302, 00-08-0307 thru 00-08-0346, and 00-09-0368 thru 00-09-0371.	64771-025-005	E33-4-014SB, Revision 1, dated November 6, 2000, Accomplishment Instructions 3.A. through 3.J.

TABLE 1.—APPLIANCE P/N AND APPLICABLE SB FOR WIRE REPLACEMENT—Continued

Appliance	Appliance P/N	SN	Tank assembly P/N	Replace wiring in accordance with SB
	(ii) 64771-001-003	00-02-0001 thru 00-03-0005, 00-04-0007 thru 00-04-0012, 00-04-0042 thru 00-04-0042, 00-04-0053 thru 00-04-0057, 00-05-0087 thru 00-05-0094, 00-07-0135 thru 00-07-0138, 00-08-0303 thru 00-08-306, 00-08-0347 thru 00-08-0354, and 00-09-0365 thru 00-09-0367.	64771-025-001	E33-4-016SB, Revision 1, dated November 6, 2000, Accomplishment Instructions 3.A. through 3.J.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office (ACO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Boston ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be done.

Note 3: The subject of this AD is addressed in LBA airworthiness directive 2000-379, dated November 13, 2000.

Issued in Burlington, Massachusetts, on May 30, 2002.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02-14252 Filed 6-6-02; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001-SW-66-AD]

RIN 2120-AA64

Airworthiness Directives; Eurocopter France Model SA330F, SA330G, SA330J, AS332C, AS332L, and AS332L1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for the specified Eurocopter France (ECF) helicopters. This proposal would require inspecting each tail rotor blade de-icing rotating collector (collector) for radial play and rotation torque at specified intervals. If the play or torque exceeds the specified standard, this proposal would require replacing the collector with an airworthy part. This proposal is prompted by excessive play measured on the collector of an ECF Model AS332 helicopter. The actions specified by this proposed AD are intended to prevent wear of a collector bearing, loss of tail rotor effectiveness, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before August 6, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001-SW-66-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193-0110, telephone (817) 222-5490, fax (817) 222-5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the

proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2001-SW-66-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001-SW-66-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on ECF Model SA330 helicopters. The

DGAC advises of excessive play measured on the collector.

ECF has issued AS 332 Service Bulletin Nos. 05.00.45, Revision 1, dated August 16, 1999, and SA 330 Alert Service Bulletin 05.88, dated June 8, 2001. The service bulletins specify checking the condition of the bearings and the collector-to-rotor attachment shaft at regular intervals, measuring the radial play, measuring the rotation torque of the collector, and state the acceptable radial and rotational tolerances. The DGAC classified the service bulletins as mandatory and issued AD No. 2001-317-082(A), dated July 25, 2001, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

This unsafe condition is likely to exist or develop on other helicopter models of these same type designs registered in the United States. Therefore, the proposed AD would require inspecting the radial play and the rotational torque on the collector initially at 100 hours time-in-service (TIS) or 6 months, whichever occurs first, and repetitively at 110 hours TIS or 6 months, whichever occurs first. If the radial play or the rotational torque exceeds 0.1 millimeter or 3.5 daN, respectively, the proposed AD would also require replacing the collector with an airworthy part. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 3 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per helicopter to inspect and replace the collector, and that the average labor rate is \$60 per work hour. Required parts would cost approximately \$300. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$1260 to replace the collectors on the entire fleet.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and

the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 2001-SW-66-AD.

Applicability: Model SA330F, SA330G, SA330J, AS332C, AS332L, and AS332L1 helicopters with a tail rotor blade de-icing rotating collector (collector), part number (P/N) APCL 110-265-201, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters 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 (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not

been eliminated, the request should include specific proposed actions to address it.

Compliance: Within 100 hours time-in-service (TIS) or 6 months, whichever occurs first, unless accomplished previously, and then at intervals not to exceed 110 hours TIS or 6 months, whichever occurs first.

To prevent wear of a collector bearing, loss of tail rotor effectiveness, and subsequent loss of control of the helicopter, accomplish the following:

(a) Inspect the radial play and the rotation torque of the collector in accordance with the Accomplishment Instructions, paragraph 2.B., of Eurocopter France AS 332 Service Bulletin No. 05.00.45, Revision 1, dated August 16, 1999, for the Model AS 332 helicopters, or Eurocopter France SA 330 Alert Service Bulletin No. 05.88, dated June 8, 2001, for the Model SA 330 helicopters. If the radial play exceeds 0.1 millimeter (0.004 inches) or the rotational torque exceeds 3.5 daN (7.9 lbs), before further flight, replace the collector with an airworthy part.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Direction General De L'Aviation Civile (France) AD No. 2001-317-082(A), dated July 25, 2001.

Issued in Fort Worth, Texas, on May 28, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02-14250 Filed 6-6-02; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM98-10-011]

Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services

May 31, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Request for comments.

SUMMARY: The Federal Energy Regulatory Commission is requesting comments with respect to the issues remanded by the United States Court of Appeals for the District of Columbia Circuit to the Commission regarding Order No. 637.

Specifically, the Commission requests comments on issues pertaining to the right of first refusal ("ROFR") term matching cap, the relationship of the ROFR to tariff provisions, backhauls and forwardhauls to the same point, and the waiver of posting and bidding for prearranged releases.

DATES: Comments are due on or before June 30, 2002.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC, 20426.

FOR FURTHER INFORMATION CONTACT: Diego A. Gomez, Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 219-2703.

SUPPLEMENTARY INFORMATION:

Notice Requesting Comments

On April 5, 2002, the United States Court of Appeals for the District of Columbia Circuit issued an opinion generally affirming Order No. 637.¹ The Court, however, reversed and remanded Order No. 637² with respect to two issues and remanded, without reversing, with respect to two other issues. As discussed below, the Commission solicits comments from interested parties on these issues. This notice will enable the Commission to decide the remanded issues with the benefit of the views of all interested parties.

Background

The four issues the Court has remanded to the Commission are the following:

1. Right of First Refusal Term Matching Cap

The Court reversed and remanded Order No. 637's policy that shippers exercising their right of first refusal (ROFR) to retain capacity need only match contract term lengths of up to five years. The ROFR originated in Order No. 636,³ where the Commission

tempered the pipeline's pre-granted authority to abandon contracts upon their termination with a ROFR for firm customers with a contract longer than one year.⁴ Specifically, the Commission adopted a regulation providing that such a shipper could retain its service under a new contract by matching the term and the rate (up to the maximum rate) offered by the highest competing bidder.⁵ In Order No. 636-A, the Commission capped the contract length the existing shipper must match at twenty years.

On appeal of Order No. 636, the Court found the twenty-year cap was not justified by the record and remanded it for further explanation.⁶ The Court stated that the Commission had not adequately explained how the twenty-year term matching cap protects against the pipelines' preexisting market power, particularly why the twenty-year cap would prevent bidders on capacity constrained pipelines from using long contract duration as a price surrogate to bid beyond the maximum approved rate, to the detriment of captive customers. On remand in Order No. 636-C, the Commission changed its policy and adopted a five-year term matching cap. It relied on the fact most commenters in the Order No. 636 proceeding had supported a term matching cap in the range of five years and more recent evidence showed that five years was about the median length of all contracts of one year or longer between January 1, 1995 and October 1, 1996.⁷

On rehearing in Order No. 636-D, the Commission recognized that pipelines had raised legitimate concerns about whether the five-year term matching cap was causing a bias toward short-term contracts, with adverse economic consequences for both pipelines and captive customers. The Commission, however, deferred further consideration of the term cap to the proceeding which became the Order No. 637 proceeding in

Docket No. RM98-10-000, where a more current record could be developed. In Order No. 637, the Commission continued the five-year cap policy, finding that none of the parties presented evidence to support the conclusion that a five-year contract is atypical in the current market.

On appeal, the Court found that the Commission had not addressed the objections that had been raised concerning the five-year cap and had relied on the same evidence that it had used to make its decision in Order No. 636-C, namely the fact that five years was about the median length of all contracts of one year or longer.⁸ The Court concluded that the only evidence supporting the Commission's final decision to choose a five-year cap was the original record, which in the Commission's own view was incomplete. The Court held the Commission had neither given an affirmative explanation for its selection of five years, nor had it responded to its own or the pipelines' objections to the five-year cap. The Court also questioned why the Commission used a median to function as a ceiling. The Court thus vacated the five-year cap and remanded the issue to the Commission.

2. Relationship of ROFR to Tariff Provisions

The Court remanded, without reversing, a second issue concerning the ROFR. In Order No. 637, the Commission stated that shippers always have the ROFR set forth in 18 CFR 284.221(d), regardless of the provisions set forth in their contract.⁹ In Order No. 637-A, the Commission stated that shippers' regulatory ROFR is effective "regardless of the terms of any tariff."¹⁰ The Court found that the Commission had not adequately explained whether, through these statements, the Commission intended to provide that the regulatory ROFR is self-executing, and applies regardless of any inconsistent language in the pipeline's tariff or whether tariff language is necessary to effect the right. Accordingly the Court remanded this issue to the Commission to explain its current position on this issue and, to the extent that the language in the Order Nos. 637 and 637-A is legally unsustainable, to modify it.

3. Backhauls and Forwardhauls to the Same Point

In Order No. 637, the Commission also addressed segmentation of capacity,

¹ Interstate Natural Gas Association of America v. FERC, 285 F.3d 18 (D.C. Cir. 2002) (*INGAA*).

² Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, FERC Stats. & Regs. Regulations Preambles (July 1996-December 2000) ¶ 31,091 (February 9, 2000); *order on reh'g*, Order No. 637-A, FERC Stats. & Regs. Regulations Preambles (July 1996-December 2000) ¶ 31,099 (May 19, 2000); *order denying reh'g*, Order No. 637-B, 92 FERC ¶ 61,062 (2000).

³ Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing

Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 636, 57 FR 13267 (April 16, 1992), FERC Statutes and Regulations, Regulations Preambles January 1991-June 1996 ¶ 30,939 at 30,446-48 (April 8, 1992); *order on reh'g*, Order No. 636-A, 57 FR 36,128 (August 12, 1992), FERC Statutes and Regulations, Regulations Preambles January 1991-June 1996 ¶ 30,950 (August 3, 1992); *order on reh'g*, Order No. 636-B, 57 FR 57,911 (December 8, 1992), 61 FERC ¶ 61,272 (1992); *reh'g denied*, 62 FERC ¶ 61,007 (1993); *aff'd in part and remanded in part*, United Distribution Companies v. FERC, 88 F.3d 1105 (D.C. Cir. 1996); *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997).

⁴ Order No. 636 at 30,446-48.

⁵ 18 CFR § 284.221(d)(2)(ii) (2001).

⁶ United Distribution Companies v. FERC, 88 F.3d 1105, 1140-41 (D.C. Cir. 1996) (*UDC*).

⁷ Order No. 636-C at 61,774 and 61,792.

⁸ *INGAA* at *78.

⁹ Order No. 637, at 31,341.

¹⁰ Order No. 637-A, at 31,647.

under which shippers may divide their mainline capacity into segments with each mainline segment equal to the contract demand of the original contract. As a general matter, shippers may overlap those mainline segments, but only up to the contract demand of the underlying contract. In Order No. 637-A, the Commission clarified that a shipper using a forwardhaul and backhaul to bring gas to the same delivery point in an amount that exceeds its contract demand is not overlapping mainline capacity. On appeal, the Court found that the Commission had not adequately addressed whether this policy modified the contracts between the pipeline and its shippers or adequately supported the need for any contract modification. The Court remanded these issues for further explanation, but did not reverse the Commission's holdings.

4. Waiver of Posting and Bidding for Prearranged Releases

Finally, the Court reversed and remanded Order No. 637 on an issue concerning the posting of prearranged capacity releases for bidding. Before Order No. 637, the Commission provided that releasing shippers need not post prearranged deals at the maximum rate for bidding. However, Order No. 637 waived the maximum rate for capacity releases of less than one year until September 30, 2002. The Commission therefore found that all prearranged releases of less than one year must be posted for bidding. The Commission, however, stated that in individual cases where a local distribution company (LDC) considers an exemption from the posting and bidding requirement essential to further a state retail unbundling program, the LDC together with the appropriate state regulatory agency, could request the Commission to waive the posting and bidding requirement. The Commission also stated that if the LDC requests such a waiver, the LDC must be prepared to have all its capacity release transactions limited to the applicable maximum rate for pipeline capacity.

The Court found that the Commission failed to support its rule conditioning the waiver of posting and bidding requirements on the applicant's being prepared to have all of its capacity release transactions limited to the applicable maximum rate. The Court accordingly reversed the Commission on this issue and remanded for the Commission to review the matter and reframe the waiver conditions.

Discussion

The Commission is requesting comments from all interested parties on their views concerning what actions the Commission should take in response to the Court's remand of the above described four issues. All comments should be filed within 30 days of the date this order issues. The Commission is particularly interested in comments on the following issues concerning the term matching cap for the ROFR and backhauls and forwardhauls to the same point.

ROFR Questions

1. *Balancing of risk between shipper and pipeline.* In remanding the issue of the appropriate term matching cap for the ROFR, the Court pointed out that both in Order No. 636-D and the notice of proposed rulemaking that led to Order No. 637, the Commission expressed concern that the five-year term matching cap resulted in a bias toward short-term contracts by providing a disincentive for an existing shipper to enter into a contract of more than five years. This could foster an imbalance of risks between existing shippers and pipelines, allowing shippers indefinite control over pipeline's capacity, but giving pipelines not corresponding protection. Accordingly, the Commission requests comments on what approach to the term-matching cap strikes a proper balance between the concerns of captive customers about their ability to retain capacity under reasonable terms and conditions when their contracts expire and the concerns of pipelines about a bias toward short-term contracts.

2. *Need for any term matching cap.* In *Tennessee Gas Pipeline Company (Tennessee)*,¹¹ the Commission found that no term matching cap is necessary where a pipeline uses the net present value method to allocate unsubscribed capacity among bidders for that capacity. The Commission reasoned that, in that context, the Commission's existing regulatory controls are sufficient to constrain pipelines from exercising market power to pressure shippers into longer contracts than they desire. Because the Commission limits the rates pipelines can charge to maximum just and reasonable levels and requires pipelines to sell all available capacity to shippers willing to pay the maximum rate, the only way a pipeline could create scarcity to force shippers to accept longer term contracts

would be to refuse to build additional capacity when demand requires it. However, the Commission found pipelines would have a greater incentive to build new capacity to serve all the demand for their service, than to withhold capacity, since the only way the pipeline could increase current revenues and profits would be to invest in additional facilities to serve the increased demand.

a. The Commission requests comment on whether the same regulatory controls which *Tennessee* found constrain the pipeline's ability to exercise market power in the allocation of its unsubscribed capacity provide justification for the removal of any term matching cap in the ROFR setting.

b. The Commission also requests comment on whether there are reasons, other than the need to control the pipeline's exercise of market power, why a term matching cap is necessary in the ROFR context. The Commission provides existing long-term maximum rate shippers a ROFR in order to enable the Commission to make the finding required by NGA section 7 that abandonment of service following contract expiration is in the public convenience and necessity. Does the need to satisfy the requirements of NGA section 7 require a term matching cap regardless of the pipeline's ability to exercise market power? What findings are necessary to satisfy NGA section 7 other than a finding that the pipeline cannot exercise market power?

3. *Term Cap Length.* To the extent any commenting party asserts that a term matching cap is necessary as part of the ROFR, the Commission requests that said party propose a term cap length which it deems appropriate. Moreover, the Commission requests that such proposed term cap length be justified and explained in detail. In order to assist parties in presenting comments on this issue (and the other issues discussed above concerning the ROFR), the Commission has developed detailed information concerning the term lengths in contracts entered into since the issuance of Order No. 636. That information is set forth in the Appendix to this notice.¹² Parties should comment on what conclusions should be drawn from the information in the Appendix as to the appropriate length of any term matching cap or whether the information provides support for removing any term matching cap.

¹¹ *Tennessee Gas Pipeline Co.*, 91 FERC ¶ 61,053 (2000), reh'g, 94 FERC ¶ 61,097 (2001), *appeal pending sub nom. Process Gas Consumers Group v. FERC*, D.C. Circuit, Case No. 01-1151.

¹² Table I shows the lengths of all contracts entered into between 1996 and 2001, including contracts which have expired. Table II shows all presently active contracts entered into since 1992.

Forwardhaul/Backhaul Questions

The Commission also solicits comments on the remanded forwardhaul/backhaul issue.

1. *Contract violation.* The Commission requests that the parties comment on why and how a pipeline's contracts are violated by the policy established in Order No. 637-A concerning forwardhauls and backhauls to the same delivery point. Pipelines' service agreements with their customers generally provide that the contract incorporates the terms and conditions in the pipeline's tariff. Given this fact, if the Commission requires the pipeline to modify the terms and conditions in its tariff consistent with its backhaul/forwardhaul policy, is there any violation of the contract between the

pipeline and its customer? To the extent a commenter asserts that there is a contract violation, it should provide the specific contractual provisions which it believes the policy violates.

2. *Benefits to the market.* The Commission requests comments on whether forwardhauls and backhauls to the same delivery point help foster more competitive markets. Are there sufficient competitive benefits to justify action under NGA section 5 to implement the policy concerning backhauls and forwardhauls to the same point?

3. *Operational feasibility.* The Commission requests comments on whether there are any operational issues or impacts with providing forwardhauls and backhauls to the same delivery

point which should be considered in responding to the Court's remand.

While the Commission is primarily interested in comments on the above described issues, parties may also comment on the two other issues the Court remanded to the Commission (*i.e.*, the relationship of the ROFR to tariff provisions and the waiver of posting and bidding for prearranged releases).

The Commission orders:

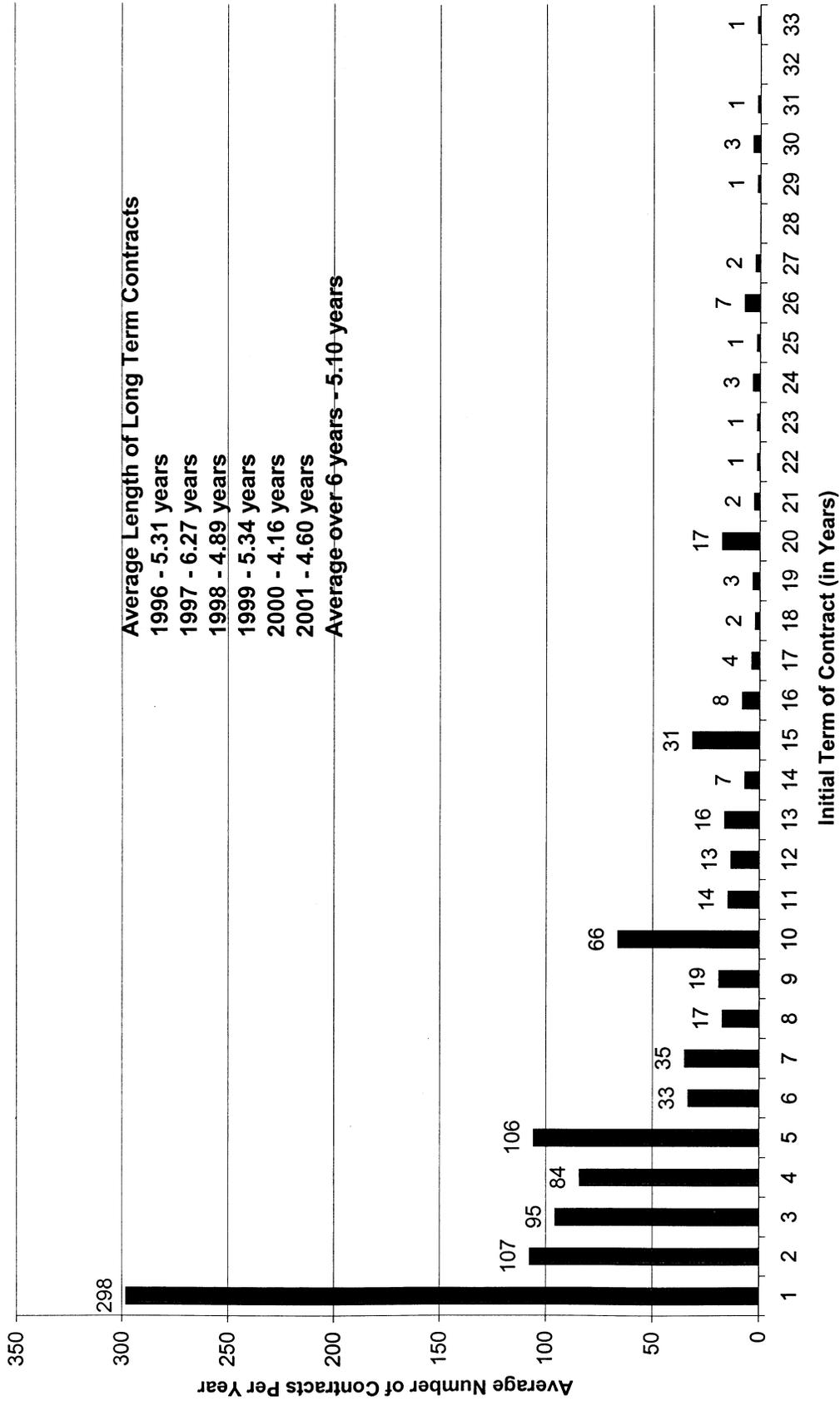
Interested parties to the above-captioned proceeding are invited to file comments on the issues discussed above on or before 30 days after the issuance of this order.

By direction of the Commission.

Linwood A. Watson, Jr.,
Deputy Secretary.

BILLING CODE 6717-01-P

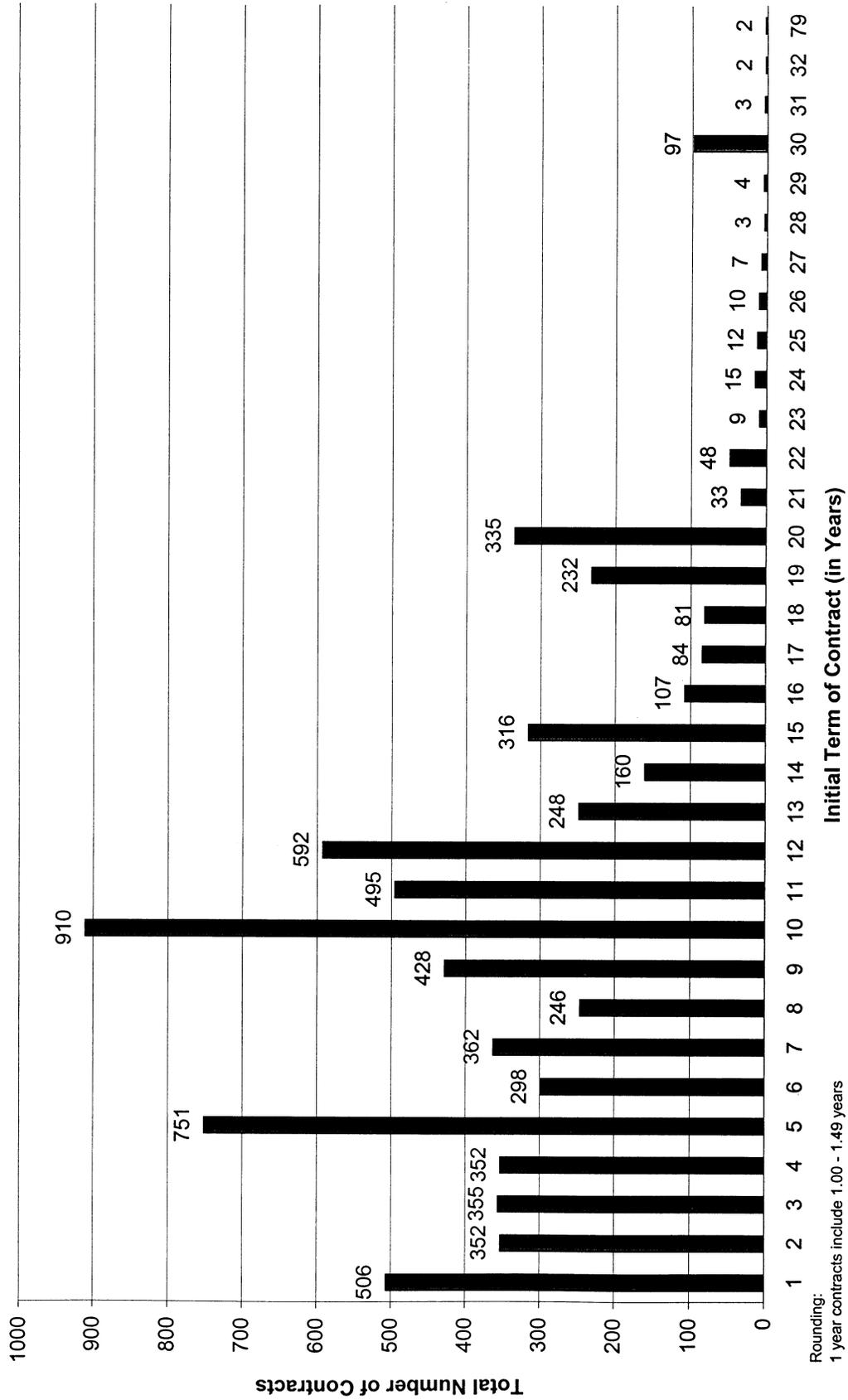
Table I
Average Number of Long Term Contracts Initiated Each Year
 1996 - 2001



Rounding:
 1 year contracts include 1.00 - 1.49 years
 2 year contracts include 1.50 - 2.49 years
 same for 3 year contracts and beyond

Source: Index of Customer Reports

Table II
Currently Effective Long Term Gas Contracts
Service Initiated 1992 - 2002



Rounding:
 1 year contracts include 1.00 - 1.49 years
 2 year contracts include 1.50 - 2.49 years
 same for 3 year contracts and beyond

Source: Index of Customers Reports
 January 1, 2002 and April 1, 2002

[FR Doc. 02-14176 Filed 6-6-02; 8:45 am]

BILLING CODE 6717-01-C

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 133

RIN 1515-AC98

Civil Fines for Importation of Merchandise Bearing a Counterfeit Mark

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations pertaining to the importation of merchandise bearing a counterfeit mark to clarify the limit on the amount of a civil fine which may be assessed by Customs when merchandise bearing a counterfeit mark is imported. The regulations currently use, as a measurement for determining the limit, the domestic value of merchandise as if it had been genuine, based on the manufacturer's suggested retail price of the merchandise at the time of seizure. The language set forth in the proposed rule adheres more closely to the statutory language, basing the limit of the civil fine on the value of the genuine goods according to the manufacturer's suggested retail price (MSRP), without any reference to domestic value. Because the MSRP excludes retail sales and markdowns, it is usually greater than the good's domestic value. Removing the distinction between the statutory and regulatory language will clear up confusion and result in Customs more uniformly determining the amount of a civil fine when merchandise bearing a counterfeit mark is imported.

DATES: Comments must be received on or before August 6, 2002.

ADDRESSES: Written comments, regarding both the substantive aspects of the proposed rule and how it may be made easier to understand, may be submitted to and inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Lynne O. Robinson, Office of Regulations and Rulings: (202) 927-2346.

SUPPLEMENTARY INFORMATION:

Background

The Anticounterfeiting Consumer Protection Act of 1996 (the ACPA; Pub. L. 104-153, 110 Stat. 1386) was signed into law on July 2, 1996, to ensure that Federal law adequately addresses the scope and sophistication of modern counterfeiting which costs American businesses an estimated \$200 billion a year worldwide. Toward that end, the ACPA amended section 526 of the Tariff Act of 1930, as amended (19 U.S.C. 1526), to provide two new tools to fight the importation of counterfeit goods: (1) The seizure, forfeiture, and destruction of merchandise bearing a counterfeit mark under 19 U.S.C. 1526(e) (section 1526(e)), as amended by section 9 of the ACPA, and (2) the imposition of a civil fine under 19 U.S.C. 1526(f) (section 1526(f)), a new section of law created under section 10 of the ACPA.

Under section 1526(e), merchandise bearing a counterfeit mark that is seized and forfeited must be destroyed except where the merchandise is not unsafe or a hazard to health and the trademark owner has consented to its disposal by one of several alternative methods (see sections 1526(e)(1), (2) and (3)). This provision ensures that a violator cannot regain possession of the forfeited goods and distribute them in some other manner (including making another attempt to import them at another U.S. port or into another country). Under section 1526(f)(1), a civil fine is assessed against any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise for sale or public distribution that is seized under section 1526(e). Section 1526(f)(2) provides for a fine for the first seizure in an amount up to the value the imported merchandise would have had if it were genuine, according to the manufacturer's suggested retail price (MSRP). Section 1526(f)(3) provides for a fine for subsequent seizures in the amount of up to twice the value the imported merchandise would have had if it were genuine, according to the MSRP.

On November 17, 1997, Customs published interim regulations in the **Federal Register** (62 FR 61231) to amend § 133.25 of the Customs Regulations (19 CFR 133.25) to reflect the ACPA's amendment of 19 U.S.C. 1526. The interim amendments were adopted as a final rule published in the **Federal Register** (63 FR 51296) on September 25, 1998. A final rule document published in the **Federal Register** (64 FR 9058) on February 24, 1999, redesignated § 133.25 as § 133.27.

Under § 133.27 of the Customs Regulations (19 CFR 133.27), Customs

may impose a civil fine, in addition to any other penalty or remedy authorized by law, against any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise bearing a counterfeit mark that is seized under § 133.21 (and 19 U.S.C. 1526(e)). Under § 133.27(a), the fine imposed for the first violation (seizure) will not be more than the domestic value of the merchandise (as set forth in § 162.43(a)) as if it had been genuine, based on the MSRP of the genuine merchandise at the time of seizure. Under § 133.27(b), the fine imposed for subsequent violations will not be more than twice the domestic value of the merchandise as if it had been genuine, based on the MSRP of the genuine merchandise at the time of seizure.

Upon review of § 133.27, Customs has determined that the language of the regulation is inconsistent with the language of section 1526(f). The regulation employs the term "domestic value" (of the merchandise) while the statute does not use that term. Moreover, because the MSRP is exclusive of any sale or markdown of a good at retail, it is usually greater than the good's domestic value. Therefore, setting the maximum amount of a civil fine by means of a formula that includes both the domestic value of the merchandise and the value of genuine merchandise according to the MSRP is confusing and contributes to misunderstanding by both Customs personnel and the public.

A review of the regulatory history indicates that Customs, in using the term "domestic value" in § 133.27 (§ 133.25 when published as a final rule on September 25, 1998), relied on 19 U.S.C. 1606 (section 1606) and § 162.43(a) of the Customs Regulations (19 CFR 162.43(a)). Section 1606 provides that Customs will determine the domestic value of merchandise seized under the Customs laws at the time and place of appraisal. Section 162.43(a) provides that "domestic value" as used in section 1606 means the price for which seized or similar property is freely offered for sale at the time and place of appraisal and in the ordinary course of trade.

While this "domestic value appraisal rule" of section 1606 and § 162.43(a) is applicable in various circumstances involving merchandise seized under the Customs laws, its application is qualified. Under 19 U.S.C. 1600, the procedures set forth in 19 U.S.C. 1602 through 1619, including the use of domestic value as laid out in section 1606, apply to seizures of property under any law enforced or

administered by Customs unless such law specifies different procedures. Section 1526(f), however, specifies a different procedure for imposing civil fines for the importation of merchandise bearing a counterfeit mark. Therefore, the formula for civil fines set forth in section 1526(f) is controlling, and the domestic value appraisement rule of section 1606 and § 162.43(a) does not apply for that purpose.

Based on the foregoing, Customs believes that the term "domestic value" should be removed from § 133.27, leaving "manufacturer's suggested retail price" as the applicable measure of the penalty. The result would be that the formula for setting the maximum civil fine under the regulation would more closely follow the language of the statute. This would clarify for Customs personnel and the importing public the limit of a civil fine and would enhance uniformity in Customs assessment of fines when merchandise bearing a counterfeit mark is imported and seized. In addition, as the MSRP of a given article (in this case the genuine article that corresponds to imported merchandise bearing a counterfeit mark) is normally greater than its domestic value, because MSRP excludes retail sales and markdowns, civil fines based on the MSRP will normally be greater. Thus, uniform application of the regulation will ensure that the Congressional intent in enacting section 1526(f), i.e., to enhance deterrence of trade in counterfeit goods, is uniformly served.

Customs notes that guidelines for the mitigation of penalties assessed under section 1526(f) and § 133.27 were published in T.D. 99-76 (33 Cust. Bull. No. 43, October 27, 1999). However, as the guidelines also use the term "domestic value" in the same manner as § 133.27, if the proposed rule is adopted as final, Customs will modify the guidelines to more closely adhere to the language of section 1526(f).

Executive Order 12866

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

Regulatory Flexibility Act

The proposed amendment, if adopted as final, will result in the language of the regulation more closely adhering to the language of the statute, thus clarifying the maximum amount Customs can assess for a civil fine when merchandise bearing a counterfeit mark is imported and seized. Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), it is certified that the proposed amendment, if

adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, the proposed amendment is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Bill Conrad, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices contributed in its development.

List of Subjects in 19 CFR Part 133

Counterfeit goods, Penalties, Seizures and forfeitures, Trademarks.

Proposed Amendment to the Regulations

For the reasons stated in the preamble, it is proposed to amend part 133 of the Customs Regulations (19 CFR part 133) as follows:

PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

1. The authority citation for part 133 continues to read, in part, as follows:

Authority: 17 U.S.C. 101, 601, 602, 603; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

* * * * *

2. Section 133.27 is revised to read as follows:

§ 133.27 Civil fines for those involved in the importation of merchandise bearing a counterfeit mark.

In addition to any other penalty or remedy authorized by law, Customs may impose a civil fine under 19 U.S.C. 1526(f) on any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise for sale or public distribution that bears a counterfeit mark resulting in a seizure of the merchandise under 19 U.S.C. 1526(e) (see § 133.21 of this subpart), as follows:

(a) *First violation.* For the first seizure of merchandise under this section, the fine imposed will not be more than the value the merchandise would have had if it were genuine, according to the manufacturer's suggested retail price at the time of seizure.

(b) *Subsequent violations:* For the second and each subsequent seizure under this section, the fine imposed will not be more than twice the value the merchandise would have had if it were genuine, according to the

manufacturer's suggested retail price at the time of seizure.

Robert C. Bonner,
Commissioner of Customs.

Approved: June 3, 2002.

Timothy E. Skud,
Deputy Assistant Secretary of the Treasury.
[FR Doc. 02-14287 Filed 6-6-02; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 141 and 151

RIN 1515-AD05

Conditional Release Period and Customs Bond Obligations for Food, Drugs, Devices, and Cosmetics

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to clarify the responsibilities of importers of food, drugs, devices, and cosmetics under Customs entry bond and to provide a reasonable period of time to allow the Food and Drug Administration to perform its enforcement functions with respect to these articles. The proposed amendments provide for a specific conditional release period for any food, drug, device, or cosmetic which has been released under bond and for which admissibility is to be determined under the provisions of the Food, Drug and Cosmetic Act. The proposed amendment also clarifies the amount of liquidated damages that may be assessed when there is a breach of the terms and conditions of the Customs bond. The document also proposes to amend the Customs Regulations to authorize any representative of the Food and Drug Administration (FDA) to obtain a sample of any food, drug, device, or cosmetic, the importation of which is governed by section 801 of the Food, Drug and Cosmetic Act, as amended (21 U.S.C. 381).

DATES: Comments must be received on or before August 6, 2002.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs

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

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Office of Regulations and Rulings, Penalties Branch (202-927-2344).

SUPPLEMENTARY INFORMATION:

Background

Section 801 of the Food, Drug and Cosmetic Act, as amended (21 U.S.C. 381), and the regulations promulgated under that statute, provide the basic legal framework governing the importation of foodstuffs into the United States. Under 21 U.S.C. 381(a), the Secretary of the Treasury will deliver to the Secretary of Health and Human Services, upon request, samples of food, drugs, devices, and cosmetics which are being imported or offered for import. The Secretary of Health and Human Services is authorized under section 381(a) to refuse admission of, among other things, any article that appears from the examination or otherwise to be adulterated or misbranded or to have been manufactured, processed, or packed under insanitary conditions. In addition, the Secretary of the Treasury is required by section 381(a) to cause the destruction of any article refused admission unless the article is exported, under regulations prescribed by the Secretary of the Treasury, within 90 days of the date of notice of the refusal or within such additional time as may be permitted pursuant to those regulations.

Under 21 U.S.C. 381(b), pending decision as to the admission of an article being imported or offered for import, the Secretary of the Treasury may authorize delivery of that article to the owner or consignee upon the execution by him of a good and sufficient bond providing for the payment of liquidated damages in the event of default, as may be required pursuant to regulations of the Secretary of the Treasury. In addition, section 381(b) allows the owner or consignee in certain circumstances to take action to bring an imported article into compliance for admission purposes under such bonding requirements as the Secretary of the Treasury may prescribe by regulation.

Based upon the above statutory provisions, imported foods, drugs, devices, and cosmetics are conditionally released under bond while determinations as to admissibility are made; see § 12.3 of the Customs Regulations (19 CFR 12.3). Under current § 141.113(c) of the Customs Regulations (19 CFR 141.113(c)),

Customs may demand the return to Customs custody of most types of merchandise that fail to comply with the laws or regulations governing their admission into the United States (also referred to as the redelivery procedure).

The condition of the basic importation and entry bond contained in § 113.62(d) of the Customs Regulations (19 CFR 113.62(d)) sets forth the obligation of the importer of record to timely redeliver released merchandise to Customs on demand and provides that a demand for redelivery will be made no later than 30 days after the date of release of the merchandise or 30 days after the end of the conditional release period, whichever is later. Under current procedures, when imported merchandise is refused admission by the FDA, Customs issues a notice of redelivery in order to establish liquidated damages if the importer of record fails to export, destroy, or redeliver the refused merchandise in the time period prescribed in that notice of redelivery.

Customs has taken the position in C.S.D. 86-21 that the term "end of the conditional release period" in 19 CFR 113.62(d) has reference to a set time limitation that is either established by regulation (*see*, for example, 19 CFR 141.113(b) which prescribes a 180-day conditional release period for purposes of determining the correct country of origin of imported textiles and textile products) or is established by express notification to the importer of record. The end of the conditional release period does not refer to the liquidation of the entry covering the imported merchandise.

In light of the above authorities, Customs now proposes to amend the regulations to provide for a specific conditional release period for merchandise for which the FDA is authorized to determine admissibility. The proposed changes will clarify importers' responsibilities under the bond, provide a reasonable period of time to allow the FDA to perform its enforcement functions, and provide finality to the process.

Proposed Regulatory Changes

This document proposes to make the following specific changes to the Customs Regulations to address these points:

1. It is proposed to redesignate some paragraphs in § 141.113 due to the addition of a new paragraph (c), which will provide for a specific conditional release period of 180 days for any food, drug, device, or cosmetic. The FDA will have this time period to make its

determination of admissibility. Similar to the case of textiles and textile products mentioned above, the proposed amendment specifies a 180-day conditional release period but also provides for a shorter period if FDA makes a determination of inadmissibility before the expiration of that 180-day period. It is noted that as a consequence of this new text, under 19 CFR 113.62(d), a demand for redelivery could be made up to 210 days (that is, 180 days plus 30 days) after the date of release of the merchandise. The proposed regulation will also make clear that the failure to redeliver merchandise will result in the assessment of liquidated damages equal to three times the value of the merchandise or equal to the domestic value of merchandise in those instances where the port director has required a bond equal to the domestic value as permitted by current § 12.3.

2. It is proposed to amend § 151.10 of the Customs Regulations (19 CFR 151.10) to authorize a representative of the FDA to obtain samples of food, drugs, devices, and cosmetic products covered by the Food, Drug and Cosmetic Act.

Comments

Before adopting these proposed regulatory amendments as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, DC.

Regulatory Flexibility Act and Executive Order 12866

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed regulatory amendments reflect current statutory requirements, and they will not require any additional action on the part of the public but rather are intended to facilitate Customs enforcement efforts involving existing import requirements. Accordingly, the proposed amendments are not subject to

the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Furthermore, this document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

List of Subjects

19 CFR Part 141

Bonds, Customs duties and inspection, Entry procedures, Imports, Prohibited merchandise, Release of merchandise.

19 CFR Part 151

Customs duties and inspection, Examination, Sampling and testing, Imports, Laboratories, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

For the reasons stated above, it is proposed to amend parts 141 and 151 of the Customs Regulations (19 CFR part 141 and 151) as set forth below.

PART 141—ENTRY OF MERCHANDISE

1. The authority citation for part 141 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * * *

Section 141.113 also issued under 19 U.S.C. 1499, 1623.

2. Section 141.113 is amended as follows:

a. Redesignate current paragraphs (c) through (h) as paragraphs (d) through (i).

b. Add a new paragraph (c), and c. Amend redesignated paragraph (d) by removing the words "(a) or (b)" and adding "(a), (b), or (c)" after the words "for any reason not enumerated in paragraph." New paragraph (c) reads as follows:

§ 141.113 Recall of merchandise released from Customs custody.

* * * * *

(c) Food, drugs, and cosmetics. For purposes of determining the admissibility of any food, drug, device, and cosmetic imported pursuant to section 801 of the Food, Drug and Cosmetic Act (21 U.S.C. 381), as amended, the release from Customs custody of any such product will be deemed conditional during the 180-day period following the date of release. If before the end of the 180-day period the Food and Drug Administration (FDA) finds that a food, drug, device, or cosmetic is not entitled to admission into the commerce of the United States, it will communicate that fact to the port director who will demand the redelivery

of the product to Customs custody. Customs will issue a notice of redelivery within 30 days from the date the product was refused admission by the FDA. The demand for redelivery may be made contemporaneously with the notice of refusal issued by the FDA. A failure to comply with a demand for return to Customs custody made under this paragraph will result in the assessment of liquidated damages equal to three times the value of the merchandise involved unless the port director has prescribed a bond equal to the domestic value of the merchandise pursuant to section 12.3(b) of this Chapter.

* * * * *

PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

1. The general authority citation for part 151 is revised, and a specific authority citation for § 151.10 is added, to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Notes 23 and 24, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

Section 151.10 also issued under 21 U.S.C. 381;

* * * * *

2. In § 151.10, add a sentence at the end of the text to read as follows:

§ 151.10 Sampling.

* * * For purposes of determining admissibility, representatives of the Food and Drug Administration may obtain samples of any food, drug, device, or cosmetic, the importation of which is governed by section 801 of the Food, Drug and Cosmetic Act, as amended (21 U.S.C. 381).

Robert C. Bonner, Commissioner of Customs.

Approved: June 3, 2002.

Timothy E. Skud, Deputy Assistant Secretary of the Treasury. [FR Doc. 02-14286 Filed 6-6-02; 8:45 am]

BILLING CODE 4820-02-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL-7222-2]

RIN 2060-AG91

National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: We are proposing to amend the National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards to revise the definition of the term "process vent" and to correct some editorial, cross-reference, and wording errors. In the Rules and Regulations section of this Federal Register, we are taking direct final action on the proposed amendments because we view these actions as noncontroversial, and we anticipate no adverse comments. We have explained our reasons for these actions in the preamble to the direct final rule. If we receive no significant adverse comments, we will take no further action on this proposed rule. If we receive significant adverse comments, we will withdraw only those provisions on which we received significant adverse comments. We will publish a timely withdrawal in the Federal Register indicating which provisions will become effective and which provisions are being withdrawn. If part or all of the direct final rule in the Rules and Regulations section of this Federal Register is withdrawn, all public comments pertaining to those provisions will be addressed in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. If you are interested in commenting, you must do so at this time.

DATES: Comments. We must receive written comments by July 8, 2002, unless a hearing is requested by June 17, 2002. If a hearing is requested, we must receive written comments by July 22, 2002.

Public Hearing. If anyone contacts us requesting to speak at a public hearing by June 17, 2002, a public hearing will be held on June 21, 2002.

ADDRESSES: Comments. By U.S. Postal Service, submit written comments (in duplicate if possible) to: Air and Radiation Docket and Information

Center (6102), Attention Docket Number A-97-17, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. In person or by courier, submit comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102) Attention Docket Number A-97-17, Room M-1500, U.S. EPA, 401 M Street, SW., Washington, DC 20460. We request that a separate copy of each public comment be sent to the contact person listed below (*see FOR FURTHER INFORMATION CONTACT*).

Public Hearing. If a public hearing is held, it will be held at the new EPA facility complex in Research Triangle Park, North Carolina at 10:30 a.m.

Docket. Docket No. A-97-17 contains supporting information used in developing the Generic MACT standards. The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in Room M-1500, Waterside Mall (ground floor), and may be inspected from 8 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. David W. Markwordt, Policy, Planning, and Standards Group (C439-04), Emission Standards Division, U.S. EPA, Research Triangle Park, NC 27711, telephone number: (919) 541-0837, electronic mail (e-mail): markwordt.david@epa.gov.

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: a-and-r-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect format. All comments and data submitted in electronic form must

note the docket number A-97-17. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: OAQPS Document Control Officer (C404-02), Attn: Mr. David Markwordt, U.S. EPA, Research Triangle Park, NC 27711. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Dorothy Apple, U.S. EPA (C439-04), Research Triangle Park, NC 27711, telephone (919) 541-4487, at least 2 days in advance of the public hearing. Persons interested in attending the public hearing must also call Ms. Dorothy Apple to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning this proposed amendment.

Docket. The docket is an organized and complete file of all the information we considered in developing this

rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to help you to readily identify and locate documents so that you can effectively participate in the rulemaking process. Along with the proposed and promulgated rules and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act.) You may obtain the regulatory text and other materials related to this rulemaking which are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260-7548. We may charge a reasonable fee for copying docket materials. You may also obtain docket indexes by facsimile, as described on the Office of Air and Radiation, Docket and Information Center Website at <http://www.epa.gov/airprog/oar/docket/faxlist.html>.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this proposed rule will also be available through the WWW. Following signature, a copy of this action will be posted on the EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules at <http://www.epa.gov/ttn/oarpg>. The TTN at EPA's website provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541-5384.

Regulated Entities. Categories and entities potentially affected by this action include:

Category	NAICS *	Regulated entities
Industry	325199	Producers of homopolymers and/or copolymers of alternating oxymethylene units. Producers of either acrylic fiber or modacrylic fiber synthetics composed of acrylonitrile (AN) units. Producers of polycarbonate.
Industry	325188	Producers of, and recoverers of HF by reacting calcium fluoride with sulfuric acid. For the purpose of implementing the rule, HF production is not a process that produces gaseous HF for direct reaction with hydrated aluminum to form aluminum fluoride (i.e., the HF is not recovered as an intermediate or final product prior to reacting with the hydrated aluminum).

* North American Information Classification System

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in 40 CFR § 63.1103 of the promulgated rule. If you have any questions regarding the applicability of these amendments to a

particular entity, consult the appropriate EPA Regional Office representative.

I. What Action Is EPA Proposing?

This proposal would revise the definition of "process vent" and make changes to recordkeeping requirements and technical corrections in 40 CFR part 63, subpart YY. For further information,

please see the information provided in the direct final rulemaking notice located in the Rules and Regulations section of today's **Federal Register**.

II. What Are the Administrative Requirements for This Action?

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

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

For purposes of assessing the impacts of today's proposed rule amendments on small entities, a small entity is defined as: (1) A small business whose parent company has fewer than 1000 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

We believe there will be little or no impact on any small entities because the proposed rule amendments do not impose additional requirements but instead either eliminate cross-referencing, editorial, and wording errors or clarify the applicability of existing requirements of the MACT standards established for acetal resins production, acrylic and modacrylic fiber production, hydrogen fluoride production, and polycarbonate production. The Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities.

For information regarding other administrative requirements for this action, please see the direct final rule action that is located in the Rules and Regulations section of this **Federal Register** publication.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous air pollutants, Hazardous substances, Reporting and recordkeeping requirements.

Dated: May 23, 2002.

Christine Todd Whitman,
Administrator.

[FR Doc. 02-13801 Filed 6-6-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-7225-3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete Tulalip Landfill NPL Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region 10, announces its intent to delete the Tulalip NPL Site (Site), which is located in Snohomish County, Washington, from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA and the Tulalip Tribes have determined that the remedial action for the site has been successfully executed.

DATES: Comments concerning the proposed deletion of this Site from the NPL may be submitted on or before July 8, 2002.

ADDRESSES: Comments may be mailed to: Beverly Gaines, EPA Point of Contact, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Mail Stop, ECL-110, Seattle, Washington 98101.

Comprehensive information on this Site is available through the Region 10 public docket which is available for reviewing at: U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Superfund Records Center, Seattle, Washington 98101.

Information on the site and a copy of the docket are available for viewing at the Information Repository which is located at: Marysville Public Library, 6120 Grove, Marysville, Washington.

FOR FURTHER INFORMATION CONTACT: Beverly Gaines, EPA Point of Contact, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Mail Stop, ECL-110, Seattle, Washington 98101; phone: (206) 553-1066, fax: (206) 553-0124; e-mail: gaines.beverly@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis of Intended Site Deletion

I. Introduction

The U.S. Environmental Protection Agency (EPA) Region 10 announces its intent to delete the Tulalip Landfill Site, which is located in Snohomish County, Washington, from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. EPA and the Tulalip Tribes have determined that the remedial action for the site has been successfully executed.

EPA will accept comments on the proposal to delete this site for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures EPA is using for this action. Section IV discusses the Tulalip Landfill Site and explains how the site meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that sites may be deleted from, or recategorized on the NPL, where no further response is appropriate. In making a determination to delete a site from the NPL, EPA shall consider, in consultation with the Tulalip Tribes, whether any of the following criteria have been met:

(i) Responsible parties or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further action by responsible parties is appropriate, or

(iii) The Remedial Investigation has shown that the site poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action

at the site to ensure that the site remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate additional remedial actions. Whenever there is a significant release from a deleted site from the NPL, the site may be restored to the NPL without application of the Hazard Ranking system.

In the case of this site, the selected remedy is protective of human health and the environment and complies with Federal, State, and Tribal requirements that are legally applicable or relevant and appropriate to the remedial action.

III. Deletion Procedures

The following procedures were used for the intended deletion of this site: (1) All appropriate response under CERCLA has been implemented and no further action by EPA is appropriate; (2) the Tulalip Tribes have concurred with the proposed deletion decision; (3) a notice has been published in the local newspapers and has been distributed to appropriate federal, state, tribal, and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete; and (4) all relevant documents have been made available in the local site information repositories.

Deletion of the site from the NPL does not in itself, create, alter or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As mentioned in section II of this notice, Sec. 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions.

For deletion of this site, EPA's Regional Office will accept and evaluate public comments on EPA's Notice of Intent to Delete before making a final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary to address any significant public comments received.

A deletion occurs when the Regional Administrator places a final notice in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Regional Office.

IV. Basis for Intended Site Deletion

The following site summary provides the Agency's rationale for the proposal to delete this Site from the NPL.

Site Background and History

The Site is located within the Tulalip Indian Reservation on approximately 147 acres of North Ebey Island in the Snohomish River delta, between Marysville and Everett, Washington. North Ebey Island is bordered by Ebey Slough to the north and Steamboat Slough to the south. The Seattle Disposal Company operated the landfill from 1964 until 1979, under a lease from the Tulalip Tribes. The landfill received primarily commercial and construction waste. Three to four million tons of waste is currently contained within the landfill which is also considered the source area. The landfill was subsequently closed and a perimeter berm was constructed. The surface of the landfill was graded and cover soils were placed at thickness ranging from 1 to 12 feet. However, insufficient grading of this cover material resulted in poor drainage and allowed precipitation to collect and eventually infiltrate the landfill surface. As a result, a pool of contaminated groundwater (leachate) formed within the landfill.

EPA performed a background exceedance evaluation to compare concentrations of soil and sediment contamination in the off-source area with regional soil and sediment background concentrations. Contaminants in the off-source area found to exceed background concentrations include aluminum, arsenic, chromium, and manganese. Concentrations of metals in wetland soil were highest in the areas surrounding most of the leachate seeps adjacent to the landfill berm. Due to the risk to human health and the environment posed by the site, the Tulalip Landfill was listed on the NPL on April 25, 1995.

Selected Remedy

In 1996 EPA signed the interim Record of Decision (ROD) for the Tulalip Landfill Source-area (the landfill). A presumptive remedy (landfill cover system) was selected which expedited the design and construction of the on-source remedy. In September 1998 EPA signed the Final Record of Decision for the Tulalip Landfill Superfund Site On-Source and Off-Source Remedial Action. This Record of Decision documented the selection of the final remedy for both the on-source and off-source areas of the site as described below:

On-Source Remedy

The interim on-source remedy presented in the March 1, 1996, Record of Decision was adopted as the final

remedy for the on-source area. Major elements of the remedy included:

- Capping the landfill in accordance with the Washington State Minimum Functional Standards for landfill source,
- Installing a landfill gas collection system,
- Monitoring the leachate mound within the landfill, the perimeter leachate seeps, and landfill gas to ensure the selected remedy is adequately containing the landfill wastes,
- Initiating restrictions to protect the landfill cap, and
- Providing for operation and maintenance (O&M) to ensure the integrity of the cap system.

Off-source Remedy

The remedy of the off-source area (wetlands) selected in the final ROD was designed to protect human health and the environment through the continued implementation of placing signs and institutional controls. The major element of the off-source remedy selected in this ROD was to place and maintain an adequate number of signs to prohibit access to contaminated wetland areas and the consumption of fish and shellfish from those areas.

Response Actions

On May 6, 1998, the remedial design for the on-source cover system was approved by EPA in consultation with the Tulalip Tribes. Construction of the cover system began on June 18, 1998, and took slightly more than two years to complete. EPA then conducted a pre-final inspection on September 26, 2000, in conjunction with the Tribes, and developed a punch list of outstanding items. Those items were addressed in early October 2000, and the final walk-through was conducted on October 17, 2000. At the time, EPA in consultation with the Tribes, determined that the constructed remedy was operational and functional.

The following remedial activities were performed by Washington Waste Hauling & Recycling, according to design specifications set forth in the 1998 Remedial Design package.

- Regrading and preparing a crowned shaped sub-base over the entire site by excavating and relocating waste (approximately 440,000 cy) and importing a significant amount of clean fill (approximately 410,000 cy).
- Constructing a passive gas collection system in the waste so that a gas treatment system could easily be added later if necessary.
- Placing and compacting a 12" foundation layer (sand) over the sub-

base and gas collection system (approximately 320,000 cy).

- Constructing a liner system (approximately 150 acres) over the foundation layer. The liner system includes a flexible membrane liner to minimize infiltration of water into the landfill, a geonet for drainage, and geotextile protective liner.
- Placing a 12" layer of topsoil (280,000 cy) over the liner system, construction of a surface water drainage system, and revegetating the landfill.
- Constructing a locked gate entrance to restrict the access of unauthorized persons and equipment, and posting appropriate warning signs.

The Tribes have adopted an enforceable tribal ordinance and have placed signs prohibiting access to and the consumption of shellfish in the nearby wetlands. The Tribe has also adopted deed restrictions and signed a consent decree which prevents activities that may disturb the integrity of the cap.

Operation and Maintenance

Monitoring has been and will continue to be conducted quarterly for landfill gas and leachate seeps, and monthly for leachate levels. The Operations and Maintenance (O&M) Plan was approved on June 6, 2001. O&M activities to be performed include monthly site inspections for the first year and then quarterly inspections thereafter. Items to be inspected include landfill grades (surveys), surface water control systems, erosion, vegetation, infiltration collection system, gas collection system, roads, piezometers, site security and signs.

The certificate of completion was issued on February 20, 2001. O&M will be conducted for a minimum of 30 years from that date, the first four years by Washington Waste Hauling and Recycling and the next 26 years by the Tulalip Tribes. Currently, the Tribes do not have plans for any specific future use of the site.

Five-Year Review

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund) requires a five-year review of all sites with hazardous substances remaining above the health-based levels for unrestricted use of the site. Since the cleanup of the Tulalip Landfill has hazardous substances remaining at the site above levels that allow unlimited use and unrestricted exposure, a five-year review will be completed prior to June 18, 2003 (five years after RA on-site mobilization).

Community Involvement

Generally, the construction of the on-site landfill cover system was not of great interest to the public. Most of the public interest was focused on the truck hauling routes to and from the site and keeping road surfaces clean. EPA's Regional community relations staff conducted an active campaign to ensure that the residents were well informed about the activities at the site through routine publication of progress fact sheets. In response to citizen concerns, some of the truck traffic was rerouted away from certain areas.

Applicable Deletion Criteria

EPA may delete a site from the NPL if "all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate." 40 CFR 300.425(e)(1)(ii). EPA, with the concurrence of the Tulalip Tribes, believe that this criterion for deletion has been met. Subsequently, EPA is proposing deletion of this site from the NPL. Documents supporting this action are available from the docket.

Tribal Concurrence

In a letter dated March 20, 2002, Tulalip Tribes, concur with the proposed deletion of the Tulalip Landfill Superfund site from the NPL.

Dated: May 24, 2002.

L. John Iani,

Regional Administrator, U.S. EPA, Region 10.
[FR Doc. 02-14209 Filed 6-6-02; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[I.D. 053102A]

Listing Endangered and Threatened Wildlife and Plants and Designating Critical Habitat; Public Scoping Meetings on a Petition to List Atlantic White Marlin (*Tetrapturus albidus*)

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

ACTION: Notice of scoping meetings.

SUMMARY: NMFS will hold 11 public scoping meetings to receive data and comments regarding the status of the Atlantic white marlin.

DATES: See **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for meeting addresses.

FOR FURTHER INFORMATION CONTACT: David Bernhart, 727-570-5312; or David O'Brien, 301-713-1401;

SUPPLEMENTARY INFORMATION: NMFS is conducting a status review of Atlantic white marlin to determine whether this species should be provided protection under the Endangered Species Act of 1973 (ESA). Status reviews are required by section 4(b)(3)(A) of the ESA, whenever a listing petition for a species is found to present substantial information indicating that the petitioned action may be warranted. On September 4, 2001, NMFS received a petition from the Biodiversity Legal Foundation (BLF) and James R. Chambers to list Atlantic white marlin as threatened or endangered throughout its known range, and to designate critical habitat under the ESA. On December 20, 2001, NMFS found that the petition presented substantial information indicating that the petitioned action may be warranted and announced initiation of a status review (66 FR 65676). NMFS also solicited information and comments on whether the Atlantic white marlin is endangered or threatened based on the ESA listing criteria, during a 60-day comment period.

NMFS' status review for white marlin is currently underway. Within 1 year of the receipt of the petition (by September 3, 2002), a finding will be made as to whether listing the Atlantic population of the white marlin as threatened or endangered is warranted, as required by section 4(b)(3)(B) of the ESA. Under section 4(a)(1) of the ESA, a species can be determined to be threatened or endangered for any one of the following reasons: (1) Present or threatened destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. If listing is found to be warranted for the white marlin, NMFS would publish a proposed rule and take public comment before taking any final action on listing.

To maximize public involvement in the status review and to ensure that NMFS receives the best available commercial and scientific data for its listing determination, NMFS will hold 11 public scoping meetings to receive additional data and comments on the status of Atlantic white marlin and the

applicability of the ESA's listing factors to Atlantic white marlin.

Meeting Dates, Times, and Locations

The public scoping meeting schedule is as follows:

Tuesday, June 11, 2002, Silver Spring, MD, 7–9 p.m.—Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910; 301–589–5200

Monday, June 17, 2002, Miami, FL, 7–9 p.m.—Sheraton Biscayne Bay Hotel, 495 Brickell Avenue, Miami, FL 33131; 305–373–6000

Tuesday, June 18, 2002, Kenner, LA, 7–9 p.m.—Hilton New Orleans Airport, 901 Airline Highway, Kenner, LA 70062; 504–469–5000

Wednesday, June 19, 2002, Panama City Beach, FL, 7–9 p.m.—Marriott Bay Point Resort Village, 4200 Marriott Drive, Panama City Beach, FL 32408; 850–236–6000

Thursday, June 20, 2002, Orange Beach, AL, 7–9 p.m.—Perdido Beach Resort, 27200 Perdido Beach Blvd., Orange Beach, AL 36561; 251–981–9811

Monday, June 24, 2002, Charlotte Amalie, St. Thomas, USVI, 7–9 p.m.—Island Beach Comber Hotel, Lindbergh Beach Road, Charlotte Amalie, St. Thomas, USVI 00802; 340–774–5250

Monday, June 24, 2002, Atlantic Beach, NC, 7:30–9:30 p.m.—Sheraton Atlantic Beach Oceanfront Hotel, 2717 West Fort Macon Road, Atlantic Beach, NC 28512; 252–240–1155

Tuesday, June 25, 2002, Manteo, NC, 7:30–9:30 p.m.—North Carolina Aquarium Roanoke Island, 374 Airport Road, Manteo, NC 27954; 252–473–3496

Thursday, June 27, 2002, Atlantic City, NJ, 7–9 p.m.—Atlantic City Center, 1535 Bacharach Blvd., Atlantic City, NJ 08401; 609–343–4801

Thursday, June 27, 2002, Fairhaven, MA, 7–9 p.m.—The Harborfront Center, 110 Middle Street, Fairhaven, MA 02719; 508–997–1281

Friday, June 28, 2002, Berlin, MD, 7–9 p.m.—Ocean Pines Library, 11107 Cathell Road, Berlin, MD 21811; 410–208–4014

Special Accommodations

These public hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to David Bernhart (see **FOR FURTHER INFORMATION CONTACT**).

Dated: June 3, 2002.

David Cottingham,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service. [FR Doc. 02–14363 Filed 6–6–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 060302A]

New England Fishery Management Council; Public Meeting

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

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 3-day Council meeting on June 24 through 26, 2002, to consider actions affecting New England fisheries in the U.S. exclusive economic zone (EEZ).

DATES: The meeting will be held on Monday, Tuesday, and Wednesday, June 24, 25, and 26, 2002. The meeting will begin at 9:00 a.m. on Monday and at 8:00 a.m. on Tuesday and Wednesday.

ADDRESSES: The meeting will be held at the Samoset Resort, 220 Warrenton Street, Rockport, ME 04856; telephone (207) 594–2511. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Monday, June 24, 2002

Following introductions, the Council will consider approval of Skate Committee recommendations concerning outstanding issues related to the submission of the Draft Skate Fishery Management Plan (FMP) and Draft Environmental Impact Statement to NMFS. The Council also will review and possibly approve the concept of incorporating skates into the multispecies complex in a future amendment to the Northeast Multispecies (Groundfish) FMP. The Council will consider monkfish management issues for the remainder of the day. Members are scheduled to approve management alternatives for inclusion in Amendment 2 to the Monkfish FMP and for purposes of analysis in the associated Draft Supplemental Environmental Impact Statement. Measures will include, but will not be limited to, revisions to the

overfishing definition reference points, adjustments to the day-at-sea program, permit qualification criteria, and measures to reduce bycatch. The monkfish discussion will include review and approval of the Habitat Committee's recommendations for minimizing the impacts of monkfish fishing on Essential Fish Habitat.

Tuesday, June 25, 2002

The Council meeting will re-convene and begin with an overview of the measures under consideration to date for inclusion in Amendment 10 to the Atlantic Sea Scallop FMP. This will be followed by a discussion of a schedule for Framework Adjustment 15 to the FMP, with a focus on an adjustment to the days-at-sea allocations and a timeline for completion. The scallop agenda item also will include the Habitat Committee's recommendations for minimizing the impacts of scallop fishing on Essential Fish Habitat. Following the completion of this discussion, there will be a short open comment period during which the public may offer remarks on subjects relevant to Council business, but not on the agenda for this meeting. The day will end with a review of progress to date on the development of Amendment 13 to the Northeast Multispecies FMP. This will include the Scientific and Statistical Committee's recommendations on the Reference Point Working Group Report prepared by NMFS and the adoption of status determination criteria.

Wednesday, June 26, 2002

The last day of the Council meeting will begin with reports on recent activities from the Council Chairman and Executive Director, the NMFS Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, NOAA General Counsel and representatives of the U.S. Coast Guard, NMFS Enforcement and the Atlantic States Marine Fisheries Commission. The remainder of the Council meeting will be spent on further addressing issues associated with Amendment 13 to the Northeast Multispecies FMP. These include recommendations from the Groundfish Advisory Panel on alternatives that will address fishing vessel capacity in the groundfish fishery, and a report from the Groundfish Plan Development Team (PDT) concerning its progress to develop management alternatives for presentation to the Council. The PDT may ask for further direction from the Council to complete its work.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: June 4, 2002.

John H. Dunnigan

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

[FR Doc. 02-14364 Filed 6-6-02; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 052802C]

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings/public hearings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will meet in June (see **SUPPLEMENTARY INFORMATION** for specific times, dates, and agenda items).

ADDRESSES: The Council meeting will be held at the American Samoa Convention Center, Pago Pago, American Samoa 96799; telephone: 684-633-5155; FAX: (684)633-4195.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808-522-8220.

SUPPLEMENTARY INFORMATION:

Dates and Locations

Public Hearings

Public hearings will be held at 4 p.m. on Tuesday, June 25, 2002, for final action on revisions to the

comprehensive Sustainable Fisheries Act (SFA) amendment that will define overfishing for the pelagic, bottomfish, and crustacean fisheries; at 11 a.m. on Wednesday, June 26, 2002, for final action on American Samoa limited entry options; and at 3 p.m. for final action on adjustments to the Northwestern Hawaiian Islands (NWHI) bottomfish annual landing requirements.

Committee Meetings

The following Standing Committees of the Council will meet on June 24, 2002. Enforcement/Vessel Monitoring System (VMS) from 8 a.m. to 10 a.m.; Fishery Rights of Indigenous People from 9 a.m. to 10 a.m.; International Fisheries/Pelagics from 10 a.m. to 12 noon; Precious Corals from 1:30 p.m. to 2:30 p.m.; Crustaceans from 1:30 p.m. to 2:30 p.m.; Bottomfish from 2:30 p.m. to 4:30 p.m.; Ecosystem and Habitat from 2:30 p.m. to 4:30 p.m.; and Executive/Budget and Program from 4:30 p.m. to 5:30 p.m.

In addition, the Council will hear recommendations from its plan teams, SSC, and other ad hoc groups. Public comment periods will be provided throughout the agenda. The order in which agenda items are addressed may change. The Council will meet as late as necessary to complete scheduled business.

The agenda during the full Council meeting will include the items listed here:

1. Introductions
2. Approval of agenda
3. Approval of 112th meeting minutes
4. Island reports
 - A. American Samoa
 - B. Guam
 - C. Hawaii
 - D. Commonwealth of the Northern Mariana Islands
5. Federal fishery agency and organization reports
 - A. Department of Commerce
 - (1) NMFS
 - (a) Southwest Region, Pacific Islands Area Office (PIAO)
 - (b) Southwest Fisheries Science Center, La Jolla and Honolulu Laboratories
 - (2) NOAA General Counsel, Southwest Region
 - (3) National Ocean Service Fagateli Bay National Marine Sanctuary
 - B. Department of the Interior/U.S. Fish and Wildlife Service
 - C. U.S. State Department

6. Enforcement/Vessel monitoring systems

- A. Report on U.S. Coast Guard activities in American Samoa
- B. Report on NMFS activities in American Samoa
- C. New and developing surveillance technology
- D. Status of violations

7. Overview of crustacean fisheries in American Samoa

8. Overview of the precious coral resource in American Samoa

9. Comprehensive SFA amendment revisions

- A. Overfishing provisions
- B. Public hearing on overfishing definitions

In 1998, the Council submitted a comprehensive amendment to all the Council's fishery management plans, which was generated in response to the 1996 re-authorization of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The section of this amendment on the maximum sustainable yield and overfishing reference control rules for bottomfish, crustaceans and pelagics was disapproved by NMFS. The Council has addressed NMFS' concerns about this disapproved section of the original comprehensive amendment and will solicit public comment prior to taking final action.

10. Observer Program

- A. NMFS PIAO
 - (i) American Samoa
 - (ii) Bottomfish
 - (iii) Hawaii longline
- B. Native Observer Program

11. Guest Speakers:

- A. Future of the American Samoa Canneries
- B. South Pacific Environmental Program
 - (i) overview of the program
 - (ii) sea turtle conservation

12. Pelagic Fisheries

- A. 1st quarter 2002 Hawaii and American Samoa longline reports
- B. American Samoa longline fishery
 - (i) limited entry program
 - (ii) public hearing

The Council will hold a public hearing on the preferred alternative for a limited entry program for the American Samoa longline fishery, and may take final action on this management measure. The number of fishing vessels participating in the American Samoa longline fishery doubled in 2001, and the level of fishing effort in terms of hooks set quadrupled.

The new entrants comprised mainly large conventional longliners which are fifty feet or larger, as opposed to the small 30–40 ft (9.144–12.192 m) outboard-powered alia-catamarans with hand deployed longline gear with which the American Samoa fishery originated. In 2002 at the Council's request, NMFS implemented a 50 nm–area closure around the American Samoa islands that generally excludes all fishing vessels larger than 50 ft (15.2 m). However there are concerns about unconstrained entry of fishing vessels into the American Samoa fishery. Unlike Hawaii, fishing vessels in the American Samoa fishery are confined to fishing within the exclusive economic zone, and gear conflict and competition for resources are likely to increase as the level of fishing increases. Consequently, the Council intends to select a preferred alternative for a limited entry program for the fishery, and wishes to solicit public comment prior to making a decision on whether to proceed with transmittal of the measure to NMFS for review and approval.

- C. Annual report modules
 - D. Seabird conservation and management
 - E. Litigation
 - F. Sea turtle conservation and management
 - (i) Sea turtle resource around American Samoa
 - (ii) Status of new Biological Opinion
 - (iii) Report from International Leatherback Survival Conference
 - G. Redrafting of Amendment 9 to the Pelagic Fishery Management Plan for shark management measures
 - H. International meetings
 - (i) Tuna Treaty
 - (ii) Second International Fishers Forum
 - I. Pelagic Fisheries Research Program new projects
13. Bottomfish Fisheries
- A. Status of American Samoa fishery

- B. NWHI Framework Action: adjustment to landing requirements
- C. Status of Biological Opinion and Draft Environmental Impact Statement
- D. Annual report modules
- E. Public hearing

The Council will consider an amendment to its Fishery Management Plan for Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region to modify the annual landing requirements for permit renewal and prohibitions on the lease and charter of permits from the NWHI Ho'omalulu and Mau zone management regimes. The Council expects that these adjustments will best address the key objectives to maintain opportunities for small scale fisheries, maintain availability of high-quality fresh bottomfish, and balance harvest capacity with harvestable fishery stocks. Given the uncertainty of the future management of these fisheries due to the establishment of the NWHI Coral Reef Reserve and the pending National Marine Sanctuary designation, the Council will consider final action on suspending the permit renewal requirements until the sanctuary designation process is complete.

14. Fishery rights of indigenous peoples
- A. Marine conservation plans
 - B. Report on Community demonstration projects program
 - C. Community development program
15. Program planning
- A. Funding
 - B. Sea turtle cooperative research and management workshop
 - C. NMFS cooperative research
 - D. Council/NMFS long term research planning for the Western Pacific Region
 - E. New NMFS Pacific Island Region structure
 - F. Joint working group
 - G. Education initiatives

16. Ecosystems and Habitat
- A. Report on the status of the Coral Reef Ecosystems Fishery Management Plan
 - B. American Samoa Rapid Assessment and Mapping Project
 - C. Marine Protected Area Policy Working Group report
 - D. Reef fish stock assessment and ecosystem management workshop
 - E. Invasive Species
 - F. Essential fish habitat mapping and designations
17. Administrative Matters
- A. Financial reports
 - B. Administrative report
 - C. Meetings and workshops

Other Business

Although non-emergency issues not contained in this agenda may come before the Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this document and to any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: June 3, 2002.

John H. Dunnigan,

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

[FR Doc. 02–14362 Filed 6–6–02; 8:45 am]

BILLING CODE 3510–22–S

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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Program Comment for Capehart and Wherry Era Army Family Housing and Associated Structures and Landscape Features (1949–1962)

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of approval of Program Comment on Army Capehart and Wherry Era Housing.

SUMMARY: On May 31, 2002, the Advisory Council on Historic Preservation approved a Program Comment that facilitates the Army's compliance with the National Historic Preservation Act with regard to its management of its inventory of Capehart and Wherry Era family housing and associated structures and landscape features.

DATES: The Program Comment goes into effect on June 7, 2002.

FOR FURTHER INFORMATION CONTACT: Address all comments concerning this Program Comment to David Berwick, Army Affairs Coordinator, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 809, Washington, DC 20004. Fax (202) 606-8672. dberwick@achp.gov.

SUPPLEMENTARY INFORMATION: Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, requires Federal agencies to consider the effects of this undertakings on historic properties and provide the Advisory Council on Historic Preservation ("Council") a reasonable opportunity to comment with regard to such undertakings. The Council has issued the regulations that set forth the process through which Federal agencies comply with these duties. Those regulations are codified under 36 CFR part 800 ("Section 106 regulations").

The section 106 regulations, under 36 CFR 800.14(e), provide that an agency

may request the Council for a "Program Comment" allowing it to comply with section 106 for a category of undertakings in lieu of conducting a separate review for each individual undertaking under the regular process.

I. Background

According to the requirements for obtaining a Program Comment, the Army formally requested the Council comment on Capehart and Wherry Era Army family housing and associated structures and landscape features in lieu of requiring separate reviews under sections 800.4 through 800.6 of the section 106 regulations for each individual undertaking. The Army identified the category of undertakings as maintenance and repair; rehabilitation; layaway and mothballing; renovation; demolition; demolition and replacement; and transfer, sale or lease out of Federal control, affecting Army family housing built between 1949 and 1962 and termed "Capehart and Wherry." The Army also specified the likely effects that these management actions would have on historic properties and the steps the Army would take to ensure that the effects are taken into account. The Army included in their request to the Council the public comments that it received from a 30-day public comment opportunity provided through an earlier notice (67 FR 2644, January 18, 2002).

The Council subsequently published a notice of intent to issue the Program Comment (67 FR 12966, March 20, 2002) and notified State Historic Preservation Officers ("SHPOs"), the National Conference of State Historic Preservation Officers ("NCSHPO"), Tribal Historic Preservation Officers ("THPOs"), and the National Association of Tribal Historic Preservation Officers, and requested their views on the Army's proposed Program Comment.

During its May 31, 2002 business meeting, the Council membership (with the Department of Defense recusing itself) voted unanimously to approve and issue the Program Comment found at the end of this notice. The vote was 19 in favor of approving and issuing the Program Comment and no votes against, with the Department of Defense abstaining.

Neither the Council nor the Army have engaged in the particularized consultation with Indian Tribes and

Native Hawaiian organizations, pursuant to 36 CFR 800.14(e)(4), since such consultation does not seem to be warranted. All Army actions considered under this Program Comment will be undertaken on Army property. The Program Comment will not have consequences for historic properties of religious and cultural significance, regardless of location, to any Indian tribe or Native Hawaiian organization since any Capehart and Wherry actions which would affect these types of properties are specifically excluded under the Program Comment.

II. Response to Public Comments

At the end of the 30-day comment period, only four comments had been filed: NCSHPO, the New Jersey SHPO, the National Trust for Historic Preservation ("Trust"), and the Department of Housing and Urban Development. The following Council responses reflect significant comments and the manner in which the Council has modified the Program Comment to respond to these public comments. The public comments are printed in bold typeface, while the Council response follows immediately in normal typeface:

The Army's proposal will, in effect, exempt one property type from any and all future compliance with section 106. The Program Comment process is not an exemption. The Program Comment reflects what the Army must follow to be in compliance with section 106.

The period of significance for Capehart and Wherry Housing is less than fifty years old. For most properties the passage of time is considered to be essential in order to gain scholarly perspective. While the National Register criteria allow for properties of exceptional significance to be eligible for the Register prior to this 50-year benchmark, the Council believes that Capehart Wherry properties would never meet the significance test for this category of exceptional significance. Since these properties are now on the cusp of meeting the 50-year benchmark, we believe it is appropriate for the Army to take management action, which would reduce their administrative cost of managing these resources, to comply with Section 106 in advance of meeting the 50-year threshold. The Council supports proactive agency planning in order to reduce administrative costs and burdens.

Conclusions reached about the non-significance of properties that are less than fifty years old are inherently suspect. The Council's notice of intent states that "The Army considers its inventory of Capehart and Wherry properties, including any associated structures and landscape features, to be eligible for the National Register of Historic Places for the purposes of section 106 compliance."

The Army's plans should receive detailed consideration, possibly by the Council as a whole. The Council's Federal Agency Program Committee reviewed the Program Comment and provided recommendations to the Council membership for its deliberation and vote at the May 31, 2002, business meeting. As stated above, at that meeting, the Council membership discussed the Program Comment and unanimously voted to approve and issue it.

SHPOs from states with significant inventories of Capehart Wherry era housing should be invited to participate in the development of treatment plans. The Council and the Army provided all SHPOs and NCSHPO ample opportunity to comment on the proposed treatment plans detailed in the Program Comment. That resulted in the receipt of comments from only one SHPO (New Jersey) and NCSHPO. Both comments were closely considered in the final drafting of the Program Comment. The consultation met the requirements of the section 106 regulations for the issuance of a Program Comment.

While documentation of the affected resources may be one effective treatment, preservation of significant examples needs to be considered also. The Program Comment has been modified to allow for identification and preservation of properties of particular importance for continued use as military housing within the funding and mission constraints of the Army.

The Advisory Council needs more information on the resource type affected, such as information about representative individual examples or types and information about groups of resources as they exist today on military installations. The revised and expanded context study will provide more detailed information on individual examples of the types of Capehart and Wherry housing which exist at each installation. This information will be used by the Army to prepare the design guidelines that will be used by installations in future planning efforts that affect Capehart and Wherry communities.

The Council should insure that Capehart Wherry communities are

evaluated within a comprehensive context, including evaluating significance within the context of local and state significance, Criteria for Evaluation B (related to individuals of historic importance) and C (work of a master). Because the housing program was not uniform across all installations, a post-by-post evaluation needs to be made for groups of resources in order to evaluate their significance. The revised and expanded context study will specifically address the importance of historically important builders, developers and architects that may have been associated with design and construction of Capehart and Wherry Era housing developments at specific Army installations.

The potential for secondary effects on National Register listed or eligible property that may be adjacent to Capehart Wherry era housing is not consider in this proposal, and archaeology is not considered either. Ground disturbing activities on Army installations should be evaluated on an individual basis. The Program Comment specifically states that it does not apply to the following properties historic properties: (a) Archaeological sites; (b) properties of traditional religious and cultural significance to federally recognized Indian tribes or Native Hawaiian organizations; and/or (c) historic properties other than Army Capehart and Wherry Era housing, associated structures and landscape features. This is found in section III, Applicability.

The Council's regulations emphasize public participation. We do not believe the spirit of the Council's regulations have been addressed by one Federal Register notice. We disagree. The Council's regulations allow agencies to use their own public review processes, including NEPA, in complying with the public involvement requirements under the Council's regulations. The general public had an opportunity to respond to comments under the Army's NEPA document and again through the Council's notice of intent process. There were no general public comments received by either the Army or the Council during these public review processes. We believe that the non-response by the general public reflects its lack of interest in these types of properties, especially as they relate to military installations.

Would the program comment affect the Army's responsibilities under section 110 of the National Historic preservation Act? Section 110(a)(2)(E) requires agency's procedures for compliance with Section 106 to be consistent with the Council's

regulations and provide a process for identification, evaluation, and consultation regarding the means by which adverse effects are considered. This Program Comment was issued and approved by the Council pursuant to the Council's section 106 regulations.

The Army's proposal includes no commitment that any of these useful documents (i.e., context study, design guidelines) will actually be used or applied by the Army. The intent of the Program Comment is that the Army apply these guidelines consistently across installations where Capehart and Wherry units will be retained by the Army. If the Council believes that the Army is not using the guidelines as intended, the Council may withdraw the Program Comment in its entirety.

There (is no) proposal by the Army to commit to the preservation of Capehart Wherry properties. The Program Comment has been modified to allow for identification and preservation of properties of particular importance for continued use as military housing within the funding and mission constraints of the Army.

The Army should not be allowed to proceed under the program comments demolition prior to the completion of the mitigation actions. While the Army is allowed to proceed with action which affect Capehart and Wherry properties prior to completion of mitigation, the Program Comment prevents them from completing management action which may preclude the eventual successful completion of the steps outlined in the Program Comment.

Rather than leaving to chance the question of which of these properties may survive, if any, the Army should identify a limited selection of these resources in advance, based on criteria of significance, and should place an explicit priority on actually preserving them. The Program Comment has been modified to establish a process for the identification of Capehart and Wherry Era properties of particular importance and to allow the preservation of such properties for continued use as military housing within the funding and mission constraints of the Army.

The Army's proposal does not contemplate any distinction whatsoever in the treatment of properties that have special architectural or other significance. The revised and expanded context study will include identification of significant architects, builders/contractors/developers and subcontractors. Upon completion, the context study will be reviewed for Capehart and Wherry Era properties of particular importance. Properties identified in this review process may

have additional historical documentation completed for them, as needed, they will be taken into consideration in producing the video documentation and they will be considered for preservation through continued use as Army family housing.

III. Text of the Program Comment

The full text of the Program Comment is produced below:

Program Comment for Capehart and Wherry Era Army Family Housing and Associated Structures and Landscape Features (1949–1962)

I. Introduction

This Program Comment, adopted pursuant to 36 CFR 800.14(e), demonstrates Department of the Army (Army) compliance with its responsibilities under section 106 of the National Historic Preservation Act with regard to the following management actions for Capehart and Wherry Era Army family housing, associated structures and landscape features: maintenance and repair; rehabilitation; layaway and mothballing; renovation; demolition; demolition and replacement; and transfer, sale of lease out of Federal control.

Structures associated with this family housing include detached garages, carports and storage buildings, and the landscape features (including but not limited to the overall design and layout of the Capeharts and Wherry Era communities, including road patterns, plantings and landscaping, open spaces, playgrounds, parking areas, signage, site furnishings, views into and out of the community, lighting, sidewalks, setbacks and all other associated cultural landscape features). A small percentage of buildings and structures constructed during this period were not constructed with funds provided through the Capehart and Wherry funding programs, but are similar in all other respects, and are therefore included in this Program Comment.

II. Treatment of Capehart and Wherry Properties

a. Consideration of Eligibility

The Army conducted a historic context of its Capehart and Wherry properties in a report entitled *For Want of a Home: A Historic Context for Wherry and Capehart Military Family Housing*. On May 22, 2001, the Army sponsored a symposium on Capehart and Wherry Era housing management as it relates to historic preservation. The symposium was attended by preservation experts, including the National Trust for Historic Preservation

(Trust), the National Conference of State Historic Preservation Officers (NCSHPO), the Advisory Council on Historic Preservation (Council), and nationally recognized experts in the field of historic preservation from academia and industry. As recommended by the symposium participants, the treatment section, below, presents the programmatic approach for complying with section 106. The Army considers its inventory of Capehart and Wherry Era properties, including any associated structures and landscape features, to be eligible for the National Register of Historic Places for the purposes of section 106 compliance.

b. Treatment

The Army requested a Program Comment as an Army-wide section 106 compliance action related to management of Capehart and Wherry Era housing, associated structures and landscape features. This programmatic approach will facilitate management actions for maintenance and repair; rehabilitation; layaway and mothballing; renovation; demolition; demolition and replacement; and transfer, sale or lease of Capehart and Wherry Era housing, associated structures and landscape features out of Federal control. Such actions present a potential for adverse effects to these historic properties.

The following treatment is based on the measures proposed by the Army in their request for Program Comment, the comments received from the Council's "notice of intent to issue program comments" as published in the **Federal Register** (67 FR 12956; March 20, 2002) and follow up discussions between the Council, the Army, NCSHPO, and the Trust.

(1) *Context Study*: The Army will expand and revise the existing historic context, *For Want of a Home: A Historic Context for Wherry and Capehart Military Family Housing*. Consistent with issues identified during the symposium on Capehart and Wherry Era Housing held by the Army in May 2001, and subsequent public review, the Army will expand the historic context to address the following important issues:

(1) Explore changing Army family demographics following the end of the World War II and their impact on housing needs and responsive programs;

(ii) Focus on post-World War II suburbanization, housing trends and affordable housing programs in the civilian sector;

(iii) Identify those Capehart and Wherry properties that may be of particular importance due to their association with historically important builders, developers and architects;

(iv) Discuss associated structures, and landscape features, in addition to addressing the housing units; and

(v) Describe the inventory of Capehart and Wherry Era housing, providing information on the various types of buildings and architectural styles and the quantity of each.

(2) *Context Study Review*: The Army review the results of the expanded and revised context study and determine whether any of those properties identified under section II(b)(1)(iii) are of particular importance. The Army will notify the Council of the results of this review, and the Council will forward the results to the NCSHPO, and the Trust.

(3) *Design Guidelines*: The Army's scoping process identified landscape features as an important attribute of Capehart and Wherry Era land-use planning and development. Using information developed in the expanded and revised context study, the Army will develop *Capehart and Wherry Era Neighborhood Design Guidelines* that consider the importance of Capehart and Wherry Era family housing, associated structures and landscape features. The Army will:

(i) Provide the design guidelines to the Council for review;

(ii) Distribute the design guidelines to those facilities and installations that have been identified in the expanded and revised context study as having Capehart and Wherry Era properties; and

(iii) Consider the design guidelines in planning actions that affect the Army's Capehart and Wherry Era housing, associated structures and landscape features.

(4) *Properties of Particular Importance*: For Capehart and Wherry properties that have been determined to have particular importance under section II(b)(2), above, the Army will:

(i) Consider the need to conduct additional historical documentation for these properties;

(ii) Focus video documentation efforts on such properties; and

(iii) Within funding and mission constraints, consider the preservation of these properties through continued use as military housing.

(5) *Tax Credits*: The Army will advise developers involved in the Army's privatization initiatives that Capehart and Wherry Era properties may be eligible for historic preservation tax credits.

(6) *Video Documentation*: The Army will document and record Capehart and Wherry Era housing, associated structures and landscape features

through preparation of a video. The video will:

(i) Document and record representative structural types and landscape features at three installations, including appropriate examples of properties of particular importance;

(ii) Explain the relationship of this housing construction program to significant issues and topics researched for the expanded and revised context study;

(iii) Be distributed for educational purposes, and archived by the Army; and

(iv) Be provided, in digital format, to the Council, the Trust, and the NCSHPO.

(7) *Schedule for Completion:*

(i) Within 12 months from Council approval of the Program Comment, the Army shall complete:

(A) The expanded and revised context study for Capehart and Wherry Era housing as described in section II(b)(1), above;

(B) Review of the context study for properties of particular importance as described in II(b)(2), above; and

(c) The design guidelines as described in section II(b)(3), above; exclusive of section II(b)(3)(iii).

(ii) Within 24 months from Council approval of the Program Comment, the Army shall complete:

(A) Its consideration of properties of particular importance as described in section II(b)(4), above; and

(B) The video documentation of Capehart and Wherry Era housing as described in Section II(b)(6), above.

(8) *Availability:* Upon their completion, the Army will make final products available to installation commanders.

III. Applicability

This Program Comment does not apply to the following properties that are listed, or eligible for listing, on the National Register of Historic Places:

(a) Archeological sites;

(b) Properties of traditional religious and cultural significance to federally recognized Indian tribes or Native Hawaiian organizations; and/or

(c) Historic properties other than Army Capehart and Wherry Era housing, associated structures and landscape features.

IV. Effect of Program Comment

By the following this Program Comment, the Army meets its responsibilities for compliance under section 106 regarding management of its entire inventory of Capehart and Wherry Era housing (1949–1962), associated structures and landscape features.

Accordingly, installations are no longer required to follow the case-by-case section 106 review process for each individual management action affecting Capehart and Wherry Era housing, associated structures and landscape features.

The Army may carry out management actions prior to the completion of the treatment steps outlined above, so long as such management actions do not preclude the eventual successful completion of these steps.

This Program Comment will remain in effect until such time as the Department of the Army determines that such comments are no longer needed, and notifies the Council, in writing, or the Council withdraws the Program Comment in accordance with 36 CFR 800.14(e)(6). Following such withdrawal, the Army would be required to comply with the requirements of 36 CFR 800.3 through 800.7 for each individual management action.

The Council approved this Program Comment on May 31, 2002.

[Signed by Chairman John L. Nau, III on May 31, 2002]

Authority: 36 CFR 800.14(e).

Dated: June 4, 2002.

John M. Fowler,

Executive Director.

[FR Doc. 02–14389 Filed 6–6–02; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Shrieve Chemical Co. of Woodlands, Texas, an exclusive license to U.S. Patent No. 5,676,994, “Non-Separable Starch-Oil Compositions,” issued on October 4, 1997 and to U.S. Patent No. 5,882,713, “Non-Separable Compositions of Starch and Water-Immiscible Organic Materials,” issued on March 16, 1999, for all uses in the field of oil drilling applications including, but not limited to, drilling muds and drilling lubricants.

U.S. Patent No. 5,676,994 is a continuation of U.S. Patent Application Serial No. 08/233,173, “Non-Separable Starch-Oil Compositions,” and U.S.

Patent No. 5,882,713 is a continuation-in-part of U.S. Patent Application Serial No. 08/233,173. Notice of Availability for U.S. Patent Application Serial No. 08/233,173 was published in the **Federal Register** on October 24, 1994.

DATES: Comments must be received within thirty (30) calendar days of the date of publication of this Notice in the **Federal Register**.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government’s patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Shrieve Chemical Co. has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Michael D. Ruff,

Assistant Administrator.

[FR Doc. 02–14288 Filed 6–6–02; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting

SUMMARY: The Siskiyou County Resource Advisory Committee (RAC) will meet on June 17, 2002, in Yreka, California. The purpose of the meeting is to discuss the following topics: Approval of Previous Meeting Minutes; Rating Criteria Review and Design; Timeline for RFPs from subgroup; Funding mechanisms status (report from Forest Service); Review successful and unsuccessful letters; 15% Merchantable

Material Discussion; discussion of process for proxy votes; Finalize the standards and time lines for the FY2002 proposal packets; Finalize the agenda for the July 15, 2002 meeting.

DATES: The meetings will be held June 17, 2002 from 4 p.m. to 7 p.m.

ADDRESSES: The meeting will be held at the Yreka High School Library, Preece Way, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Brian Harris, Meeting Coordinator, USDA, Klamath National Forest, 1312, Fairlane Road, Yreka, California, 96097, (530) 841-4485; e-mail bdharris@fs.fed.us

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public comment opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: May 31, 2002.

Margaret J. Boland,

Forest Supervisor.

[FR Doc. 02-14248 Filed 6-6-02; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Rogue/Umpqua Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

SUMMARY: The Rogue/Umpqua Resource Advisory Committee (RAC) will meet on Thursday and Friday, June 13 and 14, 2002. The meeting is scheduled to begin at 8 a.m. and conclude at approximately 4:45 p.m. on June 13 and 8 a.m. and conclude at approximately 4:45 p.m. on June 14. The meeting will be held at the Red Lion Inn Hotel 200 N. Riverside Avenue, Medford, OR. The agenda includes (1) Review of additional fiscal year 02 Title II projects on the Rogue River and Umpqua national forests, (2) Review of Title II projects on the Rogue River and Umpqua national forests proposed by the Forest Service for fiscal year 03, (3) Public Forum, including presentation of proposals submitted by the public, (4) project selection, and (5) variety of presentations on natural resource topics. The Public Forum is scheduled to begin at 8:10 a.m. on June 14. Time allotted for individual presentations will be limited to 3-4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may be submitted prior to the June meeting by sending them to Designated Federal Official Jim Caplan at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Jim Caplan; Umpqua National Forest; PO Box 1008, Roseburg, Oregon 97470; (541) 957-3203.

Dated: June 3, 2002.

Lyle Burmeister,

Acting Deputy Forest Supervisor, Umpqua National Forest.

[FR Doc. 02-14321 Filed 6-6-02; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Idaho Panhandle Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92-463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106-393) the Idaho Panhandle National Forests' Idaho Panhandle Resource advisory Committee will meet Friday, June 21, 2002 at 9:30 am in Sandpoint, Idaho for a business meeting and a fieldtrip. The business meeting is open to the public.

DATES: June 21, 2002.

ADDRESSES: The meeting location is the Idaho Panhandle National Forests' Sandpoint District Office, located at 1500 Hwy 2, Suite 110, Sandpoint, Idaho 83864.

FOR FURTHER INFORMATION CONTACT: Ranotta K. McNair, Forest Supervisor and Designated Federal Officer, at (208) 765-7369.

SUPPLEMENTARY INFORMATION: Public Forum begins at 9:30 am. The fieldtrip will view future project proposals.

Dated: June 3, 2002

Ranotta K. McNair,

Forest Supervisor.

[FR Doc. 02-14453 Filed 6-6-02; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Plain-Honey Creek Watershed, Sauk County, WI

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Plain-Honey Creek Watershed, Sauk County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Patricia S. Leavenworth, State Conservationist, Natural Resources Conservation Service, 6515 Watts Road, Suite 200, Madison, Wisconsin, 53719. Telephone (608) 276-8732.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Patricia S. Leavenworth, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purposes are flood prevention and recreation. The planned works of improvement include the removal of two single family dwellings and a business from the hydraulic shadow of Structure Number 3, and the enactment of a county floodplain zoning ordinance which restricts future development within the hydraulic shadow of Structure Number 3. Sediment will be removed from the lake behind the dam.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Thomas Krapf at (608) 276-8732, Ext. 232.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: May 30, 2002.

Patricia S. Leavenworth,

State Conservationist.

[FR Doc. 02-14283 Filed 6-6-02; 8:45 am]

BILLING CODE 3410-16-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Chairperson and Vice Chairperson Designation Announcement

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Notice of designation of Committee Chairperson and Vice Chairperson.

SUMMARY: Effective July 1, 2002, Steven B. Schwalb, representing the U.S. Department of Justice, and LeRoy F. Saunders, a Private Citizen from Oklahoma, will assume the responsibilities of the Committee's Chairperson and Vice Chairperson, respectively.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202-3259.

FOR FURTHER INFORMATION CONTACT: Annmarie Hart-Bookbinder (703) 603-0174.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 46-48(c) and 41 CFR 51. The Committee Chairperson and Vice Chairperson are elected by the members of the Committee and serve a term of two years. The Chairperson carries out all statutory, regulatory and other responsibilities as prescribed by the Javits-Wagner-O'Day (JWOD) Act and Committee regulations. The Vice Chairperson undertakes these responsibilities in the Chairperson's absence.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02-14344 Filed 6-6-02; 8:45 am]

BILLING CODE 6353-01-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a product and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received on or Before: July 8, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202-3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603-7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the product and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the product and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the product and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following product and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Product

Product/NSN: Pillow, Bed/7210-00-NIB-0021.

NPA: Raleigh Lions Clinic for the Blind, Inc., Raleigh, NC.

Contract Activity: Department of Veterans Affairs Acquisition Center, Hines, IL.

Services

Service Type/Location: Medical Transcription/Federal Bureau of Prisons, Greenville, IL.

NPA: The Lighthouse of Houston, Houston, TX.

Contract Activity: Federal Bureau of Prisons, Greenville, IL.
Service Type/Location: Mess Attendant/Anderson Air Force Base, GU.
NPA: Able Industries of the Pacific, Tamuning, GU.
Contract Activity: Department of the Air Force.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02-14345 Filed 6-6-02; 8:45 am]

BILLING CODE 6353-01-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: July 8, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202-3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly (703) 603-7740.

SUPPLEMENTARY INFORMATION: On December 8, 2000, October 26, 2001, March 29, April 5, April 12, and April 19, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (65 FR 76985, 66 FR 54194, 67 FR 15175, 16366, 17965, 17966, and 19392) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the products and services proposed for addition to the Procurement List.

Accordingly, the following products and services are added to the Procurement List:

Products

- Product/NSN: Sunscreen Preparation, Gel or Lotion/6505-01-121-2336.
NPA: ACT CORP., Daytona Beach, FL.
Contract Activity: Defense Supply Center—Philadelphia, Philadelphia, PA.
- Product/NSN: Refillable Tape Dispenser with Tape/7520-00-NIB-1402.
- Product/NSN: Refillable Tape Dispenser with Tape/7520-00-NIB-1516.
NPA: The Lighthouse for the Blind in New Orleans, New Orleans, LA.
Contract Activity: Office Supplies & Paper Products Commodity Center, New York, NY.
- Product/NSN: Load Carriage System/8415-00-NSH-0622.
NPA: Chautauqua County Chapter, NYSARC, Jamestown, NY.
Contract Activity: U.S. Army Robert Morris Acquisition Center.
- Product/NSN: Load Carriage System Pockets/8415-00-NSH-0600.
- Product/NSN: Load Carriage System Pockets/8415-00-NSH-0601.
- Product/NSN: Load Carriage System Pockets/8415-00-NSH-0602.
- Product/NSN: Load Carriage System Pockets/8415-00-NSH-0603.
- Product/NSN: Load Carriage System Pockets/8415-00-NSH-0604.
- Product/NSN: Load Carriage System Pockets/8415-00-NSH-0605.
- Product/NSN: Load Carriage System Pockets/8415-00-NSH-0606.
- Product/NSN: Load Carriage System Pockets/8415-00-NSH-0607.
- Product/NSN: Load Carriage System Pockets/8415-00-NSH-0608.
- Product/NSN: Load Carriage System Pockets/8415-00-NSH-0609.
- Product/NSN: Load Carriage System Pockets/8415-00-NSH-0611.
- Product/NSN: Load Carriage System Pockets/8415-00-NSH-0612.
- Product/NSN: Load Carriage System Pockets/8415-00-NSH-0613.
- Product/NSN: Load Carriage System Pockets/8415-00-NSH-0614.
- Product/NSN: Load Carriage System Pockets/8415-00-NSH-0615.
- Product/NSN: Load Carriage System Pockets/8415-00-NSH-0616.
- Product/NSN: Load Carriage System Pockets/8415-00-NSH-0617.
- Product/NSN: Load Carriage System Pockets/8415-00-NSH-0618.
- Product/NSN: Load Carriage System Pockets/8415-00-NSH-0619.
- Product/NSN: Load Carriage System Pockets/8415-00-NSH-0620.

Product/NSN: Load Carriage System Pockets/8415-00-NSH-0621.

NPA: Chautauqua County Chapter, NYSARC, Jamestown, NY.

Contract Activity: U.S. Army Robert Morris Acquisition Center.

Services

- Service Type/Location: Food Service Attendant/Mississippi Air National Guard Building 129, Dining Facility, Jackson, MS.
NPA: Goodwill Industries of Mississippi, Ridgeland, MS.
Contract Activity: Mississippi Air National Guard, Jackson, MS.
- Service Type/Location: Janitorial/Custodial/U.S. Coast Guard Air Station—Detroit Selfridge ANG Base, MI.
NPA: New Horizons Rehabilitation Services, Inc., Auburn Hills, MI.
Contract Activity: U.S. Coast Guard, Department of Transportation.
- Service Type/Location: Janitorial/Custodial/U.S. Army Reserve Center, Whitehall, OH.
NPA: Licking-Knox Goodwill Industries, Inc., Newark, OH.
Contract Activity: U.S. Army Reserve Center, Fort Snelling, MN.
- Service Type/Location: Office Supply Store/Federal Building, Little Rock, AR.
NPA: The Arkansas Lighthouse for the Blind, Little Rock, AR.
Contract Activity: GSA, Public Buildings Service.
- Service Type/Location: Office Supply Store/VA Medical Center, San Francisco, CA.
NPA: Associated Industries for the Blind, Milwaukee, WI.
Contract Activity: VA Medical Center, San Francisco, CA.
- Service Type/Location: Order Processing Service/National Institute of Health, Bethesda, MD.
NPA: Blind Industries & Services of Maryland, Baltimore, MD.
Contract Activity: Department of Health & Human Services.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02-14346 Filed 6-6-02; 8:45 am]

BILLING CODE 6353-01-P

DEPARTMENT OF COMMERCE

Census Bureau

Quarterly Survey of the Finances of Public-Employee Retirement Systems; Proposed Collection; Comment Request

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and

respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 6, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to David Kellerman, Chief, Finance Branch, Governments Division, U.S. Census Bureau, Washington, DC 20233-6800, 301-457-1502.

SUPPLEMENTARY INFORMATION

I. Abstract

The Census Bureau plans to request a three-year extension of the Office of Management and Budget approval for the Quarterly Survey of the Finances of Public-Employee Retirement Systems. This quarterly survey was initiated by the Census Bureau in 1968 at the request of both the Council of Economic Advisers and the Federal Reserve Board. It gathers data on the assets of the 100 largest state and local government public-employee retirement systems. These systems hold over \$2 trillion in assets, which represent approximately 90 percent of all state and local government public-employee retirement system assets.

These important data are used by the Federal Reserve Board to track the public sector portion of the flow of funds accounts. The Bureau of Economic Analysis uses the data on corporate stock holdings to estimate dividends received by State and local government public-employee retirement systems. These estimates, in turn, are used as a component in developing the national income and product accounts.

II. Method of Collection

Canvass methodology consists of a mail out/mail back questionnaire. Responses are screened manually, then put into an electronic format. No statistical methods are used to calculate the data. In those instances when we are not able to obtain a response, estimates are made for nonrespondents by using historical data for the same system or the latest available annual data.

III. Data

OMB Number: 0607-0143.

Form Number: F-10.

Type of Review: Regular.

Affected Public: State and local governments.

Estimated Number of Respondents: 100.

Estimated Time Per Response: 1 hour.

Estimated Total Annual Burden

Hours: 400.

Estimated Total Annual Cost: \$6,828.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 3, 2002.

Madeleine Clayton,

*Departmental Paperwork Clearance Officer,
Office of the Chief Information Officer.*

[FR Doc. 02-14241 Filed 6-6-02; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE**Census Bureau****Census 2003 Test; Proposed Collection; Comment Request**

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44.U.S.C.3506(C)(2)(A)).

DATES: Written comments must be submitted on or before August 6, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be directed to Suzanne Fratino, U.S. Census Bureau, Building 2, Room 2021, Washington, DC 20233-9200, 301-457-4134.

SUPPLEMENTARY INFORMATION**I. Abstract**

In Census 2000, the Census Bureau conducted four separate tests examining innovative ideas. One of these "experiments" was the Response Mode and Incentive Experiment (RMIE). RMIE attempted to measure the extent to which respondents choose to use electronic response options including Computer Assisted Telephone Interviewing (CATI), Interactive Voice Response (IVR), and Internet. Preliminary findings from the RMIE initial mailout component and Operator Assistance indicate that Computer Assisted Telephone Interviewing does not offer clear advantages relative to the Internet in terms of increasing the overall response rate. The IVR mode showed promise but requires additional design work while the Internet mode yielded relatively high data quality. One major recommendation resulting from the RMIE was to investigate the best ways to present the availability of response options, and how to word messages included with the mailed questionnaire. To take advantage of evolving technology, the Census Bureau needs to research various self-response options toward developing a strategy that encourages the public to respond to the census using either paper or electronic options before Nonresponse Follow-up (NRFU) occurs. The method and optimum timing to contact, inform and, remind the public should be included.

The Census Bureau is planning a two-part test in 2003. The first part will examine the impact of offering various self-response options and the interactions among various options on overall response rates and data quality. These options include mail, Internet, Interactive Voice Recognition (IVR), and a combination of Internet and IVR. This test is also designed to address questions about the relative timing and content of various contacts. We hope to

answer the following questions: (1) What is the effect of offering alternative data collection modes on response (i.e. increase, decrease, shift)? and (2) what is the effect of new or additional contact strategies on overall response?

The goal of this portion of the test is to identify, for further testing in 2004, the best strategy for increasing self-enumerated response to the census thus reducing the NRFU workload. Successful accomplishment of this goal will greatly improve the data quality of Census 2010 while reducing the cost of data collection.

The second part of the Census 2003 Test will assess the effects of dropping the "Some other race" response option. This test is designed to answer whether item nonresponse to the race question will increase if the "Some other race" response option with a write-in line is deleted, and what effect this will have on the overall quality of race reporting. In past decennial censuses, the Census Bureau has received an exception from the Office of Management and Budget which allowed it to include a "Some other race" category. This category is a source of noncomparability between the census and surveys and race data produced by other agencies. The purpose of this test is to develop and evaluate a mailout version of the race question that conforms to OMB standards by excluding the "Some other race" category. It will also measure the effectiveness of revised instructions for the Hispanic origin and race questions to convey to respondents the intent of the questions; more specifically that different responses are being requested in each of these questions. In addition, revisions to the Hispanic origin question, including the addition of examples of Hispanic groups to obtain more complete reporting of detailed Hispanic subgroups are to be tested. Examples for the Other Asian and the Other Pacific Islander response categories to the question on race also will be included. It is desirable to assess the feasibility of these changes to the questions on race and Hispanic origin so that alternatives can be developed and tested in a timely way before final question versions are adopted. The Census Bureau plans to conduct multiple rounds of cognitive testing to identify problems and revise question wordings and instructions before finalizing them for this test.

The goal of the race and Hispanic origin portion of the test is to develop question wording and content that will lead to improved self-reporting of both race and Hispanic origin in the census.

II. Method of Collection

The methodology for the Census 2003 Test consists of a data collection strategy involving fourteen different experimental panels. The control panel is a mailing strategy comprised of four pieces—an advance letter, an initial questionnaire, a reminder postcard, and a replacement questionnaire targeted to non-responding housing units. Essentially, this control panel is similar to the Census 2000 mailout strategy with the addition of a replacement questionnaire. In addition, the timing of each mail piece is different from Census 2000. The questionnaire used in nine of the panels will be a Census 2000 short form. The remaining six panels will use a Census 2000 short form with changes to both the Hispanic origin and race questions, their response categories, and instructions to answer both questions. “Census Day,” the reference date for enumerating respondents, will be February 6, 2003. The advance letter will be delivered to housing units in the sample by the United States Postal Service between January 22 and 24, 2003. The initial questionnaire will be delivered on January 28 and 30, followed by the reminder postcard during February 3–5. On February 10, we will determine the universe of non-respondents who will be mailed a replacement questionnaire on February 15–18, 2003.

A national sample of 220,000 addresses will be selected from housing units in Census 2000. The sample is restricted to addresses in Mailout/Mailback areas that are not in the American Community Survey sample during the test period. Based on Census 2000 return rates, census blocks will be stratified into high response and low response strata. A random sample of 5,000 housing units will be drawn from each stratum for each of the eight response strategy test panels, yielding a total of 10,000 housing units per panel. For the control panel and each of the six race and ethnicity panels, a sample of 10,000 housing units from each stratum will be selected, yielding a total of 20,000 housing units per panel.

The eight response strategy test panels consist of various treatments providing alternatives and additions to the control panel's mailing strategy. The sample households in one panel will have the option of responding via the Internet in addition to the option of completing a paper questionnaire and returning it by mail. Two other panels test a telephone interactive voice recognition (IVR) system as an alternative to mailing back the paper questionnaire. The distinction among these two panels is the extent to

which residents are encouraged to choose the IVR option instead of mail. One panel will encourage residents to respond by telephone without including a paper questionnaire and the second will give them the option of responding by telephone or with a questionnaire. Two panels, one without an initial questionnaire in the envelope, will give residents both the Internet and IVR as response options. Other response strategy treatment panels include using a telephone call reminder in lieu of a reminder postcard, putting a due date on the questionnaire envelope, and a mailing strategy without a replacement questionnaire.

Responses from paper mail returns, the Internet, and IVR will be data captured in order to analyze the demographic characteristics of respondents and patterns of item nonresponse. Results of the test will help shape the data collection strategy for the next census.

The six additional test panels are designed to test the effects on the overall and item nonresponse of changes to the questions on Hispanic origin and race. The purpose of this test is to examine the effects of dropping the “Some other race” response category from the race question, and whether additional instructions can ameliorate the resulting increase in race item nonresponse expected, as well as convey to respondents the intent of this question. Previously, the overwhelming majority of responses in the “Some other race” category were Hispanic ethnicities. It is vital that respondents understand that the intent of the question on race is for them to self-report their race using one or more of the race categories shown on the form. In addition, revisions to the Hispanic Origin question, including adding examples of Hispanic groups to obtain more complete reporting of detailed Hispanic subgroups, are being tested.

Because of the listing of Asian and Pacific Islander ethnicities, along with other design effects of the question, some respondents think we are asking them to report their ethnicity and not their race. Others do not see a difference between race and ethnicity. We also are including Other Asian and Other Pacific Islander examples to obtain more complete reporting of detailed Other Asian and Other Pacific Islander subgroups. The six panels test the effects of the following changes compared to the control panel.

1. A modified Hispanic origin question, including the addition of the word “origin,” slight revisions to the instruction for the question, and removing the slashes (/). (The same

modified Hispanic question is used in all six panels.)

2. The inclusion of examples of Hispanic groups and Other Asian and Other Pacific Islander groups to obtain more complete reporting of detailed other Asian and Other Pacific Islander subgroups.

3. The deletion of the “Some other race” response option and write-in area.

4. The deletion of the “Some other race” response option and write in area and the addition of examples of Hispanic groups and Other Asian and Pacific Islander groups.

5. The deletion of the “Some other race” response and addition of an “informative instruction” to increase respondents awareness that race and Hispanic origin are different.

6. The deletion of the “Some other race” response, addition of “informative instruction” to increase respondents awareness that race and Hispanic origin are different and, adding examples of Hispanic groups and Other Asian and Other Pacific Islander groups.

Responses from these paper mail returns also will be data captured in order to analyze the demographic characteristics of respondents and patterns of item nonresponse.

III. Data

OMB Number: Not available.

Form Number(s): DA-1A, 1B, 1C, 1D, 1DD, DA-1(CC-9), 10, 11, 12, 13.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 220,000.

Estimate Time Per Response: 10 minutes.

Estimated Total Annual Burden Hours: 36,666 hours.

Estimated Total Annual Cost: There is no cost to respondents except for their time to respond.

Respondent Obligation: Mandatory.

Legal Authority: Title 13 of the United States Code, Sections 141 and 193.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques

or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 3, 2002.

Madeleine Clayton,

*Departmental Paperwork Clearance Officer,
Office of the Chief Information Officer.*

[FR Doc. 02-14242 Filed 6-6-02; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Census Bureau

Service Annual Survey; Proposed Collection; Comment Request

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 6, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via e-mail at mclayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ruth Bramblett, U.S. Census Bureau, Room 2775-FOB 3, Washington, DC 20233-6500, (301) 457-2766 or via e-mail at ruth.ann.bramblett@census.gov.

SUPPLEMENTARY INFORMATION

I. Abstract

The Service Annual Survey (SAS) provides, for selected service industries, total revenue estimates for taxable firms and total revenue and expense estimates for tax-exempt firms. Selected service industries include professional, scientific and technical services; administrative and support services; health care and social assistance; telecommunications, publishing,

broadcasting and other information service industries; trucking, courier and messenger, and warehousing; selected financial services; and arts, entertainment and recreation. These data are needed to provide a sound statistical basis for the formation of policy by various governmental agencies. The Census Bureau is authorized by Title 13, United States Code, to conduct surveys necessary to furnish current data on subjects covered by the major censuses. These surveys provide continuing and timely national statistical data for the period between economic censuses.

The Bureau of Economic Analysis (BEA), the primary Federal user of these annual program statistics, uses the information in developing the national income and product accounts, compiling benchmark and annual input-output tables, and computing Gross Domestic Product (GDP) by industry. Agencies of the U.S. Department of Transportation (DOT) use the data for policy development and program management and evaluation. The Bureau of Labor Statistics (BLS) uses the data as inputs to its Producer Price Indexes and in developing productivity measurements. The Centers for Medicare and Medicaid Services (CMS) uses the data in the development of the National Health Expenditure Accounts. The Federal Communications Commission (FCC) uses the data as a means for assessing FCC policy. The Census Bureau uses the data to provide new insight into changing structural and cost conditions that will impact the planning and design of future economic census questionnaires. Private industry also uses the data as a tool for marketing analysis.

Data are collected from all of the largest firms and from a sample of small- and medium-sized businesses selected using a stratified sampling procedure. The samples are reselected periodically, generally at 5-year intervals. The largest firms continue to be canvassed when the sample is redrawn, while nearly all of the small- and medium-sized firms from the prior sample are replaced. We collect these data by using a mail-out/mail-back survey questionnaire.

At the present time, we are only requesting an extension for the current Service Annual Survey program. We will not be implementing any new changes for survey year 2002. However, the Service Annual Survey program began testing the North American Product Classification System (NAPCS) for the information sector (NAICS 51, except 512) and computer system services group (NAICS 5415) for survey

year 2001 and we plan to expand coverage of NAPCS to the following subsectors for survey year 2003: Professional, Scientific and Technical Services (NAICS 541); Administrative Support Services (NAICS 561) and Waste Management and Remediation Services (NAICS 562). In subsequent survey years, we intend to expand product lines to additional industries covered by SAS.

NAPCS was developed jointly by the statistical agencies in the United States, Canada, and Mexico to systematically identify and define the products of the service industries. The comprehensive demand-oriented product classification system will complement the supply-oriented North American Industry Classification System (NAICS) introduced in 1997. APCS was launched as a multi-phase initiative by the three countries on February 2, 1999, and it was announced by the Office of Management and Budget (OMB) in the **Federal Register** on April 16, 1999. Phase I, an exploratory phase launched in early 1999, targeted the following four NAICS sectors: Information (NAICS 51); Finance and Insurance (NAICS 52); Professional, Scientific, and Technical Services (NAICS 54); and Administrative and Support and Waste Management and Remediation Services (NAICS 56). Phase II, launched in July 2001, extended the product development work to industries in five additional NAICS service sectors: Transportation and Warehousing (NAICS 48 and 49), Educational Services (NAICS 61), Health Care and Social Assistance (NAICS 62), Arts, Entertainment and Recreation (NAICS 71), and Accommodation and Food Services (NAICS 72). Phase III, which is expected to be launched in mid-2003, will seek to complete product development and classification for all NAICS services industries.

Compared to goods-producing industries, there is a serious lack of information about and data for the products produced by the service industries in the U.S. and elsewhere. The collection and dissemination of NAPCS service statistics will provide much needed data for private sector firms, policy analysts and trade negotiators seeking to determine and develop market opportunities and to track industrial performance.

Future initiatives also include the collection of annual data on the cost of selected purchased services and materials in the 2003 Service Annual Survey for the following industries: Information (NAICS 51); Securities, Commodity Contracts, and Other Financial Investments and Related

Activities (NAICS 523); Professional, Scientific, and Technical Services (NAICS 541); and Administrative and Support and Waste Management and Remediation Services (NAICS 56). For the 2004 survey, we will begin collecting these data for all remaining industries covered in SAS. Key data items include the cost of purchased telecommunications services, software and data processing services, management and consulting services, fuels, electricity, lease and rental payments, materials and supplies other than for resale, and contract labor. The availability of this data will greatly improve the quality of the intermediate-inputs and value-added estimates in BEA's annual input-output and GDP by industry accounts. Annual data on purchased services and materials will also be used as indicators to update census year data collected on the Business Expenditures Survey.

II. Method of Collection

We collect this information by mail, fax, and telephone follow-up.

III. Data

OMB Number: 0607-0422.

Form Number: The SAS program consists of 58 forms which are too extensive to list here.

Type of Review: Regular Submission.

Affected Public: Businesses or other for-profit organizations, not-for-profit institutions, Government hospitals and Federal Government.

Estimated Number of Respondents: 50,000.

Estimated Time Per Response: On average, we expect 1 hour and 30 minutes as an estimate.

Estimated Total Annual Burden Hours: 61,662 hours.

Estimated Total Annual Cost: The cost to the respondents for fiscal year 2003 is estimated to be \$1,289,352 based on the median hourly salary of \$20.91 for accountants and auditors. (Occupational Employment Statistics-Bureau of Labor Statistics "2000 National Occupational Employment and Wage Estimates") <http://www.bls.gov/oes/2000/oes132011.htm>.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code; Sections 182, 224, and 225.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the

proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 3, 2002.

Madeleine Clayton,

*Departmental Paperwork Clearance Officer,
Office of the Chief Information Officer.*

[FR Doc. 02-14243 Filed 6-6-02; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Census Bureau

Current Population Surveys (CPS)- Housing Vacancy Survey (HVS); Proposed Collection; Comment Request

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Submit written comments on or before August 6, 2002.

ADDRESS: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230 or via the Internet at mclayton@doc.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Dennis Clark, Census Bureau, FOB 3, Room 3340, Washington, DC 20233-8400, (301) 763-3806.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is requesting clearance for the collection of data

concerning the HVS. The current clearance expires August 31, 2002. The HVS has been conducted in conjunction with the CPS since 1956 and serves a broad array of data users as described below.

We conduct the HVS interviews with landlords or other knowledgeable persons concerning vacant housing units identified in the monthly CPS sample and meeting certain criteria. The HVS provides the only quarterly and annual statistics on rental vacancy rates and homeownership rates for the United States, the four census regions, the 50 states and the District of Columbia, and the 75 largest Metropolitan Areas (MAs). Private and public sector organizations use these rates extensively to gauge and analyze the housing market with regard to supply, cost, and affordability at various points in time. In addition, the rental vacancy rate is a component of the index of leading economic indicators published by the Department of Commerce.

Policy analysts, program managers, budget analysts, and congressional staff use these data to advise the executive and legislative branches of government with respect to the number and characteristics of units available for occupancy and the suitability of housing initiatives. Several other government agencies use these data on a continuing basis in calculating consumer expenditures for housing as a component of the gross national product; to project mortgage demands; and to measure the adequacy of the supply of rental and homeowner units. In addition, investment firms use the HVS data to analyze market trends and for economic forecasting.

II. Method of Collection

Field representatives collect this HVS information by personal-visit interviews in conjunction with the regular monthly CPS interviewing. We collect HVS data concerning units that are vacant and intended for year-round occupancy as determined during the CPS interview. Approximately 5,760 units in the CPS sample meet these criteria each month. All interviews are conducted using computer-assisted interviewing.

III. Data

OMB Number: 0607-0179.

Form Number: There are no forms associated with this supplement. We conduct all interviewing on computers.

Type of Review: Regular.

Affected Public: Individuals who have knowledge of the vacant sample unit (e.g., landlord, rental agents, neighbors).

Estimated Number of Respondents: 5,760 per month.

Estimated Time Per Response: 3 minutes.

Estimated Total Annual Burden Hours: 3,456.

Estimated Total Annual Cost: The only cost to respondent is that of their time.

Respondent's Obligation: Voluntary. *Legal Authority:* Title 13, U.S.C., Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for the Office of Management and Budget approval of this information collection; they will also become a matter of public record.

Dated: June 3, 2002.

Madeleine Clayton,

*Departmental Paperwork Clearance Officer,
Office of the Chief Information Officer.*

[FR Doc. 02-14244 Filed 6-6-02; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

International Trade Administration

Application of License To Enter Watches and Watch Movements Into the Customs Territory of the United States

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c) (2) (A)).

DATES: Written comments must be submitted on or before August 6, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental

Paperwork Clearance Officer, Department of Commerce, Room 6608, 14th & Constitution Avenue, NW, Washington, DC 20230 or via the Internet at MClayton@doc.gov. or by phone at (202) 482-3129.

FOR FURTHER INFORMATION CONTACT:

Request for additional information or copies of the information collection instrument and instructions should be directed to: Faye Robinson, Statutory Import Programs Staff, FCB Suite 4100W, U.S. Department of Commerce, Washington, DC 20230; Phone number: (202) 482-3526, and fax number: (202) 482-0949.

SUPPLEMENTARY INFORMATION:

I. Abstract

Public Law 97-446, as amended by Public Law 103-465, requires the Departments of Commerce and the Interior to administer the distribution of duty-exemptions and duty-refunds to watch producers in the U.S. insular possessions and the Northern Mariana Islands. Public Law 106-36, enacted June 25, 1999, provides for the distribution of duty-refund benefits for any jewelry within heading 7113 of the Harmonized Tariff Schedule of the United States which is the product of the U.S. Territories and the Northern Mariana Islands in accordance with the new provisions of the note in chapter 71 and additional U.S. note 5 to chapter 91. The primary consideration in collecting information is the enforcement of the laws and the information gathered is limited to that necessary to prevent abuse of the program and to permit a fair and equitable distribution of its benefits. Form ITA-334P is the principal program form used for recording the operational data on the basis of which program entitlements are distributed among the producers (and the provision of which to the Departments constitutes their application for these entitlements). The form is completed by watch and watch movement manufacturers and has been modified with special instructions for completion by the new jewelry manufacturers. Because the duty-refund benefit has been changed from an annual benefit to a biannual benefit, Form ITA-334P is also used, with modified instructions, to gather the information needed to calculate the interim duty-refund certificate for the jewelry and watch manufacturers.

II. Method of Collection

The Department of Commerce sends Form ITA-334P to each watch producer biannually. A company official

completes the form and returns it to the Department of Commerce.

III. Data

OMB Number: 0625-0040.

Form Number: ITA-334P.

Type of Review: Revision—regular submission.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 7.

Estimated Time Per Response: 1 hour.

Estimated Total Annual Burden

Hours: 14 hours.

Estimated Total Annual Costs: The estimated annual cost for this collection is \$40,350 (\$350 for respondents and \$40,000 for federal government (included are most administration costs of program)).

IV. Request for Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 3, 2002.

Madeleine Clayton,

*Departmental Paperwork Clearance Officer,
Office of Chief Information Officer.*

[FR Doc. 02-14349 Filed 6-6-02; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Watch Duty-Exemption and 7113 Jewelry Duty-Refund Program Forms

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as

required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 6, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482-3129, Department of Commerce, Room 6608, 14th & Constitution Avenue, NW, Washington, DC 20230 or via the Internet at *MClayton@doc.gov*.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Faye Robinson, Statutory Import Programs Staff, Room 4211, U.S. Department of Commerce, Washington, DC 20230; Phone number (202) 482-3526, and fax number (202) 482-0949.

SUPPLEMENTARY INFORMATION:

I. Abstract

Public Law 97-446, as amended by Public Law 103-465, requires the Department of Commerce and the Interior to administer the distribution of duty-exemptions and duty-refunds to watch producers in the U.S. insular possessions and the Northern Mariana Islands. Public Law 106-36, enacted in 1999, extended the duty-refund benefit for any jewelry within heading 7113 of the Harmonized Tariff Schedule of the United States which is the product of the U.S. Territories and the Northern Mariana Islands in accordance with the provisions of the note in chapter 71 and additional U.S. note 5 to chapter 91. The primary consideration in collecting information is the enforcement of the law and the information gathered is limited to that necessary to prevent abuse of the program and to permit a fair and equitable distribution of its benefits. Form ITA-340P provides the data to assist in verification of duty-free shipments of watches into the United States and make certain the allocations are not exceeded. Forms ITA-360P and ITA-361P are necessary to implement the duty-refund program for the watch and jewelry producers. Because the duty-refund benefit has been changed from an annual benefit to a biannual benefit, Forms ITA-360P and ITA-361P will now also be used for the distribution of an interim duty-refund benefit.

II. Method of Collection

The Department of Commerce issues Form ITA-360P to each watch and jewelry producer biannually. No information is requested unless the recipient wishes to transfer the certificate. Form ITA-361P is obtained

from the Department of Commerce and must be completed each time a certificate holder wishes to obtain a portion, or all, of the duty-refund authorized by the certificate. The form is then sent to the Department of Commerce for validation and returned to the producer. Form ITA-340P may be obtained from the territorial government or may be produced by the company in an approved computerized format or any other medium or format approved by the Department of Commerce and the Interior. The form is completed for each duty-free shipment of watches and watch movements into the U.S. and a copy is transmitted to the territorial government. Only if entry procedures are not transmitted electronically through Customs' automated broker interface, do the regulations require a copy of the permit be sent to Customs along with other entry paperwork.

III. Data

OMB Number: 0625-0134.

Form Number: ITA-340P, 360P, 361P.

Type of Review: Revision-regular submission.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 4 (Form ITA-340); 7 (Forms ITA-360P & 361P).

Estimated Time Per Response: 10 minutes (Forms ITA-340P & 361P); 0 (ITA-360P).

Estimated Total Annual Burden Hours: 65 hours and 40 minutes.

Estimated Total Annual Costs: The estimated annual cost for this collection is \$10,788 (\$788 for respondents and \$10,000 for federal government (included are some administration costs of program)).

IV. Request for Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 3, 2002.

Madeleine Clayton,

*Departmental Paperwork Clearance Officer,
Office of the Chief Information Officer.*

[FR Doc. 02-14350 Filed 6-6-02; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-853]

Bulk Aspirin From the People's Republic of China; Initiation of Changed Circumstances Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of changed circumstances antidumping duty administrative review.

SUMMARY: The Department of Commerce is initiating a changed circumstances administrative review of the antidumping duty order on bulk aspirin from the People's Republic of China ("PRC") (*see Notice of Antidumping Duty Order: Bulk Aspirin from the People's Republic of China* (65 FR 42673, July 11, 2000)) in response to a request from Jilin Pharmaceutical Import and Export Corporation, Jilin Pharmaceutical (U.S.A.) Inc., and Jilin Pharmaceutical Limited Company. These entities have requested that, contemporaneous with the ongoing administrative review of the order, the Department of Commerce review the company's name change and determine that Jilin Henghe Pharmaceutical is the successor-in-interest of Jilin Pharmaceutical Company Ltd. and Jilin Pharmaceutical Import and Export Corporation.

EFFECTIVE DATE: June 7, 2002.

FOR FURTHER INFORMATION CONTACT: Blanche Ziv or Cole Kyle, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-4207 and (202) 482-1503 respectively.

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 of Commerce's

("Department") regulations are to 19 CFR Part 351 (2002).

SUPPLEMENTARY INFORMATION:

Background

On July 31, 2001, a respondent in this proceeding, Jilin Pharmaceutical Import and Export Company, Jilin Pharmaceutical (U.S.A.) Inc., and Jilin Pharmaceutical Limited Company (collectively, "Jilin Pharmaceutical") notified the Department that in 1999, its corporate name changed to Jilin Henghe Pharmaceutical Company Ltd. ("Jilin Henghe"). On December 14, 2001, Jilin Pharmaceutical stated that during the period of review ("POR") of the concurrent administrative review (*see Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 66 FR 43570 (August 20, 2001)), the export operations for subject merchandise, which were handled by Jilin Pharmaceutical Import and Export Company during the original investigation (*see Notice of Final Determination of Sales at Less than Fair Value: Bulk Aspirin from the People's Republic of China*, 65 FR 39598 (May 25, 2000) ("LTFV investigation")), were handled by the sales department for medicinal materials of Jilin Henghe. Jilin Pharmaceutical also stated that during the POR, subject merchandise was produced at the same facilities that Jilin Pharmaceutical used to produce subject merchandise during the LTFV investigation. On May 24, 2002, Jilin Pharmaceutical provided documentation to support this claim, consisting of a government document approving its name change and its continuing right to export subject merchandise to the United States.

The information submitted by Jilin Pharmaceutical shows changed circumstances sufficient to warrant a review. Therefore, we are initiating a changed circumstances administrative review pursuant to section 751(b)(1) of the Act to determine whether entries naming Jilin Henghe as manufacturer or exporter should receive the cash deposit rate currently applied to Jilin Pharmaceutical.

Scope of the Review

The merchandise subject to this review is bulk acetylsalicylic acid, commonly referred to as bulk aspirin, whether or not in pharmaceutical or compound form, not put up in dosage form (tablet, capsule, powders or similar form for direct human consumption). Bulk aspirin may be imported in two forms, as pure ortho-acetylsalicylic acid or as mixed ortho-acetylsalicylic acid. Pure ortho-acetylsalicylic acid can be

either in crystal form or granulated into a fine powder (pharmaceutical form). This product has the chemical formula $C_9H_8O_4$. It is defined by the official monograph of the United States Pharmacopoeia ("USP") 23. It is classified under the *Harmonized Tariff Schedule of the United States* ("HTSUS") subheading 2918.22.1000.

Mixed ortho-acetylsalicylic acid consists of ortho-acetylsalicylic acid combined with other inactive substances such as starch, lactose, cellulose, or coloring materials and/or other active substances. The presence of other active substances must be in concentrations less than that specified for particular nonprescription drug combinations of aspirin and active substances as published in the *Handbook of Nonprescription Drugs*, eighth edition, American Pharmaceutical Association. This product is classified under HTSUS subheading 3003.90.0000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

Initiation of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Act, the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order.

Jilin Pharmaceutical contends that its corporate name and successor-in-interest have changed and that no changes have occurred with respect to its production facilities. We therefore find good cause to conduct a changed circumstances review. *See* 19 CFR 351.216(c). Therefore, in accordance with section 751(b)(1) of the Act, we are initiating a changed circumstances review based upon the information contained in Jilin Pharmaceutical's submissions.

The Department will publish in the **Federal Register** a notice of preliminary results of changed circumstances antidumping duty administrative review, concurrent with the ongoing administrative review, in accordance with 19 CFR 351.221(b)(4) and 351.221(c)(3)(i), which will set forth the Department's preliminary factual and legal conclusions. The Department will issue its final results of review in accordance with the time limits set forth in 19 CFR 351.216(e).

This notice is in accordance with section 751(b)(1) of the Act.

Dated: June 3, 2002.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration, Group 1.

[FR Doc. 02-14380 Filed 6-6-02; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-824]

Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Notice of Initiation and Preliminary Results of Changed Circumstances Review of the Antidumping Order, and Intent To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances antidumping duty review, and intent to revoke order in part.

SUMMARY: In accordance with 751(b) of the Tariff Act of 1930 ("the Act") and section 351.216(b) of the Department of Commerce's ("the Department") regulations, Mitsubishi International Steel Inc. ("MISI") filed a request for a changed circumstances review of the antidumping order on certain corrosion-resistant carbon steel flat products from Japan with respect to the products known as diffusion-annealed nickel plant and next generation diffusion-annealed nickel plate described below. Domestic producers of the like product have affirmatively expressed no interest in continuation of the order with respect to these particular products. In response to MISI's request, the Department is initiating a changed circumstances review and issuing a notice of intent to revoke in part the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 7, 2002.

FOR FURTHER INFORMATION CONTACT:

Catherine Bertrand, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3207.

The Applicable Statute and Regulations: Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended, by the Uruguay

Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR part 351 (2001).

SUPPLEMENTARY INFORMATION:

Background

On May 6, 2002, MISI requested that the Department revoke in part the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. Specifically, MISI requested that the Department revoke the order with respect to imports meeting the following specifications: (1) diffusion annealed, non-alloy nickel-plated carbon products, with a substrate of cold-rolled battery grade sheet ("CRBG") with both sides of the CRBG initially electrolytically plated with pure, unalloyed nickel and subsequently annealed to create a diffusion between the nickel and iron substrate, with the nickel plated coating having a thickness of 0–5 microns per side with one side equaling at least 2 microns; and with the nickel carbon sheet having a thickness of from 0.004" (0.10mm) to 0.030" (0.762mm) and conforming to the following chemical specifications (%): C ≤ 0.08; Mn ≤ 0.45; P ≤ 0.02; S ≤ 0.02; Al ≤ 0.15; and Si ≤ 0.10; and the following physical specifications: Tensile = 65 KSI maximum; Yield = 32–55 KSI; Elongation = 18% minimum (aim 34%); Hardness = 85–150 Vickers; Grain Type = Equiaxed or Pancake; Grain Size (ASTM) = 7–12; Delta r value = aim less than ±0.2; Lankford value = ≥ 1.2.; and (2) next generation diffusion-annealed nickel plate meeting the following specifications: (a) Nickel-graphite plated, diffusion annealed, tin-nickel plated carbon products, with a natural composition mixture of nickel and graphite electrolytically plated to the top side of diffusion annealed tin-nickel plated carbon steel strip with a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; having both sides of the cold rolled substrate electrolytically plated with natural nickel, with the top side of the nickel plated strip electrolytically plated with tin and then annealed to create a diffusion between the nickel and tin layers in which a nickel-tin alloy is created, and an additional layer of mixture of natural nickel and graphite then electrolytically plated on the top side of the strip of the nickel-tin alloy; having a coating thickness: top side: nickel-graphite, tin-nickel layer ≥ 1.0 micrometers; tin layer only ≥ 0.05 micrometers, nickel-graphite layer only

> 0.2 micrometers, and bottom side: nickel layer ≥ 1.0 micrometers; (b) nickel-graphite, diffusion annealed, nickel plated carbon products, having a natural composition mixture of nickel and graphite electrolytically plated to the top side of diffusion annealed nickel plated steel strip with a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; with both sides of the cold rolled base metal initially electrolytically plated with natural nickel, and the material then annealed to create a diffusion between the nickel and the iron substrate; with an additional layer of natural nickel-graphite then electrolytically plated on the top side of the strip of the nickel plated steel strip; with the nickel-graphite, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling, or any other evidence of separation; having a coating thickness: top side: nickel-graphite, tin-nickel layer ≥ 1.0 micrometers; nickel-graphite layer ≥ 0.5 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; (c) diffusion annealed nickel-graphite plated products, which are cold-rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; having the bottom side of the base metal first electrolytically plated with natural nickel, and the top side of the strip then plated with a nickel-graphite composition; with the strip then annealed to create a diffusion of the nickel-graphite and the iron substrate on the bottom side; with the nickel-graphite and nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling, or any other evidence of separation; having coating thickness: top side: nickel-graphite layer ≥ 1.0 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; (d) nickel-phosphorous plated diffusion annealed nickel plated carbon product, having a natural composition mixture of nickel and phosphorus electrolytically plated to the top side of a diffusion annealed nickel plated steel strip with a cold rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; with both sides of the base metal initially electrolytically plated with natural nickel, and the material then annealed to create a diffusion of the nickel and iron substrate; another layer of the natural nickel-phosphorous then electrolytically plated on the top side of the nickel plated steel strip; with the nickel-phosphorous, nickel plated

material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having a coating thickness: top side: nickel-phosphorous, nickel layer ≥ 1.0 micrometers; nickel-phosphorous layer ≥ 0.1 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; (e) diffusion annealed, tin-nickel plated products, electrolytically plated with natural nickel to the top side of a diffusion annealed tin-nickel plated cold rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; with both sides of the cold rolled strip initially electrolytically plated with natural nickel, with the top side of the nickel plated strip electrolytically plated with tin and then annealed to create a diffusion between the nickel and tin layers in which a nickel-tin alloy is created, and an additional layer of natural nickel then electrolytically plated on the top side of the strip of the nickel-tin alloy; sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having coating thickness: top side: nickel-tin-nickel combination layer ≥ 1.0 micrometers; tin layer only ≥ 0.05 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; and (f) tin mill products for battery containers, tin and nickel plated on a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; having both sides of the cold rolled substrate electrolytically plated with natural nickel; then annealed to create a diffusion of the nickel and iron substrate; then an additional layer of natural tin electrolytically plated on the top side; and again annealed to create a diffusion of the tin and nickel alloys; with the tin-nickel, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having a coating thickness: top side: nickel-tin layer ≥ 1 micrometer; tin layer alone ≥ 0.05 micrometers; bottom side: nickel layer ≥ 1.0 micrometer.

Scope of Review

The products covered by the antidumping duty order include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in

addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTSUS under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this order are corrosion-resistant flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges.

Excluded from this order are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating.

Also excluded from this order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness.

Also excluded from this order are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

Also excluded from this order are certain corrosion-resistant carbon steel flat products meeting the following specifications: (1) Widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2)

thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of chromate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of chromate, and finally a layer consisting of silicate.

Also excluded from this order are carbon steel flat products measuring 1.84 millimeters in thickness and 43.6 millimeters or 16.1 millimeters in width consisting of carbon steel coil (SAE 1008) clad with an aluminum alloy that is balance aluminum, 20% tin, 1% copper, 0.3% silicon, 0.15% nickel, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys.

Also excluded from this order are carbon steel flat products measuring 0.97 millimeters in thickness and 20 millimeters in width consisting of carbon steel coil (SAE 1008) with a two-layer lining, the first layer consisting of a copper-lead alloy powder that is balance copper, 9% to 11% tin, 9% to 11% lead, less than 1% zinc, less than 1% other materials and meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, the second layer consisting of 45% to 55% lead, 38% to 50% PTFE, 3% to 5% molybdenum disulfide and less than 2% other materials.

Also excluded from this order are doctor blades meeting the following specifications: carbon steel coil or strip, plated with nickel phosphorous, having a thickness of 0.1524 millimeters (0.006 inches), a width between 31.75 millimeters (1.25 inches) and 50.80 millimeters (2.00 inches), a core hardness between 580 to 630 HV, a surface hardness between 900–990 HV; the carbon steel coil or strip consists of the following elements identified in percentage by weight: 0.90% to 1.05% carbon; 0.15% to 0.35% silicon; 0.30% to 0.50% manganese; less than or equal to 0.03% of phosphorous; less than or equal to 0.006% of sulfur; other elements representing 0.24%; and the remainder of iron.

Also excluded from this order are products meeting the following specifications: carbon steel flat products measuring 1.64 millimeters in thickness and 19.5 millimeters in width consisting of carbon steel coil (SAE 1008) with a lining clad with an aluminum alloy that

is balance aluminum; 10 to 15% tin; 1 to 3% lead; 0.7 to 1.3% copper; 1.8 to 3.5% silicon; 0.1 to 0.7% chromium, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys.

Also, excluded from this order are products meeting the following specifications: carbon steel coil or strip, measuring 1.93 millimeters or 2.75 millimeters (0.076 inches or 0.108 inches) in thickness, 87.3 millimeters or 99 millimeters (3.437 inches or 3.900 inches) in width, with a low carbon steel back comprised of: carbon under 8%, manganese under 0.4%, phosphorous under 0.04%, and sulfur under 0.05%; clad with aluminum alloy comprised of: 0.7% copper, 12% tin, 1.7% lead, 0.3% antimony, 2.5% silicon, 1% maximum total other (including iron), and remainder aluminum.

Also excluded from this order are products meeting the following specifications: carbon steel coil or strip, clad with aluminum, measuring 1.75 millimeters (0.069 inches) in thickness, 89 millimeters or 94 millimeters (3.500 inches or 3.700 inches) in width, with a low carbon steel back comprised of: carbon under 8%, manganese under 0.4%, phosphorous under 0.04%, and sulfur under 0.05%; clad with aluminum alloy comprised of: 0.7% copper, 12% tin, 1.7% lead, 2.5% silicon, 0.3% antimony, 1% maximum total other (including iron), and remainder aluminum.

Also excluded from this order are products meeting the following specifications: carbon steel coil or strip, measuring a minimum of and including 1.10mm to a maximum of and including 4.90mm in overall thickness, a minimum of and including 76.00mm to a maximum of and including 250.00mm in overall width, with a low carbon steel back comprised of: carbon under 0.10%, manganese under 0.40%, phosphorous under 0.04%, sulfur under 0.05%, and silicon under 0.05%; clad with aluminum alloy comprised of: under 2.51% copper, under 15.10% tin, and remainder aluminum as listed on the mill specification sheet.

Initiation of Changed Circumstances Antidumping Duty Administrative Review, and Intent to Revoke Order in Part

Pursuant to sections 751(d)(1) and 782(h)(2) of the Act, the Department may revoke an antidumping or countervailing duty order, in whole or in part, based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review) where the

Department determines that "producers accounting for substantially all of the production of that domestic like product have expressed a lack of interest in issuance of an order." Section 782(h)(2) of the Act. *See, e.g., Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands: Initiation and Preliminary Results of Changed Circumstances Review*, 66 FR 57415, 57416 (November 15, 2001). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. Section 351.222(g) of the Department's regulations provides that the Department will conduct a changed circumstances administrative review under 19 CFR 351.216, and may revoke an order (in whole or in part), if it determines that producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or if other changed circumstances sufficient to warrant revocation exist.

In addition, in the event that the Department concludes that expedited action is warranted, 19 CFR 351.221(c)(3)(ii) permits the Department to combine the notices of initiation and preliminary results.

In accordance with sections 751(d)(1) and 782(h)(2) of the Act, and 19 CFR 351.216 and 351.222(g), based on affirmative statements by domestic producers of the like product, Bethlehem Steel Corporation; National Steel Corporation; and United States Steel Corporation ("Domestic Producers"), no further interest exists in continuing the order with respect to certain corrosion-resistant carbon steel flat products meeting the following specifications: (1) Diffusion annealed, non-alloy nickel-plated carbon products, with a substrate of cold-rolled battery grade sheet ("CRBG") with both sides of the CRBG initially electrolytically plated with pure, unalloyed nickel and subsequently annealed to create a diffusion between the nickel and iron substrate, with the nickel plated coating having a thickness of 0–5 microns per side with one side equaling at least 2 microns; and with the nickel carbon sheet having a thickness of from 0.004" (0.10mm) to 0.030" (0.762mm) and conforming to the following chemical specifications (%): C ≤ 0.08; Mn ≤ 0.45; P ≤ 0.02; S ≤ 0.02; Al ≤ 0.15; and Si ≤ 0.10; and the following physical specifications: Tensile = 65 KSI maximum; Yield = 32–55 KSI; Elongation = 18% minimum (aim 34%); Hardness = 85–150 Vickers;

Grain Type = Equiaxed or Pancake; Grain Size (ASTM) = 7–12; Delta r value = aim less than ± 0.2; Lankford value = ≥ 1.2.; and (2) next generation diffusion-annealed nickel plate meeting the following specifications: (a) Nickel-graphite plated, diffusion annealed, tin-nickel plated carbon products, with a natural composition mixture of nickel and graphite electrolytically plated to the top side of diffusion annealed tin-nickel plated carbon steel strip with a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; having both sides of the cold rolled substrate electrolytically plated with natural nickel, with the top side of the nickel plated strip electrolytically plated with tin and then annealed to create a diffusion between the nickel and tin layers in which a nickel-tin alloy is created, and an additional layer of mixture of natural nickel and graphite then electrolytically plated on the top side of the strip of the nickel-tin alloy; having a coating thickness: top side: nickel-graphite, tin-nickel layer ≥ 1.0 micrometers; tin layer only ≥ 0.05 micrometers, nickel-graphite layer only > 0.2 micrometers, and bottom side: nickel layer ≥ 1.0 micrometers; (b) nickel-graphite, diffusion annealed, nickel plated carbon products, having a natural composition mixture of nickel and graphite electrolytically plated to the top side of diffusion annealed nickel plated steel strip with a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; with both sides of the cold rolled base metal initially electrolytically plated with natural nickel, and the material then annealed to create a diffusion between the nickel and the iron substrate; with an additional layer of natural nickel-graphite then electrolytically plated on the top side of the strip of the nickel plated steel strip; with the nickel-graphite, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling, or any other evidence of separation; having a coating thickness: top side: Nickel-graphite, tin-nickel layer ≥ 1.0 micrometers; nickel-graphite layer ≥ 0.5 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; (c) diffusion annealed nickel-graphite plated products, which are cold-rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; having the bottom side of the base metal first electrolytically plated with natural nickel, and the top side of the strip then plated with a nickel-graphite

composition; with the strip then annealed to create a diffusion of the nickel-graphite and the iron substrate on the bottom side; with the nickel-graphite and nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling, or any other evidence of separation; having coating thickness: top side: nickel-graphite layer ≥ 1.0 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; (d) nickel-phosphorous plated diffusion annealed nickel plated carbon product, having a natural composition mixture of nickel and phosphorus electrolytically plated to the top side of a diffusion annealed nickel plated steel strip with a cold rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; with both sides of the base metal initially electrolytically plated with natural nickel, and the material then annealed to create a diffusion of the nickel and iron substrate; another layer of the natural nickel-phosphorous then electrolytically plated on the top side of the nickel plated steel strip; with the nickel-phosphorous, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having a coating thickness: top side: nickel-phosphorous, nickel layer ≥ 1.0 micrometers; nickel-phosphorous layer ≥ 0.1 micrometers; bottom side : nickel layer ≥ 1.0 micrometers; (e) diffusion annealed, tin-nickel plated products, electrolytically plated with natural nickel to the top side of a diffusion annealed tin-nickel plated cold rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; with both sides of the cold rolled strip initially electrolytically plated with natural nickel, with the top side of the nickel plated strip electrolytically plated with tin and then annealed to create a diffusion between the nickel and tin layers in which a nickel-tin alloy is created, and an additional layer of natural nickel then electrolytically plated on the top side of the strip of the nickel-tin alloy; sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having coating thickness: top side: nickel-tin-nickel combination layer ≥ 1.0 micrometers; tin layer only ≥ 0.05 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; and (f) tin mill products for battery containers, tin and nickel plated on a cold rolled or tin mill black plate base metal conforming to

chemical requirements based on AISI 1006; having both sides of the cold rolled substrate electrolytically plated with natural nickel; then annealed to create a diffusion of the nickel and iron substrate; then an additional layer of natural tin electrolytically plated on the top side; and again annealed to create a diffusion of the tin and nickel alloys; with the tin-nickel, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having a coating thickness: top side: nickel-tin layer ≥ 1 micrometer; tin layer alone ≥ 0.05 micrometers; bottom side: nickel layer ≥ 1.0 micrometer. See Domestic Producers' May 14, 2002, letter to the Department. Therefore, we are initiating this changed circumstances administrative review.

Furthermore, because domestic producers have expressed a lack of interest, we determine that expedited action is warranted, and we preliminarily determine that continued application of the order with respect to certain corrosion-resistant carbon steel flat products falling within the description above is no longer of interest to domestic interested parties. Because we have concluded that expedited action is warranted, we are combining these notices of initiation and preliminary results. Therefore, we are hereby notifying the public of our intent to revoke in part the antidumping duty order with respect to imports of certain corrosion-resistant carbon steel flat products meeting the above-mentioned specifications from Japan.

If the final revocation in part occurs, we intend to instruct the U.S. Customs Service ("Customs") to liquidate without regard to antidumping duties, as applicable, and to refund any estimated antidumping duties collected for all unliquidated entries of certain corrosion-resistant carbon steel flat products meeting the specifications indicated above, not subject to final results of administrative review as of the date of publication in the **Federal Register** of the final results of this changed circumstances review in accordance with 19 CFR 351.222. We will also instruct Customs to pay interest on such refunds in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated antidumping duties on certain corrosion-resistant carbon steel flat products meeting the above specifications will continue unless and until we publish a final determination to revoke in part.

Public Comment

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Parties to the proceedings may request a hearing within 14 days of publication. Any hearing, if requested, will be held no later than two days after the deadline for the submission of rebuttal briefs, or the first workday thereafter. Case briefs may be submitted by interested parties not later than 14 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in those comments, may be filed not later than five days after the deadline for submission of case briefs. All written comments shall be submitted in accordance with 19 CFR 351.303 and shall be served on all interested parties on the Department's service list in accordance with 19 CFR 351.303. Persons interested in attending the hearing should contact the Department for the date and time of the hearing.

This notice is published in accordance with section 751(b)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: June 3, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02-14379 Filed 6-6-02; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-827]

Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Mexico: Extension of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 7, 2002.

FOR FURTHER INFORMATION CONTACT: Geoffrey Craig or Brian Ledgerwood at (202) 482-4161 or (202) 482-3836, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

TIME LIMITS:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to issue the preliminary results of a review within 245 days after the last day of the anniversary month of an order or finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of the publication of the preliminary results.

Background

On October 1, 2001, the Department published in the Federal Register the notice of initiation of this antidumping duty administrative review with respect to certain large diameter carbon and alloy seamless standard, line, and pressure pipe, covering the period February 4, 2000 through July 31, 2001 (66 FR 49924). The preliminary results were originally due on May 3, 2002. On May 10, 2002 (67 FR 17397) the Department published a 30-day extension of the preliminary results. On May 29, 2002, petitioner in this case made a submission arguing that the review should not be rescinded. Because it is not practicable to address the issues raised by June 3, 2002, we are postponing the preliminary determination an additional 90 days, until September 3, 2002, in accordance with 751(a)(3)(A) of the Act.

Extension of Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the time limit. Therefore, we are extending the time limit for completion of the preliminary results until no later than September 3, 2002. See Decision Memorandum from Melissa Skinner to Bernard Carreau, dated May 31, 2002, which is on file in the Central Records Unit, B-099 of the main Commerce Building. We intend to issue the final results no later than 120 days after the publication of the notice of preliminary results of this review.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: May 31, 2002

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02-14378 Filed 6-6-02; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-839]

Certain Polyester Staple Fiber from Korea: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to timely requests by seven companies and an importer of the subject merchandise, on June 19, 2001, the Department of Commerce published a notice of initiation of an administrative review of the antidumping duty order on certain polyester staple fiber from Korea with respect to those seven companies (66 FR 32934). The period of review is November 8, 1999, through April 30, 2001.

We preliminarily find that sales have been made below normal value. Interested parties are invited to comment on these preliminary results. If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service to assess antidumping duties on all appropriate entries.

EFFECTIVE DATE: June 7, 2002.

FOR FURTHER INFORMATION CONTACT:

Cynthia Thirumalai, Office 1, AD/CVD Enforcement Group I, Import Administration-Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4087.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (April 2001).

Background

On May 25, 2000, the Department published in the Federal Register an amended final determination and antidumping duty order on certain polyester staple fiber (PSF) from Korea (65 FR 33807).

The Department published a notice advising of the opportunity to request an administrative review of the antidumping duty order on May 1, 2001 (66 FR 21740). In response to timely requests by Stein Fibers, an importer of the subject merchandise, and certain manufacturer/exporters (*i.e.*, Daeyang Industrial Co., Ltd. (Daeyang), Estal Industry Co., Ltd. (Estal), Huvis Corporation (Huvis), Keon Baek Co., Ltd. (Keon Baek), Mijung Ind., Co., Ltd. (Mijung), Sam Young Synthetics Co., Ltd. (Sam Young) and Sunglim Co., Ltd. (Sunglim)), the Department published a notice of initiation of an administrative review with respect to these same companies (66 FR 32934, June 19, 2001).

On September 4, 2001, the Department extended the time limit for the preliminary results in this review until May 31, 2002 (66 FR 46260).

On October 9, 2001, the Department issued antidumping duty questionnaires to the above-mentioned respondent companies. We received responses from all seven respondents in November and December, 2001.

On December 28, 2001, the Department received allegations from the petitioners¹ that Daeyang, Estal, Huvis, Keon Baek, Mijung, and Sunglim sold certain PSF in Korea at prices below the cost of production (COP). The Department initiated cost investigations of these companies' home-market sales of PSF on January 30, 2002. (*See Petitioners' Allegation of Sales Below the Cost of Production* (company-specific memoranda), dated January 30, 2002.) In accordance with section 773(b)(2)(A)(ii) of the Act, Sam Young was requested to provide complete COP information at the time the questionnaire was issued, based on having made sales below cost in the original investigation.

We issued supplemental questionnaires and received responses from all of the respondents in March through May, 2002. Certain supplemental responses were not received in sufficient time to be analyzed fully by the Department prior to the issuance of these preliminary results. While we are using the data in the supplemental responses as the bases for our preliminary results, adjusted as

described below, we may request additional information from respondent companies prior to issuing our final results.

Scope of the Order

For the purposes of this order, the product covered is certain polyester staple fiber (PSF). PSF is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to this order may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) currently classifiable under the *Harmonized Tariff Schedule of the United States* ("HTSUS") at subheading 5503.20.00.20 is specifically excluded from this order. Also specifically excluded from this order are polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low-melt PSF is excluded from this order. Low-melt PSF is defined as a bi-component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.

The merchandise subject to this order is currently classifiable in the HTSUS at subheadings 5503.20.00.40 and 5503.20.00.60. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under order is dispositive.

Fair Value Comparisons

To determine whether sales of PSF by the respondents to the United States were made at less than normal value (NV), we compared export price (EP), as appropriate, to NV, as described in the "Export Price" and "Normal Value" sections of this notice. Pursuant to section 777A(d)(2) of the Act, we compared the export prices of individual U.S. transactions to the weighted-average NV of the foreign like product where there were sales made in the ordinary course of trade, as discussed in the "Cost of Production Analysis" section below.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents covered by the description in the "Scope of the

¹E.I. DuPont de Nemours, Inc.; Arteva Specialties S.a.r.l.; d/b/a KoSa; Wellman, Inc.; Intercontinental Polymers, Inc.

Order” section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. In accordance with section 773(a)(1)(C)(ii) of the Act, in order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent’s volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. (For further details, see the “Normal Value” section below.)

We compared U.S. sales to sales made in the appropriate comparison market within the contemporaneous window period, which extends from three months prior to the U.S. sale until two months after the sale. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. Where there were no sales of identical or similar merchandise made in the ordinary course of trade in the comparison market to compare to U.S. sales, we compared U.S. sales to constructed value (CV). In making product comparisons, consistent with our final determination in the investigation, we matched foreign like products based on the physical characteristics reported by the respondents in the following order: 1) composition; 2) type; 3) grade; 4) cross section; 5) finish; and 6) denier (see *Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea*, 65 FR 16880, 16881, March 30, 2000 (*Investigation Final*)).

Export Price

We used export price methodology, in accordance with section 772(a) of the Act, because all respondents sold the subject merchandise to unaffiliated purchasers in the United States prior to importation and constructed export price methodology was not otherwise indicated. We based export price on packed, FOB, C&F, CIF, ex-port/warehouse, ex-dock duty paid and delivered prices, as appropriate, to unaffiliated purchasers in the United States.

We made deductions from the starting price, where appropriate, for movement expenses including foreign inland freight, foreign brokerage and handling (e.g., terminal handling charges, wharfage, bill of lading charges, container taxes), international freight, marine insurance, U.S. duty, and U.S. Customs fees, in accordance with

section 772(c)(1) of the Act and 19 CFR 351.402(a). For Keon Baek, we adjusted the reported movement expenses for foreign brokerage and handling, container tax, bill of lading charge, and terminal handling charges to account for a rounding error. In addition, for Keon Baek’s U.S. sales where the invoice date was after the reported shipment date, consistent with Department practice, we used shipment date as the date of sale (see, e.g., *Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Luxembourg*, 67 FR 35888 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 4; and *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cold-Rolled Carbon Steel Flat Products from Brazil*, 67 FR 31200, 31202 (May 9, 2002)). For Estal, we made adjustments to gross price and certain reported expenses to account for differences between actual and theoretical weights. Also, for both Estal and Sunglim, we recalculated the short-term interest rate, based on published *Federal Reserve* rates, to reflect more accurately the POR.

We increased EP, where appropriate, for duty drawback in accordance with section 772(c)(1)(B) of the Act. Respondents in this review claim to have received duty drawback under the two systems in place in Korea: either the individual rate system or the fixed rate system (i.e., the simplified fixed drawback system).

In prior investigations and administrative reviews, the Department has examined the individual rate system and found that the government controls in place ensure that the Department’s criteria for receiving a duty drawback adjustment are met (i.e., that 1) the rebates received were directly linked to import duties paid on inputs used in the manufacture of the subject merchandise, and 2) there were sufficient imports to account for the rebates received). See *Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review: Circular Welded Non-Alloy Steel Pipe From the Republic of Korea*, 62 FR 55574, 55577 (October 27, 1997). Daeyang, Huvis, and Sunglim have each provided documentation for the record demonstrating that they received duty drawback under the individual rate system. Accordingly, we are allowing the full drawback adjustment on all U.S. sales by Daeyang and Huvis and on those U.S. sales by Sunglim on which the duty drawback was received under the individual rate system.

For the remaining U.S. sales by Sunglim and all sales by Estal, Keon

Baek, Mijung, and Sam Young, duty drawback was received under the fixed rate system. The Department has found that the Korean fixed rate duty drawback system does not sufficiently link import duties paid to rebates received upon export. Therefore, the fixed rate system does not, in and of itself, meet the Department’s criteria, i.e., that the rebates received were directly linked to import duties paid on inputs used in the manufacture of the subject merchandise, and that there were sufficient imports to account for the rebates received. See *id.* In this case, none of the respondents have demonstrated successfully that duty drawback which it received under the fixed rates system met the Department’s criteria for a duty drawback adjustment. Accordingly, for purposes of these preliminary results, we are not granting duty drawback adjustments claimed under the fixed rate system.

Normal Value

A. Home Market Viability

As stated above in the “Product Comparisons” section of this notice, we compared each respondent’s volume of home market sales of the foreign like product to its volume of U.S. sales of the subject merchandise in order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, in accordance with section 773(a)(1)(C) of the Act.

Aggregate home market sales volumes of the foreign like product for Daeyang, Estal, Huvis, Keon Baek, Mijung and Sunglim, respectively, were greater than five percent of their aggregate volumes of U.S. sales of the subject merchandise. Therefore, we determined that the home market provides a viable basis for calculating NV for these companies.

Sam Young reported that its home market sales of PSF during the POR were less than five percent of its sales in the United States. Therefore, Sam Young did not have a viable home market for purposes of calculating NV. Sam Young reported that the People’s Republic of China (PRC) was its largest viable third-country market and, consequently, submitted its sales to the PRC for purposes of calculating NV.

B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 351.412(c)(2). Substantial differences in

selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.*; see also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the "chain of distribution"),² including selling functions,³ class of customer ("customer category"), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices⁴), we consider the starting prices before any adjustments. See *Micron Technology, Inc. v. United States, et. al.*, 243 F. 3d 1301, 1314–1315 (Fed. Cir. 2001) (affirming this methodology).

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP sales at a different LOT in the comparison market, where available data show that the difference in LOT affects price comparability, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

Daeyang sold to end users only in both the home market and in the United States. Estal and Huvis reported that they sold to distributors and end users in both the home market and in the United States. Keon Baek and Mijung sold to end users in the home market and to distributors in the United States. Sam Young sold only to distributors in

² The marketing process in the United States and comparison markets begins with the producer and extends to the sale to the final user or customer. The chain of distribution between the two may have many or few links, and the respondents' sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of each respondent to properly determine where in the chain of distribution the sale appears to occur.

³ Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of this preliminary determination, we have organized the common selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services. Other selling functions unique to specific companies were considered, as appropriate.

⁴ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, G&A and profit for CV, where possible.

the United States and to distributors and end users in the PRC. Sunglim sold to distributors and end users in the home market and to distributors and wholesalers in the United States.

Each respondent has reported a single channel of distribution and a single level of trade in each market, and has not requested a level of trade adjustment. We examined the information reported by each respondent regarding its marketing process for making the reported comparison market and U.S. sales, including the type and level of selling activities performed and customer categories. Specifically, we considered the extent to which sales process, freight services, warehouse/inventory maintenance, and warranty services varied with respect to the different customer categories (*i.e.*, distributors, wholesalers, and end users) within each market and across the markets. Based on our analyses, we found a single level of trade in the United States, and a single, identical level of trade in the comparison market for all respondents. Thus, it was unnecessary to make a LOT adjustment for any of the respondents in comparing EP and comparison market prices.

C. Sales to Affiliated Customers

Huvis made sales in the home market to affiliated customers. To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated customers to those of unaffiliated customers, net of all movement charges, direct and indirect selling expenses, discounts and packing. Where the price to an affiliated customer was on average 99.5 percent or more of the price to Huvis' unaffiliated customers, we determined that the sales made to the affiliated customer were at arm's length and included those sales in our calculation of NV pursuant to 19 CFR 351.403(c). Where prices to Huvis' affiliated customers were, on average, less than 99.5 percent of the prices to unaffiliated customers, we determined that these sales were not at arm's length and excluded them from our analysis.

No other respondent made comparison market sales to affiliated customers.

D. Cost of Production Analysis

As discussed in the case history section above, there were reasonable grounds to believe or suspect that each respondent made sales of the subject merchandise in its comparison market at prices below the cost of production ("COP") in accordance with section 773(b) of the Act.

1. Calculation of COP

We calculated the COP on a product-specific basis, based on the sum of the respondents' costs of materials and fabrication for the foreign like product, plus amounts for selling, general and administrative (SG&A) expenses, including interest expenses, and the costs of all expenses incidental to placing the foreign like product in a condition packed ready for shipment in accordance with section 773(b)(3) of the Act.

We relied on COP information submitted by the respondents except for the following adjustments. For Huvis, we revised the calculation of the G&A expense ratios to include additional non-operating income and expense items in the numerator of the calculation, and to exclude packing expenses that were included in the cost of manufacture in the denominator of the calculation. We made the same adjustment to the denominator of the interest expense calculation. These adjustments resulted in small changes to the reported G&A and interest expense amounts (see *Huvis Preliminary Results Calculation Memorandum*, dated May 31, 2002).

We also disallowed certain offsets to Daeyang's and Mijung's reported G&A expenses See *Daeyang Preliminary Results Calculation Memorandum* and *Mijung Preliminary Results Calculation Memorandum*, dated May 31, 2002.

2. Test of Comparison Market Prices

For each respondent, on a product-specific basis, we compared the adjusted weighted-average COP figures for the POR to the comparison market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales were made at prices below the COP. On a product-specific basis, we compared the COP, consisting of the cost of manufacturing, G&A and interest expenses, to the comparison market prices, less any applicable movement charges, rebates, discounts, and direct and indirect selling expenses. In determining whether to disregard comparison market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

3. Results of COP Test

Pursuant to section 773(b)(1), where less than 20 percent of a respondent's

sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we determine that the below-cost sales represent "substantial quantities" within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that for Daeyang, Estal, Huvis, Mijung, and Sam Young, for certain specific products, more than 20 percent of the comparison market sales were at prices less than the COP and, thus, the below-cost sales were made within an extended period of time in substantial quantities. In addition, these sales were made at prices that did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1).

Keon Baek made no home market below-cost sales during the POR. Sunglim did not make below-cost sales within an extended period of time in substantial quantities during the POR. Therefore, we have not excluded any home market sales by Keon Baek or Sunglim from our calculation of NV.

E. Calculation of Normal Value Based on Comparison Market Prices

We based NV on the price at which the foreign like product is first sold for consumption in the comparison market, in the usual commercial quantities and in the ordinary course of trade, and at the same LOT as the export price, as defined by section 773(a)(1)(B)(i) of the Act. We calculated NV based on ex-factory, delivered, FOB and CIF prices to affiliated end users and unaffiliated customers, where appropriate. We made deductions for movement expenses including, where appropriate, domestic inland freight, domestic brokerage, wharfage, container taxes, terminal handling fees and international freight under section 773(a)(6)(B)(ii) of the Act.

In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale including imputed credit expenses, bank charges and letter of credit fees, where appropriate. For Huvis, we recalculated home market imputed credit to account for the

imputed revenue received for payments made prior to shipment. In addition, for home market sales made in U.S. dollars, we recalculated imputed credit expenses using the U.S. dollar interest rate in the calculation.

We adjusted Keon Baek's reported selling expenses for bank charges and letter of credit fees to account for a rounding error.

Finally, we made adjustments to NV, where appropriate, for differences in costs attributable to differences in the physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

Currency Conversions

We made currency conversions in accordance with section 773A of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily find that the weighted-average dumping margins for the period November 8, 1999 through April 30, 2001, are as follows:

Manufacturer/Exporter	Percent Margin
Daeyang Industrial Co., Ltd.	1.39
Estal Industry Co., Ltd. ...	0.20 (<i>de minimis</i>)
Huvis Corporation.	3.37
Keon Baek Co., Ltd.	0.31 (<i>de minimis</i>)
Mijung Ind., Co., Ltd.	1.00
Sam Young Synthetics Co., Ltd.	0.75
Sunglim Co., Ltd.	0.61

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

Public Comment

Any interested party may request a hearing within 30 days of publication. See 19 CFR 351.310(c). If requested, a hearing will be scheduled upon determination of the briefing schedule.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B-099, within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. See 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in the respective case briefs. Case briefs from interested parties and rebuttal briefs, limited to the

issues raised in the respective case briefs, may be submitted in accordance with a schedule to be determined by the Department. All interested parties will be notified of the briefing schedule once it has been established. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice.

Assessment Rates

Upon completion of this administrative review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisal instructions directly to the Customs Service. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties. For assessment purposes, we intend to calculate importer/customer-specific assessment rates for the subject merchandise by aggregating the dumping margins calculated for all U.S. sales examined and dividing this amount by the total quantity of those sales.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies will be those established in the final results of this review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (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; and (3) the cash deposit rate for all other manufacturers or exporters will continue to be 11.35 percent, the "All Others" rate made effective by the LTFV investigation.

These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with section 751(a)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: May 31, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02-14376 Filed 6-6-02; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-423-808]

Stainless Steel Plate in Coils from Belgium; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on stainless steel plate in coils (SSPC) from Belgium in response to timely requests by respondent, ALZ, N.V. (ALZ) and its affiliated U.S. importer TrefilARBED, Inc. and by petitioners. This review covers shipments of this merchandise to the United States during the period of May 1, 2000 through April 30, 2001. We have preliminarily determined that U.S. sales have been made below normal value (NV). See "Preliminary Results of Review" section below for the company-specific rate. If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service (Customs) to assess antidumping duties based on the difference between constructed export price (CEP) and NV.

EFFECTIVE DATE: June 7, 2002.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon at (202) 482-0162, Julio Fernandez at (202) 482-0190, or Brett Royce at (202) 482-4106, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute & Regulations

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930 (the Act), as amended. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2001).

Background

The Department published an antidumping duty order on SSPC from Belgium on May 21, 1999 (64 FR 27756). On May 1, 2001, the Department published in the *Federal Register* (66 FR 21740) a notice of opportunity to request an administrative review of this antidumping duty order. On May 16, 2001, in accordance with 19 CFR 351.213(b), respondent ALZ, N.V. (ALZ) and its affiliated U.S. importer TrefilARBED, Inc. (TrefilARBED), and the petitioners, Allegheny Ludlum, Corp., AK Steel Corporation, Butler Armco Independent Union, North American Stainless, Zanesville Armco Independent Union, and the United Steelworkers of America, AFL-CIO/CLC (collectively, petitioners), timely requested a review of the antidumping duty order on certain SSPC from Belgium. On June 19, 2001, we published a notice of initiation of the antidumping review of SSPC from Belgium. See 66 FR 32934.

Due to complicated issues in this case, on December 17, 2001, the Department extended to deadline for the preliminary results of this antidumping duty administrative review until no later than May 31, 2002. See *Stainless Steel Plate in Coils from Belgium: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 64950 (December 17, 2001).

Scope of Review

The product covered by this order is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or

otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (*e.g.*, cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of these orders are the following: (1) plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars. In addition, certain cold-rolled stainless steel plate in coils is also excluded from the scope of these orders. The excluded cold-rolled stainless steel plate in coils is defined as that merchandise which meets the physical characteristics described above that has undergone a cold-reduction process that reduced the thickness of the steel by 25 percent or more, and has been annealed and pickled after this cold reduction process.

The merchandise subject to these orders is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.06, 7219.12.00.21, 7219.12.00.26, 7219.12.00.51, 7219.12.00.56, 7219.12.00.66, 7219.12.00.71, 7219.12.00.81, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of the orders is dispositive.

Period of Review

The period of review (POR) is May 1, 2000 through April 30, 2001.

Verification

As provided in section 782(i) of the Act, we verified the sales and cost information provided by ALZ and TrefilARBED. We used standard verification procedures, including on-site inspection of the manufacturer's facilities and the examination of relevant sales and financial records. Our verification results are outlined in the public and proprietary versions of the verification reports, which are on file in the Central Records Unit (CRU), room B-099 of the main Department building.

Date of Sale

ALZ reported invoice date as the date of sale. Invoice date is also the

Department's presumptive date for date of sale. See section 351.401(i) of the Department's regulations and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Belgium*, 64 FR 15476 (March 31, 1999) (*SSPC Final Determination*). In the original investigation, we determined that invoice date was the proper date of sale in both markets. For purposes of this review, we also have examined whether invoice date or some other date better represents the date on which the material terms of sale were established. The Department has examined sales documentation, including order confirmations and invoices, provided by ALZ and TrefilARBED for its home market and U.S. sales, and has preliminarily found that the material terms of sale are set as of the invoice date in both markets. Specifically, changes in price and quantity may occur after the initial order confirmation date, and up to the invoicing date. See *Sales and Cost Verification of ALZ, N.V.: Antidumping Administrative Review on Stainless Steel Plate in Coils from Belgium*, from Julio A. Fernandez, through Sally C. Gannon, to the File (May 24, 2002), at page 5. See also *Sales Verification of TrefilARBED, Inc.: Antidumping Administrative Review on Stainless Steel Plate in Coils from Belgium*, from Julio A. Fernandez and Brett L. Royce, through Sally C. Gannon, to the File (May 30, 2002), at page 11. As such, pursuant to section 351.401(i) of the Department's regulations, we preliminarily determine that invoice date is the appropriate date of sale for both the home and U.S. markets in this administrative review because it better reflects the date upon which the material terms of sale were finally established.

Normal Value Comparisons

To determine whether sales of SSPC from Belgium to the United States were made at less than NV, we compared the CEP to the NV for ALZ as specified in the "Constructed Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

Constructed Export Price

We calculated CEP, in accordance with section 772(b) of the Act, because sales to the first unaffiliated purchaser took place after importation into the United States.

We based CEP on the packed ex-warehouse or delivered prices to

unaffiliated purchasers in the United States. We made deductions for billing adjustments (adjustment for freight and adjustments for customer claims), where applicable, and further processing expenses. We also made deductions for the following movement expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act: foreign inland freight, foreign inland insurance (including marine insurance), international freight (including foreign brokerage), U.S. inland freight from port to warehouse, U.S. inland insurance, U.S. brokerage and handling, U.S. warehouse expenses, U.S. inland freight from warehouse to unaffiliated customer and U.S. Customs duty. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs), inventory carrying costs, and indirect selling expenses. We also deducted the profit allocated to these expenses, in accordance with sections 772(d)(3) and 772(f) of the Act.

Normal Value

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the volume of ALZ's home market sales of the foreign like product to the volume of U.S. sales of subject merchandise, in accordance with section 773(a)(1) of the Act. Based on this comparison, we determined that the aggregate volume of ALZ's home market sales of the foreign like product is greater than five percent of the aggregate volume of ALZ's U.S. sales. Thus, we determined that ALZ had a viable home market during the POR. Consequently, we based NV on home market sales.

Pursuant to section 773(b)(2)(A)(ii) of the Act, there were reasonable grounds to believe or suspect that ALZ had made home market sales at prices below its cost of production (COP) in this review because the Department had disregarded sales that failed the cost test in the original investigation. See *SSPC Final Determination*. See also *Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review*, 66 FR 56272 (November 7, 2001), and *Issues and Decision Memorandum for Final Results of Antidumping Duty Administrative Review of Stainless Steel Plate in Coils from Belgium*, from Joseph A. Spetrini, Deputy Assistant Secretary for AD/CVD Enforcement III, to Faryar Shirzad, Assistant Secretary for Import Administration, dated November 7, 2001 (wherein ALZ's margin was based

on total adverse facts available). Therefore, the Department initiated an investigation to determine whether ALZ made home market sales during the POR at prices below its COP. Accordingly, we calculated the COP based on the sum of respondent's cost of materials and fabrication for the foreign like product, plus amounts for selling, general and administrative expenses ("SG&A") and packing costs, in accordance with section 773(b)(3) of the Act.

For these preliminary results, we recalculated respondent's reported COP based on information obtained during verification. See *Memorandum to the File from Julio A. Fernandez through Sally C. Gannon Regarding Analysis of ALZ, N.V.*, dated May 31, 2002, for a discussion of the business proprietary facts underlying this conclusion. We compared the COP figures to home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges and discounts.

In determining whether to disregard home market sales made at prices below the COP, we examined (1) whether, within an extended period of time (*i.e.*, one year), such sales were made in substantial quantities, and (2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of the respondent's sales of a given product during the POR were at prices less than the COP, we determined such sales to have been made in substantial quantities within an extended period of time in accordance with section 773(b)(1)(A) of the Act. In such cases, because we compared prices to POR weight-averaged costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act. Therefore, we disregarded the below-cost sales.

In accordance with section 773(a)(4) of the Act, we used constructed value (CV) as the basis for NV when there were no contemporaneous sales of identical or similar merchandise in the

comparison market that passed the cost test. We calculated CV, in accordance with section 773(e) of the Act, based on the sum of ALZ's cost of materials, fabrication, SG&A, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the actual amounts incurred and realized by ALZ in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we used the average of the selling expenses reported for home market sales that passed the cost test, weighted by the total quantity of those sales.

We calculated NV based on prices to unaffiliated home market customers. We made deductions for billing adjustments (adjustment when customer picks up the merchandise), early payment discounts, inland freight, and inland insurance. In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs and U.S. credit expenses.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the CEP transaction. The NV LOT is that of the starting-price sales in the comparison market. Further, in identifying levels of trade for export price (EP) and comparison-market sales (i.e., NV based on either home-market or third-country prices), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. See *Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314-1315 (Fed. Cir. March 7, 2001).

To determine whether NV sales are at a different level of trade than CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference involves the performance of different selling activities and is demonstrated to affect price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the

CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732-61733 (November 19, 1997).

In this case, ALZ requested that the Department adjust NV to account for different levels of trade in the home market and the U.S. market. However, the information on the record does not justify treating CEP sales and home market sales as sales at different levels of trade. Because much of the information on LOT is business proprietary, our analysis is set forth in a *Memorandum to the File from Julio A. Fernandez through Sally C. Gannon Regarding Level of Trade Analysis for ALZ, N.V.* (May 31, 2002) (*LOT Analysis Memo*) (public version on file in the Department's CRU). Because we found that the home market LOT did not differ from the CEP LOT, we preliminarily did not make a LOT adjustment, or, as requested by respondent, a CEP offset for sales by ALZ in Belgium which are compared with CEP sales in the United States.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank, in accordance with section 773A of the Act.

Preliminary Results of Review

As a result of our review, we preliminarily determine the antidumping margin for ALZ, for the period May 1, 2000 through April 30, 2001, to be as follows:

Manufacturer/Exporter	Margin (percent)
ALZ, N.V.	5.36

The Department will disclose, in accordance with 19 CFR 351.224(b), its calculations to interested parties within 5 days of the date of public announcement of these results, or if no public announcement, within 5 days of publication of this notice. Any interested party may request a hearing within 30 days of publication in accordance with 19 CFR 351.310(c). Unless otherwise notified by the Department, any hearing, if requested, will be held 37 days after the publication of this notice, or the first

workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 19 CFR 351.309(c)(1)(ii). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication. 19 CFR 351.309(d). Unless the due date for the final results is extended, the Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, not later than 120 days after the date of publication of this notice.

Upon issuance of the final results of this review, the Department shall determine, and the U.S. Customs Service (Customs) shall assess, antidumping duties on all appropriate entries. We have calculated importer-specific *ad valorem* assessment rates for ALZ based on entered values. We will direct Customs to assess this *ad valorem* rate against the entered value on all appropriate entries. Upon completion of this review, the Department will issue assessment instructions directly to Customs.

Furthermore, the following deposit requirements will be effective upon publication of the final results of these reviews for all shipments of stainless steel plate in coils from Belgium entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company will be the rate established in the final results of this review; (2) for merchandise exported by manufacturers or exporters not covered in these reviews but covered in the original investigation of sales at LTFV or a previous review, the cash deposit 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 or a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 9.86 percent, the "all others" rate made effective by the LTFV investigation. See *SSPC Final Determination*. These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR § 351.402(f)(2) to file a certificate

regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 31, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02-14375 Filed 6-6-02; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

Announcement of New Members for the Performance Review Board

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Announcement of new members for the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: LaVerne H. Hawkins, Department of Commerce, Office of Human Resources, Room 7412, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: This notice announces new appointments by the Under Secretary for International Trade, Grant Aldonas, of the ITA Performance Review Board. This is a revised list of new members and the appointment of previous board members as listed in the June 8, 2000, **Federal Register** (65 FR 36411). The appointments are for a period of 2 years. The purpose of the International Trade Administration's Performance Review Board is to review and make recommendations to the Appointing Authority on performance management issues such as appraisals, bonuses, ES-level Increases and Presidential Rank Awards for members of the Senior Executive Service.

The Performance Review Board members are:

- Eleanor Roberts Lewis, Chief Counsel for International Trade, Non-ITA Career Member
- Stephen Jacobs, Deputy Assistant Secretary for Agreements Compliance, Market Access & Compliance, Career
- Linda Moye Cheatham, Chief Financial Officer and Director of

Administration, Office of the Deputy Under Secretary, Career
 Barbara Tillman, Senior Director, Import Administration, Career
 Jonathan C. Menes, Executive Director, Trade Development, Career
 Nealton J. Burnham, Deputy Assistant Secretary for Export Promotion Services, U.S. and Foreign Commercial Service, Non-Career
 Kevin W. Murphy, Deputy Assistant Secretary for Basic Industries, Trade Development, Non-Career
 LaVerne H. Hawkins, Office of Human Resources Management, 202-482-2537, Executive Secretary

Dated: May 29, 2002.

Darlene Haywood,

Acting Human Resources Manager, ITA.

[FR Doc. 02-14372 Filed 6-6-02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C-475-821]

Stainless Steel Wire Rod from Italy: Notice of Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

EFFECTIVE DATE: June 7, 2002.

FOR FURTHER INFORMATION CONTACT: Carrie Farley at (202) 482-0395 and Eric Greynolds at (202) 482-6071, Office of AD/CVD Enforcement VI, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Preliminary Results: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to certain producers and exporters of stainless steel wire rod products (subject merchandise) from Italy. The benefit provided by these subsidies are preliminarily determined to be *de minimis*.

SUPPLEMENTARY INFORMATION:

Petitioners

The petition in this proceeding was filed by AL Tech Specialty Steel Corp.; Carpenter Technology Corp.; Republic Engineered Steels; Talley Metals Technology, Inc.; and, United Steelworkers of America, AFL-CIO/CLC (the petitioners).

Case History

Since the publication of the notice of initiation in the **Federal Register** (see *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Revocations in Part*, 66 FR 54195 (October 26, 2001) (*Initiation Notice*)), the following events have occurred. On November 28, 2001, we issued countervailing duty questionnaires to the Government of Italy (GOI), Acciaierie Valbruna S.p.A (Valbruna), and the European Commission (EC). On January 25, 2002, we received responses to our initial questionnaires from the GOI, the EC and Valbruna (respondent), the producer/exporter of the subject merchandise.

Scope of the Investigation

For purposes of this investigation, certain stainless steel wire rod (SSWR or subject merchandise) comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, and are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar. The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches in diameter. Two stainless steel grades SF20T and K-M35FL are excluded from the scope of the investigation. The percentages of chemical makeup for the excluded grades are as follows:

SF20T

Carbon	0.05 max.
Manganese	2.00 max.
Phosphorous	0.05 max.
Sulfur	0.15 max.
Silicon	1.00 max.
Chromium	19.00/21.00.
Molybdenum	1.50/2.50.
Lead	added (0.10/0.30).
Tellurium	added (0.03 min).

K-M35FL

Carbon	0.015 max.
Manganese	0.40 max.
Phosphorous	0.04 max.
Sulfur	0.03 max.
Silicon	0.70/1.00.
Chromium	12.50/14.00.
Nickel	0.30 max.
Lead	added (0.10/0.30).
Aluminum	0.20/0.35.

The products under investigation are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of this investigation is dispositive.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR part 351 (2001).

Period of Review

The period of review (POR) for which we are measuring subsidies is calendar year 2000.

Corporate History: Bolzano and Valbruna

From 1985 through 1990, Bolzano was a wholly-owned subsidiary of Acciaierie e Ferriere Lomarde Falck (Falck). Bolzano was the main industrial company of Falck, which was a private corporate group with holdings in steel, real estate, environmental technologies, and other sectors. In 1990, ILVA acquired 44.8 percent of the stock in Bolzano. ILVA acquired the shares of Bolzano by exchanging an equal value of shares of its own subsidiary Cogne S.p.A. ILVA also acquired shares in other Gruppo Falck steel companies. In 1993, ILVA's interest in Bolzano was completely dissolved because of losses, and Falck again held virtually all of the shares in Bolzano. Falck decided to sell Bolzano based on its company-wide strategic decision to withdraw from the steel sector. Falck contacted Valbruna as a potential buyer in late 1994. Subsequently, the parties entered into negotiations for the transfer of Bolzano. Each party had the value of Bolzano independently evaluated. A third study was done to reconcile the points of the

first valuations that were in dispute relating to the final net equity and cash flow of Bolzano for purposes of finalizing the purchase price. Valbruna acquired 99.99 percent of the shares of Bolzano for this final price on August 31, 1995. Since then, the two companies have issued consolidated financial statements.

Changes in Ownership

As explained in the "Corporate History" section of this notice, Valbruna purchased Bolzano from Falck. The Department has previously determined that Bolzano received subsidies prior to being sold to Valbruna that were not fully expensed or allocated prior to the POR. See e.g., *Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod from Italy*, 63 FR 40474, 40485 (July 29, 1998) (*Wire Rod*). However, subsequent to *Wire Rod*, the Department determined in the *Final Affirmative Countervailing Duty Determination: Stainless Steel Bar from Italy*, 67 FR 3163 (January 23, 2002) (*Steel Bar*) not to make a finding as to whether the pre-sale Bolzano and the pre-sale Valbruna were distinct persons from post-sale Valbruna. See the "Changes in Ownership," "Background" and "Comment 3" sections of the January 23, 2002, Issues and Decision Memorandum that accompanied *Steel Bar* (*Steel Bar Issues and Decisions Memorandum*). Specifically, in *Steel Bar*, we noted that the potential benefits from any pre-sale subsidies to Bolzano by the GOI (e.g., such programs as Bolzano Law 25/81 that are explained below in the "Programs Preliminarily Determined To Be Countervailable" section of this notice) remained insignificant, amounting to 0.07 percent *ad valorem*. *Id.* In *Steel Bar*, we further explained that assuming *arguendo* that these pre-sale subsidies continued to benefit Valbruna in the POI, the final *ad valorem* rate (reflecting, in full, any POI benefits of pre-sale subsidies) for Valbruna would be *de minimis*. *Id.* Therefore, we determined that the application of the change in ownership methodology was not relevant for Valbruna. *Id.* Furthermore, in these *Preliminary Results*, the overall *ad valorem* rate is still *de minimis*, even if one includes the pre-change-in-ownership subsidies. Therefore, regardless of our treatment of the pre-change-in-ownership subsidies in these *Preliminary Results*, the highest the overall *ad valorem* rate could be is 0.42 percent.

In these *Preliminary Results*, we are reviewing the same fact pattern for Valbruna that existed in *Steel Bar* (e.g.,

the same company, the same subsidiaries, and the same time period (calendar year 2000)). Thus, we preliminarily determine that the application of the change in ownership methodology is not relevant for Valbruna.

Subsidies Valuation Information

A. Allocation Period

Under 19 CFR 351.524(b) of our regulations, non-recurring subsidies are allocated over a period corresponding to the average useful life ("AUL") of the renewable physical assets used to produce the subject merchandise. Pursuant to 19 CFR 351.524(d)(2), there is a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (the "IRS Tables"), as updated by the Department of Treasury. For SSWR, the IRS Tables prescribe an AUL of 15 years.

In *Wire Rod*, we countervailed certain non-recurring subsidies that were attributable to Valbruna. See *Wire Rod*, 63 FR 40474 at 40476-40477. At the time of *Wire Rod*, it was our practice to calculate company-specific AULs. For Valbruna, we calculated an AUL of 12 years. As a matter of practice, where a subsidy has been allocated over a particular period, we will continue to use the same allocation period for that subsidy in subsequent segments of the same proceeding and from proceeding to proceeding. See, e.g., *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip from France*, 64 FR 30774, 30778 (June 8, 1999); see also *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from France*, 64 FR 73277, 73280 (December 29, 1999). Therefore, for those subsidies to Valbruna that were allocated over a 12-year period in *Wire Rod*, we have continued to use the 12-year allocation period calculated in that segment. For subsidies to these companies that were not countervailed in *Wire Rod*, we have used the 15-year allocation period from the IRS Tables.

In *Steel Bar*, Valbruna/Bolzano also calculated its company-specific AUL. However, in *Steel Bar*, we found that this company-specific AUL does not differ significantly from the 15-year AUL in the IRS Tables. See the "Allocation Period" section of the *Steel Bar Issues and Decision Memorandum*. Therefore, pursuant to 19 CFR 351.524(d)(ii), we allocated all subsidies received by Valbruna/Bolzano, except those countervailed in *Wire Rod*, over 15 years as presumed in the IRS tables. *Id.* For purposes of these preliminary

results, we have continued to adopt this approach.

For non-recurring subsidies, we have applied the "0.5 percent expense test" described in 19 CFR 351.524(b)(2). Under this test, we compare the amount of subsidies approved under a given program in a particular year to sales (total or export, as appropriate) in that year. If the amount of subsidies is less than 0.5 percent of relevant sales, the benefits are allocated to the year of receipt rather than being allocated over the AUL period.

B. Benchmarks for Loans and Discount Rates

Pursuant to 19 CFR 351.505(a) and 351.524(d)(3)(i), the Department will use as long-term loan benchmarks and discount rates the actual cost of long-term borrowing by the company, when available. In *Steel Bar*, we did not accept actual borrowing rates as reported by the respondent because the firm did not take out any comparable commercial loans during the relevant period (*i.e.*, the same year in which the terms of the government-provided benefit were established). See the "Benchmarks for Loans and Discount Rates" and "Comment 12" sections of the *Steel Bar Issues and Decisions Memorandum*. Instead, pursuant to 19 CFR 351.505(a)(3)(ii), we calculated the average cost of long-term fixed-rate loans in Italy. *Id.* Specifically, in *Steel Bar*, the Department relied on the Italian Interbank Rate ("ABI") as the basis for the long-term benchmark rate. *Id.* This approach was consistent with past cases. See, *e.g.*, *Wire Rod*, 64 FR at 40476-77; *Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils From Italy*, 64 FR 15508, 15510-15511 (March 31, 1999) (*Plate in Coils*); *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils From Italy*, 64 FR 30624, 30626-30627 (June 8, 1999) ("*Sheet and Strip*"); *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon Quality Steel Plate From Italy*, 64 FR 73244, 73248 (December 29, 1999) ("*CTL Carbon Plate*"). For purposes of these preliminary results, we have adopted the same approach and used the ABI as the basis for Valbruna's long-term benchmark rate.

Next, we added two amounts to the ABI rate. First, an upward adjustment is necessary because the ABI rate represents a long-term interest rate to banks' most-preferred customers with established low-risk credit histories. For other customers, banks will typically add a spread ranging from 0.55 percent to 4 percent, to the ABI rate depending

on the company's financial health. To reflect this, we have added the average of this spread, 2.28 percent, to the ABI rate. Second, we added an additional amount to the benchmark interest rate to reflect the charges associated with long-term lending activities that are levied by commercial banks. We note that our derivation of the long-term benchmark interest rate is consistent with Department's past practice concerning the ABI rate. See *e.g.*, the "Benchmarks for Loans and Discount Rates" section of the *Steel Bar Issues and Decisions Memorandum*; *Plate in Coils*, 64 FR at 15511; *Sheet and Strip*, 64 FR at 30627; and *CTL Carbon Plate*, 64 FR at 73248.

I. Programs Preliminarily Determined To Be Countervailable

A. Government of Italy Law 451/94 Early Retirement Benefits

Law 451/94 authorized early retirement packages for steel workers for the years 1994 through 1996. The law entitled men of 50 years of age and women of 47 years of age with at least 15 years of pension contributions to retire early. Benefits were applied for between 1994 to 1996 and, upon early retirement, workers received benefits until their normal ages of retirement, for a maximum of ten years. Employees of Bolzano used the measures in all three years of the program. Bolzano, which is wholly-owned by Valbruna, had workers retire under Law 451/94 during or before the POR.

In *Wirw Rod*, we learned that, pursuant to extraordinary Cassa Integrazione (CIG) and Article 2120 of the Italian Civil Code, most Italian companies are legally obligated to pay a small percentage of the employee's salary and set aside severance contributions. See *Wire Rod*, 63 FR at 40480. In addition, we found that, when comparing the costs under the two programs, the costs incurred by companies covered by Law 451/94 were lower than those companies operating under the CIG and Article 2120 of the Italian Civil Code. *Id.* Thus, in *Wire Rod*, we determined that Law 451/94 provides a government financial contribution under section 771(5)(D)(i) of the Act and confers a benefit to the recipient in the amount of costs covered by the GOI that the company would normally incur. *Id.* In *Wire Rod*, we further determined that Law 451/94 was specific under section 771(5A)(D)(i) of the Act because early retirement benefits under this program are limited, by law, to the steel industry. *Id.* No new information or evidence of changed circumstances were presented in this review to warrant any reconsideration of

these findings. Thus, for purposes of these preliminary results, we continue to find that Law 451/94 provided countervailable benefits to Valbruna during the POR.

Consistent with the Department's regulations, we have treated payments under Law 451/94 as recurring grants expensed in the year of receipt. See 19 CFR 351.524(a) and 351.513(b) and (c). In addition, we have adopted the calculation methodology adopted in *Steel Bar*. In *Steel Bar*, Valbruna reported that several employees had reached their normal retirement age prior to the POI. See *Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Stainless Steel Bar from Italy*, 66 FR 30414 at 30419 (June 6, 2001) (*Steel Bar Preliminary Determination*). Therefore, in *Steel Bar*, the Department found that these employees were no longer receiving early retirement benefits under Law 451/94 and were instead receiving normal retirement benefits from Valbruna. *Id.*

To calculate a subsidy rate, we first deducted these employees from the total number of employees who were approved to receive benefits during the application period, 1994 to 1996. The resulting number (*i.e.*, the number of employees who retired early and continued to receive Law 451/94 benefits in the POI), categorized by employee type (*i.e.*, blue collar, white collar, and senior executive), was multiplied by their respective average salary during the POI. Because the GOI made payments to these workers equaling eighty percent of their salary, we find forty percent of this amount benefitted Valbruna. We then divided this benefit by Valbruna's and Bolzano's consolidated sales during the POI. Accordingly, we preliminarily determine that a countervailable benefit of 0.09 percent *ad valorem* exists for Valbruna.

B. Province of Bolzano Law 25/81, Articles 13 through 15

The Province of Bolzano Law 25/81 is a general aid measure that provides grants to companies with limited investments in technical fixed assets. It targets advanced technology, environmental investment, or restructuring projects. Restructuring assistance is provided to companies under Articles 13 through 15. These two articles establish different eligibility requirements, different application procedures, different levels of available aid, and different types of aid (grants and loans) than assistance provided

under other Articles of Law 25/81. Therefore, we find it appropriate to examine Articles 13 through 15 of Law 25/81 as a separate program. *See, e.g., Wire Rod*, 63 FR at 40485–40486. Bolzano received a total of 18.6 billion lire in restructuring grants from 1983 through 1992. Specifically, Bolzano received grants for four restructuring projects under this law: one was approved in 1983, another in 1985, and two in 1988. It also had a small amount from restructuring loans outstanding during the POR, which were provided at concessionary, long-term fixed rates.

In *Steel Bar*, we determined that Bolzano was the major recipient in each of the years that it received funds under this program and Bolzano received a significant percentage of total assistance awarded. *See* “Province of Bolzano Law 25/81, Articles 13 through 15” of the *Steel Bar Issues and Decisions Memorandum*. *See also Wire Rod*, 64 FR at 40486. While assistance was provided to a number of firms during this period, Bolzano was the largest single recipient of restructuring assistance, receiving far more than the average recipient over this period. Thus, we conclude that the restructuring assistance granted to Bolzano under Articles 13 through 15 of Law 25/81 is *de facto* specific within the meaning of section 771(5A)(D)(iii)(III) of the Act because Bolzano received a disproportionately large share of benefits. The restructuring aid constitutes a government financial contribution which confers a benefit in the amount of grants, and interest savings on reduced-rate long-term loans. *See Wire Rod*, 63 FR 40486. Therefore, we determine that Articles 13 through 15 of Provincial Law 25/81 provide a countervailable subsidy within the meaning of section 771(5) of the Act. *Id.*

We note that on July 17, 1996, the European Union (EU) found in its decision number 96/617/ECSC that the aid granted to Bolzano under Law 25/81 was illegal because it was not notified to the EU, and was “incompatible with the common market pursuant to Article 4(c) of the ECSC treaty.” As a result, the EU ordered the repayment of all grants and loans made to Bolzano which were approved after January 1, 1986. The EU decision did not require the repayment of Bolzano assistance approved prior to January 1, 1986. We note that Falck unsuccessfully appealed the EU’s decision. As of the end of the POR, Falck’s second, and final, appeal was still before the EU. In *Steel Bar*, we determined that pursuant to the EU’s 1996 ruling, Falck effectively repaid the assistance under Law 25/81 approved and granted to Bolzano after January 1, 1986. *See Steel Bar Preliminary*

Determination, 66 FR at 30421, which was unchanged in *Steel Bar*. With respect to Falck’s second appeal, we stated in *Steel Bar* that given the diminished prospects for Falck to recover the amount it had repaid, there was no benefit to Bolzano or Valbruna from the grants and loans received under this program after January 1, 1986. *Id.* However, in *Steel Bar*, we further stated that if Falck does prevail in its second appeal and the monies it has repaid are refunded, it would be appropriate at that time to consider whether a benefit exists. *Id.* Thus, in *Steel Bar*, we only countervailed those grants for which the EU did not require a repayment (*e.g.*, those grants provided to Bolzano prior to January 1, 1986).

Since we are examining the same program, company, and review period in these Preliminary Results that were at issue in *Steel Bar*, we are adopting the same approach. Thus, as in *Steel Bar*, only the grants approved before 1986 will be considered countervailable.

Bolzano submitted a separate application to the regional authority for each project, so we are treating the grants received under Articles 13 through 15 of Provincial Law 25/81 as non-recurring. *See* 19 CFR 351.524(b). Pursuant to the Department’s non-recurring grant methodology, to calculate the benefit from the restructuring grants, we allocated the grants over Valbruna/Bolzano’s AUL to determine the benefit in each year. To determine the benefit from the restructuring loans that were still outstanding during the POI, we compared the long-term fixed-rate provided under the program to the benchmark rate described in the “Subsidies Valuation Information” section above since the company did not have long-term fixed rate loans from the same period. We then applied the Department’s standard long-term loan methodology and calculated the grant equivalent for the loans. We then summed the benefit amounts attributable to the POI from Bolzano’s grants and loans and divided the total benefit by Valbruna’s and Bolzano’s consolidated total sales. On this basis, we determine the countervailable subsidy would be 0.07 percent *ad valorem* for Valbruna, if we were to assume that all of the pre-change-in-ownership subsidies were countervailable.

C. European Social Fund

The European Social Fund (“ESF”), one of the Structural Funds operated by the EC, was established in 1957 to improve workers’ employment opportunities and to raise their living

standards. The main purpose of the ESF is to make employing workers easier and to increase the geographical and occupational mobility of workers within the EU. It accomplishes this by providing support for vocational training, employment, and self-employment.

Like the other EC Structural Funds, ESF seeks to achieve six different objectives explicitly identified in the EC’s framework regulations for Structural Funds: Objective 1 is to promote development and structural adjustment in underdeveloped regions; Objective 2 is to assist areas in industrial decline; Objective 3 is to combat long-term unemployment and to create jobs for young people, and people excluded from the labor market; Objective 4 is to assist workers adapting to industrial changes and changes in production systems; Objective 5 is to promote rural development; and Objective 6 is to aid sparsely populated areas in northern Europe.

The EU Member States are responsible for the identification of projects to receive ESF financing and their subsequent implementation. The Member States must also contribute to the financing of the projects. In general, the maximum benefit provided by ESF is 50 percent of the total cost of projects geared toward Objectives 2, 3, 4, and 5b, and 75 percent of the project’s total cost for Objective 1 projects. For Objective 4 programs implemented in Italy, generally 45 percent of the funding is provided by the EC and 35 percent by the GOI. Companies usually receive 50 percent of the aid up-front and the remainder upon satisfactory completion of the training program.

According to the questionnaire responses, Valbruna received or benefitted from ESF grants. We find these grants from the EU to constitute a government financial contribution within the meaning of section 771(5)(D)(i) of the Act.

All of the grants Valbruna received were given for Objective 4 projects involving worker assistance in the form of employee training. The Department considers worker assistance programs to provide a benefit to a company when the company is relieved of a contractual or legal obligation it would otherwise have incurred. *See* 19 CFR section 351.513(a). Concerning specificity, in *Steel Bar*, we stated that because the GOI and Valbruna declined to provide industry and regional distribution information, we applied an adverse inference and, therefore, concluded that the ESF program was *de facto* specific within the meaning of section 771(5A) of the Act. *See* the “European Social

Fund” section of the *Steel Bar Issues and Decisions Memorandum*. We note the Department took the same approach in *Plate in Coils*, 64 FR 15508 at 15517. For purposes of these *Preliminary Results*, it is not necessary to determine whether an adverse inference is appropriate because, even if the Department were to make such an inference, the over all *ad valorem* rate would remain *de minimis*.

D. Lease of Bolzano Industrial Site to Valbruna

Falck sold Bolzano to Valbruna in 1995. Concurrent with the change in ownership, Falck and Bolzano sold Bolzano’s industrial site to the Province of Bolzano (“Province”). In *Wire Rod*, we determined that the Province paid for the property in full. See 63 FR at 40483. Nothing on the record in the current review leads us to a different conclusion. At the same time, Valbruna negotiated with the Province to lease the Bolzano industrial site and, on July 31, 1995, signed a thirty-year lease.

We preliminarily determine that the Province’s lease of the industrial site to Valbruna constitutes a financial contribution within the meaning of section 771(5)(D)(iii) of the Act and that the lease is *de jure* specific within the meaning of 771(5)(D)(i) of the Act because the lease was limited to Valbruna.

In determining the existence and amount of the benefit, we have adopted the approach used in *Steel Bar*. Specifically, we compared the average annual return on industrial leased property in Italy during the POR to the rent paid by Valbruna during the POR. See *Steel Bar Preliminary Determination* at 30423. This comparison indicates that Valbruna received a benefit in the amount of the difference. We also included in our calculations the benefits stemming from Valbruna’s late lease payment to the Government of the Province of Bolzano (GOB). In *Steel Bar*, we explained that the GOB’s lease states that Valbruna’s payments were due no later than sixty days after the invoice date. See the “Lease of Bolzano Industrial Site to Valbruna” section and “Comment 7: Bolzano’s Industrial Lease and Extraordinary Maintenance” of the *Steel Bar Issues and Decision Memorandum*. Therefore, we found in *Steel Bar* that the non-collection of these monies provided Valbruna with a financial contribution in the form of a direct transfer of funds, *i.e.*, a zero-interest loan. *Id.* at Comment 7. We also note that, consistent with the Department’s approach in *Steel Bar*, we have not adjusted the benchmark lease rate to reflect the assumption by

Valbruna of responsibility for extraordinary maintenance. *Id.* at Comment 7.

To calculate the subsidy to Valbruna during the POR, we divided the benefit (*i.e.*, the difference between the average rate of return on leased commercial property in Italy during the POI and the actual rent paid by Valbruna during the POR) by Valbruna and Bolzano’s total consolidated sales during the POR. Accordingly, we preliminarily determine that a countervailable benefit of 0.11 percent *ad valorem* for Valbruna.

E. Environmental and Research and Development Assistance to Bolzano Under Law 25/81

Valbruna reported receiving two grants under Law 25/81 for the adaptation of existing facilities to new environmental requirements (“environmental grants”). As discussed earlier, we found assistance provided under Article 13 through 15 of Law 25/81 to be countervailable in *Wire Rod*. Though environmental grants under 25/81 were not investigated in *Wire Rod*, we examined them in *Steel Bar* and found them to be distinct from Articles 13 through 15 grants. See *Steel Bar Preliminary Determination* at 30423, which was unchanged in *Steel Bar*.

In *Steel Bar*, we determined that the environmental grants Valbruna received during the POR under Law 25/81 were countervailable subsidies because they were specific within the meaning of 771(5A)(D)(iii) of the Act and because they constituted government financial contributions and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. See the “Environmental and Research and Development Assistance to Bolzano Under Law 25/81” section of the *Steel Bar Issues and Decision Memorandum*. Regarding the Department’s specificity determination in *Steel Bar*, we made the decision on the basis of an adverse inference because the Province of Bolzano provided insufficient information regarding the specificity of the environmental grants. See *Steel Bar Preliminary Determination*, 66 FR at 30423, which was unchanged in *Steel Bar*. For purposes of these *Preliminary Results*, it is not necessary to determine whether an adverse inference is appropriate because, even if the Department were to make such an inference, the over all *ad valorem* rate would remain *de minimis*.

II. Programs Preliminarily Determined To Be Not Used

A. Capacity Reduction Payments under Articles 3 and 4 of Law 193/1984

B. Law 796/76 Exchange Rate Guarantees

C. Article 33 of Law 227/77, Export Credit Financing Under Law 227/77, and Decree Law 143/98

D. Grants under Laws 46/82 and 706/85

E. Law 181/89 and Law 120/89

F. Law 488/922, Legislative Decree 96/93 and Circolare 38522

G. Law 341/95 and Circolare 50175/95

H. Law 675/77

1. Interest Grants on Bank Loans

2. Mortgage Loans

3. Interest Contribution on IRI Loans

4. Personnel Retraining Aid

I. Law 394/81 Export Marketing Loans

J. Law 481/94 (and Precursors) Grants for Reduced Production

K. Law 489/94

L. Law 10/91

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated an individual rate for each manufacturer of the subject merchandise participating in this administrative review. We preliminarily determine the total estimated net countervailable subsidy rate to be:

Producer/exporter	Net subsidy rate
Acciaierie Valbruna S.r.l./Acciaierie Bolzano S.r.l.	0.27 percent <i>ad valorem</i> .

As provided for in the Act and 19 CFR 351.106 (c)(1), any rate less than 0.5 percent *ad valorem* in an administrative review is *de minimis*. Accordingly, if the final results of this review remain the same as these preliminary results, no customs duties will be assessed. The Department will instruct Customs to liquidate without regard to countervailing duties, shipments of the subject merchandise for Valbruna/Bolzano entered, or withdrawn from warehouse, for consumption from January 1, 2000, through December 31, 2000. Also, the cash deposit will be set at zero for this company.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. See 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must

be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company v. United States*, 822 F. Supp. 782 (CIT 1993) and *Floral Trade Council v. United States*, 822 F. Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR 355.22(g), the predecessor to 19 CFR 351.222(c)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the most recently completed administrative proceeding conducted under the URAA. *See Wire Rod*, 63 FR 40474 at 40503. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 2000 through December 31, 2000, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

Public Comment

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on these preliminary results. The hearing is tentatively scheduled to be held 37 days from the date of publication of these preliminary results, 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. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

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. In addition, six copies of the business proprietary version and six copies of the non-proprietary version of the case briefs must be submitted to the Assistant Secretary no later than 30 days from the date of publication of the preliminary determination. 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. Six copies of the business proprietary version and six copies of the non-proprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than 5 days from the date of filing of the case briefs. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with 19 CFR 351.309 and will be considered if received within the time limits specified above.

This determination is published pursuant to sections 751(f) and 777(i) of the Act.

Dated: June 3, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02-14377 Filed 6-6-02; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051502A]

Endangered Species; Permit No. 1299

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Raymond R. Carthy, Ph.D., Florida Cooperative Fish and Wildlife Research Unit, P.O. Box 110450, University of Florida, Gainesville, Florida 32611, has been issued an amendment to scientific research Permit No. 1299.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713-2289; fax (301)713-0376.

FOR FURTHER INFORMATION CONTACT:

Lillian Becker or Ruth Johnson, (301)713-2289.

SUPPLEMENTARY INFORMATION: The requested modification has been granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the provisions of § 222.306 of the regulations governing the taking, importing, and exporting of endangered and threatened fish and wildlife (50 CFR 222-226).

The Permit authorizes the Holder to attach five (5) radio/sonic transmitters and to five (5) radio transmitters to loggerhead, green or Kemp's ridley turtles already authorized to be taken. No additional animals were authorized to be taken. This activity will occur in 2002 and 2003.

Issuance of this amendment, as required by the ESA was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 3, 2002.

Eugene Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02-14361 Filed 6-6-02; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02-27]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104-164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604-6575

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02-27 with attached transmittal and policy justification.

Dated: June 3, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.



DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

23 MAY 2002

In reply refer to:
I-02/005891

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-27 and under separate cover, the classified documents thereto. This Transmittal concerns the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to the United Arab Emirates for defense articles and service estimated to cost \$245 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale is described in the enclosed confidential attachment.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tome Walters, Jr.", written in dark ink.

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachment
As stated

Separate Cover:
Classified Annex
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-27**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended**

- (i) **Prospective Purchaser: United Arab Emirates**
- (ii) **Total Estimated Value:**

Major Defense Equipment*	\$181 million
Other	<u>\$ 64 million</u>
TOTAL	\$245 million
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 237 Evolved Seasparrow Missiles (ESSM), containers, spare and repair parts, shipboard equipment, support and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical assistance and other related elements of logistics support**
- (iv) **Military Department: Navy (AAU)**
- (v) **Prior Related Cases, if any: none**
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex under separate cover**
- (viii) **Date Report Delivered to Congress: 23 MAY 2002**

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

United Arab Emirates – Evolved Seasparrow Missiles

The Government of United Arab Emirates (UAE) has requested a possible sale of 237 Evolved Seasparrow Missiles (ESSM), containers, spare and repair parts, shipboard equipment, support and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical assistance and other related elements of logistics support. The estimated cost is \$245 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

The proposed sale of ESSM missiles will provide a self-defense battlespace and firepower against known faster, lower, smaller and more maneuverable anti-ship missile threats. This improvement will enhance UAE's ability to support the allied defense posture.

Evolved Seasparrow missiles will fulfill UAE naval surface-to-air missile requirements. The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principle contractors will be Raytheon Systems, Incorporated of Tucson, Arizona. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this sale will require the assignment of one contractor representative in-country support for an unspecified period of time depending on the needs of the UAE. There will be up to 12 each U.S. Government and contractor representatives during several overseas visits of the proposed location of the Intermediate Level Maintenance Facility for technical design and construction reviews.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 02-14255 Filed 6-6-02; 8:45 am]
BILLING CODE 5001-08-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing

AGENCY: Assistant Secretary of Defense for Force Management Policy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Public Law 92-463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held. The purpose of the meeting is to review planned changes and progress in developing computerized and paper-and-pencil enlistment tests and renorming of the tests.

DATES: July 11, 2002, from 8 a.m. to 5 p.m., on July 12, 2002, from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Four Seasons Hotel in Philadelphia, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Assistant Secretary of Defense (Force Management Policy), Room 2B271, The Pentagon, Washington, DC 20301-4000, telephone (703) 697-9271.

SUPPLEMENTARY INFORMATION: Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian at the address or telephone number above no later than June 24, 2002.

Dated: June 3, 2002.

Patricia L. Toppings,
Alternate OSF Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02-14254 Filed 6-6-02; 8:45 am]

BILLING CODE 5001-08-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Meeting

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board (DSB) Task Force on Enduring Freedom Lessons Learned will meet in closed session on June 25, 2002, in the Pentagon, Washington, DC. This Task Force will review current activities of Operation Enduring Freedom to determine both near- and longer-term technical and operational

considerations that could be used to improve this operation and future campaigns initiated in the War Against Terrorism.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Defense Science Board Task Force will review and evaluate operational policy and procedures, command and control, intelligence, combat support activities, weapon system performance, and science and technology requirements.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92-463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, this meeting will be closed to the public.

Dated: June 3, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02-14253 Filed 6-6-02; 8:45 am]

BILLING CODE 5001-08-M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Availability of the Draft Environmental Impact Statement for the South River, Raritan River Basin, Hurricane and Storm Damage Reduction and Ecosystem Restoration Study

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The New York District of the U.S. Army Corps of Engineers (Corps) has prepared a Draft Environmental Impact Statement (DEIS) for the South River, Raritan River Basin Raritan, Hurricane and Storm Damage Reduction and Ecosystem Restoration Study. The purpose of the study is to identify a plan that would protect the South River, Sayerville and Woodbridge communities from damages caused by hurricanes and storms, and restore degraded habitats in the South River. The DEIS was prepared to evaluate those alternatives identified in the Feasibility Report.

DATES: The DEIS will be available for public review when this announcement is published. The review period of the

document will be until July 22, 2002. To request a copy of the DEIS please call (212) 264-4663.

FOR FURTHER INFORMATION CONTACT: For further information regarding the DEIS, please contact Mark Burlas, Project Wildlife Biologist, telephone (212) 264-4663, Planning Division, ATTN: CENAN-PL-EA, Corps of Engineers, New York District, 26 Federal Plaza, New York, New York, 10278-0090.

SUPPLEMENTARY INFORMATION: 1. The South River, Raritan River Basin, Hurricane and Storm Damage Reduction and Ecosystem Restoration Feasibility Study was authorized by resolution of the U.S. House of Representatives Committee on Public Works and Transportation and adopted May 13, 1993. The resolution states that: Resolved by the Committee on Public Works and Transportation of the United States House of Representatives, that, the Secretary of the Army, acting through the Chief of Engineers, is requested to review the report of the Chief of Engineers, titled Basinwide Water Resources Development Report on the Raritan River Basin, New Jersey, published as House Document 53, Seventy-first Congress, Second Session, and other pertinent reports, to determine whether modifications of the recommendations contained therein are advisable at the present time in the interest of flood control and related purposes on the South River, New Jersey.

2. The South River, Raritan River Basin, Hurricane and Storm Damage Reduction and Ecosystem Restoration Feasibility Study has been conducted by the Corps with the non-Federal project partner, the New Jersey Department of Environmental Protection (NJDEP). The study area initially included the entire South River basin. The South River is the first major tributary of the Raritan River, located approximately 8.3 miles upstream of the Raritan River's mouth at Raritan Bay. The South River is formed by the confluence of the Matchaponix and Manalapan Brooks, just above Duhernal Lake, and flows northward from Duhernal Lake a distance of approximately 7 miles, at which point it splits into two branches, the Old South River and the Washington Canal. Both branches flow northward into the Raritan River. The South River is tidally controlled from its mouth upstream to Duhernal Lake Dam; fluvial conditions prevail above the dam. Based on coordination with NJDEP, County and local governments, it was determined that there are no widespread flooding problems in the South River watershed upstream of the Duhernal Lake dam.

Consequently, the study area was modified, focusing on river reaches below the dam, specifically flood-prone areas within the Boroughs of South River and Sayreville, the Township of Old Bridge, and the Historic Village of Old Bridge (located within the Township of East Brunswick). The downstream river reaches encompass virtually all the flood-prone structures in the watershed and the areas of greatest ecological degradation (and greatest potential for ecosystem restoration).

3. Periodic hurricanes and storms have caused severe flooding along the South River. Flood damages downstream of Duhernal Lake are primarily due to storm surges with additional damages associated with basin runoff. The communities repeatedly affected by storm surges are the Boroughs of South River and Sayreville, the Township of Old Bridge, and the Historic Village of Old Bridge in East Brunswick Township. There are approximately 1,247 structures (1,082 residential; 165 commercial) in the 100-year floodplains of these communities and 1,597 structures in the 500-year floodplains (1,399 residential; 198 commercial). Storm surges create the greatest damages in the study area occurring during hurricanes and northeasters that generate sustained onshore winds through multiple tidal cycles. For example, the northeaster of March 1993 (a 25-year event) resulted in approximately \$17 million damage (2001 dollars) and closed the highway bridge connecting the Boroughs of South River and Sayreville.

4. The area under consideration for ecosystem restoration encompasses 1,278 acres along the Old South River and the Washington Canal and includes the 380-acre Clancy Island bounded by these waterways and by the Raritan River. Wetland plant communities account for 786 acres (61 percent) of the study area land cover. Uplands account for the remaining 492 acres, of which 234 acres are occupied by residential, commercial, and industrial development. These wetlands and uplands are ecologically degraded. Approximately 527 acres (41 percent of the study area) are dominated by monotypic stands of common reed (*Phragmites australis*). Other wetland communities are scattered around the site in a patchwork of fragmented parcels. The uplands are dominated by low quality scrub-shrub land cover. The current degraded ecological conditions appear to be the result of: (1) Construction and maintenance dredging associated with the Federal navigation channels in the South River,

Washington Canal, and Raritan River and (2) clay excavation and industrial activity associated with the defunct Sayreville brick industry.

5. Plan formulation for hurricane and storm damage reduction along the South River considered a full range of structural and nonstructural measures. Alternative plans that survived the initial screening of alternatives included: (1) A storm surge barrier at the confluences of the South River and Washington Canal with the Raritan River, (2) multiple levee and floodwall configurations, and (3) buy-out of flood-prone properties. Further investigation determined that the storm surge barrier alternative at the confluence of the Washington Canal and the Raritan River was not economically feasible and that there would be significant adverse environmental effects on study area wetlands. It was also determined that acquisition of structures in the flood plains was not economically feasible. In contrast, preliminary analysis indicated that the levee and floodwall protection of flood-prone properties in the study area was found to be economically and technically feasible.

6. More detailed analysis indicated that levees and floodwalls along the eastern and western banks of the lower South River would be economically justified and would have minimal effects on study area wetlands. It was also determined that structural protection of upstream reaches would not be economically justified. A storm surge barrier (different location than previously described), located just downstream (north) of the Veterans Memorial Bridge, was subsequently evaluated in combination with levees/floodwalls in the lower reaches. The barrier was found to be an economically feasible means to protect upstream reaches. In addition, it would: (1) Minimize environmental impacts on wetlands, (2) avoid potential Hazardous Toxic Radioactive Waste (HTRW) sites upstream, and (3) preclude the need for nonstructural protection in upstream communities by providing comprehensive storm surge protection.

7. Economic analysis of the hurricane and storm reduction plans indicated that the levee/floodwall system with upstream storm surge barrier would result in the greatest net benefits. Subsequent optimization of this plan determined that a 500-year level of protection would provide the greatest net benefits. Consequently, the levee/floodwall system with upstream storm surge barriers providing a 500-year level of protection was designated as the National Economic Development (NED) plan and was selected as the

recommended plan. Using a combination of levees, floodwalls, and a storm surge barrier, structural protection will extend to an elevation of +21.5 feet NGVD. The levees will extend 10,712 feet in length, and the floodwalls will extend 1,655 feet in length. The storm surge barrier will span the South River for a length of 320 feet and will have a clear opening of 80 feet. It is anticipated that the first costs of the selected hurricane and storm reduction plan will be approximately \$62.5 million with average annual costs estimated at \$4.3 million. With an average annual benefits estimated at \$9.1 million, the average annual net benefits associated with the selected hurricane and storm reduction plan will be approximately \$4.8 million. The selected hurricane and storm reduction plan is expected to have a benefit-cost ratio of 2.1 to one.

Even though the selected hurricane and storm damage reduction plan was specifically designed to avoid and minimize environmental impacts, there were some unavoidable impacts to the natural resources in the South River. Based on a Habitat Evaluation Procedures (HEP) study and an Evaluation of Planned Wetlands (EPW) assessment, the selected NED plan will result in a loss of 1.07 Average Annual Habitat Units (AAHUs) and 20.74 Functional Capacity Units (FCUs). Consequently, to offset these impacts it was determined that the mitigation goal will replace at least 100% of the combined loss of AAHUs summed across evaluation species and FCUs summed across wetland functions, and at least 50% (agreed upon by HEP Team) of the loss of AAHUs per evaluation species and FCUs lost per function, as a result of implementation of the selected hurricane and storm damage reduction measures.

8. To achieve the mitigation goal, a screening analysis was conducted to evaluate the feasibility of improving the available habitat on the proposed levee (e.g., plant shrubs to improve songbird habitat); improving the existing habitats (e.g., increase the density/cover of the vegetation by planting more shrubs and/or herbaceous species); and, converting one habitat/cover type to another more valuable habitat (e.g., covert areas of Phragmites to salt marsh or wetland scrub-shrub).

9. Based on an analysis of the acreages, costs, benefits, and incremental cost/output for each of these plans it was determined that Mitigation Alternative 2 had ecological outputs that were worth its associated costs. The selected mitigation plan will fulfill the mitigation goal and will

involve the conversion of 11.1 acres of degraded wetland Phragmites and disturbed habitat to a combination of wetland scrub-shrub (7.8 acres) and salt marsh (3.3 acres). This plan is estimated to cost \$2,865,300 and is included in the hurricane and storm damage reduction cost provided earlier.

10. Plan formulation for ecosystem restoration considered a wide variety of restoration measures to address opportunities associated with ecosystem restoration along the South River. Restoration goals and objectives were specified early in the plan formulation process. Restoring biodiversity and ecological functioning were established as the restoration goals; the restoration objectives included: restoring habitat for threatened and endangered species, increasing site biodiversity, increasing tidal flushing, reducing Phragmites, improving water quality, and stabilizing and protecting desirable wetland habitat. After a preliminary restoration screening process that the assessed ecological benefits and engineering constraints of eleven different alternatives, four priority habitats were chosen for ecological restoration of the study area: low emergent marsh, intertidal mudflat, wetland forest scrub-shrub, and open water (i.e., tidal creeks and tidal ponds). Using different proportions of each habitat, more than 250 potential mathematical combinations of these habitats were evaluated.

11. These combinations were then applied to four potential restoration areas delineated in the study area using four different scales of restoration for degraded acreage in each area: 25 percent, 50 percent, 75 percent, and 100 percent. Cost effectiveness and incremental cost analysis was applied to the resultant 40,000 potential restoration plans, resulting in identification of eight "best buy" restoration plans for the study area. These plans represent the most efficient means to achieve ecosystem restoration in the study area. Based upon the incremental analysis and the ability of the alternative plans to achieve the restoration planning goals and objectives, one of the Best Buy plans was selected as the National Ecosystem Restoration (NER) plan.

12. The NER plan will restore 100 percent of the 379 acres of degraded wetlands in the potential restoration areas. The NER plan will restore the following habitats: low emergent marsh (151 acres: 40 percent), wetland forest/scrub-shrub (170 acres: 45 percent; plus an additional 19 acres, or 5 percent, as upland forest/scrub-shrub), mudflat (19 acres: 5 percent), and open water (19

acres: 5 percent). It is expected that implementation of the NER plan will cost approximately \$50.6 million with an average annual cost of approximately \$3.3 million.

13. The costs of project implementation for the hurricane and storm damage reduction features and ecosystem restoration features will be shared by the Federal government and the non-Federal project partner (NJDEP) on a 65 percent/35 percent basis. All operations and maintenance costs will be borne by the non-Federal project partner. For the hurricane and storm damage reduction features, the project implementation costs will be shared as follows: \$40,608,700 Federal and \$21,866,200 non-Federal with annual O&M costs of \$221,500 (non-Federal). This includes mitigation costs associated with the implementation of these features (\$2,865,300 total with \$1,862,400 Federal and \$1,002,900 non-Federal). For the ecosystem restoration features, the project implementation costs \$50,552,800 million will be shared with \$32,859,300 Federal and \$17,693,500 non-Federal with O&M costs of \$80,000 (non-Federal).

14. Potential beneficial cumulative impacts to migratory waterfowl and songbirds are likely to result from implementation of the selected mitigation and ecosystem restoration plans. These plans, in conjunction with similar projects in the South River watershed, should increase the overall ecological value of the area. Specifically, the mitigation and restoration plans will add large areas of more desirable wetland communities and increase the study area's biodiversity (i.e., improve the areas composition and abundance of plant and animal species).

15. The construction and maintenance of both the hurricane and storm damage reduction measures and the ecosystem restoration measures will not negatively impact any Federally or state listed endangered or threatened species, areas of designated critical habitat, or essential fish habitat. By providing increased cover and opportunities for foraging and nesting, the selected plans will also improve habitat for the Federally listed threatened bald eagle thought to utilize habitats in the general vicinity, and for many of the State of New Jersey endangered and threatened species observed in the restoration area (e.g., black skimmer, northern harrier, peregrine falcon, yellow-crowned night heron, osprey, black-crowned night heron, and American bittern).

16. In sum, the recommended plan will efficiently reduce hurricane and storm damages along the South River

and improve the structure and function of degraded ecosystems in the study area. The non-Federal project partner, NJDEP, has indicated its support for the recommended plan and is willing to enter into a Project Cooperation Agreement with the Federal Government for the implementation of the plan. At this time, there are no known major areas of controversy or unresolved issues regarding the study and selected plan among agencies or the public interest.

Len Houston,

Chief, Environmental Analysis Branch.

[FR Doc. 02-14226 Filed 6-6-02; 8:45 am]

BILLING CODE 3710-06-M

DEPARTMENT OF EDUCATION

Notice of proposed information collection requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by June 12, 2002. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before August 6, 2002.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address Karen_F_Lee@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to

the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. ED invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: June 3, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Local-Flex Application.

Abstract: Application for local educational agencies (LEAs) seeking to enter into local flexibility demonstration agreements ("Local-Flex" agreements). By statute, the Department can select 80 LEAs through a competitive process with which to enter into Local-Flex agreements. These agreements give LEAs the flexibility to consolidate certain Federal education funds and to use those funds for any educational purpose permitted under the Elementary and Secondary Education Act (ESEA) in order to meet the State's definition of adequate yearly progress (AYP) and specific measurable goals for improving student achievement and narrowing achievement gaps.

Additional Information: An emergency clearance is necessary to enable the Department to select Local-

Flex agreement LEAs by September 15 of this year. While LEAs may still have difficulty implementing the program during school year 2002–03, approval after the school year begins will surely delay implementation to the following year. In our view, harm to the public would thus occur if this clearance is not approved by June 12, 2002. The Department plans to make applications available by mid-June to allow applicants sufficient time to prepare their Local-Flex agreement. The Department would then have approximately one month to complete a peer review and negotiate final agreements with selected applicants.

Frequency: Semi-Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 240.

Burden Hours: 19,200.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2058. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address vivan.reese@ed.gov. Requests may also be electronically mailed to the Internet address OCIO_RIMG@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements, contact Kathy Axt at (540) 776–7742 or via her Internet address Kathy.Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–14289 Filed 6–6–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.359A (Pre-Application) and 84.359B (Full Application)]

Early Reading First Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

SUMMARY: The Secretary invites applications for new grant awards for FY 2002 for the Early Reading First

Program. These grants are authorized by subpart 2, part B, title I, of the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act, Public Law 107–110. The Secretary also announces final procedures, requirements, and priorities for this competition.

Purpose of Program

The purpose of the Early Reading First Program is to create preschool centers of excellence by improving the instruction and classroom environment of early childhood programs that are located in urban or rural high-poverty communities and that serve primarily children from low-income families. These programs will provide preschool age children, including children with disabilities and children with limited English proficiency, with high-quality environments and early reading curricula and activities, based on scientifically based reading research, to support the age-appropriate development of: oral language, phonological awareness, print awareness, and alphabetic knowledge. These activities (with tactile and communication accommodations for children with disabilities, as appropriate), in combination with professional development based on scientific research and with screening assessments, will form an integrated, coherent instructional program that will further children's language and literacy skills and prevent them from encountering reading difficulties when they enter school.

These grants complement the Reading First State Grants Program, which provides support for high-quality, scientifically based classroom-focused reading instruction for kindergarten through grade three. The Early Reading First Program is joined by several other significant endeavors that are designed to enhance the school readiness of young children, such as the Department's Early Childhood Educator Professional Development Grants Program, which is designed to improve the knowledge and skills of early childhood educators, and the Preschool Curriculum Evaluation Research Grants Program, which will implement rigorous evaluations of preschool curricula to provide information to support informed choices of classroom curricula for early childhood programs.

Early Reading First grants will help support the President's new Early Childhood Initiative, by strengthening early learning environments and instruction for young children. These grants also will support that initiative by helping ensure that preschool

programs are more closely coordinated with State educational goals, including goals for kindergarten through grade 12, so that there is continuity with formal school instruction and so that what children are doing before they enter school is aligned with what is expected of them once they are in school.

Early Reading First grants will use research-based strategies to generate information about effective practices in providing children with the essential language, literacy, and cognitive experiences that will best prepare them for later school success. The Department plans to disseminate information about Early Reading First projects that prove to be effective models for early childhood education.

Applications Available: June 7, 2002.

Deadline for Receipt of Applications: Pre-Application: July 15, 2002 (by 4:30 p.m., if hand delivered). Full Application (for invited applicants only): October 11, 2002 (by 4:30 p.m., if hand delivered) (which is at least 6 weeks after the date applicants will be invited to submit Full Applications).

Deadline for Intergovernmental Review: December 10, 2002.

Estimated Available Funds: \$75,000,000.

Estimated Range of Awards (per year): \$250,000–\$1,500,000.

Estimated Average Size of Awards (per year): \$425,000 (based on 175 awards).

Estimated Number of Awards: 50–300.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to three years.

SUPPLEMENTARY INFORMATION:

Background

As the President's new Early Childhood Initiative recognizes, research demonstrates the strong relationship between high-quality educational experiences for children before kindergarten and their later success in school. The National Research Council report, *Preventing Reading Difficulties in Young Children* (1998), concludes that the majority of reading problems faced by today's adolescents and adults could have been avoided or resolved in the early years of childhood. The *Cost, Quality and Child Outcomes* report (June 1999), partially funded by the Department, concludes that children's cognitive and social competence in the second grade can be predicted by the experiences that they had four years previously in child care, even after taking into account kindergarten and first-grade classroom experiences. The report also found that

children who have traditionally been at risk for not doing well in school are more affected by the quality of child care experiences than are other children.

Early Reading First grants will help meet this challenge by funding projects that demonstrate the capacity to provide high-quality, research-based experiences in language and early literacy for preschool age children. These grants will improve the instruction and environment of programs primarily serving young children living in poverty, in programs such as Title I preschools and schoolwide programs, Head Start, Even Start Family Literacy programs, and publicly funded or subsidized child care.

Early Reading First projects must provide the following activities, with accommodations as needed for children with disabilities: High-quality oral language and print-rich environments; professional development for staff based on scientifically based reading research knowledge of language, cognitive, and early reading development that will assist in developing preschool age children's oral language, phonological awareness, print awareness, and alphabet knowledge; activities and instructional materials based on scientifically based reading research for use in developing language, cognitive, and early reading skills; acquisition, training, and implementation of screening reading assessments; and integration of the instructional materials, activities, tools, and measures into the applicant's overall programs. These activities, required by section 1222(d) of the ESEA, are more specifically described in the application guide.

The Secretary is particularly interested in Early Reading First projects that will serve a significant number of children with special needs, including those with disabilities and those with limited English proficiency. These programs would provide those children access, through appropriate accommodations, to the same high-quality environments and early reading curricula and activities based on scientifically based reading research as would be provided to children without special needs, to support their age-appropriate development of oral language, phonological awareness, print awareness, and alphabetic knowledge.

Eligible Applicants

(1) One or more local educational agencies (LEAs) identified as being eligible on the list of "Eligible LEAs" on the Department's Web site at <http://www.ed.gov/offices/OESE/earlyreading/>

index.html; (2) one or more public or private organizations or agencies located in a community served by one of those LEAs, which organization or agency is acting on behalf of one or more programs (which may include themselves) that serve young children, such as a Head Start program, a child care program, an Even Start program; or (3) one or more of the eligible LEAs, applying in collaboration with one or more of the eligible organizations or agencies. In addition to obtaining the list of "Eligible LEAs" from the Department's Web site, the public may obtain that list by contacting one of the individuals identified below under **FOR APPLICATIONS AND FURTHER INFORMATION CONTACT**.

Definitions

As defined for the Early Reading First Program under section 1221(b)(2) and (3) of the ESEA, the terms listed have the following meanings:

(1) The term "scientifically based reading research," as defined in section 1208—(6) of the ESEA, means research that—

(A) applies rigorous, systematic, and objective procedures to obtain valid knowledge relevant to reading development, reading instruction, and reading difficulties; and

(B) includes research that—

(i) employs systematic, empirical methods that draw on observation or experiment;

(ii) involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

(iii) relies on measurements or observational methods that provide valid data across evaluators and observers and across multiple measurements and observations; and

(iv) has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

(2) The term "screening reading assessment," as defined in section 1208(7)(B) of the ESEA, means an assessment that is—

(i) valid, reliable, and based on scientifically based reading research; and

(ii) a brief procedure designed as a first step in identifying children who may be at high risk for delayed development or academic failure and in need of further diagnosis of their need for special services or additional reading instruction.

Applicability of Regulations

The following provisions of the Education Department General Administrative Regulations (EDGAR) contained in Title 34 of the Code of Federal Regulations (CFR) apply to these Early Reading First Program grants: 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99.

Waiver of Proposed Rulemaking

It is the Secretary's practice, in accordance with the Administrative Procedure Act (5 U.S.C. 553), to offer interested parties the opportunity to comment on proposed rules that are not taken directly from statute. Ordinarily, this practice would have applied to the priorities and requirements in this notice. Section 437(d)(1) of the General Education Provisions Act (GEPA), however, exempts from this requirement rules that apply to the first competition under a new or substantially revised program. The Secretary, in accordance with section 437(d)(1) of GEPA, has decided to forgo public comment with respect to the rules in this grant competition in order to ensure timely awards. These rules will apply only to the FY 2002 grant competition.

Application Process

The FY 2002 Early Reading First grant competition will be conducted through a Pre-Application and Full Application process. All applicants must submit a Pre-Application, which must include a narrative that briefly describes the existing preschool program(s) to be supported and improved with Early Reading First funds, and then addresses four key concepts related to the proposed project that are described below under Pre-Application Selection Criteria. In addition, the Pre-Application must include an estimated budget and brief budget justification. The Pre-Application is limited to: 2 double-spaced pages for describing the context, 10 double-spaced pages to address the selection criteria and priorities, and 3 double-spaced pages for the budget justification, with formatting requirements and limited appendices that are described in the application guide.

The Secretary, through a peer review panel of experts convened under section 1203(c)(2) of the ESEA in accordance with section 1222(c) of the ESEA, will evaluate each Pre-Application based upon the Pre-Application selection criteria and three competitive priorities included in this notice. The Secretary will invite those applicants to submit Full Applications whose Pre-Applications the peer review panel rate

highly in the competitive Pre-Application review process and recommend as having the potential to become successful projects. The Department will inform applicants of the outcome of the Pre-Application phase.

The Full Application must include a narrative addressing the Full Application selection criteria, a budget, and a budget narrative. Those Full Application selection criteria are different than the Pre-Application selection criteria. The Secretary, through a separate peer review panel of experts also convened under section 1203(c)(2) of the ESEA in accordance with section 1222(c) of the ESEA, will evaluate each Full Application based upon the Full Application selection criteria and Full Application competitive priority included in this notice. The Full Application is limited to: 35 pages for the narrative, and 5 pages for the budget narrative, with formatting requirements and limited appendices that are described in the application guide.

The Secretary will select applicants for funding based on the quality of the Full Applications and the recommendations of the Full Application peer review panel. The Secretary will consider for funding only those applications that the peer review panel recommends as demonstrating the greatest potential for creating improvements in early childhood education programs and for becoming successful projects that are centers of excellence for early learning.

In making funding decisions, the Department will use the procedures in EDGAR, 34 CFR 75.217, which may include the use of on-site reviews for some or all Full Applications following the peer review process. When making awards, the Secretary may take into consideration other information that is relevant to obtaining a variety of types of funded projects and an equitable distribution of awards throughout the nation, such as geographical representation, location in high-need urban and rural areas, project size, and type of program. The Department anticipates making final awards in December 2002.

Pre-Application Priorities

Pre-Application Competitive Priorities

Under 34 CFR 75.105(c)(2), the Secretary gives three separate competitive preferences to Pre-Applications as follows:

Pre-Application Competitive Priority 1—State Educational System Partnership

Early Reading First projects that are operated by a partnership that includes at least the following two partners: (1) a State educational agency (SEA) or a local educational agency (LEA) (or both); and (2) a preschool that is not under the administrative control of an LEA. The Secretary considers a preschool to be under the administrative control of an LEA for the purpose of this competitive priority if the LEA is the fiscal agent, operates, supervises, controls, or manages the preschool. A preschool that is located in a school or LEA building is not necessarily under the administrative control of an LEA.

Programs that form new qualifying partnerships for Early Reading First will meet this priority, as will programs operated through existing partnerships between LEAs and preschools that are not under the administrative control of an LEA. To qualify for points under this first Pre-Application competitive priority, at least one partner must qualify as an eligible applicant. In addition, to qualify under this competitive priority all preschools that will be supported by the proposed Early Reading First project must be located in a community served by an eligible LEA or primarily serve children who will attend kindergarten in an eligible LEA (see list of eligible LEAs on the Department's Web site listed above under "Eligible Applicants").

Note: (Eligible applicants that meet this competitive priority, if invited to submit a Full Application, must attach a Partnership Agreement to the Full Application that describes the specific responsibilities and roles each partner will have with respect to the Early Reading First project.)

An application that meets this first Pre-Application competitive priority would receive *10 points* in the Pre-Application portion of the grant competition. These points are in addition to any points the applicant earns under the Pre-Application selection criteria and any other Pre-Application competitive priority.

This competitive priority is designed to: Ensure that the preschool programs supported with Early Reading First funds are closely coordinated and aligned with the State's kindergarten through grade 12 (K–12) educational system and goals; enhance collaboration and instructional continuity between those preschools and the elementary schools children will enter after preschool; and give State and local support to preschools not part of the State K–12 public education system.

Pre-Application Competitive Priority 2—Children from Low-Income Families

The preschool program(s) to be supported by the proposed Early Reading First project primarily serve children from low-income families.

An application that meets this second Pre-Application competitive priority would receive from 0–15 points in the Pre-Application portion of this grant competition, based on the applicant's demonstration of the degree to which the program serves children from low-income families. These points are in addition to any points the applicant earns under the Pre-Application selection criteria or any other Pre-Application competitive priority.

When awarding points, the Secretary will consider the relative percentage of children from low-income families. Applicants must include in their Early Reading First Program Pre-Application Narrative a description of the preschool program(s) to be served by the proposed project, which includes demographic and socioeconomic information on the preschool age children enrolled in those programs. Applicants may use data of their choice to demonstrate that the preschool age children primarily are from low-income families. For example, an applicant may use such information such as census data, the percentage of children receiving a free or reduced price lunch, or other similar measures of poverty to demonstrate the percentage of children from low-income families. The Secretary will consider the different definitions of poverty used in these data sources in determining the extent to which a project primarily serves children from low-income families.

This competitive priority is designed to ensure that Early Reading First funds are used to support local efforts to enhance the early language, literacy, and prereading development, particularly of preschool children who are from low-income families.

Pre-Application Competitive Priority 3—Novice Applicant

The applicant is a novice applicant (or a group of novice applicants) under 34 CFR 75.225 that is otherwise eligible to apply under this competition. A "novice applicant" under 34 CFR 75.225 means the following for this Pre-Application competitive priority: an applicant that has not had an active discretionary grant from the Federal Government in the five years before the deadline date for the Pre-Application in this grant competition. For the purposes of this requirement, a grant is active until the end of the grant's project or funding period, including any

extensions of those periods that extend the grantee's authority to obligate funds. In the case of applications from more than one eligible applicant (that is, a group application), every eligible applicant must be a novice applicant to meet this Pre-Application competitive priority.

This competitive priority is included to broaden and diversify the pool of qualified applicants and provide greater opportunities for inexperienced applicants with high-quality applications to receive funding. An application that meets this third Pre-Application competitive priority would receive 5 points in the competition. These points are in addition to any points the applicant earns under the Pre-Application selection criteria or any other Pre-Application competitive priority.

Full Application Priority

Under 34 CFR 75.225, the Secretary gives a competitive priority to Full Applications as follows:

Full Application Competitive Priority—Novice Applicant

The applicant is a novice applicant (or a group of novice applicants) under 34 CFR 75.225 that is otherwise eligible to apply under this competition. A "novice applicant" under 34 CFR 75.225 means the following for this initial competition in the new Early Reading First Program: an applicant that has not had an active discretionary grant from the Federal Government in the five years before the deadline date for a Full Application under this grant competition. For the purposes of this requirement, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds. In the case of applications from more than one eligible applicant (that is, a group application), every eligible applicant must be a novice applicant to meet this Full Application competitive priority.

This competitive priority is included to broaden and diversify the pool of qualified applicants and provide greater opportunities for inexperienced applicants with high-quality applications to receive funding. An application that meets this Full Application competitive priority would receive 5 points in the competition. These points are in addition to any points the applicant earns under the selection criteria.

Pre-Application Selection Criteria

The Secretary will use the following selection criteria in accordance with 34

CFR 75.200(b)(2) and 75.209 to evaluate Pre-Applications under this grant competition. The maximum score for all of these selection criteria is 100 points. The maximum score for each criterion is indicated in parenthesis with the criterion.

Applicants must first use up to two (2) pages of their applications to describe the context of the existing early childhood education programs serving preschool age children (preschool programs) that they propose to support with Early Reading First funds. The Secretary recommends that, in the case of center-based programs, applicants generally include no more than a total of 5 centers to ensure that funds are sufficiently concentrated to achieve the program goals. This description must include the following information: the ages and number of children being served; demographic and socioeconomic information on those children; information on the type of special needs that any of the children may have; the average hours the children attend the program (hours/day, days/week, and months/year); primary funding source(s) for the program; the basic instructional program; and the number of staff and their qualifications.

In addition to the 2-page context description, applicants must also include, in the Appendix to the Pre-Application: (1) A list of the names and addresses of the preschool programs that the Early Reading First project will support, and, if the applicant intends to qualify under Pre-Application Competitive Priority 1 (State Educational System Partnership), the name of the eligible LEA in which each preschool is located or the name(s) of the eligible LEA(s) in which the kindergartens are located that the preschool age children primarily will attend; and (2) a one-page organizational chart showing the relationship between the members of the project proposal, which indicates the eligible applicant(s), the fiscal agent, and the preschools to be served.

Each applicant must then use no more than a total of 10 additional pages to address the following selection criteria and Pre-Application Competitive Priority 2 (Children from Low-Income Families). (Pre-Application Competitive Priority 1 (State Educational System Partnership) and Pre-Application Competitive Priority 3 (Novice Applicant) will be addressed by separate forms in the application package.)

Selection Criteria

(1) *Vision* (up to 25 points): Starting from the context of the existing early

childhood education program(s) that the Early Reading First project would support, applicants must describe their vision for what those programs would look like if they were to become centers of educational excellence. Using the scientific reading research upon which their vision is based, applicants must describe the overall goals for their proposed Early Reading First project.

In evaluating the response to this first Pre-Application selection criterion, the Secretary will consider the clarity, creativity, comprehensiveness, and feasibility of the overall vision. The Secretary also will consider how well the goals reflect the vision, and the extent to which those goals incorporate high expectations, based on scientific research, for improvements in the early learning environment, curricula, teacher instruction, and enhancing children's language, cognitive, and early reading skills.

(2) *Key Research and Program Design* (up to 40 points): Applicants must discuss the key scientifically based research in the areas of language, cognitive, and early reading development for preschool age children, and include citations to the sources of that research. Applicants must tie that research to their program design by explaining the research-based strategies they would use, and the changes they would make, which appropriately address the needs of all children in the project including children with special needs, in each of the following core areas: classroom environment, professional development, curricula and instruction, and on-going screening assessment or other appropriate measures to monitor the children's progress. Applicants must explain any changes that they would make in the amount of time the program spends on developing children's language, cognition, and early reading skills, and how they would engage parents in helping with their children's development in those areas.

In evaluating the response to this second Pre-Application selection criterion, the Secretary will consider the relevance and rigor of the research cited, and how well the program design clearly links the proposed strategies with the major findings of up-to-date scientifically based reading research about best practices in language, cognitive, and early reading development. These best practices may include, for example, how the Early Reading First project will create high-quality print-rich environments, use on-going intensive professional development for preschool staff, support children's learning through explicit and

scaffolded instruction in phonological awareness, oral language skills, print awareness, and alphabet knowledge, and use continuous screening assessments to monitor children's progress.

The Secretary also will consider the clarity and feasibility of the overall program design, based upon the Pre-Application estimated budget and budget justification and the proposed project activities, including the extent to which, in the case of center-based early education programs for preschool age children, the number of centers to be supported by Early Reading First is limited enough (generally, to no more than five (5) centers) to achieve the project goals with the amount of funds requested.

(3) *Continuity and Coordination with Formal School Instruction* (up to 10 points): Applicants must describe how they would work with the LEA that the preschool children would later attend to link the Early Reading First activities with the instructional program in kindergarten through third grade (including with any activities in the LEA under the Reading First State Grants Program authorized by subpart 1 of part B of title I of the ESEA). This will ensure close coordination with the State's educational goals and to promote continuity so that cognitive and literacy gains that children made in the preschool are sustained and supported once the children begin formal classroom instruction. Applicants must indicate whether or not their State has preschool standards in the cognitive domain, and if it does, briefly describe those standards. Applicants must explain how their proposed Early Reading First project would prepare young children to meet their State's preschool content standards (if any) and their State's reading or language arts content standards for kindergarten or the lowest elementary grade for which the State has those content standards.

In evaluating the response to this third Pre-Application selection criterion, the Secretary will consider how well the project design would result in the language, cognitive, and early reading gains children make in preschool being sustained once they begin formal schooling, and how well the Early Reading First strategies and activities would prepare children to meet the State's preschool cognitive standards (if any), and the State's content standards in reading or language arts for the lowest grade for which the State has those standards.

(4) *Measuring success* (up to 25 points): Applicants must describe how they will evaluate the success of their

Early Reading First activities. Specifically, applicants must explain how they will determine whether the early language, literacy, and pre-reading development of the preschool age children served by the Early Reading First Program has improved and been enhanced as a result of their Early Reading First strategies and changes. Applicants must describe the key outcomes that they would expect to see in the classroom environment, instructional practice, and children's learning, how they plan to measure those outcomes, and how they would use the results for continuous program improvement.

In evaluating the response to this fourth Pre-Application selection criterion, the Secretary will consider how well the expected outcomes are linked to the program's goals, and how well the proposed child measures will demonstrate those outcomes. The Secretary will also consider the validity and rigor of the proposed measures, their appropriateness for the target population, and the degree to which the program will use the results to inform future instruction and program improvement.

Full Application Selection Criteria

The Secretary will use the following selection criteria in accordance with 34 CFR 75.200(b)(2) and 75.209 to evaluate Full Applications under this grant competition. The maximum score for all of the Full Applicant selection criteria is 100 points. The maximum score for each criterion is indicated in parenthesis with the criterion.

In addition, when making awards, the Secretary will consider for awards only those high-quality applications that the peer review panel recommends as demonstrating the greatest potential for creating improvements in early childhood education programs and for becoming successful projects that are centers of excellence for early learning. When making awards, the Secretary may take into consideration other information that is relevant to obtaining a variety of types of funded projects and an equitable distribution of awards throughout the nation, such as geographical representation, location in high-need urban and rural areas, project size, and type of program.

In evaluating Full Applications, the Secretary will take into consideration the responsiveness of the applicant to the comments of peer reviewers on the applicant's Pre-Application, including the extent to which the applicant refines its initial vision and the broad plan described in that Pre-Application, based upon the comments of the Pre-

Application reviewers and other new information the applicant may have obtained.

Selection Criteria

(a) *Significance of project* (up to 15 points). (1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The likelihood that the applicant's vision (as described in the Pre-Application and refined as appropriate for the Full Application) will result in a project that is a center of educational excellence for at-risk preschool age children, as demonstrated by the learning environment, instruction, and student achievement.

(ii) The extent to which the field of early childhood education can benefit from the project through products such as information, materials, and techniques, and the potential for those resources being used effectively in other settings.

(b) *Quality of project activities and services* (up to 35 points). (1) The Secretary considers the quality of the proposed project's activities and services.

(2) In determining the quality of the proposed project's activities and services, the Secretary considers the following factors:

(i) The extent to which the applicant presents a detailed plan (with research citations where appropriate) that describes the activities and services that the project will provide, to support the development of language, cognitive, and early reading skills for preschool age children, in all of the following areas, and how those activities and services are based on up-to-date knowledge from scientifically based reading research:

(A) Providing a rich oral language and print-rich environment.

(B) Preparing and providing ongoing assistance to staff, through professional development and other support.

(C) Providing services and using instructional materials and activities, and integrating those instructional materials and activities into the applicant's preschool programs and family literacy services.

(D) Using screening reading assessments or other appropriate measures to determine the skills children are learning and identify children who might be at risk of reading failure.

(E) Helping children, especially those experiencing difficulty with language and early reading skills, to make the transition from preschool to formal classroom instruction.

(F) Involving parents meaningfully in their children's early education.

(ii) The extent to which the planned activities and services in each of the above areas will help staff in the programs to meet more effectively the diverse needs of preschool age children in the community, including those with limited English proficiency, disabilities, or other special needs.

(c) *Quality of project personnel* (up to 10 points). (1) The Secretary considers quality of project personnel.

(2) In determining the quality of project personnel, the Secretary considers the following factors:

(i) The strength of the qualifications, including relevant training and experience, of the project staff.

(ii) The strength of the qualifications, including relevant training and experience, of personnel with whom the project will contract to assist in project activities, including research-based professional development for staff to support children's development of language, cognitive, and early reading skills.

(d) *Quality of management plan* (up to 20 total points).

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan, the Secretary considers the feasibility of the proposed project and the likelihood that the project will be able to achieve its expected goals (as described in the applicant's Pre-Application and refined as appropriate for the Full Application), taking into consideration the strength of any partnership, and using the following factors:

(i) The adequacy of the management plan to achieve the goals of the proposed project on time and within budget, including: clearly defined goals, activities, responsibilities, and timeline for accomplishing project tasks (up to 10 points).

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel, including any partnership commitments, are appropriate and adequate to meet the objectives of the proposed project (up to 5 points).

(iii) The extent to which the proposed costs are adequate in relation to the proposed activities, the number of persons to be served, and the anticipated results and benefits (up to 5 points).

(e) *Quality of the project evaluation* (up to 20 total points).

(1) The Secretary considers the quality of the proposed project evaluation.

(2) In considering the quality of the proposed project evaluation, the Secretary considers the extent to which the methods of evaluation include the use of objective, valid, and reliable performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data in the following areas:

(i) Improvement in classroom environment (up to 5 points).

(ii) Improvement in teacher knowledge and qualifications (up to 5 points).

(iii) Improvement in teacher instruction and planning (up to 5 points).

(iv) Improvement in outcomes for children's language, cognitive, and early reading skills (up to 5 points).

Paperwork Reduction Act Considerations

The procedures and requirements contained in this notice relate to an application package that the Department has developed for the Early Reading First Program grants. The public may obtain copies of this application package by calling or writing the individual identified below as the Department's contact, or through the Department's Web site at: www.ed.gov/GrantApps/#84.359; or <http://www.ed.gov/offices/OESE/earlyreading/index.html>.

As required by the Paperwork Reduction Act, the Office of Management and Budget has approved the use of this application package under OMB control number 1810-0654, which expires October 31, 2002.

For Applications Contact

Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794-1398. Telephone (toll free): 1-877-433-7827. FAX: (301) 470-1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1-877-576-7734.

You may also contact ED Pubs at its Web site: <http://www.ed.gov/pubs/edpubs.html>.

Or you may contact ED Pubs at its e-mail address: edpubs@inet.ed.gov.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.359(A and B).

The public also may obtain a copy of the application package on the Department's Web site at the following address: www.ed.gov/GrantApps/#84.359.

FOR FURTHER INFORMATION CONTACT:

Tracy Bethel or Jennifer Flood, Office of Elementary and Secondary Education, 400 Maryland Avenue SW, Washington, DC 20202-6132. Telephone: (202) 260-4555, or via Internet: erf@ed.gov.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339. Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: www.ed.gov/legislation/fedregister.

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC area at (202) 512-1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>.

Program Authority: 20 U.S.C. 6371-6376 and Public Law No. 107-110.

Dated: June 4, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02-14383 Filed 6-6-02; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[CFDA 84.060A]

Office of Elementary and Secondary Education, Office of Indian Education Formula Grants to Local Educational Agencies; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002, including Applications for Integration of Services Projects Under Elementary and Secondary Education Act (ESEA) Section 7116

Purpose of Program: The Indian Education Formula Grants program provides grants to support local educational agencies (LEAs) in their efforts to reform elementary and secondary schools programs that serve Indian students. The programs funded must be based on the same challenging State academic content and student academic achievement standards applied to all students, and are designed to assist Indian students in meeting those standards. Under ESEA section 7116, Integration of Services, the Indian Education Formula Grant program also authorizes the consolidation of funds for Federal programs exclusively serving Indian children, or the funds reserved under Federal programs to exclusively service Indian children under a statutory or administrative formula, for the purposes of providing education and related services that would be used to serve Indian students. Instructions for an Integration of Services project are included in the application package.

Eligible Applicants: LEAs and certain schools funded by the Bureau of Indian Affairs, and Indian tribes under certain conditions, as prescribed by statute in ESEA section 7112(b).

Deadline for Transmittal of Applications: July 8, 2002.

Deadline for Intergovernmental Review: September 6, 2002.

Applications Available: June 5, 2002.

Estimated Available Funds: The appropriation for this program for fiscal year 2002 is \$97,133,000, which should be sufficient to fund all eligible applicants.

Estimated Range of Awards: \$3,000 to \$2,400,000.

Estimated Average Size of Awards: \$76,183.

Estimated Number of Awards: 1,275.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Budget Requirement: All projects with budgets of \$115,000 or more must plan and budget for one person to attend a two day Project Directors' meeting to be held in Washington, DC in mid-September 2002. Other projects not

meeting the level of funding may attend at their discretion.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99.

Note: Applications not meeting the deadline will not be considered for funding in the initial allocation of awards. However, if funds become available after the initial allocation of funds, applications not meeting the deadline may be considered for funding if the Secretary determines under ESEA section 7118(d) that reallocation of those funds to late applicants would best assist in advancing the purposes of the program, may be less than the applicant would have received had it's application been submitted on time.

For Applications or Information Contact: Cathie Martin, Office of Indian Education, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3W115, Washington, DC 20202-6335. Telephone: (202) 260-3774. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request of the person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternative format, also, by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: www.ed.gov/legislation/FedRegister.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

You may also view this document at the following site: <http://www.ed.gov/offices/OESE/oe/index.html>

Note: The official version of this document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>

Program Authority: 20 U.S.C. 7421.

Dated: June 3, 2002.

Susan Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02-14279 Filed 6-6-02; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.358A]

Small, Rural School Achievement Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice announcing application deadline.

SUMMARY: Under the Small, Rural School Achievement Program, we will award grants on a formula basis to eligible local educational agencies (LEAs) to address the unique needs of rural school districts. In this notice, we announce the deadline for eligible LEAs to apply for fiscal year (FY) 2002 funding under the program and indicate that all applications must be submitted electronically.

Application Deadline: July 9, 2002.

SUPPLEMENTARY INFORMATION: An LEA is eligible for an award under the Small, Rural School Achievement Program if—

(a) The total number of students in average daily attendance at all of the schools served by the LEA is fewer than 600; or each county in which a school served by the LEA is located has a total population density of fewer than 10 persons per square mile; and

(b) All of the schools served by the LEA are designated with a school locale code of 7 or 8 by the Department's National Center for Education Statistics; or the Secretary has determined, based on a demonstration by the LEA and concurrence of the SEA, that the LEA is located in an area defined as rural by a governmental agency of the State.

We previously requested each SEA to provide, on behalf of their LEAs, data that the Department needs to determine eligibility and calculate FY 2002 allocations under the Small, Rural School Achievement Program. (A copy this request and information concerning the program is available on the Department's web site at <http://www.ed.gov/offices/OESE/reap.html>.) On February 21, 2002, we also

published a notice in the **Federal Register** (67 FR 8014-8015) announcing the acceptability of alternative average daily attendance (ADA) data and establishing an April 1, 2002 deadline

for States to submit ADA and other eligibility and allocation data to the Department. On the basis on the information that States have provided to us, we will award formula grants to eligible LEAs that submit a timely application for funds under the program.

We are now establishing a deadline for the submission of LEA applications, because the precise amount of funding that an eligible LEA will receive under the program for FY 2002 is affected by whether other eligible LEAs throughout the country participate in the program. The Department cannot determine final allocations under the Small, Rural School Achievement Program without a deadline for the submission of applications.

Electronic Submission of Applications: To receive its share of FY 2002 funding, an eligible LEA must submit an electronic application to the Department by July 8, 2002. Submission of an electronic application involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS).

You can access the electronic application for the Small, Rural School Achievement Program at: <http://e-grants.ed.gov>.

Once you access this site, you will receive specific instructions regarding the information to include in your application.

The regular hours of operation of the e-Grants Web site are from 6 a.m. until 12 midnight (Washington, DC time) on Mondays, Tuesdays, Thursdays and Fridays; and from 6 a.m. until 7 p.m. on Wednesdays and Saturdays. The system is unavailable on the second Saturday of every month, Sundays, and Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Milagros Lanauze. Telephone: (202) 401-0039 or via Internet: reap@ed.gov.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this notice in an alternative format (e.g., Braille, large print, audiotope, or computer diskette) on request to the contact person listed above.

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at the following site: www.ed.gov/legislation/FedRegister.

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official version of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: <http://www.access.gpo.gov/nara/index.html>.

Program Authority: Section 6212 of the ESEA, as amended by the No Child Left Behind Act of 2001 (Pub. L. 107-110).

Dated: June 3, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02-14280 Filed 6-6-02; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.011]

Title I, Part C—Education of Migratory Children; Correction

AGENCY: Department of Education.

ACTION: Notice of proposed requirements and minimum data elements for an electronic system of records transfer and request for comment; correction.

SUMMARY: On May 28, 2002 a notice of proposed requirements and minimum data elements for an electronic system of records transfer and request for comment was published in the **Federal Register** (67 FR 36862). Appendix A, published in that document, contained several errors. This document corrects and republishes appendix A: Minimum Data Elements.

FOR FURTHER INFORMATION CONTACT: Alex Goniprow, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E333, Washington, DC 20202-6400. Telephone (202) 260-1205.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotope, or computer diskette) on request to the contact person identified in the preceding paragraph.

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Register, in text or Adobe Portable Document Format (PDF), on the Internet at the following site: www.ed.gov/legislation/FedRegister.

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: <http://www.access.gpo.gov/nara/index.html>.

Dated: June 3, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

Appendix A: Minimum Data Elements

The following table presents the proposed requirements for the minimum data elements that a State shall collect and maintain for the purpose of electronically exchanging, among the States, educational and health information for all migratory students.

The table lists the data elements by: (1) A data element identification number, (2) a code that identifies the primary user function(s) for which the data element is required, (3) the name of the data element, and (4) a data element definition.

In regard to the primary user functions for which a data element is required, the letter "E" indicates that the data element is required to help guidance counselors, school registrars, or migrant education specialists with the timely and efficient enrollment of migratory students in a school in the community in which the children currently reside. The letter "P" indicates that the data element is required to help guidance counselors or migrant education specialists with the proper placement of migratory students into courses and/or programs at the appropriate grade level. The letter "G" indicates that the data element is required to help guidance counselors or migrant education specialists with the provision of academic counseling that supports the completion of courses and the accrual of credits needed for graduation.

In addition, the data elements are grouped into one of five categories of data: (1) Data elements that describe a student, (2) data elements that describe a school or project, (3) data elements that describe the student's graduation plan, (4) data elements that describe a student's course history, and (5) data elements that describe a student's assessment information.

Finally, although the data elements are listed once, a number of the data elements will be used for multiple entries in a migrant student record (e.g., "course title" will be used for each course in which a migratory student is enrolled).

MINIMUM DATA ELEMENTS

No.	Use(s)	Data element	Definition
STUDENT INFORMATION			
1	E	Unique Migrant Student Record Number.	A unique identification number assigned to a migrant student and his/her record(s).
2	E	State Student Identification Number.	An alternate identification number assigned to a student by a State.
3	E	Last Name1	Student's legal last name (paternal).
4	E	Last Name2	If appropriate, student's legal last name (maternal). [Note: Provides an option for a hyphenated or double last name.]
5	E	First Name	A name given to a student at birth, baptism, or during another naming ceremony, or through legal change.
6	E	Middle Name	A secondary name given to a student at birth, baptism, or during another naming ceremony, or through legal change.
7	E	Generation	An appendage, if any, used to denote a student's generation in his family (e.g., Jr., Sr., III).
8	E	Gender	A student's gender. 01 Female. 02 Male.
9	E	Birth Date	The month, day, and year on which a student was born.
10	E	Birth Certificate Flag	The evidence by which a student's date of birth is confirmed. 01 Birth certificate—A written statement or form issued by an Office of Vital Statistics verifying the name and birth date of the child as reported by the physician attending at the birth. 02 Other official document (i.e., baptismal or church certificate, physician/hospital certificate, passport, previously verified school record, State-issued ID, driver's license). 03 Self Report—Parent or student reports age, birth date, and place of birth.
11	E	Birth City	The name of the city in which the student was born.
12	E	Birth State	The postal abbreviation code for a State (within the United States), Outlying Area, or State (in another country) in which a student was born.
13	E	Birth Country	The name of the country in which a student was born.
14	E	Birth/Legal Parent1 Last Name	The last/surname of the natural or adoptive male parent having legal responsibility for a student.
15	E	Birth/Legal Parent1 First Name ...	The first name of the natural male parent having legal responsibility for a student.
16	E	Birth/Legal Parent2 Last Name	The last/surname of the natural or adoptive female parent having legal responsibility for a student.
17	E	Birth/Legal Parent2 First Name ...	The first name of the natural or adoptive female parent having legal responsibility for a student.
18	E	Current Parent/Guardian Last Name.	The last/surname of the adult serving as the student's <i>local</i> guardian. [Note: Provides an option for a hyphenated or double last name.]
19	E	Current Parent/Guardian First Name.	The first name of the adult serving as the student's local guardian.
20	P G	Grade Level	The grade level in which a school/project enrolls a student. 01 Grade 1. 02 Grade 2. 03 Grade 3. 04 Grade 4. 05 Grade 5. 06 Grade 6. 07 Grade 7. 08 Grade 8. 09 Grade 9. 010 Grade 10. 011 Grade 11. 012 Grade 12. 013 Ungraded. 014 Pre-school. 015 Kindergarten. 016 Out-of-School.
21	E P G	Withdrawal Date	The month, day, year on which a student withdrew from a school or project.
22	E	Ed Alert Flag	Alert for a special need/educational condition linked with a contact person.
23	E	Ed Alert Contact	The full, legally accepted, proper name of the Ed Alert contact person.
24	E	Ed Alert Phone	The Ed Alert contact person's telephone number including the area and extension, if applicable.
25	E	Med Alert	Alert for a medical/health condition
26	E	Med Alert Date	Month, day, and year the alert was issued

MINIMUM DATA ELEMENTS—Continued

No.	Use(s)	Data element	Definition
27	E	Med Alert Contact	The full, legally accepted, proper name of the Med Alert contact person.
28	E	Med Alert Phone	The Med Alert contact person's telephone number including the area and extension, if applicable.
29	E	Immunization Date	The month, day, and year on which a student receives an immunization.
30	E	Immunization Type	The name of immunization that a student has received.
31		QAD (Qualifying)	The month, day, and year on Arrival Date which the family unit or the student (where the student is the worker) arrived at the place where the qualifying work was sought.
32		QAD From City	The name of the city in which the previous school district is located.
33		QAD From State	The postal abbreviation code for a State (within the United States) or Outlying Area in which the previous school district is located.
34		QAD From Country	The abbreviation code for a country (other than the US) area in which the previous school district is located.
35		QAD To City	The name of the city in which the new school district is located.
36		QAD To State	The postal abbreviation code for a State (within the United States) or Outlying Area in which the new school district is located.
37		Residency Date	The month, day, and year on which the family unit or the student (where the student is the worker) establishes residency in a school district within a State.
38		Termination Date	The month, day, and year on which the student is no longer eligible for the Migrant Education Program.
39		Termination Flag	The reason for the end of student eligibility. 01 Non-migrant status, eligibility expired. 02 Graduated. 03 GED. 04 Dropout. 05 Deceased.

SCHOOL/PROJECT INFORMATION

40	E P G	School/Facility Identification Code	A unique national code assigned to each school, site, or facility providing educational and/or educationally-related services.
41	E P G	School Name	The full legally or popularly accepted name of a school (or project providing educational and/or educationally-related services).
42	E P G	Address1	Line 1 of the mailing address. The street number and name or post office box number of a school's address.
43	E P G	Address2	Line 2 of the mailing address. The building, office, department, room, suite number of a school's address.
44	E P G	Address3	Line 3 of the mailing address.
45	E P G	City	The name of the city in which a school is located.
46	E P G	District	The full legally or popularly accepted name of a local educational agency (i.e., school district or local operating agency).
47	E P	State	The postal abbreviation code for a State (within the United States) or Outlying Area in which a school or other facility is located.
48	E P G	Zip	The five or nine digit zip code portion of a school or other facility's address.
49	G	Contact Name	The full, legally accepted, proper name of the school or project contact person.
50	G	Contact Title/Position	The common title or job position of the school or project contact person (i.e., Principal, Guidance Counselor, Federal Program Coordinator, Migrant Specialist, etc.).
51	E G	Phone	The telephone number of the school or project contact person including the area code and extension, if applicable. Allow for an optional alternate phone number.
52	E G	Fax	The facsimile number for the school or project including the area code and extension, if applicable. Allow for an optional alternate fax number.
53	E	Email	The electronic mail (email) address of the school or project contact person or organization.
54	E P G	Enrollment Date	The month, day, and year on which a student enrolls in a school, project, or State and is eligible to receive instructional or support services during a given session.
55	P	Enrollment types	The type of school/migrant education project in which instruction and/or support services are provided. 01 Regular School. 02 Regular Term MEP-Funded Supplemental Program. 03 Summer/Intersession MEP-Funded Project. 04 Year Round MEP-funded Project. 05 Residency Only.

MINIMUM DATA ELEMENTS—Continued

No.	Use(s)	Data element	Definition
56	P G	Designated School for Graduation Flag.	An indicator that designates the school or facility from which a student expects to graduate and is linked with associated school or facility identification fields (i.e., district, city, state, zip code). Only one school may be designated for graduation at any one point in time.
GRADUATION PLAN INFORMATION (SECONDARY STUDENTS ONLY)			
57	G	Graduation Year	The year the student is projected to graduate from high school. [Provided by Designated School of Graduation].
58	G	Type of Credential	The type of credential that the student expects to receive in recognition of his/her completion of curricular requirements. [Provided by Designated School of Graduation]. 01 Regular diploma. 02 Certificate of attendance/completion. 03 General Educational Development (GED) credential. 04 State-specific diploma (e.g, New York Regents, Texas Minimum Program, etc.).
59	G	Subject Area Requirements	Number of credits (Carnegie units) required in individual subject areas for graduation in the State from which the student is projected to graduate.
60	G	Test	The name of the test the student will have to pass to graduate.
61	P G	Subject Area	The name of a subject area (e.g., History, English).
COURSE HISTORY INFORMATION (SECONDARY STUDENTS ONLY)			
62	P G	Course Title	The name of a course (e.g., Algebra III, American History, Art I, English III, English-10).
63	G	Course Type	An indication of the general nature and difficulty of instruction provided throughout a course. 01 Regular (Default)—A course providing instruction (in a given subject matter area) that focuses primarily on general concepts for the appropriate grade level. 02 Honors—An advanced level course designed for students who have earned honors status according to educational requirements. 03 Pre-Advanced Placement—A course in preparation to admission to an AP Program. 04 Advanced Placement—An advanced, college-level course designed for students who achieve specific level of academic performance. Upon successful completion of the course and a standardized Advanced Placement examination, a student may receive college credit. 05 International Baccalaureate—A program of study, sponsored and designed by International Baccalaureate Organization, that leads to examinations and meets the needs of secondary students between the ages of 16 and 19 years. 06 Accepted as a high school equivalent—A secondary-level course offered at an education institution other than a secondary school (such as adult learning center or community college) or through correspondence or distance learning. 07 Not Applicable.
64	G	Course Year	Calendar year in which the course was taken.
65	P G	Course Section	The prescribed duration of course taken. 01 Full year. 02 Section A—One of two equal segments into which the course is divided. 03 Section B—One of two equal segments into which the course is divided.
66	P G	Term Type	The prescribed span of time that a course is provided, and in which students are under the direction and guidance of teachers and/or an educational institution. 01 Full year. 02 Semester—A designation for the segment of a school year that is divided into two equal parts. 03 Trimester—A designation for the segment of a school year that is divided into three equal parts. 04 Quarter—A designation for the segment of a school year that is divided into four equal parts. 05 Quinmester—A designation for the segment of a school year that is divided into five equal parts.
		Term	

MINIMUM DATA ELEMENTS—Continued

No.	Use(s)	Data element	Definition
67	P G	Grade-to-date	For courses that have NOT been completed (or credit granted), a numerical grade (percentage) of student performance for the grade-to-date that the student has completed at the time of withdrawal.
68	P	Clock Hours	For courses that have NOT been completed (or credit granted), the number of clock hours to date that the student has completed.
69	P	Final Grade	For courses that have NOT had credit granted, a final indicator of student performance in a class at the time of withdrawal as submitted by the instructor.
70	P	Credits Granted	The credits granted in Carnegie units for a given course or a section of a course (e.g., 1.0, .50, .33, .25, .20).

ASSESSMENT INFORMATION

71	G	Assessment Name	The title or description, including a form number, if any, that identifies a particular assessment.
72	G	Assessment Type	The category of an assessment based on format and content. 01 Achievement Test/State Assessment—An assessment to measure a student's present level of knowledge, skill, or competence in a specific area or subject. 02 Advanced placement test—An assessment to measure the achievement of a student in a subject matter area, taught during high school, which may qualify him or her to bypass the usual initial college class in this area and begin his or her college work in the area at a more advanced level and possibly with college credit. 03 Language proficiency test—An assessment used to measure a student's level of proficiency (i.e., speaking, writing, reading, and listening) in either a native language or an acquired language. 04 Exit Exam. 05 GED. 06 Special Education Assessment. 07 Early Childhood Development Assessment. Other
73	G	Assessment Date	The month and year on which an assessment is administered.
74	G	Assessment Result	A score or statistical expression of the performance of a student on an assessment.
75	G	Type of Result	The metric in which results are presented. 01 Proficiency level. 02 Percentile rank. 03 Pass/Fail (if failed enter numerical score). 04 Normal curve equivalent. 05 Sections that have been successfully completed (e.g., GED).

[FR Doc. 02-14281 Filed 6-6-02; 8:45 am]
BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

[Docket No. EA-223-A]

Application to Export Electric Energy; CMS Marketing, Services and Trading Company

AGENCY: Office of Fossil Energy, DOE.
ACTION: Notice of application.

SUMMARY: CMS Marketing, Services and Trading Company (CMS) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before June 24, 2002.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE-27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585-0350 (FAX 202-287-5736).

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202-586-9506 or Michael Skinker (Program Attorney) 202-586-2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On July 11, 2000, the Office of Fossil Energy (FE) of the Department of Energy (DOE) issued Order No. EA-223 authorizing CMS to transmit electric energy from the United States to Canada as a power marketer using the international electric transmission facilities owned and operated by Basin Electric Power Cooperative, Bonneville Power Administration, Citizen Utilities, Eastern Maine Electric Cooperative, International Transmission Company (formally The Detroit Edison Company), Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric

Transmission Company. That two-year authorization expires on July 11, 2002.

On May 30, 2002, DOE received an application from CMS to renew its authorization to transmit electric energy from the United States to Canada. Further, CMS requests that an electricity export authorization be issued for a 5-year term.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with section 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the CMS application to export electric energy to Canada should be clearly marked with Docket EA-223-A. Additional copies are to be filed directly with Francis X. Berkemeier, Attorney, 212 W. Michigan Avenue, Jackson, MI 49201 and Karyl M. Lawson, General Counsel, 1021 Main St., Ste. 2900, Houston, TX 77002.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Order No. EA-223. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA-223 proceeding.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the FE Home Page at <http://www.fe.de.gov>. Upon reaching the FE Home page, select "Electricity Regulation" and then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on June 4, 2002.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 02-14393 Filed 6-6-02; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

[Docket No. EA-267]

Application to Export Electric Energy; Conectiv Energy Supply, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Conectiv Energy Supply, Inc. (CESI) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before July 8, 2002.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE-27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585-0350 (FAX 202-287-5736).

FOR FURTHER INFORMATION CONTACT:

Steven Mintz (Program Office) 202-586-9506 or Michael Skinker (Program Attorney) 202-586-2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On May 17, 2002, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from CESI to transmit electric energy from the United States to Canada. CESI is a Delaware corporation and is a wholly-owned subsidiary of Conectiv Energy Holding Company which is, in turn, a wholly-owned subsidiary of Conectiv. CESI intends to acquire electric energy from power suppliers in the United States and to export this energy to the Independent Electricity Market Operator in Ontario, Canada, or to other wholesale customers in Canada. CESI does not own or control any electric power generation or transmission facilities and does not have a franchised service area.

CESI proposes to arrange for the delivery of electric energy to Canada over the existing international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizen Utilities, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk

Power Corporation, Northern States Power, and Vermont Electric Transmission Company. The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by CESI, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the CESI application to export electric energy to Canada should be clearly marked with Docket EA-267. Additional copies are to be filed directly with Kimberly A. Curry, Bracewell & Patterson, L.L.P., 2000 K Street, NW., Suite 500, Washington, DC 20006-1872 and I. David Rosenstein, Assistant General Counsel, Conectiv Energy, 800 King Street, Post Office Box 231, Wilmington, DE 19801 and K. Stephen Tsingas, Manager, Physical Trading Desk, Conectiv Energy Trading, P.O. Box 6066, Newark, DE 19714-6066.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy home page at <http://www.fe.de.gov>. Upon reaching the Fossil Energy home page, select "Electricity Regulation," and then "Pending Procedures" from the options menus.

Issued in Washington, DC, on June 4, 2002.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 02-14391 Filed 6-6-02; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

[Docket No. EA-266]

Application to Export Electric Energy; Entergy-Koch Trading, LP**AGENCY:** Office of Fossil Energy, DOE.**ACTION:** Notice of application.

SUMMARY: Entergy-Koch Trading, LP (EKT) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act. In this application Entergy-Koch Trading, LP has asked for export authority for a five (5) year term.

DATES: Comments, protests or requests to intervene must be submitted on or before July 8, 2002.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE-27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585-0350 (FAX 202-287-5736).

FOR FURTHER INFORMATION CONTACT: Rosalind Carter (Program Office) 202-586-7903 or Michael Skinker (Program Attorney) 202-586-2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On May 15, 2002, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from Entergy-Koch Trading, LP (EKT) to transmit electric energy from the United States to Canada. EKT is a limited partnership formed under the laws of Delaware with its principle place of business in Houston, Texas. EKT is a wholly-owned subsidiary of Entergy Koch, LP (EKLP). EKLP owns Entergy-Koch Trading, LP, Entergy-Koch Trading Ltd., and Gulf South Pipeline Company, LP. EKLP is a privately held corporation. EKT does not own or control any electric power generation or transmission facilities and does not have a franchised electric power service area in the United States. EKT operates as a power marketer and broker of electric power at wholesale and retail and provides services in related areas such as fuel supplies and transmission services.

EKT will purchase the power to be exported from electric utilities and Federal power marketing agencies within the United States and will arrange for the delivery of electric energy to Canada over the existing

international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizen Utilities, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by EKT, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the EKT application to export electric energy to Canada should be clearly marked with Docket EA-266. Additional copies are to be filed directly with Monica J. Richards, Attorney, Entergy-Koch Trading, LP, 20 E. Greenway Plaza, Suite 700, Houston, Texas 77046.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy home page at <http://www.fe.de.gov>. Upon reaching the Fossil Energy home page, select "Regulatory Programs," then "Electricity Regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on June 4, 2002.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 02-14392 Filed 6-6-02; 8:45 am]

BILLING CODE 6450-01-P**ENVIRONMENTAL PROTECTION AGENCY**

[ER-FRL-6630-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564-7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 12, 2002 (67 FR 17992).

Draft EISs

ERP No. D-COE-E30042-FL Rating LO, Broward County Shore Protection Project, Fill Placement in Segment II (Hillsboro Inlet to Port Everglades) and Segment III (Port Everglades to the south County Line), Broward County, FL.

Summary: EPA has no objections to the dredging proposal.

ERP No. D-COE-E35021-FL Rating EC2, Miami River Dredged Material Management Plan, River Sediments Dredging and Disposal Maintenance Dredging, Biscayne Bay, City of Miami, Miami-Dade County, FL.

Summary: EPA supported the environmental restoration of the Miami River system, but raised some concerns about the potential impacts of the restoration proposal. EPA also noted that a preliminary appraisal of this action would only be possible after assessing how the chosen contractor elects to carry out the constituent elements of the final Request for Proposals. EPA also recommended that a monitoring plan be developed and made part of any final project.

ERP No. D-COE-J36052-ND Rating EU3, Devils Lake Basin North Dakota Study, The Reduction of Flood Damages Related to the Rising Lake Levels and the Flood-Prone Areas Around Devils Lake and to Reduce the Potential for Natural Overflow Event, Sheyenne River and Red River of the North, ND.

Summary: EPA found the preliminary selected outlet alternative to be environmentally unsatisfactory based on adverse impacts to wetlands and riparian habitats, water quality in the Sheyenne and Red Rivers, introduction of invasive species and concerns about meeting the objectives of the Boundary Waters Treaty of 1909 with Canada. The DEIS also lacked information on water quality impacts and appropriate mitigation.

ERP No. D-COE-K39073-CA Rating EC2, Middle Creek Flood Damage Reduction and Ecosystem Restoration Project, Implementation, Located between Highway 20 and Middle Creek immediately northwest of Clear Lake, Lake County, CA.

Summary: EPA expressed environmental concerns and requested additional information on impacts to water quality from methyl mercury contamination, cultural resources in the study area and tribal trust resources.

ERP No. D-FHW-K40250-NV Rating EC2, Boulder City/US 93 Corridor Transportation Improvements, Study Limits are between a western boundary on US 95 in the City of Henderson and an eastern boundary on US 93 west of downtown Boulder City, NPDES and US Army COE Section 404 Permits Issuance and Right-of Way Grant, Clark County, NV.

Summary: EPA expressed environmental concerns regarding impacts to Waters of the U.S. and the potential for indirect impacts associated with Alternative D. EPA believes that Alternative D is not the environmentally preferred alternative. EPA recommended that coordination occur before the Final EIS regarding permit and mitigation requirements for discharge of fill into Waters of the U.S.

ERP No. D-FRC-B03010-00 Rating EC2, Islander East Pipeline Project, Interstate Natural Gas Pipeline Facilities Construction and Operation to provide 285,000 dekatherms per day (Dth/d) of Natural Gas to Energy Markets in Connecticut, Long Island and New York City, New Haven, CT and Suffolk County, NY.

Summary: EPA expressed environmental concerns about the project purpose and need, analysis of alternatives, wetland and marine impacts associated with the pipeline, and asked for more information concerning water supply and spill control issues.

ERP No. D-IBR-K31003-CA Rating EO2, Imperial Irrigation District Water Conservation and Transfer Project and Draft Habitat Conservation Plan (HCP), To Implement a Grant and Section 10

Permit to Authorize the Incidental Take, Colorado River, Imperial County, CA.

Summary: EPA endorsed the effort to reduce Southern California's use of Colorado River water to California's legal apportionment of 4.4 maf/yr while minimizing the adverse effects on urban and industrial water use. EPA expressed objections over potential impacts to water and air quality, biological resources, Indian tribes, and potential cumulative impacts on water quality and the increased probability of more frequent and higher magnitude water shortages for other users of Lower Colorado River water. EPA requested that EPA comments on other related water management actions (e.g., the Colorado River Quantification Settlement Agreement (QSA) and the Department of Interior's Implementation Agreement (IA) be considered together with this EIS.

ERP No. D-MMS-G02011-00 Rating LO, Gulf of Mexico Outer Continental Shelf Oil and Gas Lease Sales: 2003–2007, Starting in 2002 the Proposed Central Planning Area Sales 185, 190, 194, 198, and 201 and Western Planning Area Sales 187, 192, 196, and 200, Offshore Marine Environment, Coastal Counties and Parishes of TX, LA, AL and MS.

Summary: EPA has no objections but request clarification in the Final EIS.

ERP No. D1-FAA-D51026-00 Rating EC2, Potomac Consolidated Terminal (PCT) Radar Approach Control Facility (TRACON) Airspace Redesign in the Baltimore-Washington Metropolitan Area, Newly Consolidated TRACON, Aircraft Performance Improvements and Emerging PCT Technologies, PA MD, DE, VA, WV and DC.

Summary: EPA has environmental concerns regarding noise impacts and believe that additional clarification/information and identification of possible mitigation measures is needed in the Final EIS.

Final EISs

ERP No. F-FTA-K51041-CA BART-Oakland International Airport Connector, Extending south from the Existing Coliseum BART Station, about 3.2 miles, to the Airport Terminal Area, Alameda County, CA.

Summary: EPA has no objection to the proposed action since EPA's previous concerns were adequately addressed in the final EIS.

ERP No. F-MMS-A02242-00 Outer Continental Shelf Oil and Gas Leasing Program: From Mid-2002 Through Mid-2007, 5-Year Schedule Leasing Program for 20 Sales in 8 of the Outer Continental Shelf Planning Areas, AL, AK, CA, FL, LA, MS, OR, TX and WA.

Summary: EPA has no objection to the action as proposed. ERP No. F-SFW-L91014-WA Icicle Creek Restoration Creek Project, To Protect and Aid in the Recovery of Threatened and Endangered Fish, Leavenworth National Fish Hatchery (LNFH), COE Section 404 and NPDES Permits, Leavenworth, WA.

Summary: EPA appreciates changes made to the document in response to comments on the Draft EIS. In future activities, EPA suggests that Tribal consultation and coordination be an active element in any finalized plans and management direction for the project area.

ERP No. FS-GSA-K80037-CA San Diego-United States Courthouse Annex Street Project, Site Selection and Construction, New Information concerning Addition of the Union Street with Hotel San Diego Facade and Lobby Alternative, Central Business District (CBD), City of San Diego, San Diego County, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. FS-MMS-L67008-ID Smoky Canyon Mine Panels B and C, Proposal to Mine Phosphate Ore Reserves in the Final Two Mine Panels, National Forest Systems Lands and Federal Mineral Leases, Caribou National Forest, Permits Issuance, Caribou County, ID.

Summary: EPA generally supports the agency preferred alternative with the additional restriction of placing the seleniferous overburden solely in the pit backfill. EPA recommends including the following information in the ROD to address our remaining concerns: actual cost reclamation bonding, a commitment to update the reclamation bond if needed, an allocation of the reclamation bond equal to 30% of reclamation estimates, and mining approval contingent on the development and approval of a complete monitoring strategy (with quality assurance and annual report distribution protocols).

Dated: June 4, 2002.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 02-14365 Filed 6-6-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6629-9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564-7167 or <http://www.epa.gov/compliance/nepa/>.

Weekly receipt of Environmental Impact Statements

Filed May 27, 2002 Through May 31, 2002

Pursuant to 40 CFR 1506.9.

EIS No. 020220, Final EIS, AFS, CO,

White River National Forest Land and Resource Management Plan 2002 Revision, Alternative K is the Selected Alternative, Implementation, Eagle, Garfield, Gunnison, Mesa, Moffat, Pitkin, Rio Blanco, Routt and Summit Counties, CO, Wait Period Ends: July 08, 2002, Contact: Martha Ketelle (970) 945-2521. This document is available on the Internet at: www.fs.fed.us/r2/whiteriver.

EIS No. 020221, Final EIS, FHW, IL, U.S.

67 (FAP-310) Expressway from Jacksonville to Macomb Transportation Improvements, NPDES and COE Section 10 and 404 Permits, Morgan, Cass, Schuyler and McDonough Counties, IL, Wait Period Ends: July 08, 2002, Contact: Norman Stoner (217) 492-4640.

EIS No. 020222, Draft EIS, NRS, OK,

Rehabilitation of Aging Flood Control Dams in Oklahoma, Authorization and Funding, OK, Comment Period Ends: July 08, 2002, Contact: M. Darrel Dominick (405) 742-1227.

EIS No. 020223, Final EIS, AFS, MT,

Beaverhead-DeerLodge National Forest, Noxious Weed Control Program, Implementation, Integrated Weed Management, Beaverhead, Butte-Silver Bow, Anaconda-Deer Lodge, Granite, Jefferson, Powell and Madison Counties, Dillon, MT, Wait Period Ends: July 08, 2002, Contact: Leaf Magnuson (406) 683-3950.

EIS No. 020224, Final EIS, COE, FL,

Lake Tohopekaliga Extreme Drawdown and Habitat Enhancement Project, Fish and Wildlife Habitat Improvements, Construction, Operation and Maintenance, Osceola County, FL, Wait Period Ends: July 08, 2002, Contact: Lizabeth Manners (904) 232-3923.

EIS No. 020225, Final Supplement,

NOA, Atlantic Tunas, Swordfish and Sharks, Highly Migratory Species Fishery Management Plan, Updated Information concerning Reduction of Bycatch and Incidental Catch in the Atlantic Pelagic Longline Fishery, Atlantic Ocean, Gulf of Mexico and Caribbean Sea, Wait Period Ends: June 28, 2002, Contact: Christopher Rogers (301) 713-2347. Under Section 1506.10(d) of the Council on Environmental Quality Regulations for Implementating the Procedural Provisions of the National Environmental Policy Act the US Environmental Protection Agency has

Granted a 7-Day Wavier for the above EIS.

EIS No. 020226, Final EIS, USA, PA, Fort Indiantown Gap National Guard Training Center, Training and Operations Enhancement, Pennsylvania National Guard (PANG), Annville, Dauphin and Lebanon Counties, PA, Wait Period Ends: July 08, 2002, Contact: Lt. Richard H. Shertzer (717) 861-2548.

EIS No. 020227, Draft EIS, BLM, CA, Coachella Valley California Desert Conservation Area Plan Amendment, Santa Rosa and San Jacinto Mountains Trails Management Plan, Implementation, Riverside and San Bernardino Counties, CA, Comment Period Ends: September 05, 2002, Contact: Elena Misquez (760) 251-4810. This document is available on the Internet at: www.ca.blm.gov/palmsprings.

Amended Notices

EIS No. 020163, Final EIS, COE, FL,

Cape Sable Seaside Sparrow Protection, Interim Operating Plan (IOP), Alternative 7R Final Recommend Plan, Emergency Sparrow Protection Actions, Implementation, Everglass National Park, Miami-Dade County, FL, Wait Period Ends: June 18, 2002, Contact: Jon Moulding (904) 232-2286. Revision of FR Notice Published on 05/03/2002: CEQ Comment Period Ending 06/03/2002 has been extended to 06/18/2002.

EIS No. 020213, Draft EIS, FHW, PA,

Mon/Fayette Transportation Project, Improvements from PA Route 51 to I-376 in Monroeville and Pittsburg, Funding, U.S. Coast Guard Bridge Permit and COE Section 404 Permit, Allegheny County, PA, Comment Period Ends: August 14, 2002, Contact: James A. Cheatham (717) 221-3461. Revision of FR Notice Published on 05/31/2002: Correction to Contact Telephone.

Dated: June 4, 2002.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 02-14395 Filed 6-6-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[OPP-2002-0054; FRL-7178-8]

Region III Urban Initiative Grants; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA Region III is announcing the availability of approximately \$100,000 in fiscal year (FY) 2002 grant/cooperative agreement funds under section 20 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (the Act), for grants to States and federally recognized Native American Tribes for research, public education, training, monitoring, demonstration, and studies. For convenience, the term "State" in this notice refers to all eligible applicants.

DATES: In order to be considered for funding during the FY 2002 award cycle, all applications must be received by EPA Region III on or before July 8, 2002. EPA will make its award decisions by June 30, 2002.

FOR FURTHER INFORMATION CONTACT:

Fatima El Abdaoui, Environmental Protection Agency, Region III, Mail Code 3WC32, Waste Chemicals and Management Division, 1650 Arch St., Philadelphia, PA 19103-2029; telephone number: (215) 814-2129; fax number: (215) 814-3113; e-mail address: El-Abdaoui.Fatima@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to eligible applicants who primarily operate out of and will conduct the project in one of the following Region III States: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Electronically.* You may obtain electronic copies of this document 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. *By mail or in person.* Contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Availability of FY 2002 Funds

With this publication, EPA Region III is announcing the availability of approximately \$100,000 in grant/cooperative agreement funds for FY 2002. The Agency has delegated grant making authority to the EPA Regional Offices. EPA Region III is responsible for the solicitation of interest, the screening of proposals, and the selection of projects. Grant guidance will be provided to all applicants along with any supplementary information Region III may wish to provide. All applicants must address the criteria listed under Unit IV.B. Interested applicants should contact the Regional Urban Initiative coordinator listed un Unit V. for more information.

III. Eligible Applicants

In accordance with the Act “. . . Federal agencies, universities, or others as may be necessary to carry out the purposes of the act, . . .” are eligible to receive a grant. Eligible applicants for purposes of funding under this grant program include those operating within the six EPA Region III States (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia), and any agency or instrumentality of a Region III State including State universities and non-profit organizations operating within a Region III State. For convenience, the term “State” in this notice refers to all eligible applicants.

IV. Activities and Criteria

A. General

The goal of the Urban Initiative Grant Program is to: (1) Detect any diversion of highly toxic pesticides from the agriculture sector into urban areas for illegal use indoors; (2) identify any ongoing misuse of agricultural pesticides in urban and residential communities; and (3) prevent future diversion and structural application of pesticide misuse through compliance assistance and education.

B. Criteria

Proposals will be evaluated based on the following criteria:

1. Qualifications and experience of the applicant relative to the proposed project.
 - Does the applicant demonstrate experience in the filed of the proposed activity?
 - Does the applicant have the properly trained staff, facilities, or

infrastructure in place to conduct the project?

2. Consistency of applicant's proposed project with the risk reduction goal of the Urban Initiative.

3. Provision for a quantitative or qualitative evaluation of the project's success at achieving the stated goals.

- Is the project designed in such a way that it is possible to measure and document the results quantitatively and qualitatively?

- Does the applicant identify the method that will be used to measure and document the project's results quantitatively and qualitatively?

- Will the project assess or suggest a means for measuring progress in reducing risk associated with the use of pesticides?

4. Likelihood the project can be replicated to benefit other communities or the product may have broad utility to a widespread audience. Can this project, taking into account typical staff and financial restraints, be replicated by similar organizations in different locations to address the same or similar problem?

C. Program Management

Awards of FY 2002 funds will be managed through EPA Region III. Quality Management Plans and Quality Assurance Project Plans may be required, depending on the nature of the project and the data collected. Contact your Regional Urban Initiative coordinator for more information about this requirement.

D. Contacts

Interested applicants must contact the appropriate EPA Regional Urban Initiative coordinator listed under Unit V. to obtain specific instructions, regional criteria, and guidance for submitting proposals.

V. Region III Urban Initiative Program Contact

Region III: (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia), Dr. Fatima El Abdaoui, (3WC32), 1650 Arch St., Philadelphia, PA 19103; telephone (215) 814-2129; e-mail address: El-Abdaoui.Fatima@epa.gov.

VI. Submission to Congress and the Comptroller General

Under the Agency's current interpretation of the definition of a “rule,” grant solicitations such as this which are competitively awarded on the basis of selection criteria, are considered rules for the purpose of the Congressional Review Act (CRA). The CRA, 5 U.S.C. 801 *et seq.*, as added by

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

List of Subjects

Environmental protection, Pesticides, Risk reduction.

Dated: May 21, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 02-14211 Filed 6-6-02; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS-2002-0024; FRL-7178-7]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; State of Colorado Authorization of Lead-Based Paint Activities Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; final approval of the State of Colorado Lead-Based Paint Activities Program.

SUMMARY: On September 28, 2001, the State of Colorado submitted a self-certification letter stating that Colorado's Lead-Based Paint Abatement Program meets the requirements for approval of a State program under section 404 of TSCA and that Colorado has the legal authority and ability to implement the appropriate elements to enforce the program. The State program will administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). Today's notice announces the authorization of the State of Colorado Lead-Based Paint Activities Program to apply in the State of Colorado effective September 28, 2001.

DATES: The Lead-Based Paint Activities Program authorization was granted to

the State of Colorado effective on September 28, 2001.

FOR FURTHER INFORMATION CONTACT: Dave Combs, Regional Toxics Team Leader, Environmental Protection Agency, Region VIII, 999 18th St., Suite 300, 8P-P3T, Denver, CO 80202-2466; telephone: 303-312-6021; e-mail address: combs.dave@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 28, 1992, the Housing and Community Development Act of 1992, Public Law 102-550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681-92), titled "Lead Exposure Reduction."

Section 402 of TSCA (15 U.S.C. 2682) authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges and other structures. Those regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. Under section 404 (15 U.S.C. 2684), a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

On August 29, 1996 (61 FR 45777) (FRL-5389-9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). Those regulations are codified at 40 CFR part 745, and allow both States and Indian Tribes to apply for program authorization. Pursuant to section 404(h) of TSCA (15 U.S.C. 2684(h)), EPA is to establish the Federal program in any State or Tribal Nation without its own authorized program in place by August 31, 1998.

States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete application. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed

requirements a State or Tribal program must meet in order to obtain EPA approval.

On December 21, 1998, the State of Colorado submitted an application for EPA interim approval to administer and enforce the training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of TSCA. Colorado provided a self-certification letter stating that its program is at least as protective of human health and the environment as the Federal program and it possesses the legal authority and ability to implement the appropriate elements necessary to receive interim enforcement approval. Based upon the State's self-certification, Lead-Based Paint Activities Interim Program Authorization was granted to the State of Colorado effective on December 21, 1998.

On September 7, 1999 (64 FR 48618) (FRL-6099-1), EPA published a notice in the **Federal Register** granting interim approval of the Colorado TSCA section 402/404 Lead-Based Paint Accreditation and Certification Program. Full approval was not granted at the time due to the State of Colorado's Environmental Audit Privilege and Penalty Immunity Statute, sometimes known as S.B. 94-139 (codified at sections 13-25-126.5, 13-90-107(1)(j), and 25-1-114-5, C.R.S.). This statute impaired the State's ability to fully administer and enforce the lead-based paint program. Interim compliance and enforcement approval was granted to provide the State the opportunity to address problems and issues associated with its Environmental Audit Privilege and Penalty Immunity Statute. During the 2000 Legislative Session, the Colorado State Legislature amended the State's Environmental Audit Privilege and Immunity Statute. On May 30, 2000, EPA and the State of Colorado signed a Memorandum of Agreement resolving all of the issues with the State's Environmental Audit Privilege and Immunity Statute. Based upon the revised Statute and the Memorandum of Agreement between Colorado and EPA, the legal barriers for final EPA approval of Colorado's Lead Based Paint Abatement and Certification Program have been removed.

Notice of Colorado's application, a solicitation for public comment regarding the application, and background information supporting the application was published in the **Federal Register** of March 6, 2002 (67 FR 10205) (FRL-6823-2). As determined by EPA's review and assessment, Colorado's application

successfully demonstrated that the State's Lead-Based Paint Activities Program achieves the protectiveness and enforcement criteria, as required for Federal authorization. Furthermore, no public comments were received regarding any aspect of Colorado's application.

II. Federal Overfiling

TSCA section 404(b), makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

III. Withdrawal of Authorization

Pursuant to TSCA section 404(c), the Administrator may withdraw a State or Tribal lead-based paint activities program authorization, after notice and opportunity for corrective action, if the program is not being administered or enforced in compliance with standards, regulations, and other requirements established under the authorization. The procedures EPA will follow for the withdrawal of an authorization are found at 40 CFR 745.324(i).

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: May 14, 2002.

Robbie E. Roberts,

Regional Administrator, Region VIII.

[FR Doc. 02-14369 Filed 6-6-02; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT-2002-0021; FRL-7182-4]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a

premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from April 18, 2002 to May 2, 2002, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. The "S" and "G" that precede the chemical names denote whether the chemical identity is specific or generic.

DATES: Comments identified by the docket ID number OPPT-2002-0021 and the specific PMN number, must be received on or before July 8, 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. of the

SUPPLEMENTARY INFORMATION. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT-2002-0021 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Acting Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554-1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Electronically.* You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at <http://www.epa.gov/>. 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/fedrgrstr/>.

2. *In person.* The Agency has established an official record for this action under docket ID number OPPT-2002-0021. 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, any test data submitted by the Manufacturer/Importer is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B-607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260-7099.

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 ID number OPPT-2002-0021 and the specific PMN number in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564-8930.

3. *Electronically.* You may submit your comments electronically by e-mail to: "oppt.ncic@epa.gov," or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you

consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPPT-2002-0021 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI.

Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID 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. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which

covers the period from April 18, 2002 to May 2, 2002, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA

as described in Unit II, to access additional non-CBI information that may be available. The "S" and "G" that precede the chemical names denote whether the chemical identity is specific or generic.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 48 PREMANUFACTURE NOTICES RECEIVED FROM: 04/18/02 TO 05/02/02

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-02-0570	04/18/02	07/17/02	CBI	(S) Resin for wood floor coating	(G) Polyamide polyurethane
P-02-0571	04/18/02	07/17/02	CBI	(S) Emulsifier used in formulating metalworking coolants	(S) Fatty acids, C ₁₆₋₁₈ and C ₁₈ -unsaturated, branched and linear, reaction products with diisopropanolamine
P-02-0572	04/18/02	07/17/02	CBI	(G) Polymer powder for dry mortar applications	(G) Water soluble anionic acrylic copolymer
P-02-0573	04/18/02	07/17/02	CBI	(S) Curing agent for epoxy coating for automotive and flooring	(G) Cycloaliphatic amine adducts
P-02-0574	04/18/02	07/17/02	CBI	(S) Electrodeposition coating for metallic substrates	(G) Amine functional epoxy based resin salted with an organic acid
P-02-0575	04/18/02	07/17/02	CBI	(G) Non-dispersive use	(G) Acrylic additive
P-02-0576	04/19/02	07/18/02	Piedmont Chemical Industries I, LLC	(S) Cotton softener	(S) Fatty acids, C ₁₆₋₁₈ and C ₁₈ -unsaturated, branched and linear, mixed esters with C ₁₈ -unsaturated fatty acid dimers and polyethylene glycol
P-02-0577	04/19/02	07/18/02	CBI	(S) Industrial uv/eb coatings and inks	(G) Amine acrylate ester
P-02-0584	04/19/02	07/18/02	Piedmont Chemical Industries I, LLC	(S) Dyeing assistant for polyester and nylon	(S) Fatty acids, C ₁₆₋₁₈ and C ₁₈ -unsaturated, branched and linear, esters with polyethylene glycol
P-02-0585	04/22/02	07/21/02	The Dow Chemical Company	(G) Grinding Aid and Intermediate	(S) 2-propanol, 1-[bis(2-hydroxyethyl)amino]-
P-02-0586	04/22/02	07/21/02	CBI	(G) Open, non-dispersive use	(G) Acrylic polymer
P-02-0593	04/18/02	07/17/02	Houghton International, Inc.	(S) Lubricant additive/emulsifier	(S) Fatty acids, C ₁₆₋₁₈ and C ₁₈ -unsaturated, branched and linear, compounds with triisopropanolamine
P-02-0594	04/18/02	07/17/02	Houghton International, Inc.	(S) Lubricant additive/emulsifier	(S) Fatty acids, C ₁₆₋₁₈ and C ₁₈ -unsaturated, branched and linear, compounds with diisopropanolamine
P-02-0595	04/22/02	07/21/02	CBI	(G) Non-dispersive use	(G) Epoxy-amine adduct salt
P-02-0596	04/22/02	07/21/02	CBI	(G) Non-dispersive use	(G) Epoxy-amine adduct salt
P-02-0597	04/22/02	07/21/02	CBI	(G) Lubricant additive	(G) Alkylamidocarboxylic acid, alkanolamine salt
P-02-0598	04/22/02	07/21/02	CBI	(G) Lubricant additive	(G) Alkylamidocarboxylic acid, substituted aliphatic amine salt
P-02-0599	04/22/02	07/21/02	CBI	(G) Non-dispersive use	(G) Blocked aromatic isocyanate
P-02-0600	04/22/02	07/21/02	Solutia Inc.	(S) Binder for industrial coatings	(G) Acrylate modified alkyd resin
P-02-0601	04/22/02	07/21/02	Solutia Inc	(S) Resin for industrial paints	(G) Acrylic copolymer
P-02-0602	04/23/02	07/22/02	Arch Chemicals, Inc.	(S) Component in a photoresist formulation to be used in the manufacture of semiconductor and related devices	(G) Derivatized ethoxylated polystyrene resin
P-02-0603	04/23/02	07/22/02	CBI	(G) Binder	(G) Acrylic copolymer
P-02-0604	04/23/02	07/22/02	CBI	(G) Binder	(G) Acrylic copolymer

I. 48 PREMANUFACTURE NOTICES RECEIVED FROM: 04/18/02 TO 05/02/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P-02-0605	04/23/02	07/22/02	CBI	(G) Binder	(G) Acrylic copolymer
P-02-0606	04/23/02	07/22/02	CBI	(G) Plastics additive	(G) Poly(oxyalkylene) aromatic amine colorant
P-02-0607	04/23/02	07/22/02	CBI	(G) Plastics additive	(G) Poly(oxyalkylene) aromatic amine colorant
P-02-0608	04/24/02	07/23/02	CBI	(G) Open, non-dispersive use	(G) Hydroxy functional oligomer
P-02-0609	04/25/02	07/24/02	3M Company	(G) Protective coating	(G) Fluorochemical urethane
P-02-0610	04/25/02	07/24/02	CBI	(G) Catalyst	(G) Multi-metal oxide compound
P-02-0611	04/26/02	07/25/02	Hickory Springs MFG. Co.	(S) Polyol for production of flexible slabstock polyurethane foam	(G) Polyisocyanate polyaddition product
P-02-0612	04/29/02	07/28/02	CBI	(G) Component of coating with open use	(G) Phosphatized aromatic epoxy polymer
P-02-0613	04/29/02	07/28/02	CBI	(G) Open, non-dispersive (resin)	(G) Polyacrylate resin
P-02-0614	04/29/02	07/28/02	Solutia Inc.	(S) Resin for industrial paints	(G) Acrylic copolymer
P-02-0615	04/29/02	07/28/02	Solutia Inc.	(S) Resin for industrial paints	(G) Acrylic copolymer
P-02-0616	04/29/02	07/28/02	CBI	(G) This a destructive use of a chemical intermediate, to make a FIFRA regulated agricultural product	(G) Halogenated heterocyclic carboxylic acid derivative
P-02-0617	04/29/02	07/28/02	Solutia Inc.	(S) Resin for industrial paints	(G) Acrylic copolymer
P-02-0618	04/29/02	07/28/02	CBI	(S) Hardener for epoxy resins	(G) Derivatives of methylimidazole
P-02-0619	04/29/02	07/28/02	Alberdingk Boley Inc.	(S) Coating additive for wood and plastic substrates	(G) Urethane acrylate copolymer
P-02-0620	04/30/02	07/29/02	Cognis Corporation	(S) Stabilization of pigments in paints and coatings	(G) Polyester polyurethane
P-02-0621	04/30/02	07/29/02	Cognis Corporation	(S) Stabilization of pigments in paints and coatings	(G) Polyester polyurethane
P-02-0622	05/01/02	07/30/02	Bedoukian Research, Inc.	(S) Chemical intermediate	(G) Branched alkenoate
P-02-0623	05/01/02	07/30/02	CBI	(G) Textile colorant	(G) Substituted cyan acetic acid butylester and butoxyethylester
P-02-0624	05/01/02	07/30/02	CBI	(G) Textile colorant	(G) Substituted cyan acetic acid butylester and butoxyethylester
P-02-0625	05/02/02	07/31/02	CBI	(S) Specialty grease thickener	(G) Aromatic substituted diurea
P-02-0626	05/02/02	07/31/02	CBI	(S) Specialty grease thickener	(G) Aromatic substituted diurea
P-02-0627	05/02/02	07/31/02	CBI	(G) Open, non-dispersive use	(G) Acrylic polymer
P-02-0628	05/02/02	07/31/02	CBI	(S) Ingredient in fragrance compound	(S) 1,2-propanediol, 2-methyl-3-[[[(1r,2s,5r)-5-methyl-2-(1-methylethyl) cyclohexyl]oxy]-
P-02-0629	05/02/02	07/31/02	CBI	(G) Grooming aid	(G) Substituted amino acid

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 16 NOTICES OF COMMENCEMENT FROM: 04/18/02 TO 05/02/02

Case No.	Received Date	Commencement/Import Date	Chemical
P-01-0158	04/23/02	03/07/02	(S) Xanthylum, 3,6-bis[(2,6-dimethylphenyl)amino]-9-(2-sulfophenyl)-, inner salt
P-01-0543	04/23/02	01/18/02	(G) Substituted carbopolycycle heteropolycycle substituted sulfo heteropolycycle
P-01-0567	04/29/02	04/16/02	(G) Phenolic resin
P-01-0570	04/18/02	04/14/02	(G) Diacrylate monomer
P-01-0583	04/18/02	04/15/02	(G) Triazine derivative
P-01-0629	04/23/02	03/12/02	(G) Formaldehyde, reaction product with an alkylated phenol and an aliphatic amine
P-01-0777	04/23/02	11/20/01	(G) Ammonium fluoroborate
P-01-0780	04/23/02	03/20/02	(S) 2,5-furandione (9ci) polymer with alpha-hydro-omega-hydroxypoly(oxy(methyl-1,2-ethanediyl)) and 1,2-propanediol
P-01-0872	05/01/02	04/05/02	(G) Alkenoic acid, polymer with vinyl alkyl lactam, alkenamide, alkenyl propanesulfonic acid, neutralized.
P-01-0919	04/25/02	04/22/02	(G) Tetramine pyrimidine derivative
P-02-0029	04/19/02	03/13/02	(S) Lignosulfonic acid, ethoxylated, compds. with polyaniline, p-toluenesulfonates
P-02-0031	04/24/02	04/22/02	(S) Cyclohexan-1-ol, 1-methyl-3-(2-methylpropyl)-

II. 16 NOTICES OF COMMENCEMENT FROM: 04/18/02 TO 05/02/02—Continued

Case No.	Received Date	Commencement/Import Date	Chemical
P-02-0035	04/30/02	04/05/02	(S) Ethanaminium, n-ethyl-2-hydroxy-n,n-bis(2-hydroxyethyl)-, mono- and diesters with branched and linear C ₁₆₋₁₈ and C ₁₈ -unsaturated, fatty acids, et sulfates (salts)
P-02-0133	04/18/02	04/12/02	(G) Benzofuranone derivative
P-02-0144	04/30/02	04/24/02	(G) Chromophore substituted polyoxyalkylene
P-02-0215	04/23/02	04/15/02	(S) 1,3-benzenedicarboxylic acid, 5-hydroxy-, polymers with 3-(4-aminophenoxy) benzenamine, 3-carboxy-1-cyano-1-methylpropyl-terminated acrylonitrile-butadiene polymer and isophthalic acid

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: May 30, 2002.

Mary Louise Hewlett,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 02-14370 Filed 6-6-02; 8:45 am]

BILLING CODE 6560-50-S

Contact Report (CAC) used to gather information about the floodplain management activities of communities that participate in the National Flood Insurance Program.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Act of 1968 established the NFIP. Section 1315 of the Act requires the adoption of permanent land use and control measures, which is consistent with the comprehensive criteria of land management and use, under section 1361. 44 CFR 59.24 establishes requirements for continued eligibility to participate in the NFIP based upon implementing an adequate community based floodplain management program. The information gathered on FEMA Forms 81-68, Community Visit Report (CAV) and 81-69, Community Contact Report (CAC) is used to evaluate the adequacy of a community's floodplain management program, as it relates to continued participation in the NFIP.

Collection of Information

Title: Effectiveness of a Community's Implementation of the NFIP, Community Assistant Contact (CAC) Report and Community Assistant Visit (CAV) Report.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 3067-0198.

Form Numbers: FEMA Form 81-68, Community Contact Report (CAC); FEMA Form 81-68, Community Visit Report (CAV).

Abstract: FEMA's Community Assistant Program (CAP) is designed to assure that communities participating in the NFIP are achieving the flood loss reduction objectives of the program. The CAP also provides needed floodplain management assistance services to NFIP communities to identify, prevent, and resolve floodplain management issues before they develop into problems requiring enforcement actions. The Community Assistant Contact (CAC) is a telephone contact or brief visit with a NFIP community to determine if program-related problems exist and offer assistance. The Community Assistant Visit (CAV) is a scheduled visit with a NFIP community for the purpose of conducting a comprehensive assessment of the community's floodplain management program and to assist the community in understanding the NFIP and its requirements and implementing effective flood loss reduction measures.

Affected Public: Federal Government and State, Local and Tribal Government.

Estimated Total Annual Burden Hours:

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed continuing information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning FEMA forms 81-68, Community Visit Report (CAV) and 81-69, Community

FEMA forms	Number of respondents (A)	Frequency of response (B)	Hours per response (C)	Annual burden hours (A x B x C)
81-68 (CAV)	2,000	1 per community	3 hours	6,000
81-69 (CAC)	3,000	1 per community	2 hour	6,000
Total	5,000	12,000

Estimated Cost. It is estimated that \$319,920 is the annualized cost to respondents for the hour burdens for collecting data. (12,000 burden hours x \$26.66 per hour = \$319,920. Based upon respondent wage of \$20.00 per hour plus 33.3% overhead and fringe benefit.)

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Bill Lesser, Program Specialist, IM-MP-CA, (202) 646-2807 for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at telephone number (202) 646-2625 or facsimile number (202) 646-3347 or e-mail muriel.Anderson@fema.gov

Dated: May 29, 2001.

Reginald Trujillo,

Branch Chief, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate.

[FR Doc. 02-14260 Filed 6-6-02; 8:45 am]

BILLING CODE 6718-01-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1416-DR]

Illinois; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois [FEMA-1416-DR], dated May 21, 2002, and related determinations.

EFFECTIVE DATE: May 23, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705 or Rich.Robuck@fema.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective May 23, 2002.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression

Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02-14266 Filed 6-6-02; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1416-DR]

Illinois; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Illinois, (FEMA-1416-DR), dated May 21, 2002, and related determinations.

EFFECTIVE DATE: May 30, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705 or Rich.Robuck@fema.gov.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Illinois is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 21, 2002:

Adams, Bond, Brown, Calhoun, Cass, Champaign, Christian, Clark, Coles, Crawford, Cumberland, De Witt, Douglas, Edgar, Ford, Fulton, Greene, Hancock, Iroquois, Jersey, Lawrence, Logan, McDonough, Macon, Macoupin, Mason, Menard, Montgomery, Morgan, Moultrie, Piatt, Pike, Sangamon, Schuyler, Scott, Shelby, Vermilion and Wabash Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02-14267 Filed 6-6-02; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1413-DR]

Michigan; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Michigan, [FEMA-1413-DR], dated May 6, 2002, and related determinations.

EFFECTIVE DATE: May 24, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705 or Rich.Robuck@fema.gov.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Michigan is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 6, 2002:

Iron County and the Keweenaw Bay Indian Community for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02-14264 Filed 6-6-02; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1412-DR]

Missouri; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Missouri, [FEMA-1412-DR], dated May 6, 2002, and related determinations.

EFFECTIVE DATE: May 24, 2002.

FOR FURTHER INFORMATION CONTACT:

Richard A. Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705 or Rich.Robuck@fema.gov.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Missouri is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 6, 2002:

Carroll, Chariton, Christian, Clark, Cooper, Grundy, Howard, Lewis, Linn, Mercer, Polk, Scotland, Schuyler, and Sullivan Counties for Public Assistance.

Dent, Iron, Ripley, Texas and Wayne Counties for Public Assistance (already designated for Individual Assistance).

Camden, Cedar, Christian, Greene, Hickory, Jasper, Laclede, McDonald, Mississippi, New Madrid, Newton, Pemiscot, Polk, Scott, Stone, Vernon and Wright Counties for Individual Assistance.

Barry, Barton, Dade, Dallas, Lawrence, Taney, and Webster Counties for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02-14263 Filed 6-6-02; 8:45 am]

BILLING CODE 6718-02-P

**FEDERAL EMERGENCY
MANAGEMENT AGENCY**

[FEMA-1415-DR]

**New York; Amendment No. 1 to Notice
of a Major Disaster Declaration**

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New York, [FEMA-1415-DR], dated May 16, 2002, and related determinations.

EFFECTIVE DATE: May 30, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and

Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705 or Rich.Robuck@fema.gov.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New York is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 16, 2002:

The counties of Franklin, Hamilton, Warren, and Washington for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02-14265 Filed 6-6-02; 8:45 am]

BILLING CODE 6718-02-P

**FEDERAL EMERGENCY
MANAGEMENT AGENCY**

[FEMA-1410-DR]

**West Virginia; Amendment No. 2 to
Notice of a Major Disaster Declaration**

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of West Virginia (FEMA-1410-DR), dated May 5, 2002, and related determinations.

EFFECTIVE DATE: May 20, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705 or Rich.Robuck@fema.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective May 20, 2002.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family

Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02-14261 Filed 6-6-02; 8:45 am]

BILLING CODE 6718-02-P

**FEDERAL EMERGENCY
MANAGEMENT AGENCY**

[FEMA-1410-DR]

**West Virginia; Amendment No. 3 to
Notice of a Major Disaster Declaration**

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia, (FEMA-1410-DR), dated May 5, 2002, and related determinations.

EFFECTIVE DATE: May 24, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705 or Rich.Robuck@fema.gov.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 5, 2002:

Summers County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02-14262 Filed 6-6-02; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL HOUSING FINANCE BOARD

**Sunshine Act Notice Announcing an
Open Meeting of the Board**

Time and Date: 10 a.m., Wednesday, June 12, 2002.

Place: Board Room, Second Floor, Federal Housing Finance Board 1777 F Street, NW., Washington, DC 20006.

Status: The entire meeting will be open to the public.

Matter to be Considered During Portions Open to the Public:

- Federal Home Loan Bank of Cincinnati Capital Plan (Tentative)
- Federal Home Loan Bank of Dallas Capital Plan
- Federal Home Loan Bank of Chicago Capital Plan (Tentative)
- Federal Home Loan Bank of San Francisco Capital Plan
- 2002 Designation of Federal Home Loan Bank State Directorships
- Proposed Rule: Affordable Housing Program

Contact Person for More Information: Elaine L. Baker, Secretary to the Board, (202) 408-2837.

James L. Bothwell,
Managing Director.

[FR Doc. 02-14450 Filed 6-5-02; 9:39 am]

BILLING CODE 6725-01-P

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 June 24, 2002

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *Charles Harley Johnson*, North Oaks, Minnesota; to acquire voting shares of The EastBank Corporation, Minneapolis, Minnesota, and thereby indirectly acquire voting shares of EastBank, Minneapolis, Minnesota.

Board of Governors of the Federal Reserve System, June 3, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02-14247 Filed 6-6-02; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL TRADE COMMISSION

Granting of Requests for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—04/29/2002			
20020295	Solvay S.A	Italenergia S.p.A.	Agora, S.p.A.
20020618	Cintas Corporation	Elifin S.A	Omni Services, Inc.
20020655	Sun Capital Partners II, LP	Rexam PLC	Rexam PLC
20020669	NKK Corporation	Kawasaki Steel Corporation	Kawasaki Steel Corporation
20020670	Kawasaki Steel Corporation	NKK Corporation	NKK Corporation
20020673	Lincare Inc	Allina Health Systems, Inc	Allina Health Systems, Inc.
20020679	General Electric Company	Questron Technology, Inc	Questron Technology, Inc.
20020680	Catholic Health East	Eastern Mercy Health System	Eastern Mercy Health System
20020685	The Procter & Gamble Company	GMP Companies, Inc	GMP Companies, Inc.
20020695	Questor Partners Fund II, L.P	Zenith Industrial Corporation (debtor-in-possession).	Zenith Industrial Corporation (debtor-in-possession)
20020696	Questor Partners Fund II, L.P	Aetna Industrial Corporation (debtor-in-possession).	Aetna Industrial Corporation (debtor-in-possession)
TRANSACTIONS GRANTED EARLY TERMINATION—04/30/2002			
20020676	UBS AG	Danny L. Darby	Collegiate Funding Services, L.L.C.
20020677	UBS AG	Gary W. Frazier	Collegiate Funding Services, L.L.C.
20020682	Fleming Companies, Inc	Albertson's Inc	Albertson's Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—05/01/2002			
20020663	The Savage Companies	McMoRan Exploration Co	Freeport-McMoRan Sulphur LLC
20020666	Mr. K. Rupert Murdoch	Meredith Corporation	Meredith Corporation
20020667	Meredith Corporation	Mr. K. Rupert Murdoch	Fox Television Stations, Inc.
20020671	Designs, Inc	Casual Male Corp	Casual Male Corp.
20020672	IMC Global Inc	McMoRan Exploration Co	Freeport-McMoRan Sulphur LLC
20020678	E.I. du Pont de Nemours and Company.	Liqui-Box Corporation	Liqui-Box Corporation
20020681	GTCR Fund VII, L.P.	Herbert Simon	MerchantWired, LLC
20020683	ALLTEL Corporation	CenturyTel, Inc.	Century TelWireless, Inc.
20020691	SuperValu Inc	Deals—Nothing Over a Dollar, LLC ..	Deals—Nothing Over a Dollar, LLC

Trans #	Acquiring	Acquired	Entities
20020646	Creative Technology Ltd	3Dlabs Inc., Ltd	3Dlabs Inc., Ltd.
20020709	DAKO Cytomation A/S	Cytomation Inc.	Cytomation Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—05/03/2002

20020674	CIBER, Inc	John A. Krasula	Decision Consultants, Inc.
20020690	Corinthian Colleges, Inc	Allied Capital Corporation	Wyo-Tech Acquisition Corp.
20020703	Linsalata Capital Partners Fund IV, L.P.	Eagle & Taylor Company	Eagle & Taylor Company
20020711	Italenergia S.p.A	Italenergia S.p.A	CanAmera Foods
20020715	Russell V. Umphenour, Jr	RTM Restaurant Group, Inc	RTM Restaurant Group, Inc.
20020716	RTM Inc	RTM Holding Company Inc	RTM Holding Company Inc.
20020717	RTM Holding Company Inc	RTM Inc	RTM Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—05/06/2002

20020689	NDCHealth Corporation	TechRx Incorporated	TechRx Incorporated
20020692	TA/Advent VIII, L.P	Ameritrade Holding Corporation	Ameritrade Holding Corporation
20020693	TA IX L.P	Ameritrade Holding Corporation	Ameritrade Holding Corporation
20020700	Bain Capital VII Coinvestment Fund	Ameritrade Holding Corporation	Ameritrade Holding Corporation
20020701	Silver Lake Partners, L.P	Ameritrade Holding Corporation	Ameritrade Holding Corporation
20020708	CRH plc	Martin Marietta Materials, Inc.	Martin Marietta Materials, Inc.
20020714	Morgan Stanley Dean Witter & Co ...	AMR Corporation	AMR Corporation

TRANSACTIONS GRANTED EARLY TERMINATION—05/10/2002

20020686	Sun Capital Partners II, LP	BMK (debtor-in-possession)	BMK, Inc.
20020712	Heartland Industrial Partners, L.P	Heartland Industrial Partners, L.P	Newco Holding Company
20020722	Fleming Companies, Inc	Jupiter Partners, L.P	Core-Mark International, Inc.
20020725	Santemedia Group Holding S.a.r.l	Vivendi Universal, S.A	MediMedia USA, Inc.
20020726	Tradescape Corp	E*Trade Group, Inc	E*Trade Group, Inc.
20020732	Whitney V, L.P	Mark Hughes Family Trust	Herbalife International, Inc.
20020739	Goense Bounds & Partners A, L.P. ..	Zinna Family Trust	L&S Plumbing Partnership, Ltd.
20020742	Cortec Group Fund III, L.P	American Securities Partners II, L.P.	DRL Holdings, Inc.

FOR FURTHER INFORMATION CONTACT:
Sandra M. Peay, or Chandra L. Kennedy,
Contact Representatives. Federal Trade
Commission, Premerger Notification
Office, Bureau of Competition, room
303, Washington, DC 20580, (202) 326-
3100

By Direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 02-14334 Filed 6-6-02; 8:45 am]

BILLING CODE 6750-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section

7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
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TRANSACTIONS GRANTED EARLY TERMINATION—05/13/2002

20020730	E*Trade Group, Inc	Tradescape Corp	Tradescape Momentum Holdings, Inc. Tradescape Technology Holdings, Inc.
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TRANSACTIONS GRANTED EARLY TERMINATION—05/14/2002

20020698	Alcoa Inc	Ivex Packaging Corporation	Ivex Packaging Corporation
20020719	Eagle-Tribune Publishing Company	Dow Jones & Company, Inc	Essex County Newspapers, Inc. Ottoway newspapers, Inc. The Mail Tribune, Inc.
20020723	EnCana Corporation	El Paso Corporation	Coastal Oil & Gas Resources El Paso Production Oil & Gas Company
20020724	Solectron Corporation	Lucent Technologies, Inc	Lucent Technologies, Inc.
20020728	Inverness/Phoenix Partners LP	Kellstrom Industries, Inc. (debtor-in-possession).	Kellstrom Industries, Inc. (debtor-in-possession)

Trans #	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—05/15/2002			
20020733	Level 3 Communications, Inc	Software Spectrum, Inc	Software Spectrum, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—05/16/2002			
20020727	King Pharmaceuticals, Inc	Johnson & Johnson	Ortho-McNeil Pharmaceutical, Inc.
20020737	Mentor Graphics Corporation	Innoveda, Inc	Innoveda, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—05/20/2002			
20020721	Jabil Circuit, Inc	Compaq Computer Corporation	Compaq Computer Corporation
20020736	GTCR Fund VI, L.P	Robert G. Owens	Millennium Holdings I, LLC
20020747	Intuit Inc	CBS Employer Services, Inc	CBS Employer Services, Inc.
20020755	MBNA Corporation	Ohio Savings Financial Corporation	Ohio Savings Bank
TRANSACTIONS GRANTED EARLY TERMINATION—05/22/2002			
20020741	Morgan Stanley Dean Witter Capital Partners IV, L.P.	Louis A. Weiss Memorial Hospital	Louis A. Weiss Memorial Hospital
20020746	General Electric Company	Panametrics, Inc	Panametrics, Inc.
20020758	Grupo IMSA, S.A. de C.V.	Material Sciences Corporation	MSC Pinole Point Steel Inc. MSC Pre Finish Metals Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—05/23/2002			
20020735	Schering Aktiengesellschaft	Collateral Therapeutics, Inc	Collateral Therapeutics, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—05/24/2002			
20020744	MiTAC International Corp	Arrow Electronics, Inc	Arrow Electronics, Inc.
20020790	Sears, Roebuck and Co	Gary C. Comer	Land's End, Inc.

FOR FURTHER INFORMATION CONTACT:

Sandra M. Peay, or Chandra L. Kennedy, Contact Representatives. Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 02-14335 Filed 6-6-02; 8:45 am]

BILLING CODE 6750-01-M

FEDERAL TRADE COMMISSION

[File No. 011 0199]

Bayer AG and Aventis S.A.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 1, 2002.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: consentagreement@ftc.gov, as prescribed below.

FOR FURTHER INFORMATION CONTACT: Joseph Simons or Wallace Easterling, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326-3300 or 326-2936.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission's rules of practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for May 30, 2002), on the

World Wide Web, at "<http://www.ftc.gov/os/2002/05/index.htm>." A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: consentagreement@ftc.gov. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice, 16 CFR 4.9(b)(6)(ii).

Analysis of the Complaint and Proposed Consent Order to Aid Public Comment

I. Introduction

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Bayer AG ("Bayer") and Aventis S.A. ("Aventis") (collectively "Respondents"). The Consent Agreement is intended to resolve anticompetitive effects stemming from Bayer's proposed acquisition of Aventis CropScience Holding S.A. ("ACS") from Aventis. The Consent Agreement includes a proposed Decision and Order (the "Order"), which would require Respondents to divest ACS's acetamiprid, fipronil and tribufos business, including its fipronil production facility in Elbeuf, France, and Bayer's flucarbazone business, to an acquirer or acquirers approved by the Commission and in a manner approved by the Commission. The Consent Agreement also includes an Order to Hold Separate and Maintain Assets, which requires Respondents to preserve the acetamiprid, fipronil and flucarbazone operations as a viable, competitive and ongoing operation until the divestitures are completed.

The Consent Agreement, if finally accepted by the Commission, would settle charges that Bayer's proposed acquisition of ACS may have substantially lessened competition in the markets for New Generation Chemical Insecticide Active Ingredients; New Generation Chemical Insecticide Products (including but not limited to (i) crop specific end uses, (ii) veterinary channel companion animal flea and tick control products and (iii) non-repellent liquid termiticides); Post-Emergent Grass Herbicides for Spring Wheat; and Cool Weather Cotton Defoliants. The Commission has reason to believe that Bayer's proposed acquisition of ACS would have violated Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act, as alleged in the Commission's proposed complaint.

II. The Proposed Complaint

According to the Commission's proposed complaint, there are several relevant lines of commerce in which to analyze the effects of Bayer's proposed acquisition of ACS, including: (1) New Generation Chemical Insecticide Active Ingredients; (2) New Generation Chemical Insecticide Products; (3) Post-Emergent Grass Herbicides for Spring Wheat; and (4) Cool Weather Cotton Defoliants.

The proposed complaint alleges that the United States is the relevant geographic market and section of the country within which to analyze the likely effects the combination of Bayer and ACS.

A. New Generation Chemical Insecticide Active Ingredients

The proposed complaint alleges that relevant lines of commerce in which to analyze the effects of the proposed merger are new generation chemical insecticide active ingredients and related technologies ("New Generation Chemical Insecticide Active Ingredients") for specific end use applications, including the development, manufacture and sale of insecticides for use as non-repellent termiticides, flea control for companion animals, and for use on an array of crop applications such as corn, cotton, citrus, cole crops, grapes, vegetables, for turf and ornamental uses, and as protection for seeds and seedlings ("seed treatments"). New Generation Chemical Insecticide Active Ingredients are chemicals that are designed to kill undesirable insects but that, unlike older insecticide active ingredients, are less harmful to human health and the environment. These New Generation Chemical Insecticide Active Ingredients include imidacloprid, acetamiprid, thiamethoxam, and other chloronicotinyls; and fipronil and other phenylpyrazoles.

According to the Commission's proposed complaint, New Generation Chemical Insecticide Active Ingredients are used in applications where their characteristics provide superior performance and where they offer advantages as compared to older chemical insecticides. These advantages include reductions in the amount of chemical insecticides used (resulting in reduced negative impacts on the environment and human health), reduced risk to humans and beneficial insects due to the use of safer chemicals in comparison to older chemical insecticides, and superior control of certain undesirable pests. The proposed complaint alleges that many of these advantages are a result of competition in research and development. The proposed complaint also alleges that New Generation Chemical Insecticide Active Ingredients are of increasing importance as the EPA removes older insecticides from the market because of harmful effects on human health and the environment.

The proposed complaint alleges that Bayer and Aventis are the firms that have been significant competitors in developing and commercializing New

Generation Chemical Insecticide Active Ingredients; Syngenta Corporation is the only other firm with significant development and production of New Chemical Insecticide Active Ingredients.

According to the Commission's proposed complaint, Bayer and Aventis are distinguished by their unique product development and commercialization skills relating to New Generation Chemical Insecticide Active Ingredients. The proposed complaint alleges that these unique skills have prompted competitors, through licensing, to allow Bayer and Aventis to develop products based on molecules other firms have discovered.

The proposed complaint alleges that the acquisition would reduce actual, direct, and substantial competition, eliminate potential competition, increase barriers to entry, reduce innovation competition, increase Respondents' ability to exercise unilateral market power and substantially increase the level of concentration and enhance the probability of coordination in the relevant markets.

B. New Generation Chemical Insecticide Products

The proposed complaint alleges that insecticide products based on New Generation Chemical Insecticide Active Ingredients ("New Generation Chemical Insecticide Products") constitute relevant lines of commerce in which to analyze the effect of the proposed merger. New Generation Chemical Insecticide Products include, but are not limited to, (i) crop specific end uses, such as corn, cotton, citrus, cole crops, grapes, vegetables and seed treatments; (ii) veterinary channel companion animal flea control products; and (iii) non-repellent liquid termiticides.

The proposed complaint alleges that New Generation Chemical Insecticide Active Ingredients provide New Generation Chemical Insecticide Products with advantages over older chemical insecticide products. The proposed complaint alleges that New Generation Chemical Insecticide Products are displacing older insecticide products as the EPA removes or limits the use of a significant number of these older harmful products.

The proposed complaint alleges that New Generation Chemical Insecticide Products include separate relevant markets based on the specific applications in which the relevant products are used because the EPA requires a separate registration for each application in which the products will be used and suppliers price their products at different levels depending

on the specific end use application. The proposed complaint further alleges that New Generation Chemical Insecticide Products may constitute application specific relevant product markets such as: Termiticides, flea control for companion animals, specific crops or any application in which New Generation Insecticide Products are used.

According to the proposed complaint, Bayer and Aventis are the leading firms in the development and commercialization of New Generation Chemical Insecticide Products and own significant intellectual property estates relating to these products. The proposed complaint alleges that Syngenta is the only other firm with significant sales of New Generation Chemical Insecticide Products.

According to the Commission's proposed complaint, the proposed transaction would reduce the number of firms—from two to one in two relevant markets, and from three to two in other relevant markets. The proposed complaint alleges that Bayer and Aventis are the only firms currently selling New Generation Chemical Insecticide Products for non-repellent liquid termiticides. The proposed complaint also alleges that Bayer and Aventis are the only firms that have developed and sold successful New Generation Chemical Insecticide products for use in the veterinary channel companion animal flea control application. The proposed complaint further alleges that Bayer, Aventis and Syngenta are the only firms producing and selling a range of New Generation Chemical Insecticide Products for a range of crop specific end uses.

According to the proposed complaint, the acquisition would eliminate competition (including potential competition), increase barriers to entry, reduce innovation competition among developers of relevant products, increase Respondents' ability to exercise unilateral market power and substantially increase the level of concentration and enhance the probability of coordination in the relevant markets.

C. Post-Emergent Grass Herbicides for Spring Wheat

According to the proposed complaint, herbicides are chemicals designed to kill or control grasses that interfere with crop production. The proposed complaint alleges that separate markets for herbicides may be distinguished by the type of weed controlled (grassy weed versus broadleaf weed) and the growth stage at which the herbicide is applied (pre-emergent versus post-

emergent). The proposed complaint further alleges that post-emergent grass herbicides for spring wheat ("Spring Wheat Herbicides") is a relevant product market in which to analyze the effects of Bayer's proposed acquisition of ACS.

According to the Commission's proposed complaint, Aventis is the largest supplier of Spring Wheat Herbicides, accounting for almost 70 percent of sales in 2001. The proposed complaint alleges that Aventis' leading product for post-emergent grass control for spring wheat is Puma, which contains the active ingredient fenoxaprop. The proposed complaint also alleges that in 2001, Bayer introduced Everest, which contains the active ingredient flucarbazone, and that Everest accounted for approximately 7 percent of sales in the market in that year.

The Complaint alleges that the acquisition would eliminate price competition, increase the Respondents' ability to unilaterally raise price and increase the likelihood and degree of coordinated interaction among competitors in the market for Spring Wheat Herbicides.

D. Cool Weather Cotton Defoliants

According to the Commission's proposed complaint, cotton defoliants are chemical harvest aids designed to remove leaves from cotton plants without drying them. The proposed complaint alleges that separate markets for cotton defoliants may be distinguished by method of action (defoliation versus desiccation) and by product efficacy in varying environmental conditions (cool weather versus warm weather). The Commission's proposed complaint further alleges that Cool Weather Cotton Defoliants are necessary for economical harvesting of premium grade cotton and constitutes a relevant product market in which to analyze the effects of the proposed acquisition.

The proposed complaint alleges that Bayer and Aventis are the only two suppliers of Cool Weather Cotton Defoliants. The proposed complaint also alleges that both Bayer and Aventis offer products containing the active ingredient tribufos for cool weather cotton defoliation; Bayer offers the DEF product and Aventis offers the Folex product.

The Commission's proposed complaint alleges that Bayer's proposed acquisition of ACS would eliminate competition between Bayer and Aventis in the market for Cool Weather Cotton Defoliants in the U.S., substantially increase the level of concentration,

increase the likelihood that Respondents will unilaterally exercise market power and increase barriers to entry. The proposed complaint also alleges that the proposed acquisition would increase the likelihood that customers of Cool Weather Cotton Defoliants in the U.S. would be forced to pay higher prices.

E. Barriers to Entry Into the Relevant Product Markets

The proposed complaint alleges that entry into the relevant markets for New Generation Chemical Insecticide Active Ingredients would require years of research, development, testing, registration and commercial scale production synthesis. The proposed complaint alleges that entry into the New Generation Chemical Insecticide Products market is an expensive and lengthy process that requires access to a New Generation Chemical Insecticide Active Ingredient, product development and EPA review, among other things. The proposed complaint further alleges that entry into the Spring Wheat Herbicides market can take seven to ten years, in part because a potential entrant would spend substantial time researching active molecules, developing promising molecules, and implementing the studies required by the EPA. The proposed complaint alleges that barriers to entry into the Cool Weather Cotton Defoliant market include distribution barriers, existing purchase and supply contracts and EPA regulations.

III. Terms of the Proposed Order

The proposed Order is designed to remedy the alleged anti-competitive effects of the proposed acquisition by requiring the divestiture of assets relating to four businesses: (1) Acetamiprid; (2) fipronil; (3) flucarbazone; and (4) Folex (tribufos). The proposed Order requires Respondents to divest the acetamiprid, fipronil, and flucarbazone businesses to acquirer(s) approved by the Commission, at no minimum price, not later than 180 days from the date that the Commission accepts the proposed Order for public comment. If this divestiture does not occur by that date, the proposed Order allows the Commission to appoint a trustee to sell the divestiture assets or additional assets, to acquirer(s) approved by the Commission.

A. Acetamiprid

Section II. of the proposed Order requires Respondents to divest ACS's worldwide assets relating to the acetamiprid business. However, the

proposed Order does not require Bayer to divest the acetamiprid business in Mexico, South America, Central America or Africa in the event that Nippon Soda, the acetamiprid licensor, does not consent to the assignment of the acetamiprid agreements relating exclusively to these regions.

Paragraph II.E. of the proposed Order permits the Commission-approved acquirer, at its discretion, to license back to Bayer any intellectual property that is not related primarily to the acetamiprid business. This provision ensures that the Order will not prevent Bayer from obtaining exclusive rights to develop, make, sell or import any new insecticide products that are in the same chemical family as acetamiprid. Thus, both the acquirer and Bayer will have the right to invent, patent, and develop new compounds in the chemical family to which acetamiprid belongs.

The proposed Order also provides that if Bayer fails to divest its assets relating to the acetamiprid business within the time and manner described above, the Commission may appoint a divestiture trustee to divest those assets in a manner acceptable to the Commission, or may require divestiture of Bayer's assets relating to the thiacloprid business at no minimum price. The proposed Order provides that while Bayer may obtain a cross-license to any intellectual property included in the thiacloprid business (provided that Bayer's license does not impair the viability of the thiacloprid business), this provision creates an additional thiacloprid supplier to compete directly with Bayer. The proposed Order provides that if Bayer obtains this cross-license, Bayer can obtain a supply agreement of thiacloprid from the acquirer. Bayer may also obtain a supply of clothianidin from the acquirer because this chemical is produced in the same plant that produces thiacloprid. The Commission must approve all such supply agreements, licenses, and divestitures.

B. Fipronil

Section III. of the proposed Order requires Respondents to divest all assets relating to ACS's fipronil business, including intellectual property, ACS's production facility in Elbeuf, France, and other assets.

Paragraph III.D.2. of the proposed Order allows Bayer to license back any intellectual property included in the fipronil assets for non-agricultural use, as described in Definition RR. This license back increases competition in the non-repellant liquid termiticide market as it enables both Bayer and the

fipronil acquirer to bring products containing fipronil to the market.

Paragraph III.E. of the proposed Order permits Bayer to enter into a supply agreement with the Commission-approved acquirer. The supply agreement allows the acquirer to supply fipronil to Bayer for non-agricultural use for a term of two years, which may be extended subject to Commission approval. This supply arrangement may be necessary because of current supply contracts that obligate ACS to supply fipronil to third parties. The supply agreement may also allow the acquirer to supply intermediates to Bayer until the expiration of patents covering such intermediates. This may be necessary because Bayer may require the use of those intermediates in the production of its own chemicals.

C. Flucarbazone

The proposed Order provides that Respondents will divest the flucarbazone assets, including tangible and intangible assets relating to the business of developing, manufacturing and selling all products containing the active ingredient flucarbazone worldwide. The divested assets exclude the manufacturing facility in Kansas City where flucarbazone is manufactured. This facility is also used to manufacture other Bayer herbicides that are not sold in the Spring Wheat Herbicide market.

So long as Bayer divests the Everest assets to a Commission-approved acquirer by the deadline described above, the proposed Order permits Bayer to exclusively retain its intellectual property rights that relate primarily to its Olympus (proxycarbazone) business. Under the license grant in Paragraph IV.C. of the proposed Order, both the Commission-approved acquirer and Bayer will have the right to invent, patent, and develop new compounds in the chemical family to which Everest (flucarbazone) and Olympus (propoxycarbazone) belong.

In order to guarantee that Bayer will not block the Commission-approved acquirer from operating the Everest (flucarbazone) business, Paragraph IV.C.2. of the proposed Order prohibits Bayer from suing the acquirer for patent infringement relating to the acquirer's actions in developing, making, selling or importing any product containing flucarbazone, except for those products containing propoxycarbazone (*i.e.* Bayer's Olympus business).

Paragraph IV.E. of the proposed Order permits Bayer to supply the Commission-approved acquirer with flucarbazone products for an interim period of 30 months from the date Bayer

divests the Everest (flucarbazone) business. This supply arrangement may be necessary because the acquirer is unlikely to have sufficient time to set-up an independent capability for manufacturing flucarbazone and formulating flucarbazone-based products in time for the 2003 spring wheat crop. The proposed Order sets up parameters for the supply relationship between Bayer and the acquirer, including requiring Bayer to supply the acquirer with sufficient quantities of flucarbazone in a timely manner and requiring Bayer to charge a reasonable price that is based on its direct costs of providing the acquirer with flucarbazone and other related services.

Finally, in the event Bayer does not divest its Everest (flucarbazone) business by the deadline described above, Sections X. and XII. of the proposed Order require Bayer to additionally divest its Olympus (propoxycarbazone) business, and the plant in Kansas City where it manufactures flucarbazone and propoxycarbazone, to a Commission-approved acquirer that may not license the business back to Bayer. Additionally, Paragraph XII.A.2. of the proposed order prohibits Bayer from suing the acquirer for patent infringement relating to the acquirer's actions in developing, making, selling or importing any product containing propoxycarbazone.

D. Folex

The provisions in Section V. of the proposed Order requires Respondent to divest assets relating to Folex, which contains the active ingredient tribufos, and to assign ACS's rights under the tribufos supply agreement to Amvac Corporation ("Amvac") no later than twenty days from the date the Commission accepts the Consent for public comment. Amvac is a manufacturer that purchases proprietary molecules from discovery firms and commercializes these molecules. Under the supply agreement, Amvac may purchase tribufos from Bayer. Amvac also has the capability to manufacture its own tribufos.

If the Commission, at the time that it makes the Order final, notifies Bayer that it does not approve of the proposed divestiture to Amvac, or of the manner of the divestiture, the proposed Order provides that Bayer would terminate or rescind the sale to Amvac and divest the Folex business within 180 days, at no minimum price, to a Commission-approved acquirer.

E. Other Elements of the Order

According to the proposed Order, Bayer shall provide technical assistance to the acquirer(s) of the assets relating to the acetamiprid, dipronil, flucarbazone and Folex businesses upon their request. Because Respondents' employees have likely developed expertise in the manufacture of these chemicals and other operations of the businesses, this technical assistance provision ensures that the acquirer(s) can obtain the capability to operate the businesses as efficiently as Respondents.

Section VI. of the proposed Order contains various provisions which aid the Commission-approved acquirers in hiring Respondents' employees with experience in the divested businesses. Respondents must provide the acquirers with the names of these employees and access to personnel files and other documents relating to the employees' performance. Moreover, for a subset of employees considered to have a "key" role in the divested businesses, Respondents must pay such employees a bonus if they accept an employment offer from the acquirers within the first thirty days after the relevant divestiture.

The proposed Order also provides for the Commission to appoint a monitor trustee to oversee Bayer's compliance with the terms of the proposed Order and the divestiture agreements that Bayer enters pursuant to the proposed Order.

The proposed Order requires Respondents to provide the Commission, within sixty days from the date the Order becomes final, a verified written report setting forth in detail the manner and form in which the Respondents intend to comply, is complying, and has complied with the provisions relating to the proposed Order and the Order to Hold Separate and Maintain Assets. The proposed Order further requires Respondent to provide the Commission with a report of compliance with the Order every sixty days after the date when the Order becomes final until the divestitures have been completed.

According to the proposed Order, Bayer shall provide the Commission with advance written notice prior to acquiring any interest of or entering into a joint venture with Merial unless such transaction requires notification pursuant to section 7A of the Clayton Act, 15 U.S.C. 18a. Merial is a joint venture between Aventis S.A. and Merck. Prior to the proposed transaction, ACS supplied fipronil to Merial for use in its Frontline flea and tick control product. ACS also provided

a crop protection pipeline of new insecticide molecules that may have application in animal health. Following the proposed transaction, Merial may wish to reform the existing research and development agreement, or form a research and development technology venture with Bayer. Prior notification will allow the Commission to investigate whether such a partnership would have appropriate safeguards to obtain the benefits of joint development without negatively impacting competition in downstream animal health products.

F. The Order To Hold Separate and Maintain Assets

The proposed Order to Hold Separate and Maintain Assets that is also included in the Consent Agreement requires that Respondent hold separate and maintain the viability of the acetamiprid, fipronil, and flucarbazone businesses.

IV. Opportunity for Public Comment

The proposed Order has been placed on the public record for thirty days to receive comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will review the Consent Agreement and comments received and will decide whether to withdraw its agreement or make final the Consent Agreement's proposed Order and Order to Hold Separate and Maintain Assets.

The purpose of this analysis is to facilitate public comment on the proposed Order. This analysis is not intended to constitute an official interpretation of the Consent Agreement, the proposed Order, or the Order to Hold Separate and Maintain Asset or in any way to modify the terms of the Consent Agreement, the proposed Order, or the Order to Hold Separate and Maintain Assets.

By direction of the Commission.
Benjamin I. Berman,
Acting Secretary.

Statement of Commissioner Mozelle W. Thompson

In the Matter of Bayer/Aventis AG, File No. 011 0199

Today, I have joined in the Commission's vote to accept for public comment a proposed consent agreement and order resolving competitive issues stemming from Bayer AG's proposed acquisition of Aventis CropScience Holding S.A. Although I believe that in this matter the proposed consent agreement and order adequately address the Commission's concerns, I write

separately to underscore that consent order divestiture provisions for which a buyer has not yet been identified will continue to be closely scrutinized in order to ensure that the asset package is sufficient and that a qualified buyer will likely be found.

The value of having "up front" buyers is explained in the Commission's 1999 Divestiture Study,¹ which reviews Commission divestiture orders issued between 1990 and 1994. This value has only increased as we review more complex transactions in interconnected markets. In cases where there are questions about asset sufficiency or buyer qualifications, or where the Commission determines that there are other risks to the proposed divestiture, I believe that presentation of an up front buyer will be required.²

[FR Doc. 02-14336 Filed 6-6-02; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. Assessment of State Laws, Regulations and Practices Affecting the Collection and Reporting of Racial and Ethnic Data by Health Insurers and Managed Care Plans—NEW—One of the overarching goals of Healthy People 2010 is the elimination of health disparities, including those associated with race and ethnicity. The lack of data

¹ A Study of the Commission's Divestiture Process, Staff of the Bureau of Competition (1999), available at <http://www.ftc.gov/os/1999/9908/divestiture.pdf>. "The "up front" divestiture not only reduces the opportunity for interim competitive harm by expediting the divestiture process, but it assures at the outset that there will be an acceptable buyer for the to-be-divested assets." *Id.* at 39.

² Indeed, it is the Commission's prerogative to require an up front buyer in any merger warranting divestiture(s), and it will do so when it has less than complete confidence that all risks to the efficacy of the proposed relief have been minimized. For more information regarding "up front" buyers, please see "Frequently Asked Questions About Merger Consent Order Provisions," available at <http://www.ftc.gov/bc/mergerfaq.htm>.

has been identified as a barrier to performance measurement for this goal. Therefore, the Office of Minority Health is proposing a study which will examine States' laws and policies concerning the collection and use of

racial and ethnic data by health insurers and managed care plans. The study involves visits to 20 States for an in-depth look at their policies and practices, interviews with State officials and representatives of the States' major

managed care plans and health insurance industry. *Respondents:* State or local governments; businesses or other for-profit; non-profit institutions.

BURDEN INFORMATION

Instrument	Number of respondents	Burden per response	Burden hours
Administrator Interview Guide	120	4	480

OMB Desk Officer: Allison Herron Eydt.
Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690-6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address:

Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Written comments should be received within 30 days of this notice.

Dated: May 29, 2002.

Kerry Weems,

Acting Deputy Assistant Secretary, Budget.

[FR Doc. 02-14284 Filed 6-6-02; 8:45 am]

BILLING CODE 4150-29-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request the Office of Management and Budget (OMB) to allow the proposed information collection project: "Enrollee Survey of Relationship Between Out-of-Pocket Costs and Use of Prescribed Medications". In accordance with the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C.

3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

The proposed information collection was previously published in the **Federal Register** on April 3, 2002 and allowed 60 Days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 Days for public comment.

DATES: Comments on this notice must be received by July 8, 2002.

ADDRESSES: Written comments should be submitted to: OMB Desk Officer at the following address: Allison Eydt, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, OMB: New Executive Office Building, Room 10235; Washington, DC 20503.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Cynthia D. McMichael, AHRQ Reports Clearance Officer, (301) 594-3132.

SUPPLEMENTARY INFORMATION:

Proposed Project

"Enrollee Survey of Relationship Between Out-of-Pocket Costs and Use of Prescribed Medications"

The project is being conducted in response to an AHRQ task order entitled "Patient Safety and the Quality of Care: An Examination of Economic and Structural Characteristics, Working Conditions, and Technological Advances" (issued under Contract 290-00-0012: Accelerating the Cycle of Research through a Network of Integrated Delivery Systems with the Center for Health Care Policy and Evaluation, UnitedHealth Group, Minnetonka, MN).

Past research suggests that increases in out-of-pocket costs are associated with decreased medication use by the elderly patients who have a drug benefit.

Furthermore, reductions in medication use have been associated with increases in visits to physicians' offices and emergency departments and admissions to hospitals and long-term care facilities.

When Medicare beneficiaries alter their use of prescription medications in response to their out-of-pocket costs, patient safety and quality of care may be compromised.

As suggested by OMB, we have been in communication with the Center for Medicare & Medicaid Services (CMS) (contact: Frank Eppic Deputy Director, Information and Methods Group, ORDI, tel: 410-786-7950 or FEppic@hcfa.org) regarding the availability of data on this topic, particularly CMS's Medicare Current Beneficiary Survey (MCBS).

Examination of raw response frequencies on the 1999 MCBS survey indicate that fewer than 2% (319/16670 total respondents) cite costs or lack of coverage as primary reasons for not getting a prescription filled. This small percentage seems to be inconsistent with other reports on the inadequacy of drug benefits for the elderly. However, the MCBS does not inquire whether Medicare beneficiaries get prescriptions filled, but take less medication than prescribed because of out-of-pocket costs or caps on drug benefits. In addition, the amount of drug coverage is not ascertained. Since data to determine the prevalence of cost-related reductions in medication use under different drug benefits and subsequent worsening health or increased use of health care services are sparse, additional research on this important issue is warranted.

The proposed study will utilize the Center for Health Care Policy and Evaluation's administrative database that includes several Medicare+Choice health plans that have provided a limited drug benefit in 2002.

Data collected by survey will determine how often out-of-pocket costs or caps incurred under the available drug benefit caused Medicare beneficiaries to alter their use of prescription medicines including not

getting a prescription filled or refilled or taking reduced doses. These are the dependent variables for the study. Survey data will be used to identify medications that have not been taken or reduced and alternatives that have been used to make judgements about the potential clinical consequences of any changes in medication-taking behavior.

In addition, respondents' perceptions of the effects of any changes in medication use on their health status and utilization of other services (physician visits, emergency department visits and hospital admissions) will be ascertained. Several potential correlates will be assessed as well, most of which are based on previous studies of medication use in elderly population. Other key variables will be extracted from administrative (enrollment and claims) data including age, gender, identity of the health plan, duration of enrollment, number of prescription claims, types of medications, prescription co-payments, number of physician visits and hospital admissions during the period prior to the survey.

Data Confidentiality Provisions

Assurances of confidentiality will be given to participants within the informed consent form that each person will sign prior to participation (see Appendix 1). These assurances explain the applicability of AHRQ's confidentiality statute, 42 U.S.C. 299c-3(c). (see Appendix 2). The consent form will be reviewed, modified if requested and approved by an Institutional Review Board and sent to survey recipients along with the survey (see Appendix 3).

The Center for Health Care Policy and Evaluation has an extensive security program in place to safeguard the privacy and confidentiality of data. This multi-tiered program, comprised of both policies and specific procedures, promotes compliance with all legal and regulatory requirements for privacy protection of individually identifiable health information. Building and office access cards and computer identification codes and passwords are in operation. Encryption and authentication are utilized where control over sensitive information is required including file transfers (e.g., FTP) and data processing applications. Automated monitoring (network and platform intrusion detection) and system firewalls are established for all major network interface points.

Additional confidentiality procedures include: (1) Written agreements with a subcontractor hired to administer the questionnaire; (2) use of key-code processes and encryption to protect

individual identity of data records in the Center for Health Care Policy and Evaluation's administrative database; (3) use of study-specific keys for data transmission and linkage of sample information and survey data; (4) efforts to ensure that the least sensitive level of data possible is used or transmitted in the conduct of research;

(5) destruction of data files after completion of the research project, approximately one year after the final report is filed under the task order or one year after a journal article is published based upon the final report, whichever is later (to allow access to assist other scientists seeking to validate or replicate results); and (6) written policies and procedures and training of employees in regards to protection of human subjects and data confidentiality.

Data Products

Data will be produced in the following forms:

1. A file will be developed comprising the sample from the Center for Health Care Policy and Evaluation's database of enrollment and claims to be used to collect the survey data. The sample file will contain an investigator-assigned, study specific case identity code that will allow the survey results file to be linked back to the administrative data.

2. A second file will include information on the final disposition of all cases and survey responses along with variables derived from administrative data. This file will be analyzed to generate research reports. The proportion (probability) that an individual in the study population altered his/her prescription medication-taking behavior because of out-of-pocket costs or limits on drug benefits will be estimated with 95% confidence intervals.

The probabilities of altered medication use secondary to out-of-pocket costs or caps on drug benefits will be analyzed separately. Since the sampling design provides equal probabilities of selection without cluster techniques, design effects do not need to be taken into consideration during estimation of the probabilities and confidence intervals (variance).

The finite population correction factor should also be negligible. Missing data on partially completed surveys will be imputed. Estimates and tests of potential explanatory variable will be generated by two-step regression models in an effort to control non-response bias.

The data are intended to be used for purposes such as:

1. Providing information about the extent and correlates of reduced

prescriptions drug use to help define the circumstances when out-of-pocket costs might become a quality/safety issue.

2. Helping to inform policymakers about how current drug benefits being provided by Medicare+Choice plans affect patients' quality of care.

3. Informing the design of drug benefits for Medicare beneficiaries that foster quality care by considering financial barriers to effective use of pharmaceuticals.

Method of Collection

The population to be studied consists of individuals enrolled in the Center for Health Care Policy and Evaluation's UnitedHealthcare Medicare+Choice health plans that provide a drug benefit in 2002, from which sample will be drawn and surveyed.

The Center for Health Care Policy & Evaluation maintains a database comprised of enrollment and claims data generated by these health plans. Actual 2002 enrollment will be used for sampling. None of drug benefits being studied require a deductible and all will use the same formulary or preferred drug list.

Investigators will use the enrollment and claims database to define the sampling frame for the study. Pharmacy claims will not be used for sample selection because they would be missing if enrollees do not get prescriptions filled, and selecting people because they had a pharmacy claim could bias estimates of cost-altered medication use. Since medication use and out-of-pocket prescription costs are related to the presence of chronic conditions, selection of enrollees will be based on diagnoses listed in the administrative data. The focus will be on medical conditions that are common in the elderly population for which medications are often prescribed including hypertension, hyperlipidemia (high cholesterol), coronary artery disease, congestive heart failure, diabetes, arthritis, glaucoma and gastrointestinal ulcers.

The presence of one or more of these diagnoses on claims from physician visits or hospital admissions that occur in the first quarter of 2002 will be used to create a sampling frame. This will help assure that sampled enrollees have recently seen a physician who has acknowledged the presence of the condition and a high likelihood of having been prescribed medication. Eligible health plan members must also be enrolled during the entire first quarter of 2002 to facilitate collection of administrative variables for the analysis.

The sample of eligible enrollees will be stratified by health plan and a simple

random sample will be selected from each health plan using a proportionate (uniform) sampling fraction.

Mission sampling frame elements are not expected to be a problem, and anyone excluded from the sampling frame because of missing diagnoses due to claims lags will be considered missing at random because physician and hospital claim lags should be totally independent of cost-related changes in medication-taking behavior.

The sample file will contain an investigator-assigned, study specific case identity code that will allow the survey results file to be linked back to

the administrative data. Checks for changes in address will be made and survey packets prepared. A cover letter from the investigators will invite Medicare beneficiaries enrolled in UnitedHealthcare Medicare+Choice health plans to participate in the study, and a written consent form approved by a duly constituted Institutional Review Board will be sent along with the survey questionnaire. Two mailings with a postcard reminder sent in the interim period and follow-up calls to non-responders after the second survey mailing are planned to obtain a response rate similar to the Medicare Consumers

Assessment of Health Plans Survey response rate of 75% to 82%. Respondents will not receive any gifts or payments as incentives to respond.

Estimated Annual Respondent Burden

This is a one-time survey with 24 multiple choice questions, plus one question that asks respondents to name any medication(s) they did not use as prescribed because of cost, plus one question that asks respondents to name the medication(s), if any, that they used as alternative(s) to the medication(s) that cost too much. The survey will be conducted in 2002.

Survey year	Number of respondents	Estimated time per respondent in hours	Estimated total burden hours	Estimated cost to the government
2002	1,125	.25	281	\$35,000

Request for Comments

In accordance with the above cited legislation, comments on the AHRQ information collection proposal are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: May 15, 2002.

Carolyn M. Clancy,
Acting Director.

[FR Doc. 02-14382 Filed 6-6-02; 8:45 am]

BILLING CODE 4160-90-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Cooperative Agreements for Prevention Research Centers, Program Announcements 98047 and 01101

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreements for Prevention Research Centers, Program Announcements 98047 and 01101, meeting.

Times and Dates: 8:30 a.m.—8:55 a.m., June 25, 2002 (Open); 9 a.m.—5 p.m., June 25, 2002 (Closed); 8 a.m.—5 p.m., June 26, 2001 (Closed).

Place: Sheraton Colony Hotel, 188 14th Street, N.E., Atlanta, GA 30361.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Deputy Director for Program Management, CDC, pursuant to Public Law 92-463.

Matters to Be Discussed: The meeting will include the review, discussion, and evaluation of award applications received in response to Program Announcements #98047 and 01101.

For Further Information Contact: Mike Waller, Deputy Branch Chief, Healthcare and Aging Studies Branch, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, 4770 Buford Highway, m/s K45,

Atlanta, GA., 30341. Telephone 770.488.5269, e-mail mnw1@cdc.gov.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: June 3, 2002.

Joseph E. Salter,
Acting Director, Management Analysis and Services Office, CDC.

[FR Doc. 02-14323 Filed 6-6-02; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Community-Based Participatory Prevention Research, Program Announcement #02003

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Community-Based Participatory Prevention Research, Program Announcement #02003.

Times and Dates: 5 p.m.—6 p.m., June 24, 2002 (Open); 6:15 p.m.—8 p.m., June 24, 2002 (Closed); 8 a.m.—5 p.m., June 25, 2002 (Closed); 8 a.m.—4 p.m., June 26, 2002 (Closed).

Place: Holiday Inn Select, 130 Clairmont Avenue, Decatur, Georgia.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552(b)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92-463.

Matters to Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to PA# 02003.

For Further Information Contact: Theodore J. Meinhardt, Associate Director for Management and Operations, 4770 Buford Highway, MS-K38, Atlanta, Georgia 30341, 770-488-2505.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: June 3, 2002.

Joe E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02-14324 Filed 6-6-02; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Update on the Findings of the Hanford Thyroid Disease Study Final Report

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) and Fred Hutchinson Cancer Research Center (FHCRC) announces the following public meeting.

Name: Update on the Findings of the Hanford Thyroid Disease Study Final Report.

Time and Date: 6 p.m.-8:30 p.m., June 21, 2002.

Place: Red Lion Inn-The Hanford House, 802 Washington Way, Richland, Washington 99352, telephone 509-946-7611.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 200 people.

Background: In 1986, Freedom of Information Act requests led the Department of Energy to make public thousands of pages of documentation indicating that large quantities of radioactive materials were released into the atmosphere from the Hanford Nuclear Site. The radioactivity was a byproduct of nuclear weapons production from December 1944 through 1957. Most of the radioactivity was released in the form of Iodine-131, which concentrates in the thyroid glands of those who eat food contaminated by it. The amount of Iodine-131 released during this period was more than half a million curies, prompting concern

regarding thyroid health effects. The government convened a special Hanford Health Effects Review Panel to review the documents and recommend steps to evaluate possible health consequences among those who live near the Hanford Nuclear Site.

Two studies were undertaken as a result of these recommendations. The first was the Hanford Environmental Dose Reconstruction Project which estimated potential radiation doses to the thyroid among persons exposed to Hanford Iodine-131 releases. The second was the Hanford Thyroid Disease Study. This study was designed to determine whether the exposures from Hanford resulted in an increased risk of thyroid disease in a randomly selected study population. In late 1989, a contract to perform this study was awarded to the FHCRC.

Purpose: The purpose of the study was to determine if there was an increased risk for thyroid disease among a randomly selected study population exposed to atmospheric releases of radioactive Iodine-131 from the Hanford Nuclear Site in eastern Washington State during the 1940s and 1950s. The study, mandated by Congress, was conducted by a team of scientists at the FHCRC under contract from the CDC.

Matters to Be Discussed: Agenda items include a presentation from NCEH regarding the findings of the Hanford Thyroid Disease Study Final Report. There will be time for public input, questions, poster sessions, and comments.

All agenda items are subject to change as priorities dictate.

For Further Information Contact: General information may be obtained from Ms. Maire Holcombe, Health Communicator, Radiation Studies Branch (RSB), Division of Environmental Hazards and Health Effects (DEHHE), NCEH, CDC, 1600 Clifton Road (E-39), Atlanta, Georgia 30333, telephone 404-498-1809. Technical information may be obtained from Dr. Paul Garbe, Associate Director for Science, DEHHE, NCEH, CDC, 1600 Clifton Road (E-39), Atlanta, Georgia 30333 telephone 404-498-1305.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and ATSDR.

Dated: June 3, 2002.

Joseph Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02-14322 Filed 6-6-02; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS-R-138]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Medicare Geographic Classification Review Board (MGCRG) Procedures and Criteria and Supporting Regulations in 42 CFR, Section 412.256; *Form No.:* CMS-R-138 (OMB #0938-0573); *Use:* This collection sets up an application process for prospective payment system hospitals who choose to appeal their geographic status to the Medicare Geographic Classification Review board (MGCRB); *Frequency:* Annually; *Affected Public:* Business or other for-profit, and Not-for-profit institutions; *Number of Respondents:* 650; *Total Annual Responses:* 650; *Total Annual Hours:* 650.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@hhs.gov, or call the Reports

Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Dawn Willingham, CMS-R-138, Room N2-14-26, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated: May 29, 2002.

John P. Burke III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.
[FR Doc. 02-14273 Filed 6-6-02; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS-10065]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services. HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection; *Title of Information Collection:* Making Good Choices Survey; *Form No.:* CMS-10065 (OMB# 0938-NEW); *Use:* This is a request for clearance for a survey "Making Good Choices about Medicare

Health Plan Survey". As part of the continuous quality improvement effort for the National Medicare Education Program (NMEP), this survey will be used to assess the impact of new educational materials developed for individuals who are turning 65 and entering the Medicare program. The measures and educational materials are based on the Transtheoretical Model of Change (TTM, the "stage model"), which has been applied and proven effective in facilitating behavior change in a wide range of health behaviors including smoking cessation, exercise acquisition and mammography screening. The materials are designed to increase new enrollees' readiness to compare their health plan options and make an informed choice. The use of an investigational design in the present study (one group will receive the materials, another will not) will allow CMS to determine whether the materials increase readiness to make an informed choice, self-efficacy, knowledge about the Medicare program, information seeking, and satisfaction with health plan choice. It will assist CMS with its national educational campaign to inform beneficiaries about their health plan choices. ; *Frequency:* Once with follow-up; *Affected Public:* Individuals or Households; *Number of Respondents:* 1350; *Total Annual Responses:* 1350; *Total Annual Hours:* 1013 hours.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Melissa Musotto, Room N2-14-26, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated: May 29, 2002.

John P. Burke III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.
[FR Doc. 02-14275 Filed 6-6-02; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS-R-299]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* A Project to Develop an Outcome-Based Continuous Quality Improvement System and Core Outcome and Comprehensive Assessment Data Set for PACE; *Form No.:* CMS-R-299 (OMB# 0938-0791); *Use:* The purpose of this project is to develop and outcome-based continuous quality improvement (OBCQI) system and core comprehensive assessment data set for the PACE program by (a) developing and testing a set of data items for core outcome and comprehensive assessment (COCOA), (b) testing risk-adjustment methods so each site's outcomes can be appropriately evaluated, (c) designing an OBCQI approach to improve quality in a systematic, evolutionary manner, and (d) testing the usefulness of the data items for assessment and care planning. A three-phase field test will result in the refinement of the draft COCOA data items and protocols as needed. Findings from the project are intended to guide the possible implementation of a national approach for OBCQI and core

comprehensive assessment for PACE; *Frequency*: On Occasion; *Affected Public*: Not-for-profit institutions and individuals or households; *Number of Respondents*: 8,298; *Total Annual Responses*: 90,070; *Total Annual Hours*: 22,503.77.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: May 29, 2002.

John P. Burke III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards. [FR Doc. 02-14274 Filed 6-6-02; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS-1880/1882]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality,

utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Request for Certification as Supplier of Portable X-ray Services under the Medicare/Medicaid Program for Portable X-ray Survey Report and Supporting Regulations in 42 CFR 486.100-486.110; *Form No.:* CMS-1880/1882 (OMB# 0938-0027); *Use:* The Medicare program requires portable X-ray suppliers to be surveyed for health and safety standards. The CMS-1880 is used by the surveyor to determine if a portable X-ray applicant meets the eligibility requirements. It also promotes data reduction or introduction, and retrieval from the Online Survey Certification and Reporting (OSCAR) System by the CMS Regional Offices. The CMS-1882 is the survey form that records survey results. The form is primarily a coding work sheet designed to facilitate data reduction and retrieval into the OSCAR system at the CMS Regional Offices; *Frequency:* On occasion; *Affected Public:* Business or other for profit; *Number of Respondents:* 655; *Total Annual Responses:* 98; *Total Annual Hours:* 172.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: May 30, 2002.

John P. Burke III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards. [FR Doc. 02-14276 Filed 6-6-02; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS-R-284]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Medicaid Statistical Information System (MMIS); *Form No.:* HCFA-R-0284 (OMB# 0938-0345); *Use:* State data are reported by a Federally mandated process known as MSIS. These data are the basis for Medicaid actuarial forecasts for service utilization and costs; Medicaid legislative analysis and cost savings estimates; and for responding to requests for information from CMS components, the Department, Congress, and other customers. The national MSIS database will contain details that will allow constructive or predictive analysis of today's Medicaid issues (*e.g.*, pregnant women, and infants); *Frequency:* Quarterly and Annually; *Affected Public:* State, Local, or Tribal Government; *Number of Respondents:* 53; *Total Annual Responses:* 212; *Total Annual Hours:* 2,120.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at <http://www.hcfa.gov/regs/>

prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: May 30, 2002.

John P. Burke III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards. [FR Doc. 02-14277 Filed 6-6-02; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Planning, Research and Evaluation; Grant to Metropolitan Family Services

AGENCY: Office of Planning, Research and Evaluation, Administration for Children and Families (ACF), Department of Health and Human Services (DHHS)

ACTION: Award announcement.

SUMMARY: Notice is hereby given that a noncompetitive grant award is being made to Metropolitan Family Services to strengthen the relationship between fathers and their children, increase their access to the labor force, improve their financial literacy, and strengthen their support systems.

As a Congressional set-aside, this 17-month project is being funded noncompetitively. Metropolitan Family Services is uniquely qualified to implement this project because of its decades long experience in providing services for strengthening families and communities. The cost of this 17-month project is \$400,000.

FOR FURTHER INFORMATION CONTACT: K.A. Jagannathan, Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone: 202-205-4829.

Dated: May 28, 2002.

Howard Rolston,

Director, Office of Planning, Research and Evaluation.

[FR Doc. 02-14320 Filed 6-6-02; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N-0587]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; General Licensing Provisions: Biologics License Application, Changes to an Approved Application, Labeling Forms FDA 356h and 2567; and Revocation and Suspension

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by July 8, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezuto, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

General Licensing Provisions: Biologics License Application, Changes to an Approved Application, Labeling Forms FDA 356h and 2567; and Revocation and Suspension (OMB Control Number 0910-0338)—Extension

Under section 351 of the Public Health Service Act (the PHS Act) (42 U.S.C. 262), manufacturers of biological products must submit a license application for FDA review and

approval before marketing a biological product in interstate commerce. Licenses may be issued only upon showing that the establishment and the products for which a license is desired meets standards prescribed in regulations designed to ensure the continued safety, purity, and potency of such products. All such licenses are issued, suspended, and revoked as prescribed by regulations in part 601 (21 CFR part 601). Section 601.2(a) requires a manufacturer of a biological product to submit an application with accompanying information, including labeling information, to FDA for approval to market a product in interstate commerce. The container and package labeling requirements are provided under 21 CFR 610.60, 610.61, and 610.62. Section 601.12(a) provides the general requirements for submitting a change to an approved application. Section 601.12(b), (c), and (d) requires applicants to follow specific procedures in informing FDA of each change, established in an approved license application, in the product, production process, quality controls, equipment, facilities, or responsible personnel. The appropriate procedure depends on the potential for the change to have a substantial, moderate, minimal, or no adverse effect on the safety or effectiveness of the product. Section 601.12(e) requires applicants to submit a protocol, or change to a protocol, as a supplement requiring FDA approval before distributing the product. Section 601.12(f)(1), (f)(2), and (f)(3) requires applicants to follow specific procedures in reporting labeling changes to FDA. Section 601.12(f)(4) requires applicants to report to FDA advertising and promotional labeling and any changes. Section 601.45 requires applicants to submit to the agency for consideration, during the preapproval review period, copies of all promotional materials, including promotional labeling as well as advertisements. Section 601.27(a) requires that applications for new biological products contain data that are adequate to assess the safety and effectiveness of the biological product for the claimed indications in pediatric subpopulations, and to support dosing and administration information. Section 601.27(b) provides that an applicant may request a deferred submission of some or all assessments of safety and effectiveness required under § 601.27(a). Section 601.27(c) provides that an applicant may request a full or partial waiver of the requirements under § 601.27(a). Section 601.28 requires sponsors of licensed biological products to submit the information in section

601.28(a), (b), and (c) to the Center for Biologics Evaluation and Research (CBER) each year, within 60 days of the anniversary date of approval of the license. Section 601.28(a) requires sponsors to submit to FDA a brief summary stating whether labeling supplements for pediatric use have been submitted and whether new studies in the pediatric population to support appropriate labeling for the pediatric population have been initiated. Section 601.28(b) requires sponsors to submit to FDA an analysis of available safety and efficacy data in the pediatric population and changes proposed in the labeling based on this information. Section 601.28(c) requires sponsors to submit to FDA a statement on the current status of any postmarketing studies in the pediatric population performed by, on or behalf of, the applicant. Sections 601.33 through 601.35 clarify the information to be submitted in an application to FDA to evaluate the safety and effectiveness of in vivo radiopharmaceuticals. In addition to §§ 601.2 and 601.12, there are other regulations in parts 640, 660, and 680 (21 CFR parts 640, 660, and 680) that relate to information to be submitted in a license application or supplement for certain blood or allergenic products: §§ 606.110(b), 640.6, 640.17, 640.21(c), 640.22(c), 640.25(c), 640.56(c), 640.64(c), 640.74(a) and (b)(2), 660.51(a)(4), and 680.1(b)(2)(iii). In table 1 of this document, the burden associated with the information collection requirements in these regulations is included in the burden estimate for §§ 601.2 and 601.12. A regulation may be listed under more than one paragraph of § 601.12 due to the type of category under which a change to an approved application may be submitted. In addition, the burden associated with the information collection requirements in § 601.27(a) and §§ 601.33 through 601.35 is included in the burden estimate for § 601.2 since these regulations deal with information to be provided in an application. Sections 600.15(b) (21 CFR 600.15(b)) and § 610.53(d) (21 CFR 610.53(d)) require the submission of a request for an exemption or modification regarding the temperature requirements during shipment and from dating periods, respectively, for certain biological products. Section 601.25(b) requests interested persons to submit, for review and evaluation by an advisory review panel, published and unpublished data and information pertinent to a designated category of biological products that have been licensed prior to July 1, 1972. Section

601.26(f) requests that licensees submit to FDA a written statement intended to show that studies adequate and appropriate to resolve questions raised about a biological product have been undertaken for a product if designated as requiring further study under the reclassification procedures. Section 601.5(a) requires a licensee to submit to FDA notice of its intention to discontinue manufacture of a product or all products. Section 601.6(a) requires the licensee to notify selling agents and distributors upon suspension of its license, and provide FDA with records of such notification. Section 680.1(c) requires manufacturers to update annually the list of source materials and the suppliers of the materials. In July 1997, FDA revised Form FDA 356h "Application to Market a New Drug, Biologic, or an Antibiotic Drug for Human Use" to harmonize application procedures between CBER and the Center for Drug Evaluation and Research (CDER). The application form serves primarily as a checklist for firms to gather and submit to the agency studies and data that have been completed. The checklist helps to ensure that the application is complete and contains all the necessary information, so that delays due to lack of information may be eliminated. The form provides key information to the agency for efficient handling and distribution to the appropriate staff for review. The estimated burden hours for submissions using FDA Form 356h to CDER are reported under OMB control number 0910-0001. Form FDA 2567 "Transmittal of Labels" and circulars (is used by manufacturers of licensed biological products to submit labeling (e.g., circulars, package labels, container labels, etc.) and labeling changes for FDA review and approval. The labeling information is submitted with the form for license applications, supplements, or as part of an annual report. Form FDA 2567 is also used for the transmission of advertisements and promotional labeling. Form FDA 2567 serves as an easy guide to assure that the manufacturer has provided the information required for expeditious handling of their labeling by CBER. For advertisements and promotional labeling, manufacturers of licensed biological products may submit to CBER either Form FDA 2567 or Form FDA 2253. Form FDA 2253 was previously used only by drug manufacturers regulated by CDER. In August of 1998, FDA revised and harmonized Form FDA 2253 so the form may be used to transmit specimens of promotional labeling and advertisements for

biological products as well as for prescription drugs and antibiotics. The revised and harmonized form updates the information about the types of promotional materials and the codes that are used to clarify the type of advertisement or labeling submitted; clarifies the intended audience for the advertisements or promotional labeling (e.g., consumers, professionals, news services); and helps ensure that the submission is complete. Under table 1 of this document, the number of respondents is based on the estimated annual number of manufacturers that submitted the required information to FDA in fiscal year (FY) 2000, or the number of submissions received in FY 2000. Based on information obtained from CBER's database system, there are an estimated 350 licensed biologics manufacturers. However, not all manufacturers will have any submissions in a given year and some may have multiple submissions. The total annual responses are based on the estimated number of submissions (e.g., license applications, labeling and other supplements, protocols, advertising and promotional labeling, notifications) received annually by FDA. Based on previous estimates, the rate of submissions is not expected to change significantly in the next few years. The hours per response are based on information provided by industry and past FDA experience with the various submissions or notifications. The hours per response include the time estimated to prepare the various submissions or notifications to FDA, and, as applicable, the time required to fill out the appropriate form and collate the documentation. Additional information regarding these estimates is provided below as necessary. Under §§ 601.12(f)(4) and 601.45, manufacturers of biological products may use either Form FDA 2567 or Form FDA 2253 to submit advertising and promotional labeling. In FY 2000, CBER received 4,302 submissions of advertising and promotional labeling from 117 manufacturers. FDA estimates that approximately 36 percent of those submissions were received with Form FDA 2567 resulting in an estimated 1,549 submissions by 42 manufacturers. The burden hours for the remaining submissions received using Form FDA 2253 are reported under OMB control number 0910-0376. Under §§ 600.15(b) and 610.53(d), FDA receives very few requests for an exemption or modification to the requirements, therefore, FDA has estimated one respondent per year in table 1 of this document to account for the rare

instance in which a request may be made. Under § 601.25(b)(3), FDA estimates no burden for this regulation since all requested data and information had been submitted by 1974. Under § 601.26(f), FDA estimates no burden for this regulation since there are no products designated to require further study and none are predicted in the future. However, based on the possible reclassification of a product, the labeling for the product may need to be revised, or a manufacturer, on its own initiative, may deem it necessary for further study. As a result, any changes to product labeling would be reported under § 601.12. Under § 601.6(a), the total annual responses is based on FDA estimates that establishments may notify an average of 20 selling agents and distributors of such suspension and provide FDA with the records of such notification. The number of respondents is based on the estimated annual number of suspensions by FDA of a biologics license. There were also 1,585 amendments to an unapproved application or supplement and 21 resubmissions (total of 1,606 submissions) submitted in FY 2000 using Form FDA 356h.

One letter of comment was received in response to the 60-day notice on the information collection in which we received one comment on the proposed information collection.

The comment stated that we should revise various regulations to harmonize regulations between CBER and CDER. The comment cited many specific provisions, with none of the cited provisions being affected by the proposed information collection, and recommended specific changes to those provisions. For example, the comment asked that we delete § 610.12 (21 CFR 610.12) regarding sterility for bulk materials, that we revise 21 CFR 610.11, § 610.12, and 21 CFR 610.13 and 610.30 to delete references to specific tests, and that we redefine "manufacturer" in 21 CFR 600.3(t). The comment also asked us to address "outdated" safety reporting regulations; to permit multiple product facilities (citing 21 CFR 600.11(e)(3)); and to expedite followup actions after inspections.

The comment's suggested regulatory revisions pertain to provisions or matters that are outside the scope of the proposed information collection. Consequently, we decline to adopt the comment's recommendations.

The comment relevant to the information collection in the 60-day notice stated that Form FDA 2567 is only used to submit labels to CBER and that CDER does not use this form. The comment stated that the requirement to use only one form for one Center imposes an additional burden (but did not describe the additional burden), and suggested that CBER and CDER use the same form or not use the form at all.

We are considering whether to retain Form FDA 2567 for labeling purposes, but because the issue of eliminating the form is complex, we won't have a decision on the matter before the OMB approval expires. Therefore, we are renewing the form until a final decision is reached on the use of the form. Manufacturers already have the option of submitting to CBER and CDER Form FDA 2253 for the submission of advertising and promotional labeling. However, any additional burden of submitting the form with a biologics license application is minimal because the time required to complete this form is estimated to average 10 minutes.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹

21 CFR Part ²	Form FDA No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
601.2(a), 610.60, 610.61, and 610.62	2567 and 356h	22	3.64	80	1,600	128,000
601.12(b)(1) and (b)(3)	356h	168	4.98	837	80	66,960
601.12(c)(1) and (c)(3)	356h	119	6.63	789	50	39,450
601.12(c)(5)	356h	58	3.52	204	50	10,200
601.12(d)	356h	83	1.72	143	10	1,430
601.12(e)	356h	70	1	70	20	1,400
601.12(f)(1)	2567	37	2.08	77	40	3,080
601.12(f)(2)	2567	45	1	45	20	900
601.12(f)(3)	2567	20	1	20	10	200
601.12(f)(4) and 601.45	2567	42	36.88	1,549	10	15,490
600.15(b)	356h	1	1	1	8	8
610.53(d)	356h	1	1	1	8	8
601.25(b)(3)	NA	0	0	0	0	0
601.26(f)	NA	0	0	0	0	0
601.27(b)	NA	5	1	5	24	120
601.27(c)	NA	3	1.33	4	8	32
601.28(a)	NA	69	1	69	8	552
601.28(b)	NA	69	1	69	24	1,656
601.28(c)	NA	69	1	69	1.5	103.5
601.5(a)	NA	25	1	25	.33	8.25
601.6(a)	NA	2	21	42	.33	14
680.1(c)	NA	10	1	10	2	20
Amendments and Resubmissions Total	356h	350	4.59	1,606	20	32,120
						301,751.75

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

² The reporting requirement under §§ 601.27(a), 601.33, 601.34, 601.35, and 680.1(b)(2)(iii) is included in the estimate under § 601.2(a). The reporting requirement under §§ 640.6, 640.17, 640.21(c), 640.22(c), 640.25(c), 640.56(c), 640.64(c), and 640.72(a) and (b)(2) is included in the estimate under § 601.12(b). The reporting requirement under §§ 640.25(c) and 640.56(c) is also included in the estimate under § 601.12(c)(3).

Dated: May 31, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02-14390 Filed 6-6-02; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84N-0102]

Cumulative List of Orphan Drug and Biological Designations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the cumulative list of orphan drug and biological designations as of December 31, 2001. FDA has announced the availability of previous lists, which are updated monthly, identifying the drugs and biologicals granted orphan designation under the Federal Food, Drug, and Cosmetic Act (the act).

ADDRESSES: Copies of the cumulative list of orphan drug and biological designations are available from the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and the Office of Orphan Products Development (HF-35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-3666.

FOR FURTHER INFORMATION CONTACT: Jeffrey Fritsch, Office of Orphan Products Development (HF-35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-3666.

SUPPLEMENTARY INFORMATION: FDA's Office of Orphan Products Development (OPD) reviews and takes final action on applications submitted by sponsors seeking orphan designation of their drug or biological under section 526 of the act (21 U.S.C. 360bb). In accordance with this section of the act, which requires public notification of designations, FDA maintains a cumulative list of orphan drug and biological designations. This list includes the name of the drug or biological, the specific disease/condition for which the drug or biological is designated, and information about the sponsor such as the name, address, telephone, and contact.

At the end of each calendar year, the agency publishes a cumulative list of orphan drug and biological designations current through the calendar year. The list that is the subject of this notice is the cumulative list of orphan drug and biological designations through December 31, 2001, and, therefore, brings the April 3, 2001 (66 FR 17718) publication up to date. This list is available upon request from the Dockets Management Branch (see **ADDRESSES**). Those requesting a copy should specify Docket No. 84N-0102, which is the docket number for this notice. In addition, the list is updated monthly and is available upon request from OPD or FDA's Dockets Management Branch (see **ADDRESSES**). The current list is also available at <http://www.fda.gov/orphan>.

The orphan designation of a drug or biological applies only to the sponsor who requested the designation. Each sponsor interested in developing a drug or biological for an orphan indication must apply for orphan designation in order to obtain exclusive marketing rights. Any request for designation must be received by FDA before the submission of a marketing application for the proposed indication for which designation is requested (21 CFR 316.23). Copies of the orphan drug regulations (21 CFR part 316) (57 FR 62076, December 29, 1992) and explanatory background materials for use in preparing an application for orphan designation may be obtained from OPD (see **ADDRESSES**).

The names of the drugs and biologicals shown in the cumulative list of orphan designations may change upon marketing approval/licensing, reflecting the established, proper name approved by FDA. Because drugs and biologicals not approved/licensed for marketing are investigational, the appropriate established, proper name has not necessarily been assigned.

Dated: May 30, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02-14327 Filed 6-6-02; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D-0242]

Pharmacy Compounding Compliance Policy Guide; Availability

AGENCY: Food and Drug Administration, HHS

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for FDA staff and industry entitled "Sec. 460.200 Pharmacy Compounding." The document being issued with this notice provides guidance to drug compounders on how FDA intends to address pharmacy compounding as a result of a recent decision by the Supreme Court.

DATES: Submit written or electronic comments on the guidance at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Drug Information (HFD-240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or to the Division of Compliance Policy (HFC-230), Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/> ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Fred Richman, Center for Drug Evaluation and Research (HFD-330), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301-594-0101.

SUPPLEMENTARY INFORMATION:

I. Background

On March 16, 1992, FDA issued a CPG, section 460.200 (formerly CPG 7132.16), which delineated FDA's enforcement policy on pharmacy compounding. This CPG represented FDA's policy in this area until November 1997, when the President signed into law the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105-115). Section 127 of FDAMA added section 503A to the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 353a), which exempted compounded drug products from the requirements of sections 501(a)(2)(B) (current good manufacturing practices), 502(f)(1) (adequate directions for use), and 505 (new drug provisions) of the act (21 U.S.C. 351(a)(2)(B), 352(f)(1), and 355), provided that the compounding was conducted in accordance with and the drug products met the requirements in section 503A of the act.

In November 1998, the solicitation and advertising provisions of section

503A were challenged by seven compounding pharmacies as being impermissible regulation of commercial speech. The U.S. District Court for the District of Nevada ruled in the plaintiffs' favor. The Government appealed to the U.S. Court of Appeals for the Ninth Circuit. On February 6, 2001, the Court of Appeals declared section 503A invalid in its entirety (*Western States Medical Center v. Shalala*, 238 F.3rd 1090 (9th Cir. 2001)). The Government petitioned for a writ of certiorari to the U.S. Supreme Court for review of the circuit court opinion. The Supreme Court granted the writ and issued its decision in the case on April 29, 2002, (*Thompson v. Western States Medical Center*, No. 01-344, April 29, 2002).

The Supreme Court affirmed the Ninth Circuit Court of Appeals decision that found section 503A of the act to be invalid in its entirety because it contained unconstitutional restrictions on commercial speech (i.e., prohibitions on soliciting prescriptions for and advertising specific compounded drugs). The Supreme Court did not rule on, and therefore left in place, the Ninth Circuit's holding that the unconstitutional restrictions on commercial speech could not be severed from the rest of section 503A of the act. Accordingly, all of section 503A is now invalid.

FDA has therefore determined that it needs to issue guidance to the compounding industry and FDA staff on what types of compounding might be subject to enforcement action under current law.

This guidance is being issued as a level 1 guidance consistent with our good guidance practices (GGPs) regulation in § 10.115 (21 CFR 10.115). It is being implemented immediately without prior public comment, under § 21 CFR 10.115(g)(2), because of the agency's urgent need to explain how, in light of the Supreme Court decision, it will exercise its enforcement discretion in regard to compounded human drugs. However, pursuant to GGPs, FDA requests comments on the guidance and will revise the document, if appropriate. Comments will be considered by the agency in the development of future policy.

This guidance represents the agency's current thinking on the enforcement of the act in regard to drug products compounded by pharmacies. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statutes and regulations.

II. Comments

Interested persons may, at any time, submit written or electronic comments on the guidance to the Dockets Management Branch (see **ADDRESSES**). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at <http://www.fda.gov/cder/guidance/index.htm>, <http://www.fda.gov/ora> under "Compliance References," or <http://www.fda.gov/ohrms/dockets/default.htm>.

Dated: May 30, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02-14259 Filed 6-4-02; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, NIDCD Small Grants on communication disorders.

Date: July 24-25, 2002.

Time: July 24, 2002, 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Time: July 25, 2002, 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Stanley C. Oaks, PhD, Scientific Review Branch, Division of Extramural Research, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892-7180. 301-496-8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: May 31, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02-14304 Filed 6-6-02; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, June 19, 2002, 8 a.m. to June 19, 2002, 5 p.m., Hyatt Regency of Bethesda, MD, 20814 which was published in the Federal Register on May 22, 2002, 67 FR 36012.

The meeting will be held at the Governor's House Hotel, 1615 Rhode Island Avenue, Washington, DC to review grant applications. The meeting is closed to the public.

Dated: May 31, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02-14305 Filed 6-6-02; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal 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, High Risk (R21).

Date: August 29–30, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS).

Dated: May 31, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–14306 Filed 6–6–02; 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, Loan Repayment Program.

Date: June 18, 2002.

Time: 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate contract proposals.

Place: 45 Center Drive, Bethesda, MD 20892.

Contact Person: Tommy L. Broadwater, PHD, Chief, Review Branch, 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: May 31, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–14307 Filed 6–6–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, MBRS SEP IMSD.

Date: July 23, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Select—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael A. Sesma, PhD, Office of Scientific Review, NIGMS, Natcher Bldg., Room 1AS19H, 45 Center Drive, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 31, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–14308 Filed 6–6–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Minority Programs Review Committee, MBRS, Review Subcommittee B.

Date: July 10–11, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Select—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rebecca H. Johnson, PhD, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS19J, Bethesda, MD 20892. (301) 594–2771. johnrh@nigms.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 31, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–14309 Filed 6–6–02; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Comprehensive International Program of Research on Aids (CIPRA).

Date: June 27, 2002.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: 6700 B Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Eleazar Cohen, PhD, Scientific Review Administrator, NIAID/DEA, Scientific Review Program, Room 2220, 6700B Rockledge Drive, MSC-7616, Bethesda, MD 20892. 301-496-2550. ec17w@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 31, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02-14310 Filed 6-6-02; 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 grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Comprehensive International Program of Research on AIDS (CIPRA).

Date: June 19, 2002.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700-B Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Robert C. Goldman, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700 B Rockledge Drive, MSC 7616, Bethesda, MD 20892-7616. 301-496-8424. rg159w@nih.gov.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Comprehensive International Program of Research on AIDS (CIPRA).

Date: June 21, 2002.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700 B Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Robert C. Goldman, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700 B Rockledge Drive, MSC 7616, Bethesda, MD 20892-7616. 301-496-8424. rg159w@nih.gov.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Comprehensive International Program of Research on AIDS (CIPRA).

Date: June 27, 2002.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700 B Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Robert C. Goldman, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700 B Rockledge Drive, MSC 7616, Bethesda, MD 20892-7616. 301-496-8424. rg159w@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 31, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02-14311 Filed 6-6-02; 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 Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel Rapid IV Review.

Date: June 17, 2002.

Time: 1 p.m. to 2 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: Richard E. Weise, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6140, MSC9606, Bethesda, MD 20892-9606, 301-443-1225, rweise@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.

Name of Committee: National Institute of Mental Health Special Emphasis Panel Genetics of Fear and Anxiety Program Project.

Date: July 8, 2002.

Time: 3:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Houmam H Araj, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6148, MSC

9608, Bethesda, MD 20892-9608, 301-443-1340, haraj@mail.nih.gov.

(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: May 31, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02-14312 Filed 6-6-02; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, NIDCD Fellowships and Career Awards.

Date: July 2, 2002.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 6120 Executive Blvd, Suite 400C, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Craig A. Jordan, PhD, Chief, Scientific Review Branch, NIH/NIDCD/DER, Executive Plaza South, Room 400C, Bethesda, MD 20892-7180. 301-496-8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: May 31, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02-14313 Filed 6-6-02; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group, Behavior and Social Science of Aging Review Committee.

Date: June 13-14, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Arthur D. Schaerdel, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892. (301) 496-9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Application Related to Therapeutics for Prior Diseases.

Date: June 20-21, 2002.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard San Francisco Downtown, 299 Second Street (2nd & Folsom), San Francisco, CA 94105.

Contact Person: Ramesh Vemuri, PhD, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 496-9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, Integrative Pathways to Health and Illness.

Date: June 26-27, 2002.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Madison Concourse Hotel, One West Dayton Street, Madison, WI 53703.

Contact Person: Arthur D. Schaerdel, DVM, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892. (301) 496-9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, NIA Neurosciences RO3's.

Date: July 15, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Jeffrey M. Chernak, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892. (301) 496-9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 31, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02-14314 Filed 6-6-02; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443-7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use

of automated collection techniques or other forms of information technology.

Proposed Project: Notification of Intent to Use Schedule III, IV, or V Opioid Drugs for the Maintenance and Detoxification Treatment of Opiate Addiction Under 21 U.S.C. 823(g)(2) [OMB No. 0930-0234, extension]—The Drug Addiction Treatment Act of 2000 (“DATA,” Pub. L. 106-310) amended the Controlled Substances Act (21 U.S.C. 823(g)(2) to permit practitioners (physicians) to seek and obtain waivers to prescribe certain approved narcotic treatment drugs for the treatment of opiate addiction. The legislation sets eligibility requirements and certification requirements as well as an interagency notification review process for physicians who seek waivers.

To implement these new provisions, SAMHSA has developed a notification form (SMA 167) that facilitates the submission and review of notifications. The form provides the information necessary to determine whether practitioners (*i.e.*, independent physicians and physicians in group practices (as defined under section 1877(h)(4) of the Social Security Act) meet the qualifications for waivers set forth under the new law. Use of this form will enable physicians to know they have provided all information needed to determine whether practitioners are eligible for a waiver.

However, there is no prohibition on use of other means to provide requisite information. The Secretary will convey notification information and determinations to the Drug Enforcement Administration (DEA), which will assign an identification number to qualifying practitioners; this number will be included in the practitioner’s registration under 21 U.S.C. 823(f).

Practitioners may use the form for two types of notification: (a) New, and (b) immediate. Under “new” notifications, practitioners may make their initial waiver requests to SAMHSA.

“Immediate” notifications inform SAMHSA and the Attorney General of a practitioner’s intent to prescribe immediately to facilitate the treatment of an individual (one) patient under 21 U.S.C. 823(g)(2)(E)(ii).

The form collects data on the following items: Practitioner name; state medical license number and DEA registration number; address of primary location, telephone and fax numbers; e-mail address; name and address of group practice; group practice employer identification number; names and DEA registration numbers of group practitioners; purpose of notification new, immediate, or renewal; certification of qualifying criteria for treatment and management of opiate-dependent patients; certification of capacity to refer patients for appropriate

counseling and other appropriate ancillary services; certification of maximum patient load, certification to use only those drug products that meet the criteria in the law. The form also notifies practitioners of Privacy Act considerations, and permits practitioners to expressly consent to disclose limited information to the SAMHSA Substance Abuse Treatment Facility Locator.

At present, there are no narcotic drugs or combinations for use under notifications; however, SAMHSA believes that it is appropriate to develop a notification system to implement DATA in anticipation of narcotic treatment medications becoming available in the very near future. Therefore, SAMHSA recently obtained emergency OMB approval of form SMA 167 so that physicians will have it available to use if they wish to be assured that all required information is provided on their waiver submission and so that the review of submissions may be facilitated by use of a standard format for provision of the required information. Respondents may submit the form electronically, through a dedicated Web page that SAMHSA will establish for the purpose, as well as via U.S. mail.

The following table summarizes the estimated annual burden for the use of this form.

Purpose of submission	Number of respondents	Responses per respondent	Burden per response (hr.)	Total burden (hrs.)
Initial Application for Waiver	1,200	1	.083	100
Notification to Prescribe Immediately	33	1	.083	3
Total	1,200	103

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16-105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: May 31, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02-14325 Filed 6-6-02; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 1018-AI55

Proposed Implementation Guidelines for Fiscal Year (FY) 2002 Landowner Incentive Program (Non Tribal Portion) for States, Territories and the District of Columbia

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The Department of the Interior and Related Agencies Appropriations Act 2002, allocated \$40 million from the Land and Water Conservation Fund for conservation grants to States, the District of Columbia, Puerto Rico, Guam, the

United States Virgin Islands, the Northern Mariana Islands, American Samoa, (hereafter referred to as States) and Tribes under a Landowner Incentive Program (LIP). The U.S. Fish and Wildlife Service (Service) will address the Tribal component of LIP under a separate **Federal Register** notice.

DATES: For consideration, interested parties should submit comments on the policies or the information collection in this announcement to the appropriate addresses below by July 8, 2002. For the information collection, OMB has up to 60 days to approve or disapprove information collections but may respond after 30 days.

ADDRESSES: For non-tribal LIP comments only, Kris E. LaMontagne, Chief, Division of Federal Aid, U.S. Fish

and Wildlife Service, 4401 North Fairfax Drive, Suite 140, Arlington, VA 22203. For Paperwork Reduction Act, send comments for the Information Collection portion only to Interior Desk Officer, Attn: 1018-0109, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, send a copy of the comment to U.S. Fish and Wildlife Service, Information Collection Clearance Officer, 4401 North Fairfax Drive, Room 224, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: For LIP grant information for the States contact Kris E. LaMontagne, Chief, Division of Federal Aid, at the above address or call (703) 358-2156. For LIP grant information for the Tribes contact Pat Durham, Office of Native American Liaison, U.S. Fish and Wildlife Service, 1849 C Street NW., Mail Stop 3251, Washington, DC 22203 or call (202) 208-4133. For information on the Paperwork Reduction Act Information Collection Approval contact Rebecca Mullin, U.S. Fish and Wildlife Service, Information Collection Clearance Officer, 4401 North Fairfax Drive, Room 224, Arlington, VA 22203.

SUPPLEMENTARY INFORMATION:

Background

The Service is soliciting comments from individuals, government agencies, the scientific community, environmental groups, industry, or any other interested party concerning the proposed program implementation. All comments received will be considered as long as they are not anonymous.

The Service will make all comments received in response to this Notice available for public review during regular business hours at the Division of Federal Aid in Arlington, Virginia (see **ADDRESSES**). If a respondent wishes his or her name or address to be withheld from public view, we will honor these wishes to the extent allowable by law, if they make this request known at the time of comment submission.

In recent years, natural resource managers have increasingly recognized that private lands play a pivotal role in linking or providing important habitats for fish, wildlife, and plant species. To protect and enhance these habitats through incentives for private landowners, Congress appropriated \$40 million for the Service to administer a new Landowner Incentive Program (LIP) for States and Tribes. The Service will award grants to States for programs that enhance, protect, and/or restore habitats that benefit federally listed, proposed or candidate species, or other at risk species on private lands. A primary

objective of LIP is to establish, or supplement existing, landowner incentive programs that provide technical and financial assistance, including habitat protection and restoration, to private landowners for the protection and management of habitat to benefit federally listed, proposed, or candidate species, or other at-risk species on private lands as stated in the appropriations language. LIP complements other federal private lands conservation programs that focus on the conservation of habitat.

Proposed Program Implementation Guidelines

Definitions

LIP is a grant program establishing a partnership among Federal and State governments and private landowners. The Federal role in implementation of LIP is to provide policy, guidance, funds, and oversight. The State role in implementation of LIP is to provide technical and financial assistance to private landowners for projects for the protection and management of habitat for species at risk. The private landowner role is to provide the habitat necessary to accomplish the objectives of LIP. For this program, we are defining species at risk as any Federally listed, proposed, or candidate species or other species of concern as officially determined and documented by a State. Private land is considered any non-government-owned land. A project is a discrete task to be undertaken by private landowners for the accomplishment of the defined LIP objectives.

A series of questions and answers follow which describe the proposed implementation guidelines for LIP.

Program Requirements

1. What is the objective of this program? the primary objective of this program is to establish or supplement State landowner incentive programs that protect and restore habitats on private lands, to benefit Federally listed, proposed, or candidate species or other species determined to be at risk, and provide technical and financial assistance to private landowners for habitat protection and restoration.

2. How will the Tribes participate in LIP? The Service is allocating \$4 million of the total funds appropriated under LIP to Tribes for a competitive grant program to be described in a separate **Federal Register** notice. For Tribal LIP grant information contact Pat Durham, Office of Native American Liaison, U.S. Fish and Wildlife Service, 1849 C Street NW., Mail Stop 3251, Washington, DC 20240 or call (202) 208-4133.

3. Does LIP require plans like the State Wildlife Grant Program (FY 2002) and the Wildlife and Conservation and Restoration Program? No.

4. Who can apply for a LIP grant? The State agency with primary responsibility for fish and wildlife will be responsible for submitting all proposal to Federal Aid (FA). All other governmental entities, individuals, and organizations, including Tribes, may partner with or serve as a subgrantee to that fish and wildlife agency.

Fiscal Issues

5. How will the Service distribute the available \$40 million? The Service will allocate \$34.8 million for competitive grants to States, \$4.0 million for Tribes, and \$1.2 million for program administration by the Service.

6. What is the non-Federal match requirement for LIP grants? The Service requires a minimum of 25% non-Federal match for LIP grants. The Insular Areas of the U.S. Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands are exempt form matching requirements for this program (based on 48 U.S.C. 1469a.(d)).

7. May the required non-Federal match be in-kind contributions? Yes. Allowable in-kind contributions are defined in 43 CFR part 12.64. The following website provides additional information www.nctc.fws.gov/fedaid/toolkit/4312toc.pdf.

Grant Administration

8. How will the Service award grants to States? The Service will use a two-tiered award system. Tier-1 grants will be assessed such that they meet minimum eligibility requirements. The Service will rank Tier-2 grants on proposed criteria contained in this notice and award grants after a national competition.

9. What are the intended objectives of Tier-1 grants? The Service intends that Tier-1 grants fund staff and associated support necessary to develop or enhance an existing landowner program. These programs should benefit private landowners and other partners to help manage and protect habitats that benefit species at risk through the development of plans, outreach, and associated activities that assist in the implementation of projects on private lands.

10. What are the eligibility requirements for Tier-1 grants? To receive a Tier-1 grant a State program must meet all of the following:

(a) Deliver technical and financial assistance to landowners;

(b) Provide for appropriate administrative functions such as fiscal and contractual accountability;

(c) Use LIP grants to supplement and not replace existing funds;

(d) Distribute funds to landowners through a fair and equitable system;

(e) Provide outreach and coordination that assists in administering the program; and

(f) Describe a process for the identification of species at risk; and

(g) Use obtainable and quantifiable performance measures that support Service goals. (<http://planning.fws.gov/>)

11. What are the intended objectives of Tier-2 grants? The objective of a Tier-2 grant should place a priority on the implementation of State programs that provide technical and financial assistance to the private landowner. Programs should emphasize the protection and restoration of habitats that benefit Federally listed, proposed or candidate species, or other species at risk on private lands. The Service generally intends a Tier-2 grant to fund the expansion of existing State landowner incentive programs or those created under Tier-1 grants.

12. What factors will be used to rank Tier-2 grants? The Service proposes to use the following criteria to rank Tier-2 proposals.

(a) Proposal provides clear and sufficient detail to describe the program. (0–10 points)

(b) Proposal provides adequate management systems for fiscal and contractual accountability (State), including annual monitoring and evaluation of progress toward desired project and program objectives (landowner and State). (0–10 points)

(c) Proposal must describe the State's fair and equitable system for fund distribution. For example, States have developed their own criteria to evaluate and prioritize their project proposals based on criteria such as species needs, priority habitats, compliance with State and federal requirements, cost/benefit components including the duration of costs and benefits, and feasibility of success and select projects for grant proposal funding based on their highest priority standing. (0–10 points)

(d) Proposal describes outreach efforts used to effect broad public awareness, support, and participation. (0–10 points)

(e) Number of identified species at risk to benefit from the proposal. Points increase from 0–10 as more species are identified.

(f) Percentage of State's total LIP program funds identified for use on private land projects as opposed to staff and related administrative support costs. Points increase from 0 to 10 as the

percentage of funds identified for staff and related administrative costs decrease.

(g) Percentage of total non-Federal fund cost sharing. Points increase from 0 to 10 as the percentage of non-Federal cost sharing increases above the minimum cost share.

(h) Proposal provides obtainable and quantifiable performance measures that support Service performance goals. (<http://planning.fws.gov/>) (0–10 points)

13. Are there funding limits (caps) for LIP? Yes.

(a) The Service will cap Tier-1 grants at \$180,000 for State fish and wildlife agencies, and \$75,000 for Territories and the District of Columbia.

(b) In addition, no State may receive more than \$1.74 million Tier 1 and Tier 2 funds combined from the FY 2002 appropriation.

14. May a State submit more than one proposal? States may submit one proposal each for Tier 1 and Tier 2 grants. However, funding limits still apply, as described in Question 13.

15. If, after awarding Tier-1 and Tier-2 grants, some FY 2002 funds remain, how will the Service make them available to the States? We will announce subsequent requests for proposals until all LIP funds are obligated. States that have not reached the cap may submit an additional proposal.

16. Will interest accrue to the account holding LIP funds and if so how will it be used? No. The LIP funds were not approved for investing, and as a result no interest will accrue to the account.

17. What administrative requirements must States comply with in regard to LIP? States must comply with 43 CFR Part 12 that provides the administrative regulations (www.nctc.fws.gov/fedaid/toolkit/4312toc.pdf) and OMB Circular A-87 that provides cost principles (www.whitehouse.gov/omb/circulars).

18. What information must a State include in a grant proposal? LIP grant proposals must include an Application for Federal Assistance (SF-424) and must identify whether it is a Tier-1 or Tier-2 proposal. They must also include statements describing the need, objectives, expected results or benefits, approach or procedures, location, and estimated cost for the proposed work (43 CFR part 12). They should also clearly identify how each of the ranking criteria (Tier 2) and minimum requirements (Tier 1) are addressed and information on performance measures to be used. The SF-424 is available from FA at any Service Regional Office or at www.nctc.fws.gov/fedaid/toolkit/formsfil.pdf.

19. Where should a State send grant proposals? Once the final Federal Register notice is published, States should submit all LIP proposals to the Director, U.S. Fish and Wildlife Service, Division of Federal Aid, 4401 North Fairfax Drive, Suite 140, Arlington, VA 22203-1610.

20. When are proposals due to the Service? The Service will issue a Request For Proposals (RFP) in the **Federal Register** in the summer of 2002 which will give States 60 days to prepare and submit proposals from the date of the RFP.

21. What process will the Service use to evaluate and select proposals for funding? The Service will evaluate all proposals received by the 60 day deadline. Successful proposals will then be selected based on the final eligibility and selection criteria in the RFP, and will be subject to the final approval of the Assistant Secretary for Fish and Wildlife and Parks. All applicants will be notified of the results.

22. Once a proposal is selected for funding what additional grant documents must the applicant submit and to whom? In addition to the Application for Federal Assistance submitted with the original proposal, the Service requires the following documents: A Grant Agreement (Form 3-1552) and a schedule of work the State proposes to fund through this grant. Additionally, the Service, in cooperation with the applicants, must address Federal compliance issues, such as the National Environmental Policy Act, the National Historic Preservation Act, and the Endangered Species Act. Regional Office FA staff can assist in explaining the procedures and documentation necessary for meeting these Federal requirements. This additional documentation must be sent to the appropriate Regional Office where FA staff will approve the grant agreement to obligate funds. See the answer to Question 25 for Regional Office locations and www.nctc.fws.gov/fedaid/toolkit/fagabins.pdf for additional information.

23. What reporting requirements must States meet once funds are obligated under a LIP grant agreement? The Service requires an annual progress report and Financial Status Report (FSR) for grants longer than one year. This annual report should include a list of accomplishments including project details and their relationship to meeting Service performance goals. (www.planning.fws.gov/) A final performance report and FSR (SF-269) are due to the Regional Office within 90 days of the grant agreement ending date.

24. Will landowners who have LIP projects implemented on their property be required to leave project improvements in place for a specific period of time? States will need to address this issue in their grant proposals, landowner incentive programs, and agreements with individual landowners. Habitat improvements should be left in place in order to realize the desired benefits for species at risk.

25. Who can I contact in the Service about the LIP program in my local or regional area? Correspondence and telephone contacts for the Service are listed by Region below.

Region 1. Hawaii, Idaho, Oregon, Washington, California, Nevada, American Samoa, Guam, and Commonwealth of the Northern Mariana Islands. Regional Director, Division of Federal Aid, U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, Oregon 97232-4181, LIP Program Contact: Jim Greer, (503) 231-6128.

Region 2. Arizona, New Mexico, Oklahoma, and Texas. Regional Director, Division of Federal Aid, U.S. Fish and Wildlife Service, 500 Gold Avenue SW., Room 4012, Albuquerque, New Mexico, 87102, LIP Program Contact: Lonnie Schroeder, (505) 248-7457.

Region 3. Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. Regional Director, Division of Federal Aid, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111-4056, LIP Program Contact: Lucinda Corcoran, (612) 713-5135.

Region 4. Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the U.S. Virgin Islands. Regional Director, Division of Federal Aid, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345, LIP Program Contact: Marilyn Lawal, (404) 679-7277.

Region 5: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia. Regional Director, Division of Federal Aid, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035-9589, LIP Program Contact: Vaughn Douglas, (413) 253-8502.

Region 6. Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. Regional Director, Division of Federal Aid, U.S. Fish and

Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225-0486, LIP Program Contact: Jacque Richy, (303) 236-8155 ext. 236.

Region 7. Alaska. Regional Director, Division of Federal Aid, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503-6199, LIP Program Contact: Nancy Fair (907) 786-3435.

Required Determinations

Regulatory Planning and Review

This policy document identifies proposed eligibility criteria and selection factors that may be used to award grants under the LIP. The Service developed this draft policy to ensure consistent and adequate evaluation of grant proposals that are voluntarily submitted and to help perspective applicants understand how the Service will award grants. According to Executive Order (E.O.) 12866, this policy document is significant and has been reviewed by the Office of Management and Budget in accordance with the four criteria discussed below.

(a) The LIP will not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or State or local communities. A total of \$34,800,000 will be awarded in grants to State and Territorial wildlife agencies to provide financial and technical assistance to private landowners to carry out voluntary conservation actions. These funds will be used to pay for the administration and execution of actions such as restoring natural hydrology to streams or wetlands that support species of concern, fencing to exclude livestock from sensitive habitats, or planting native vegetation to restore degraded habitat. In addition, grants that are funded will generate other, secondary benefits, including benefits to natural systems (e.g., air, water) and local economies. All of these benefits are widely distributed and are not likely to be significant in any single location. It is likely that some residents where projects are initiated will experience some level of benefit, but quantifying these effects at this time is not possible. We do not expect the sum of all the benefits from this program, however, to have an annual effect on the economy of \$100 million or more.

(b) We do not believe the LIP would create inconsistencies with other agencies' actions. Congress has given the Service the responsibility to administer the program.

(c) As a new grant program, the LIP would not materially alter the budgetary impact of entitlements, user fees, loan programs, or the rights and obligations of their recipients. This policy document establishes a new grant program that Public Law 107-63 authorizes, which should make greater resources available to applicants. The submission of grant proposals is completely voluntary, but necessary to receive benefits. When an applicant decides to submit a grant proposal, the proposed eligibility criteria and selection factors identified in this policy can be construed as requirements placed on the awarding of the grants. Additionally, we will place further requirements on grantees that are selected to receive funding under the LIP in order to obtain and retain the benefit they are seeking. These requirements include specific Federal financial management and reporting requirements and time commitments for maintaining habitat improvements or other activities described in the applicant's proposal.

(d) OMB had determined that this policy raises novel legal or policy issues, and, as a result, this document has undergone OMB review.

Regulatory flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). No regulatory flexibility analysis is required, however, if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide as statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. In this notice, we are certifying that the LIP will not have a significant economic impact on a substantial number of small entities for the reasons described below.

Small entities include organizations, such as independent nonprofit organizations and local governmental jurisdictions, including school boards

and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger impacts as a result of this program. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

The types of effects this program could have on small entities include economic benefits resulting from the purchasing of supplies or labor to implement the grant proposals in relation to habitat improvements on private lands. By law, only State and Territorial wildlife agencies are eligible grant recipients. Since this program will be awarding a total of only \$34,800,000 for grants throughout the United States to benefit wildlife habitat on private lands, a substantial number of small entities are unlikely to be affected. The benefits from this program will be spread over such a large area that is unlikely that any significant benefits will accrue to a significant number of entities in any area. In total, the distribution of the \$34,800,000 will not create a significant economic benefit for small entities but, clearly a number of entities will receive some benefit.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 August 25, 2000 *et seq.*):

(a) This policy will not "significantly or uniquely" affect small government entities.

(b) This policy will not produce a Federal mandate of \$100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The LIP establishes a grant program that States may participate in voluntarily.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), the LIP does not have significant takings

implications. State and Territorial agencies will work with private landowners who voluntarily request technical and financial assistance for species conservation on their lands.

Executive Order 13211

On May 18, 2001, the President issued and Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This policy is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Federalism

In accordance with Executive Order 13132, this policy document does not have any Federalism effects. A Federalism assessment is not required. Congress has directed that we administer grants under the LIP directly to the States and Territories. The States have the authority to decide which project proposals received from private landowners to forward to the Service for consideration.

Civil Justice Reform

In accordance with Executive Order 12988, the LIP does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. With the guidance in the policy document, the Service will clarify the requirements of the LIP to applicants that voluntarily submit grant proposals.

National Environmental Policy Act

This draft policy does not constitute a major Federal action significantly affecting the quality of the human environment. The Service has determined that the issuance of the draft policy is categorically excluded under the Department of the Interior's NEPA procedures in 516 DM 2, Appendix 1 and 516 DM 6, Appendix 1. The Service will ensure that grants that are funded through the LIP are in compliance with NEPA.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government to Government Relations With Native American Tribal Governments" (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with

federally recognized Tribes on a government-to-government basis.

This policy document deals only with the LIP program as it relates to States and Territories. Under Public Law 107-63, Title I, Tribes are also eligible grantees. The Service is preparing a separate policy document which will be applicable to the tribal component of the LIP program.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501) please note the following information. This information collection is authorized by the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777-7771), Federal Aid in Wildlife Restoration Act (16 U.S.C. 669-669i), Partnerships for Wildlife Act (16 U.S.C. 3741), the Coastal Wetlands Planning, Protection and Restoration Act (16 U.S.C. 3954), the Endangered Species Act (16 U.S.C. 1531-1544) and Department of the Interior and Related Agencies Appropriations Acts.

This information collection covers the collection of proposals, budgets, financial and performance reports related to grants issued under the above Acts. Potential grantees are expected to submit complete proposals addressing the ranking factors discussed elsewhere in this notice. We are collecting this information to evaluate programs and projects relevant to the eligibility, substantiality, relative value of each in order to rank the proposals for competitive awards. We are collecting budget information from applicants in order to make awards of grants under these programs. We are collecting financial and performance information to track costs and accomplishments of these grants programs. We are also collecting performance information as it relates to the President's goals and objectives for the department of the Interior and the Fish and Wildlife Service. Completion of these application and reporting requirements will involve a paperwork burden of approximately 80 hours per grant proposal. This does not include any burden hours previously approved by OMB for standard or U.S. Fish and Wildlife Service forms.

Your response to this information collection is required to receive benefits in the form of a Grant, and does not carry any premise of confidentiality. 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: This information collection was previously approved by OMB and assigned control number 1018-0109. We

are citing additional authorities and requesting an increase in the total burden hours through this approval request. Interested parties can see this proposed information collection at this url: http://federalaid.fws.gov/grants/Proposed_Federal_Aid_Grants_Application_Booklet.pdf.

The Service submitted the information collection requirements to OMB for review and approval under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments are invited on (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be submitted to the address listed in **ADDRESSES** section near the beginning of this notice.

Authority

This notice is published under the authority of the Department of the Interior and Related Agencies Appropriations Act, 2002, H.R. 2217/ Public Law 107-63.

Dated: June 3, 2002.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02-14257 Filed 6-6-02; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 1018-A156

Fiscal Year 2002 Private Stewardship Grants Program; Proposed Program Implementation

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: For Fiscal Year 2002, Congress appropriated \$10 million from the Land and Water Conservation Fund for the U.S. Fish and Wildlife Service (Service) to establish a Private Stewardship Grants Program (PSGP). The PSGP provides grants and other assistance on a competitive basis to

individuals and groups engaged in private conservation efforts that benefit species listed as endangered or threatened under the Endangered Species Act of 1973, as amended (Act), species proposed or candidates for such listing, or other at-risk species (*e.g.*, species formally recognized as a species of conservation concern, such as species listed by a State or Territory). We request comments on the proposed eligibility criteria, project ranking factors and scoring system, or any other aspect of the Private Stewardship Grants Program.

DATES: We will accept comments on program implementation until July 8, 2002.

ADDRESSES: Send comments regarding program implementation to Chief, Branch of Recovery and State Grants, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT:

Martin Miller, Chief, Branch of Recovery and State Grants (703/358-2061).

SUPPLEMENTARY INFORMATION:

Background

The majority of endangered and threatened species depend, at least in part, upon privately owned lands for their survival. The help of landowners is essential for the conservation of these and other imperiled species. Fortunately, many private landowners want to help. Often, however, the costs associated with implementing conservation actions are greater than a landowner could undertake without financial assistance. The President's Budget for Fiscal Year 2002 requested funding to address this need and Congress responded by appropriating \$10 million in FY 2002 from the Land and Water Conservation Fund for the Service to establish the PSGP. The PSGP provides grants or other Federal assistance on a competitive basis to individuals and groups engaged in private conservation efforts that benefit species listed or proposed as endangered or threatened under the Act, candidate species, or other at-risk species on private (non-governmentally owned) lands within the United States.

What Types of Projects May Be Funded?

Eligible projects include those by landowners and their partners who need technical and financial assistance to improve habitat or implement other activities on private lands for the benefit of endangered, threatened, candidate, proposed, or other at-risk species. Examples of the types of projects that

may be funded include restoring natural hydrology to streams or wetlands that support imperiled species, fencing to exclude animals from sensitive habitats, or planting native vegetation to restore degraded habitat.

Who Can Apply for These Grants?

Individual private landowners as well as groups of private landowners will be encouraged to submit project proposals for their properties. Additionally, individuals or groups (*e.g.*, land conservancies) working with private landowners on conservation efforts will also be encouraged to submit project proposals provided they identify specific private landowners who have confirmed their intent to participate with them in the conservation efforts.

What Are the Proposed Eligibility Criteria for Proposed Projects?

We propose that all of the following criteria must be satisfied for a proposal to be considered for funding: (1) The project must involve voluntary conservation efforts on behalf of private landowners within the United States (*i.e.*, U.S. States and Territories); (2) the project must benefit species listed as endangered or threatened under the Act by the Service, species proposed or designated as candidates for listing by the Service, or other at-risk species that are native to the United States; (3) the proposal must include at least 10 percent cost sharing (*i.e.*, at least 10 percent of total project cost) on the part of the landowner or other non-Federal partners involved in the project (the cost-share may be an in-kind contribution, including equipment, materials, operations, and maintenance costs); (4) the proposal must identify at least some of the specific landowners who have confirmed their intent to participate in the private conservation efforts (not all participating landowners need to be identified at the time of the proposal submission); (5) the proposal must include a reasonably detailed budget indicating how the funding will be used and how each partner is contributing; and (6) the proposal must include quantifiable measures that can be used to evaluate the project's success. The project proposal should also indicate whether partial funding of the project is practicable, and, if so, what specific portion(s) of the project could be implemented with what level of funding. A project proposal that fits into a longer-term initiative will be considered; however, the proposed project's objectives and benefits must stand on their own, as there are no assurances that additional funding

would be awarded in subsequent years for other related projects.

We do not intend to grant funding for projects that serve to satisfy regulatory requirements of the Act including complying with a biological opinion under section 7 of the Act or fulfilling commitments of a Habitat Conservation Plan under section 10 of the Act, or for projects that serve to satisfy other local, State, or Federal regulatory requirements (e.g., mitigation for local, State, or Federal permits). Additionally, we do not intend to award grants to fund the acquisition of real property either through fee title or easements. However, habitat improvements over and above any existing requirements for lands covered under current easements or other such conservation tools would be considered eligible for funding.

In addition to the above general eligibility criteria that will be required for project proposals to be considered for funding, there will be additional requirements for projects that are selected to receive funding under the PSGP. These requirements include

specific Federal financial management requirements and time commitments for maintaining habitat improvements or other activities described in the project proposal. These requirements vary depending on the type of grantee (individual, nonprofit organization, etc.) and the type of project to be funded (e.g., grantees will be required to satisfy the time commitment as described in their proposal for leaving the habitat improvement in place in order to realize the desired habitat benefits). Additionally, the Service, in cooperation with the grantees, must address Federal compliance issues, such as the National Environmental Policy Act, the National Historic Preservation Act, and the Endangered Species Act. For the projects that are selected to receive funding, we will provide additional guidance on compliance with these requirements.

How Will Proposals Be Selected?

Proposals will compete at a regional level for funding. We will target 50 percent of the grant funding to the

Service's Regions based on the number of acres of non-Federal land, as a representation of the amount of private land within each Region, and 50 percent based on the number of listed, proposed, candidate, and other at-risk species in each Region (see Table 1). Within each Region, a diverse panel of representatives from State and Federal government, conservation organizations, agriculture and development interests, and the science community will assess the applications and make funding recommendations to the Service. The purpose of using the diverse panels is to obtain individual advice on project selection from an array of interests involved with conservation efforts on private lands. The Service will make all funding selections, subject only to the final approval of the Assistant Secretary for Fish and Wildlife and Parks. The Service will award grants for actions and activities that protect and restore habitats that benefit federally listed, proposed or candidate species, or other at risk species on private lands.

TABLE 1.—SERVICE REGIONS AND FUNDING TARGET FOR GRANTS IN EACH REGION

Region	States and territories	Total funding target for grants within region
Region 1 (Pacific)	California, Hawaii, Idaho, Oregon, Washington, Nevada, American Samoa, Guam, and Commonwealth of the Northern Mariana Islands.	\$2,821,859
Region 2 (Southwest)	Arizona, New Mexico, Oklahoma, and Texas	1,490,457
Region 3 (Great Lakes-Big Rivers)	Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin	942,981
Region 4 (Southeast)	Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the U.S. Virgin Islands.	1,723,690
Region 5 (Northeast)	Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.	634,151
Region 6 (Mountain-Prairie)	Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.	1,413,886
Region 7 (Alaska)	Alaska	472,976

Members of each diverse panel will individually score each proposal based on a set of ranking factors, which include (1) the number of endangered or threatened species, species proposed or candidates for such listing, and at-risk species that will benefit from the project; (2) the importance of the project to the conservation of those species, including the duration of the benefits, the magnitude of the benefits, and the urgency of the project; (3) the amount of non-Federal cost sharing involved in the project; and (4) other proposal merits,

such as whether the project complements other conservation projects in the area, the project's unique qualities, feasibility of the project, or any other appropriate justifications, including particular strengths in the above categories (e.g., extraordinary benefits). Final project selections will be based on projects' total scores, although geographic distribution of projects, the amount of funding requested for a project compared with the total amount of funding available, and other such factors may also be considered. Partial

funding of one or more projects, when practicable, may be considered.

Due to the wide variety of project proposals that will likely be submitted, the scoring system must provide a relatively high degree of flexibility. Therefore, a scoring system that is relatively simple, but allows project proposals to be evaluated qualitatively as well as quantitatively is desired. We propose that the four ranking factors be scored as described in Table 2 below.

TABLE 2.—PROJECT PROPOSAL SCORING GUIDELINES
[10 points maximum]

Ranking factor	Project proposal assessment	Number of points
(1) The number of federally listed, proposed, candidate, or at-risk species that will benefit from the project.	1 or 2 species	1
(2) The importance of the project to the conservation of the target species, including the duration of the benefits, the magnitude of the benefits, and the urgency of the project.	3 or more species	2
(3) The amount of non-Federal cost sharing involved in the project	Qualitative	1–4
(4) Other Proposal Merits. Whether the project complements other projects in the area, the project's unique qualities, feasibility of the project, or any other appropriate justifications, including particular strengths in the above categories (e.g. extraordinary benefits).	Five percent or greater <i>in addition to</i> the required ten percent. Qualitative	0–1 0–3

How Will the PSGP Further the Mission of the Service?

In accordance with the Government Performance and Results Act of 1993 (31 U.S.C. 1115), the Service prepares a Strategic Plan. This plan describes the Service's performance goals and measures. Additionally, President Bush has launched a bold new strategy for improving the management and performance of the Federal government. Secretary Norton has adopted the President's management agenda and created a new vision of management excellence at the Department of the Interior that focuses her commitment to citizen-centered governance around "four Cs": Conservation through Cooperation, Consultation, and Communication.

The PSGP will reflect the President's strategy and embody the Secretary's commitment to citizen-centered government. The eligibility criteria, selection factors, and reporting requirements in the PSGP will ensure that the projects funded maximize progress toward our goals and measures. Among others, the PSGP will further the Service's goals for conserving imperiled species and habitat conservation as described in the Service's strategic plan. Information on the Service's strategic plans and performance reports are available on the Service's internet site at <http://planning.fws.gov/>.

Public Comments Solicited

We intend that the actions resulting from this proposed program implementation be as accurate and effective as possible. Therefore, any suggestions from the public, concerned governmental agencies, the scientific community, environmental groups, industry, commercial trade entities, or any other interested party concerning this proposed program implementation guidance are hereby solicited. We will take into consideration any comments

and additional information received and we will announce a Request for Proposals in the **Federal Register** after the close of the comment period and as promptly as possible after all comments have been reviewed and analyzed. The Request for Proposals will describe the final eligibility criteria and ranking factors to be used for Fiscal Year 2002 and provide instructions on how to apply for these grants.

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 Division of Consultation, HCPs, Recovery, and State Grants in Arlington, Virginia (see **FOR FURTHER INFORMATION CONTACT**).

Required Determinations

Regulatory Planning and Review

This policy document identifies proposed eligibility criteria and selection factors that may be used to award grants under the PSGP. The Service developed this draft policy to ensure consistent and adequate evaluation of project proposals that are

voluntarily submitted and to help perspective applicants understand how grants will be awarded. In accordance with Executive Order (E.O.) 12866, this policy document is significant and has been reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below.

(a) The PSGP will not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or State, local or tribal communities. A total of \$9,500,000 will be awarded in grants to private landowners or their partners to implement voluntary conservation actions.

These funds will be used to pay for actions such as restoring natural hydrology to streams or wetlands that support imperiled species, fencing to exclude animals from sensitive habitats, or planting native vegetation to restore degraded habitat. In addition, the projects that are funded will generate other secondary benefits, including benefits to natural systems (e.g., air, water) and local economies. All of these benefits are distributed widely and are not likely to be significant in any one location. It is likely that local residents near projects where grants are awarded will experience some level of benefit, but it is not possible to quantify these effects at this time. However, the sum total of all the benefits from this program is not expected to have an annual effect on the economy of \$100 million or more.

(b) We do not believe the PSGP would create inconsistencies with other agencies' actions. Congress has given the Service responsibility to administer the program.

(c) As a new grant program, the PSGP would materially affect entitlements, grants, user fees, loan programs, or the

rights and obligations of their recipients. The submission of project proposals is completely voluntary. However, when an applicant decides to submit a project proposal, the proposed eligibility criteria and selection factors identified in this policy can be construed as requirements placed on the awarding of the grants. Additionally, we will place further requirements on proponents of projects that are selected to receive funding under the PSGP. These requirements include specific Federal financial management requirements and time commitments for maintaining habitat improvements or other activities described in the applicant's project proposal in order to obtain and retain the benefit they are seeking.

(d) OMB has determined that this policy raises novel legal or policy issues and, as a result, this document has undergone OMB review.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. In this notice, we are certifying that the PSGP will not have a significant economic impact on a substantial number of small entities for the reasons described below.

Small entities include small organizations, such as independent non-profit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in

annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger impacts as a result of this program. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

The types of effects this program could have on small entities include economic benefits resulting from the purchasing of supplies or labor to implement the project proposals. However, since this program will be awarding a total of only \$9,500,000 for projects throughout the United States, a substantial number of small entities are unlikely to be affected. The benefits from this program will be spread over such a large area that it is unlikely that any significant benefits will accrue to a significant number of entities in any area. In total, the distribution of \$9,500,000 will not create a significant economic benefit for small entities, but clearly a number of entities will receive some benefit.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 August 25, 2000 *et seq.*):

(a) We believe this rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. This program provides benefits to private landowners.

(b) This rule will not produce a Federal mandate of \$100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The PSGP imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), the PSGP does not have significant takings implications. While private landowners may choose to directly or indirectly implement actions that may have property implications, they would do so as a result of their own decisions, not as result of the PSGP. The PSGP has no provisions that would take private property rights.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. Congress has directed that we administer grants under the PSGP directly to private landowners.

Civil Justice Reform

In accordance with Executive Order 12988, the PSGP does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. With the guidance provided in this policy document, the requirements of the PSGP will be clarified to applicants that voluntarily submit project proposals.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501), please note the following information. The information collection associated with the PSGP is authorized by the Department of the Interior and Related Agencies Appropriations Act, 2002, H.R. 2217/Public Law 107-63. The information collection solicited is necessary to gain a benefit in the form of a grant, as determined by the Secretary of the Interior. 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 Office of Management and Budget (OMB) control number. An information collection package has been submitted to OMB for approval. The OMB has up to 60 days to approve or disapprove the proposed information collection, but may respond after 30 days. To request a copy of the information collection approval request, explanatory information, and related forms, contact Rebecca A. Mullin at (703) 358-2287. A copy of the information collection approval request is also available electronically on the Service's website at <http://>

endangered.fws.gov/grants/private—stewardship.html.

The likely respondents for grants under the PSGP will include individuals and private groups, and the submission of project proposals is voluntary. The collected information can be separated into two categories: the project proposal and the reporting requirements required for those projects that are selected to receive funding. To apply for a PSGP grant, individuals or groups must submit a project proposal. The project proposal should include information demonstrating that the eligibility criteria have been met and should be organized such that the ranking factors can be easily evaluated and other considerations can be easily identified. We will use this information to determine the eligibility and relative value of conservation projects competing for funding. Individuals and groups that are selected to receive and that accept funding under the PSGP, will be required to submit additional reporting information on project performance as well as the financial status of the project proposal. We will use this information to ensure that the funding is used appropriately and to monitor the effectiveness of the project in meeting its stated goals.

The reporting burden is estimated to average 8 hours per respondent for the project proposal and 4 hours per respondent for reporting activities. The total annual burden is 4,000 hours for the project proposals and 200 hours for reporting activities; the number of respondents is estimated to average 500 respondents for submitting project proposals and 50 respondents for the reporting requirements. The information collected does not carry a premise of confidentiality.

We invite comments on (1) Whether or not the collection of information is necessary for the proper performance of the functions of the Service, including whether or not the information will have practical utility; (2) the accuracy of the estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) the quality, utility, and clarity of the information to be collected; and (4) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology. Comments may be submitted to: Attention: Desk Officer for the Department of the Interior, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington,

DC 20503. Send a copy to the Information Collection Officer, Mail Stop 224 ARLSQ, U.S. Fish and Wildlife Service, Washington, DC 20240. To ensure consideration, comments must be received by July 8, 2002.

National Environmental Policy Act

We have analyzed this draft policy in accordance with the criteria of the National Environmental Policy Act (NEPA) and the Department of the Interior Manual (516 DM 2 and 6). This draft policy does not constitute a major Federal action significantly affecting the quality of the human environment. The Service has determined that the issuance of the draft policy is categorically excluded under the Department of the Interior's NEPA procedures in 516 DM 2, Appendix 1 and 516 DM 6, Appendix 1. The Service will ensure that projects that are funded through the PSGP are in compliance with NEPA.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments" (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a government-to-government basis. The effect of this draft policy document on Native American Tribes would be determined on a case-by-case basis with the individual evaluation of project proposals. Under Secretarial Order 3206, the Service will, at a minimum, share with the tribes any information concerning project proposals that may affect Tribal trust resources. After consultation with the Tribes and the project proponent, and after careful consideration of the Tribe's concerns, the Service must clearly state the rationale for the recommended final decision and explain how the decision relates to the Service's trust responsibility. Accordingly:

a. We have not yet consulted with the affected Tribe(s). This requirement will be addressed with individual evaluations of project proposals.

b. We have not yet treated Tribes on a government-to-government basis. This requirement will be addressed with individual evaluations of project proposals.

c. We will consider Tribal views in individual evaluations of project proposals.

d. We have not yet consulted with the appropriate bureaus and offices of the Department about the identified effects of this draft policy on Tribes. This requirement will be addressed with individual evaluations of project proposals.

Authority

This notice is published under the authority of the Department of the Interior and Related Agencies Appropriations Act, 2002, H.R. 2217/ Public Law 107-63.

Dated: May 31, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02-14338 Filed 6-6-02; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-610-02-1610-]

Revised Notice of Intent To Prepare West Mojave Plan and Environmental Impact Statement; California Desert District Office, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Revised Notice of Intent.

SUMMARY: This notice is a revision of the notice of intent published December 5, 1991 (pages 63741) (1991 NOI) for the West Mojave Plan (WMP) (formerly, the "West Mojave Coordinated Management Plan") and Environmental Impact Statement (EIS). In compliance with the National Environmental Policy Act of 1969 (NEPA), the Federal Land Policy Management Act of 1976 (FLPMA) and the Code of Federal Regulations (40 CFR 1501.7, 43 CFR 1610.2), notice is hereby given that the Bureau of Land Management (BLM) will hold a series of public scoping meetings and will then prepare an Environmental Impact Statement (EIS) for the WMP and related amendments to the BLM's California Desert Conservation Area Plan (CDCA Plan). The purpose of this revision is to invite the public to attend these scoping meetings, to discuss the proposed action and possible alternatives, and to provide comments for consideration during the preparation of the EIS.

DATES: Public scoping meetings will be held in June 2002 to identify issues and concerns involving the WMP's proposals and alternatives, including the conservation strategies developed to conserve the Desert Tortoise, Mohave ground squirrel and other sensitive

desert species. All comments received shall be taken into consideration during the preparation of the EIS, prior to issuance of a Record of Decision. Meeting locations and dates will be announced at least 15 days in advance through local media and online at <http://www.ca.blm.gov/news/meetings.html>. Scoping comments previously submitted following publication of the 1991 Notice of Intent are still valid and will be considered together with comments received pursuant to this revised notice. Therefore, commentators do not need to resubmit comments but may provide additional comments or clarifications of those previously made. Written comments will be accepted up to thirty (30) days from the date of publication of this notice.

SUPPLEMENTARY INFORMATION: The WMP addresses the management of 3.6 million acres of public lands administered by the BLM in eastern Kern County, southern Inyo County, northern Los Angeles County and western San Bernardino County, all of which are within the State of California. The BLM's Ridgecrest and Barstow field offices administer most of these public lands. A small amount of acreage administered by the BLM's Needles and Palm Springs field offices is also affected. All public lands are within the California Desert Conservation Area, and all lie within the jurisdiction of the BLM's California Desert District.

The WMP is being prepared collaboratively with local jurisdictions, state and other federal agencies. It is the intent of the collaborators that the WMP also serve as a habitat conservation plan (HCP) applicable to the 2.8 million acres of private lands within the planning area. Preparation of the HCP would facilitate the issuance of programmatic incidental take permits by the California Department of Fish and Game and the United States Fish and Wildlife Service to participating cities and counties.

The first step in this effort was the publication of the December 5, 1991 notice of intent and the holding of public scoping meetings in January 1992. This initiated a collaborative planning process which involved scientific data collection and the discussion of conservation issues by representatives of agencies, local jurisdictions, public land users and others with an interest in the future of the western Mojave Desert. These issues included conservation strategies for the desert tortoise, Mohave ground squirrel and other sensitive desert plants and animals, a motorized vehicle access network for public lands in the region, and such multiple use issues as

livestock grazing, mining, cultural resources and recreation.

The EIS will assess the environmental impacts of a proposed action and a range of reasonable alternatives (including a "no action" alternative). Any necessary amendments to the BLM's CDCA Plan will be addressed. The EIS will evaluate whether the conservation strategies can recover western Mojave Desert populations of the threatened desert tortoise, the endangered Lane Mountain milkvetch and other sensitive species.

The BLM invites the public to help identify significant issues or concerns to be addressed in the EIS. These will be discussed at a series of additional public scoping meetings to be held in June 2002.

ADDRESSES: Written comments may be forwarded to the following address: Mr. William Haigh, West Mojave Project Manager, Bureau of Land Management, California Desert District Office, 6221 Box Springs Road, Riverside, CA 92507. Citizens submitting written comments will automatically be included in the mailing list.

FOR FURTHER INFORMATION CONTACT: Mr. William Haigh, West Mojave Project Manager, Bureau of Land Management, California Desert District Office, 6221 Box Springs Road, Riverside, CA 92507, telephone (760) 252-6080.

Dated: April 23, 2002.

Linda Hansen,

Acting District Manager, California Desert.

[FR Doc. 02-14292 Filed 6-6-02; 8:45 am]

BILLING CODE 4310-AG-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-930-1060-JJ]

Notice of Public Hearing; Boise, ID

AGENCY: Bureau of Land Management, Idaho State Office, Interior.

ACTION: Notice of public hearing.

SUMMARY: A public hearing will be held at the Lower Snake River District, Bureau of Land Management, Boise, Idaho, to receive statements concerning the use of helicopters and motor vehicles in wild horse gathering operations within Idaho for calendar year 2002.

DATE AND TIME: Tuesday, July 9, 2002, 6 p.m. to 8 p.m. Location: Lower Snake River District, Bureau of Land Management, 3948 Development Ave., Boise, Idaho, 83705.

FOR FURTHER INFORMATION CONTACT: Kent Benson, Range Technician/Wild Horse

and Burro Specialist, Upper Snake River District, Bureau of Land Management, 15 East 200 South, Burley, Idaho 83318, or e-mail at Kent_Benson@blm.gov, or Jon Foster, Branch Chief Resources and Sciences, Idaho State Office, 1387 South Vinnell Way, Boise, Idaho 83709, or e-mail at Jon_Foster@blm.gov.

SUPPLEMENTARY INFORMATION: The hearing will allow interested persons to make oral statements concerning the use of helicopters and motor vehicles during wild horse gathering operations in Idaho, consistent with requirements for a public hearing described in 43 CFR 4840.1(b). All statements will be recorded.

Dated: May 8, 2002.

Fritz Rennebaum,

Acting State Director, Bureau of Land Management, Idaho.

[FR Doc. 02-14394 Filed 6-6-02; 8:45 am]

BILLING CODE 4310-GG-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU-76735]

Utah; Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease UTU-76735 for lands in San Juan County, Utah, was timely filed and required rentals accruing from October 1, 2001, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of \$10 per acre and 16²/₃ percent, respectively. The \$500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate lease UTU-76735, effective October 1, 2001, subject to the original terms and conditions of the lease and the increased rental and royalty rate cited above.

Robert Lopez,

Chief, Branch of Minerals Adjudication.

[FR Doc. 02-14291 Filed 6-6-02; 8:45 am]

BILLING CODE 4310-SS-P

DEPARTMENT OF THE INTERIOR**National Park Service****Cape Cod National Seashore, South Wellfleet, Massachusetts; Cape Cod National Seashore Advisory Commission, Two Hundred Thirty Eighth Meeting; Notice of Meeting**

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. App 1, section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, June 21, 2002.

The Commission was reestablished pursuant to Public Law 87-126 as amended by Public Law 105-280. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will meet at 1:00 p.m. at Headquarters, Marconi Station, Wellfleet, Massachusetts for the regular business meeting to discuss the following:

1. Adoption of Agenda
2. Approval of minutes of previous meeting (April 26, 2002)
3. Reports of Officers
4. Reports of Subcommittees
Nickerson Fellowship
5. Superintendent's Report
News from Washington
New Beach in Eastham
Construction of Salt Pond Visitor Center
6. Old Business
Pheasant Hunting
7. New Business
8. Date and agenda for next meeting
9. Public comment and
10. Adjournment

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: May 16, 2002.

Maria Burks,

Superintendent.

[FR Doc. 02-14337 Filed 6-6-02; 8:45 am]

BILLING CODE 4310-70-P

DEPARTMENT OF THE INTERIOR**National Park Service****National Park System Advisory Board; Meeting**

AGENCY: National Park Service, Interior.

ACTION: Notice of Meeting.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix, that the National Park System Advisory Board will meet June 12, 2002, in the Chesapeake Room, of the Swissôtel Washington The Watergate, 2650 Virginia Avenue, NW, Washington, DC. The Board will convene at 8 a.m., and adjourn at 5:30 p.m. During the morning session, National Park Service Director Fran Mainella will address the Board, followed by an orientation session for new members, and the Board's consideration of recommendations regarding the National Park Service process for making determinations of cultural affiliations. In the afternoon, the Board will discuss next steps in implementing the Board's report *Rethinking the National Parks for the 21st Century*.

Other officials of the National Park Service and the Department of the Interior may address the Board, and other miscellaneous topics and reports may be covered. The order of the agenda may be changed, if necessary, to accommodate travel schedules or for other reasons.

Due to the unexpected cancellation of the original meeting space and the additional time required to locate an alternate site, this notice could not be published at least 15 days prior to the meeting date. The National Park Service regrets this delay, but is compelled to hold the meeting as scheduled because of the significant sacrifice rescheduling would require of Board members who have adjusted their schedules to accommodate the proposed meeting date.

The Board meeting will be open to the public. Space and facilities to accommodate the public are limited and attendees will be accommodated on a first-come basis. Anyone may file with the Board a written statement concerning matters to be discussed. The Board may also permit attendees to address the Board, but may restrict the

length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time.

Anyone who wishes further information concerning the meeting, or who wishes to submit a written statement, may contact Mr. Loran Fraser, Office of Policy, National Park Service, 1849 C Street, NW, Washington, DC 20240 (telephone 202-208-7456).

Draft minutes of the meeting will be available for public inspection about 12 weeks after the meeting, in room 2414, Main Interior Building, 1849 C Street, NW, Washington, DC.

Dated: June 3, 2002.

Loran Fraser,

Chief, Office of Policy, National Park Service.

[FR Doc. 02-14388 Filed 6-6-02; 8:45 am]

BILLING CODE 4310-70-P

INTERNATIONAL TRADE COMMISSION**Summary of Commission Practice Relating to Administrative Protective Orders**

AGENCY: U.S. International Trade Commission.

ACTION: Summary of Commission practice relating to administrative protective orders.

SUMMARY: Since February 1991, the U.S. International Trade Commission ("Commission") has issued an annual report on the status of its practice with respect to violations of its administrative protective orders ("APOs") in investigations under Title VII of the Tariff Act of 1930 in response to a direction contained in the Conference Report to the Customs and Trade Act of 1990. Over time, the Commission has added to its report discussions of APO breaches in Commission proceedings other than Title VII and violations of the Commission's rule on bracketing business proprietary information ("BPI") (the "24-hour rule"), 19 CFR 207.3(c). This notice provides a summary of investigations of breaches in Title VII, sections 202 and 204 of the Trade Act of 1974, as amended, and section 337 of the Tariff Act of 1930, as amended, completed during calendar year 2001. There were no completed investigations of 24-hour rule violations during that period. The Commission intends that this report educate representatives of parties to Commission proceedings as to some specific types of APO breaches encountered by the Commission and the corresponding

types of actions the Commission has taken.

FOR FURTHER INFORMATION CONTACT:

Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205-3088. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205-1810. General information concerning the Commission can also be obtained by accessing its Internet server (<http://www.usitc.gov>).

SUPPLEMENTARY INFORMATION:

Representatives of parties to investigations conducted under Title VII of the Tariff Act of 1930, sections 202 and 204 of the Trade Act of 1974, and section 337 of the Tariff Act of 1930, as amended, may enter into APOs that permit them, under strict conditions, to obtain access to BPI of other parties. See 19 U.S.C. 1677f; 19 CFR 207.7; 19 U.S.C. 2252(i); 19 CFR 206.17; 19 U.S.C. 1337(n); 19 CFR 210.5, 210.34. The discussion below describes APO breach investigations that the Commission has completed, including a description of actions taken in response to breaches. The discussion covers breach investigations completed during calendar year 2001.

Since 1991, the Commission has published annually a summary of its actions in response to violations of Commission APOs and the 24-hour rule. See 56 FR 4846 (Feb. 6, 1991); 57 FR 12,335 (Apr. 9, 1992); 58 FR 21,991 (Apr. 26, 1993); 59 FR 16,834 (Apr. 8, 1994); 60 FR 24,880 (May 10, 1995); 61 FR 21,203 (May 9, 1996); 62 FR 13,164 (March 19, 1997); 63 FR 25064 (May 6, 1998); 64 FR 23355 (April 30, 1999); 65 FR 30434 (May 11, 2000); 66 FR 27685 (May 18, 2001). This report does not provide an exhaustive list of conduct that will be deemed to be a breach of the Commission's APOs. APO breach inquiries are considered on a case-by-case basis.

As part of the effort to educate practitioners about the Commission's current APO practice, the Commission Secretary issued in March 2001 a third edition of *An Introduction to Administrative Protective Order Practice in Import Injury Investigations* (Pub. No. 3403). This document is available upon request from the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, tel. (202) 205-2000.

I. In General

The current APO form for antidumping and countervailing duty investigations, which the Commission

has used since March 1995, requires the applicant to swear that he or she will:

(1) Not divulge any of the BPI obtained under the APO and not otherwise available to him, to any person other than—

(i) personnel of the Commission concerned with the investigation,

(ii) the person or agency from whom the BPI was obtained,

(iii) a person whose application for disclosure of BPI under this APO has been granted by the Secretary, and

(iv) other persons, such as paralegals and clerical staff, who (a) are employed or supervised by and under the direction and control of the authorized applicant or another authorized applicant in the same firm whose application has been granted; (b) have a need thereof in connection with the investigation; (c) are not involved in competitive decisionmaking for the interested party which is a party to the investigation; and (d) have submitted to the Secretary a signed Acknowledgment for Clerical Personnel in the form attached hereto (the authorized applicant shall sign such acknowledgment and will be deemed responsible for such persons' compliance with the APO);

(2) Use such BPI solely for the purposes of the Commission investigation [or for binational panel review of such Commission investigation or until superceded by a judicial protective order in a judicial review of the proceeding];

(3) Not consult with any person not described in paragraph (1) concerning BPI disclosed under this APO without first having received the written consent of the Secretary and the party or the representative of the party from whom such BPI was obtained;

(4) Whenever materials (*e.g.*, documents, computer disks, etc.) containing such BPI are not being used, store such material in a locked file cabinet, vault, safe, or other suitable container (N.B.: storage of BPI on so-called hard disk computer media is to be avoided, because mere erasure of data from such media may not irrecoverably destroy the BPI and may result in violation of paragraph C of the APO);

(5) Serve all materials containing BPI disclosed under this APO as directed by the Secretary and pursuant to section 207.7(f) of the Commission's rules;

(6) Transmit such document containing BPI disclosed under this APO:

(i) with a cover sheet identifying the document as containing BPI,

(ii) with all BPI enclosed in brackets and each page warning that the document contains BPI,

(iii) if the document is to be filed by a deadline, with each page marked "Bracketing of BPI not final for one business day after date of filing," and

(iv) if by mail, within two envelopes, the inner one sealed and marked "Business Proprietary Information—To be opened only by [name of recipient]", and the outer one sealed and not marked as containing BPI;

(7) Comply with the provision of this APO and section 207.7 of the Commission's rules;

(8) Make true and accurate representations in the authorized applicant's application and promptly notify the Secretary of any changes that occur after the submission of the application and that affect the representations made in the application (*e.g.*, change in personnel assigned to the investigation);

(9) Report promptly and confirm in writing to the Secretary any possible breach of the APO; and

(10) Acknowledge that breach of the APO may subject the authorized applicant and other persons to such sanctions or other actions as the Commission deems appropriate including the administrative sanctions and actions set out in this APO.

The APO further provides that breach of a protective order may subject an applicant to:

(1) Disbarment from practice in any capacity before the Commission along with such person's partners, associates, employer, and employees, for up to seven years following publication of a determination that the order has been breached;

(2) Referral to the United States Attorney;

(3) In the case of an attorney, accountant, or other professional, referral to the ethics panel of the appropriate professional association;

(4) Such other administrative sanctions as the Commission determines to be appropriate, including public release of or striking from the record any information or briefs submitted by, or on behalf of, such person or the party he represents; denial of further access to BPI in the current or any future investigations before the Commission; and issuance of a public or private letter of reprimand; and

(5) Such other actions, including but not limited to, a warning letter, as the Commission determines to be appropriate.

Commission employees are not signatories to the Commission's APOs and do not obtain access to BPI through

APO procedures. Consequently, they are not subject to the requirements of the APO with respect to the handling of BPI. However, Commission employees are subject to strict statutory and regulatory constraints concerning BPI, and face potentially severe penalties for noncompliance. See 18 U.S.C. 1905; Title 5, U.S. Code; and Commission personnel policies implementing the statutes. Although the Privacy Act (5 U.S.C. 552a) limits the Commission's authority to disclose any personnel action against agency employees, this should not lead the public to conclude that no such actions have been taken.

An important provision of the Commission's rules relating to BPI is the "24-hour" rule. This rule provides that parties have one business day after the deadline for filing documents containing BPI to file a public version of the document. The rule also permits changes to the bracketing of information in the proprietary version within this one-day period. No changes—other than changes in bracketing—may be made to the proprietary version. The rule was intended to reduce the incidence of APO breaches caused by inadequate bracketing and improper placement of BPI. The Commission urges parties to make use of the rule. If a party wishes to make changes to a document other than bracketing, such as typographical changes or other corrections, the party must ask for an extension of time to file an amended document pursuant to section 201.14(b)(2) of the Commission's rules.

II. Investigations of Alleged APO Breaches

Upon finding evidence of a breach or receiving information that there is a reason to believe one has occurred, the Commission Secretary notifies relevant offices in the agency that an APO breach investigation file has been opened.

Upon receiving notification from the Secretary, the Office of General Counsel (OGC) begins to investigate the matter. The OGC prepares a letter of inquiry to be sent to the possible breacher over the Secretary's signature to ascertain the possible breacher's views on whether a breach has occurred. If, after reviewing the response and other relevant information, the Commission determines that a breach has occurred, the Commission often issues a second letter asking the breacher to address the questions of mitigating circumstances and possible sanctions or other actions. The Commission then determines what action to take in response to the breach. In some cases, the Commission determines that although a breach has occurred, sanctions are not warranted,

and therefore has found it unnecessary to issue a second letter concerning what sanctions might be appropriate. Instead, it issues a warning letter to the individual. A warning letter is not considered to be a sanction.

Sanctions for APO violations serve two basic interests: (a) preserving the confidence of submitters of BPI that the Commission is a reliable protector of BPI; and (b) disciplining breachers and deterring future violations. As the Conference Report to the Omnibus Trade and Competitiveness Act of 1988 observed, "the effective enforcement of limited disclosure under administrative protective order depends in part on the extent to which private parties have confidence that there are effective sanctions against violation." H.R. Conf. Rep. No. 576, 100th Cong., 1st Sess. 623 (1988).

The Commission has worked to develop consistent jurisprudence, not only in determining whether a breach has occurred, but also in selecting an appropriate response. In determining the appropriate response, the Commission generally considers mitigating factors such as the unintentional nature of the breach, the lack of prior breaches committed by the breaching party, the corrective measures taken by the breaching party, and the promptness with which the breaching party reported the violation to the Commission. The Commission also considers aggravating circumstances, especially whether persons not under the APO actually read the BPI. The Commission considers whether there are prior breaches by the same person or persons in other investigations and multiple breaches by the same person or persons in the same investigation.

The Commission's rules permit economists or consultants to obtain access to BPI under the APO if the economist or consultant is under the direction and control of an attorney under the APO, or if the economist or consultant appears regularly before the Commission and represents an interested party who is a party to the investigation. 19 CFR 207.7(a)(3)(B) and (C). Economists and consultants who obtain access to BPI under the APO under the direction and control of an attorney nonetheless remain individually responsible for complying with the APO. In appropriate circumstances, for example, an economist under the direction and control of an attorney may be held responsible for a breach of the APO by failing to redact APO information from a document that is subsequently filed with the Commission and served as a public document. This is so even

though the attorney exercising direction or control over the economist or consultant may also be held responsible for the breach of the APO.

The records of Commission investigations of alleged APO breaches in antidumping and countervailing duty cases are not publicly available and are exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552, section 135(b) of the Customs and Trade Act of 1990, and 19 U.S.C. 1677f(g).

The breach most frequently investigated by the Commission involves the APO's prohibition on the dissemination of BPI to unauthorized persons. Such dissemination usually occurs as the result of failure to delete BPI from public versions of documents filed with the Commission or transmission of proprietary versions of documents to unauthorized recipients. Other breaches have included: the failure to bracket properly BPI in proprietary documents filed with the Commission; the failure to report immediately known violations of an APO; and the failure to supervise adequately non-legal personnel in the handling of BPI.

Counsel participating in Title VII investigations have reported to the Commission potential breaches involving the electronic transmission of public versions of documents. In these cases, the document transmitted appears to be a public document with BPI omitted from brackets. However, the BPI is actually retrievable by manipulating codes in software. The Commission completed two investigations of this type of breach in 2001 (Cases 10 and 16), and in both cases the Commission found that the electronic transmission of a public document containing BPI in a recoverable form was a breach of the APO.

The Commission advised in the preamble to the notice of proposed rulemaking in 1990 that it will permit authorized applicants a certain amount of discretion in choosing the most appropriate method of safeguarding the confidentiality of the BPI. However, the Commission cautioned authorized applicants that they would be held responsible for safeguarding the confidentiality of all BPI to which they are granted access and warned applicants about the potential hazards of storage on hard disk. The caution in that preamble is restated here:

[T]he Commission suggests that certain safeguards would seem to be particularly useful. When storing business proprietary information on computer disks, for example, storage on floppy disks rather than hard disks is recommended, because deletion of

information from a hard disk does not necessarily erase the information, which can often be retrieved using a utilities program. Further, use of business proprietary information on a computer with the capability to communicate with users outside the authorized applicant's office incurs the risk of unauthorized access to the information through such communication. If a computer malfunctions, all business proprietary information should be erased from the machine before it is removed from the authorized applicant's office for repair. While no safeguard program will insulate an authorized applicant from sanctions in the event of a breach of the administrative protective order, such a program may be a mitigating factor. Preamble to notice of proposed rulemaking, 55 FR 24100, 21103 (June 14, 1990).

In 2001, the Commission completed four investigations of instances in which members of a law firm or consultants working with a firm were granted access to APO materials by the firm although they were not APO signatories (Cases 3, 5, 7, and 11). In all these cases, the firm and the person using the BPI mistakenly believed an APO application had been filed for that person. The Commission determined in all four cases that the person who was a non-signatory, and therefore did not agree to be bound by the APO, could not be found to have breached the APO. Action could be taken against these persons, however, under Commission rule 201.15 (19 CFR 201.15) for good cause shown. In all four cases, the Commission decided that the non-signatory was a person who appeared regularly before the Commission and was aware of the requirements and limitations related to APO access and should have verified their APO status before obtaining access to and using the BPI. In all four cases the Commission issued warning letters because it was the first time the persons in question were subject to possible sanctions under section 201.15.

Also in 2001, the Commission found the lead attorney to be responsible for breaches in at least six cases where he or she failed to provide adequate supervision over the handling of BPI. (Cases 1, 3, 6, 20, 22, and 32). Lead attorneys should be aware that their responsibilities for overall supervision of an investigation, when a breach has been caused by the actions of someone else in the investigation, may lead to a finding that the lead attorney has also violated the APO. In at least three of the investigations completed in 2001, the lead attorney was found not to have violated the APO because his delegation of authority was reasonable (Cases 8, 34, and 35).

In one investigation in 2001, a lead attorney was sanctioned with a private

letter of reprimand under circumstances in which the Commission usually issues a warning letter. In that case the lead attorney made a conscious decision not to conform to the 60-day rule covering the return or destruction of BPI and certification to its destruction or return because he interpreted the APO to allow him to retain the materials for possible but not yet ripe appeals of the Commission's determination. The Commission found that this was not an inadvertent violation of the APO.

In 2001, the Commission issued two public letters of reprimand (Cases 2, 19, 20, and 21). See 66 FR 57110 (Nov. 14, 2001) and 66 FR 19516 (April 16, 2001).

III. Specific Investigations in Which Breaches Were Found

The Commission presents the following case studies to educate users about the types of APO breaches found by the Commission. The studies provide the factual background, the actions taken by the Commission, and the factors considered by the Commission in determining the appropriate actions. The Commission has not included some of the specific facts in the descriptions of investigations where disclosure of such facts could reveal the identity of a particular breacher. Thus, in some cases, apparent inconsistencies in the facts set forth in this notice result from the Commission's inability to disclose particular facts more fully.

Case 1: An economic consultant prepared, filed, and served a public version of a postconference brief that contained BPI. The consultant inadvertently left a page from the confidential version of the brief in the public version. The consultant filed and served the public version of the brief on all parties to the investigation, and notified the lead attorney that filing and service had been completed. All the firms on the public certificate of service that received the improperly redacted brief were also on the APO certificate of service.

A question arose as to the status of the attorney who discovered the breach because the attorney was not an original signatory to the APO, nor was he listed on the APO certificate of service. Prior to the time of discovery of the breach, however, he applied and was granted access to BPI. The Secretary determined that the attorney was a signatory to the APO because an attorney is deemed a signatory to the APO at the time of approval by the Secretary, and thus the breach was discovered by a signatory to the APO, although the attorney was not listed on the certificate of service.

Immediately after discovery of the breach, the lead attorney notified the

Commission and arranged for the return or destruction of the offending page. The Commission found that the consultant breached the APO by failing to redact BPI from the public version of the brief. The Commission also found that the lead attorney breached the APO by allowing the public version of the brief containing BPI to be filed and by failing to provide adequate supervision over the handling of BPI. The Commission determined that another attorney at the law firm did not breach the APO because she was not responsible for the preparation, service, or filing of the brief, or for overseeing the acts of the consultant. As mitigating circumstances, the Commission considered the unintentional nature of the breach, the prompt measures taken to rectify the situation, the increased security measures implemented at the firm to safeguard BPI in the future, and the discovery of the breach by a signatory to the APO. The Commission issued a private letter of reprimand to the consultant because it was his second APO breach within the time period normally considered by the Commission in determining sanctions, and issued a warning letter to the supervising partner.

Case 2: Two attorneys prepared, filed, and served a public version of a prehearing brief which on one page contained BPI, which was neither bracketed in the confidential version nor redacted from the public version. A third attorney at the law firm reviewed both versions of the brief for APO compliance prior to filing. After notification by the Commission that a breach may have occurred, the attorneys took immediate steps to effect the return or destruction of the page containing BPI.

The attorneys argued that the BPI at issue was not subject to the requirements of the APO because it could have been found in the public domain. The Commission ultimately determined that a breach occurred because the statement at issue was based in part on BPI. The Commission found that the exact statement at issue was not publicly available and the two attorneys failed to exercise due care with regard to BPI. The Commission noted that the attorneys involved, as experienced trade lawyers, should have been aware that the type of information at issue is often treated as BPI. The two attorneys who prepared the brief were issued a public letter of reprimand since it was the third breach by one attorney and the fourth breach by the other attorney within a short period of time. The Commission also found that the third attorney breached the APO

because he served as APO manager for the firm and failed to discover the breach. The third attorney was issued a private letter of reprimand rather than a warning letter. He was the firm's APO compliance manager yet failed to discover the breach, he was on notice of the need to review the documents with great care because of prior APO breaches by members of his firm, and, at the time of this decision, he was under investigation for two more possible APO breaches.

Case 3: An attorney utilized BPI obtained from his law firm when drafting posthearing and prehearing briefs, based on a mistaken assumption that he was a signatory to the APO. The attorney later realized that he was not a signatory. After further review, it was discovered that the APO coordinator of the firm never included the attorney in its APO application to the Commission.

The Commission determined that two attorneys in the firm breached the APO. The lead attorney breached the APO because he failed to provide adequate supervision over the handling of BPI. The second attorney was found responsible for the breach because he was the APO compliance attorney within the firm. The Commission issued warning letters to the attorneys because the breach was unintentional, the non-signatory attorney safeguarded the BPI as if he was a signatory to the APO, immediate corrective actions were taken once the breach was discovered, and increased safeguard measures were implemented at the firm to prevent future breaches. In addition, in deciding to issue warning letters instead of private letters of reprimand, the Commission distinguished this situation from others in which BPI is mistakenly sent to other parties or is released to clients or the public, and a non-signatory subsequently reads the BPI.

Although the Commission found that the non-signatory attorney had not breached the APO because he was not a signatory, his use of the BPI was actionable under rule 201.15 for his failure to verify that he was a signatory to the APO. He was issued a warning letter. Although the attorney used the BPI on multiple occasions and was previously warned as a result of another APO breach to take better care when handling APO matter, the Commission noted that this was the first time he was subject to a possible sanction under rule 201.15. As mitigating factors, the Commission considered the unintentional nature of the breach and the attorney's adherence to the APO as though he was a signatory.

Case 4: Counsel submitted a public version of a posthearing brief containing

unredacted BPI, which was discovered by the Secretary during a routine review of the submission. The firm argued that the information was not BPI because it was public information that could be found elsewhere in the record of the investigation. While reviewing the public version of the brief as a result of the Secretary's notification, the firm discovered another possible breach on a different page of the public brief involving the failure to redact BPI. The firm retrieved a copy of the offending submission from the single non-APO signatory upon which it had been served, and provided the Commission and all signatories on the proprietary and public service lists with replacement pages.

The Commission determined that an APO breach did not occur as to the first breach because the information in question was revealed at a prior public hearing and entered into the record. The Commission determined that a breach did occur as to the failure to redact information on the other page of the brief because that information was BPI. The Commission issued warning letters to the attorney and legal assistant responsible for the preparation, filing, and service of the public version of the brief. In the case of two other attorneys whose names were on the posthearing brief, the Commission found that they did not breach the APO because they possessed no firsthand knowledge of the preparation and filing of the public version of the brief. In deciding to issue warning letters, the Commission considered the unintentional nature of the breach, the promptness with which the firm rectified the breach, the existence and subsequent reinforcement of the law firm's internal procedures to protect BPI, and the absence of any prior violations by the attorneys involved in this investigation.

Case 5: A law firm provided personnel at an outside economic consulting firm, who were non-signatories to the APO, with various documents received under an APO. After discussion about the BPI contained in such documents was conducted between the law firm and consulting firm, an attorney at the law firm discovered that the personnel at the consulting firm had not signed the APO application. After confirming this fact, the law firm promptly retrieved all APO materials from the consulting firm.

The Commission determined that two attorneys at the law firm were responsible for the breach. The lead attorney breached the APO because he was responsible for the overall conduct of the case, and nonetheless disseminated and discussed BPI with

non-signatories. The other attorney was found responsible because he was the firm's APO compliance attorney, and he also disseminated and discussed BPI with non-signatories. The Commission issued warning letters to the attorneys. In determining the appropriate action, the Commission considered the absence of any violations in the two years prior to the investigation, the promptness with which the attorneys remedied the problem, and the existence of internal procedures within the economic consulting firm in safeguarding BPI. Although the attorneys released BPI to non-signatories of the APO, the Commission determined that the consultants' treatment of the information as if they were under the APO was sufficient to warrant issuance of a warning letter rather than a private letter of reprimand.

The Commission found the actions of three consultants, who viewed and discussed the BPI, actionable under rule 201.15 because the consultants regularly appeared before the Commission and were fully aware that BPI should be handled only after ensuring they were on the APO. The Commission issued a warning letter to the consultants because this was the first time their actions were actionable under rule 201.15.

Case 6: An economist at a law firm, who was a signatory to the APO, transmitted a posthearing brief containing BPI to an attorney who represented a party in the investigation but who was not a signatory to the APO. Upon receipt of the package containing the brief and without opening it, the non-signatory attorney immediately contacted the lead attorney responsible for the preparation of the brief and returned it to him. Upon notification to the Secretary, the Commission conducted an investigation and determined that both the economist and lead attorney breached the APO because the economist made BPI available to a non-signatory to the APO and the lead attorney failed to adequately supervise the economist in the use and release of BPI. The Commission issued private letters of reprimand instead of warning letters to both individuals because it was the second APO violation for each.

Case 7: An attorney provided BPI to an outside economic consultant under the mistaken belief that the consultant was a signatory to the APO. Personnel at the law firm discovered the error and informed the Secretary. After an investigation was initiated, the attorney notified the Secretary that he had also mistakenly provided BPI to his legal secretary two days before the secretary was authorized to view it under the

APO. Both the consultant and legal secretary believed they were signatories to the APO at the time of breach and acted in accordance with the APO's requirements.

The Commission found that the attorney breached the APO by providing BPI to unauthorized persons. The Commission issued a warning letter to the attorney instead of a private letter of reprimand because it considered the case a single breach, although the breach involved two individuals who were non-signatories to the APO. The Commission also took into account the unintentional nature of the breach, the immediate actions taken to remedy the breach and to include on the APO the non-signatories who had prior unauthorized access to BPI, the implementation at the law firm of new procedures to avoid future breaches, and the use of the BPI by the non-signatories as though they were signatories to the APO.

The Commission issued a warning letter to the consultant pursuant to rule 201.15 because of his failure to verify whether he was a signatory to the APO. The Commission also considered as aggravating factors the full use of BPI by the consultant, and his awareness of APO obligations as a former employee of the Commission and a frequent participant in Commission proceedings. The legal secretary was not sanctioned pursuant to rule 201.15 because clerical employees do not sign individual APO applications and thus have less independent responsibility to determine their status under APOs.

Case 8: An attorney filed and served a public version of a prehearing brief that contained unredacted BPI. The attorney notified the Commission and relevant parties the next morning and retrieved each copy of the brief. Although the briefs were served on non-signatories to the APO, the briefs were not, to the best of counsel's knowledge, read by any of them. Upon investigation, the Commission determined that the attorney, as the attorney who was in charge of preparing the brief, breached the APO. The Commission issued a warning letter because the breach was unintentional and this was the first APO violation for both the attorney and firm. In addition, the firm implemented new procedures to prevent future breaches. The lead attorney in the case was not found to have committed an APO breach because he was not involved in the preparation of the brief, and his reliance on the senior attorney who was in charge of preparing the brief was reasonable.

Case 9: Three attorneys sent a letter to the Secretary containing BPI. A public

version of the letter containing BPI was subsequently filed with the Commission and served on a non-signatory to the APO. Upon discovery, the attorneys immediately retrieved the letter before it was read by the non-signatory. The Commission found that the attorney supervising the preparation of the public version of the letter breached the APO by failing to redact BPI and by making it available to a non-signatory to the APO. A warning letter was issued in light of the unintentional nature of the breach, the absence of any prior APO breaches by the attorney, the immediate notification and corrective actions taken once the breach was discovered, and the implementation at the law firm of strengthened procedures to prevent future breaches.

Case 10: An attorney authorized a legal secretary to transmit, via e-mail, a public version of a prehearing brief to an attorney who was not a signatory to the APO. The electronic version of the brief contained BPI that was masked but not deleted. As a result, the BPI could have been retrieved by someone who was able to alter the software print codes. The possible breach was discovered by the transmitting firm's APO administrator.

The Commission determined that the attorney and legal secretary breached the APO by making BPI available to a non-signatory to the APO. Warning letters were sent to both individuals. As mitigating factors, the Commission took into account the unintentional nature of the breach, the discovery of the violation by the breachers, the prompt measures taken by the breachers to remedy the breach, and the destruction of the BPI prior to being viewed by a non-signatory.

Case 11: Three attorneys at a firm, non-signatories to an APO, reviewed and utilized BPI. One of the attorneys reviewed BPI contained in documents under the APO and utilized it in the preparation of prehearing briefs. The two other attorneys reviewed BPI when they proofread the briefs at the instruction of the attorney preparing the brief.

The Commission found two other attorneys at the firm, signatories to the APO, in breach of the APO for failing to ascertain that the three non-signatory attorneys were not on the APO list. Although the Commission found that the non-signatory attorney who prepared the brief did not breach the APO because he had not signed it, his use of the BPI was actionable under rule 201.15. The Commission issued each of the three attorneys a warning letter in light of the unintentional nature of the breach, the discovery of the breach by

the law firm, and the prompt action taken to remedy the breach. In the case of the non-signatory attorney who prepared the brief, the Commission considered the fact that he treated the BPI as if he was on the APO.

The two attorneys who proofread the brief were not found to have breached the APO because they were not signatories to the APO and their actions were not sufficient to demonstrate good cause for action under rule 201.15.

Case 12: Attorneys filed and served a public version of a prehearing brief that contained BPI. BPI that was bracketed in an attachment to the confidential version of the brief was not redacted in the public version. The Secretary discovered the error during a routine review of the submission and alerted the firm. The firm immediately retrieved the briefs from all parties and received confirmation from them that the BPI was not seen by anyone not subject to the APO. One of the attorneys involved in the breach asserted that White-out tape covering the BPI at issue fell off during the photocopying process, resulting in the breach.

The Commission found that the two attorneys responsible for the preparation, filing, and service of the brief breached the APO by making BPI available to unauthorized persons, and issued warning letters to them. In deciding to issue warning letters, the Commission considered the inadvertent nature of the breach, the prompt steps taken to rectify the situation, the retrieval of the BPI prior to its review by anyone, and the absence of any prior violations by the attorneys.

Case 13: An attorney prepared, filed, and served a prehearing brief containing BPI that was neither bracketed in the confidential version nor redacted in the public version. Before discovery of the breach, the attorney failed to serve the brief by hand or overnight delivery as required by Commission rule 207.3. After learning of the service error, the Secretary rejected the prehearing brief as improperly served. The attorney refiled the brief with the Secretary and the Commission accepted the late filing after the attorney sought leave to file the brief out of time.

An attorney representing another party in the case noticed the breach upon receiving the brief by first class mail and notified the attorney and Commission. The attorney who filed the brief immediately contacted all other counsel and asked them to retrieve and return all copies of the prehearing brief. The briefs were returned, but counsel for one of the parties stated that the brief had already been forwarded to his client. Counsel for each party asserted

that the brief was not reviewed by any non-signatories to the APO, including the attorney who had forwarded the brief to his client. Upon refile and reservice, the attorney once again failed to bracket BPI that was unbracketed in the original filing. The attorney retrieved the page in question from all counsel and the Commission and provided a new page correcting the error.

The attorney argued that a breach did not occur as to two items of information because one item was publicly disclosed in a prehearing staff report and the other item could be logically inferred from numerous public statements made by the industry. The Commission agreed but found that a breach occurred as to three other items that constituted BPI. Although the attorney made immediate efforts to rectify the situation and no evidence existed that BPI was viewed by non-signatories to the APO, the Commission issued a private letter of reprimand to the attorney due to several aggravating factors. First, the Commission did not view the breach as inadvertent, as the attorney stated that he had closely reviewed the information in question and made a conscious decision not to bracket it. Second, the attorney violated the Commission's rules when he failed to serve the brief by hand or overnight delivery. Finally, the attorney failed to correct all the problematic disclosures in the brief before filing it with the Commission a second time.

Case 14: Two attorneys prepared, filed, and served a prehearing brief. One of the attorneys discovered that the public version of the brief contained BPI. He immediately notified the Secretary and retrieved the pages containing the BPI from the other parties and filed and served three replacement pages. After the replacement pages were filed and served, an attorney representing another party contacted the Secretary to inform her that there was additional BPI in the brief that had not been bracketed in the confidential version and had not been redacted from the public version of the brief. The Secretary instructed the breaching attorneys to file new amended pages for both the confidential version and the public version of the brief.

The attorneys argued that the type of BPI discovered by the other attorney is often public and, therefore, the failure to redact was understandable. Upon investigation, the Commission found that the two attorneys responsible for the preparation and review of the brief had breached the APO. The Commission issued private letters of reprimand to the attorneys due to their filing of three

defective versions of the brief (two of the public version and one of the confidential version) and their failure to exercise proper diligence to ensure that BPI was not revealed to the public. Some mitigating circumstances were present: the inadvertence of the breach involving the BPI discovered by the breacher, the prompt correction of the unauthorized disclosures, and the absence of any prior APO breaches for both attorneys.

Case 15: Two attorneys prepared, filed, and served a prehearing brief containing BPI on one page that was neither bracketed in the confidential version nor redacted in the public version. The Secretary instructed the attorneys to retrieve the page in question from the Commission and parties. After filing a replacement page, they filed a letter with the Commission stating that neither the confidential nor the public version of the original prehearing brief had been disclosed to anyone not having access to BPI. The attorney having primary responsibility for preparing the brief stated that he overlooked the BPI in question because he was under the impression that the quoted information was publicly available. The second attorney, responsible for reviewing the brief for typographical and bracketing errors, stated that he inadvertently failed to consider that the domestic producer's questionnaire response was the source of the information.

The Commission determined that both attorneys breached the APO by making BPI available to unauthorized persons. Despite the discovery of the breach by the Secretary, and not by the attorneys, Commission issued a warning letter because of the unintentional nature of the breach, the absence of any prior breaches by the attorneys, and the prompt action taken by the attorneys to mitigate the breach. A third attorney who was a signatory to the APO and signed the brief was found not to have breached the APO because he had no responsibility for the preparation or filing of the brief.

Case 16: Counsel prepared and electronically forwarded a non-confidential draft of a prehearing brief containing BPI to an attorney and an economist, both of whom were signatories to the APO. The draft was created using a software program that electronically suppressed all data within brackets. Although not visible when viewed on a computer screen or printed in hard copy, the BPI contained in the draft could have been restored by someone who was knowledgeable about the operation of the software. The attorney preparing the brief asserted that

he was unaware that there was BPI in the draft at the time of transmission. At the direction of the attorney receiving the electronically transmitted brief, the draft was electronically forwarded by the economist to an official of the client corporation. Once received by the official, it was electronically forwarded to another official of the client corporation. Neither official was a signatory to the APO. At the time of receipt, neither official was aware that redacted BPI could be electronically restored in the draft brief.

In the course of editing the brief, the attorney responsible for the preparation of the brief realized that BPI still existed in recoverable form. Recognizing that a possible APO breach may have occurred, the attorney contacted the Secretary. The attorney who had received the electronically transmitted brief contacted the economist and client-officials, and requested that they destroy the electronic version of the draft brief sent to them. A letter was filed with the Commission stating that no actual disclosure of BPI occurred.

The Commission found that the attorney in charge of the preparation of the brief breached the APO by e-mailing a draft of the public prehearing brief that contained retrievable BPI. Although he did not know that the draft contained BPI, he had the responsibility to be fully aware of how the document was prepared because a legal assistant was preparing the document and non-signatories would ultimately see the brief. The Commission issued a warning letter to the attorney in light of the unintentional nature of the breach, the fact that the attorney discovered the breach, the promptness with which the breach was rectified, the certifications by the non-signatories that the brief was not read, and the implementation of a new policy within the law firm that documents under an APO will not be electronically transmitted.

The economist and second attorney were found not to have breached the APO because they were unaware that the brief contained BPI and its preparation was not under their control or supervision. In the case of the second attorney, he took an additional precaution by visually checking the document to ensure that all BPI had been deleted before he arranged to have the document forwarded to his client.

Case 17: Counsel prepared, filed, and served a public document that contained BPI. The Secretary discovered the breach and notified the attorney. The page containing BPI was retrieved from all those on the service list except for one firm. That firm stated that it never received the document. The

attorney was able to confirm that the document had not been copied or distributed by the other firms on the service list.

According to the attorneys who signed the document and were signatories to the APO, the breach occurred because the attorney preparing the document failed to have it checked by a second attorney, as required by the law firm's APO procedures. Moreover, the attorneys argued that the information at issue was not BPI because it did not contain commercial information and the information was later revealed in a publicly available Commission staff report. The Commission determined that the information at issue was BPI at the time it was released and that a breach had occurred.

The Commission held that the attorney responsible for the preparation of the brief committed a breach by allowing BPI to become publicly available. The Commission did not hold the other attorneys who signed the document responsible because, by not following the firm's APO procedures, the attorney who prepared the brief precluded another attorney from reviewing the document for potential APO violations. In addition, the attorney was a third year associate and had no prior breaches that would have alerted the other attorneys who signed the document that they needed to provide closer supervision of APO materials.

The Commission considered the fact that one of the copies of the document was never found as an aggravating circumstance. Nonetheless, the Commission issued a warning letter in light of the unintentional nature of the breach, the prompt action taken to rectify the breach, the absence of any information suggesting that any non-signatory to the APO read the BPI, the implementation at the law firm of additional safeguards to prevent future breaches, and the absence of any prior breaches by the attorney.

Case 18: Two attorneys prepared, filed, and served a public version of a posthearing brief that contained unredacted BPI. Immediately after being notified of this error by opposing counsel, the attorneys contacted the Secretary and the other parties, requesting that they destroy the page containing BPI and replace it with a corrected version.

The attorneys, signatories to the APO, argued that because the error was corrected within the 24-hour deadline prescribed for the filing of a brief under rule 207.3(c), they did not breach the APO. However, the Commission held

that rule 207.3 was not applicable because that rule applies only to bracketing changes made to confidential briefs and not to public briefs.

Therefore, the Commission determined that the attorneys breached the APO by failing to redact BPI and making it available to non-signatories to the APO. The Commission issued warning letters to the attorneys because the breach was unintentional and immediately rectified. Moreover, the attorneys had no prior APO breaches.

Case 19: Two attorneys and a consultant filed a prehearing brief with the Department of Commerce containing bracketed BPI obtained under the APO in the Commission investigation. In addition, the two attorneys and their secretary sent a copy of the confidential brief to a law firm that was not a signatory to the Commission's APO and was no longer a signatory to Commerce's APO. The secretary typed the brief, made copies, and prepared envelopes for service on other parties. In determining whom to serve, she used an old certificate of service list that had not been updated, even though one of the attorneys told her that the firm had received an updated service list. The Commission found that the attorneys and the secretary breached the Commission's APO in releasing the brief to DOC personnel. The Commission determined that some of the information contained in the brief was BPI and not publicly available because it came from Commission questionnaire responses, which were provided only to the parties to the Commission investigation under its APO. The two attorneys and the secretary failed adequately to explain their contention that the information in question was independently known to industry participants. The Commission decided that the consultant did not breach the Commission's APO, as she was not involved in preparing, filing, or serving the prehearing brief and had no personal knowledge of any circumstances surrounding the possible breach.

The Commission issued a warning letter to the secretary. As mitigating factors, the Commission considered that this was the only breach in which the secretary was involved within the time period generally examined by the Commission for the purpose of determining sanctions, the breach was unintentional, prompt action was taken to minimize the effect of the breach, the non-signatory law firm did not view the BPI, and the secretary was under the direction and supervision of an attorney.

In determining the proper sanctions for the two attorneys, the Commission

decided to consider the APO breaches committed by one of the attorneys in this case at the same time it considered sanctions for the breach he committed in Case 20. The Commission determined the sanctions against the second attorney in concert with consideration of the sanctions against him in two other APO violations, Cases 20 and 21.

Case 20: The lead attorney, a second attorney, and a consultant submitted a public version of their final comments to the Commission, but failed to redact BPI from two pages of the Comments. The Secretary noticed the errors a day after the comments were filed and notified one of the attorneys. That same day the attorney called all parties that had received copies of the comments and requested that they destroy the pages containing the BPI.

The Commission found that the consultant, who was not a signatory to the APO, did not breach the APO because, although his name was on the Final Comments, he only had client contact responsibilities and never had access to the APO materials. The Commission determined that both attorneys breached the APO by failing to redact the BPI. In addition, the lead attorney also breached by failing to provide adequate supervision over the handling of BPI.

The Commission determined the sanctions for the lead attorney in connection with Case 19, discussed above. The Commission decided to publicly reprimand the lead attorney in the **Federal Register**, 66 FR 57110 (November 14, 2001). In reaching this decision, the Commission considered the fact that the breaches committed by the attorney were his second and third breaches within a short period of time. In addition, the Commission, in the public letter, required the law firm to have at least two attorneys review all documents for future filings with the Commission to ensure APO compliance. The two-attorney review requirement is in effect for the two-year period starting with the date the public reprimand was published in the **Federal Register**. The Commission decided the sanctions against the second attorney in concert with Cases 19 and 21.

Case 21: Three attorneys filed and served a public version of their final comments that contained BPI. The lead attorney who had been the second attorney in Cases 19 and 20 prepared the documents and took sole responsibility for the breach. He argued that the information in question was publicly available. The Commission disagreed and found that the lead attorney breached the APO because he received the information from a

Commission investigator's report that relied on data given by a domestic producer's representative. The Commission found that the two other attorneys did not breach the APO because they did not prepare the final comments.

In sanctioning the attorney who breached the APO, the Commission also considered the attorney's previous breaches in Cases 19 and 20. As an aggravating factor, the Commission found it significant that the attorney had committed four breaches within a short period of time. The Commission publicly reprimanded the attorney in the **Federal Register**, 66 FR 57110 (November 14, 2001). The Commission also suspended the attorney's access to BPI for six months from the date the public reprimand was published in the **Federal Register**. Finally, as noted in Case 20, the Commission required the attorney's law firm to have at least two attorneys review all documents for future filings with the Commission to ensure APO compliance.

Case 22: An associate attorney, his secretary, and the lead attorney breached the APO by transmitting BPI to four embassy officials who were non-signatories to the APO, but were on the public service list. Over a 17-day period, BPI was sent to the same four embassies on four separate occasions. In deciding that the associate attorney, his secretary, and the lead attorney breached the APO four times, the Commission considered the lack of attention paid to the certificates of service for both confidential and public documents. The Commission determined that either none of the parties noticed that the public certificate of service had been used for both confidential and public materials or the parties lacked awareness that the two service lists were different. In addition, the Commission found that the law firm did not provide adequate safeguards or supervision to protect BPI from delivery to unauthorized persons.

The Commission sanctioned the associate attorney, his secretary, and the lead attorney by issuing private letters of reprimand to them. As mitigating factors, the Commission considered the unintentional nature of the breaches, the timely reporting of the breaches once discovered, the efforts to mitigate any harm caused by the breaches, the lack of previous APO breaches, and efforts by the firm to prevent future breaches. As aggravating factors, the Commission considered the large number of breaches in one investigation, the large volume of APO materials involved, and the significant amount of time during which the BPI was unprotected. The

Commission determined that it could not be certain that no BPI was divulged to unauthorized persons.

Case 23: A partner and an associate filed the public version of a prehearing brief, which had an annex that contained BPI. One of the law firm's clients notified the parties three days after filing of the possibility of a breach after two executives of the client corporation had read the annex containing the BPI. The associate notified the Commission the same day and both attorneys immediately contacted counsel for the other parties and provided substitute annexes.

The Commission found that both attorneys breached the APO and issued them private letters of reprimand. As mitigating factors, the Commission considered that the breach was unintentional, the attorneys took immediate action to remedy the situation by notifying the Commission, contacting counsel for the other parties, and providing substitute annexes, this was the only breach in which the attorneys had been involved during the time period normally considered by the Commission, and the BPI in question was in a cover letter to a questionnaire response that was not clearly labeled as containing BPI. The Commission issued private letters of reprimand because of the aggravating circumstances that the attorneys' client discovered the breach and that the two executives who were not signatories to the APO actually read the BPI.

Case 24: A law firm and a consulting firm failed to return or destroy BPI released under an APO and to file certificates of return or destruction within the 60-day time limit after the Commission published its final determination in the **Federal Register**. The Secretary noticed the breach when the lead attorney sent a certificate of return or destruction signed by an attorney who had left the firm. The Secretary's staff discovered that certificates of destruction or return had not been filed by most of the other signatories to the APO. The firm had only submitted certificates of return or destruction for people no longer with the firm.

The lead attorney admitted that the firm had not returned or destroyed the APO materials. However, he argued that it was necessary to retain APO materials because the investigations were still subject to a judicial appeal of the Commission's final affirmative determination. He noted that the Department of Commerce had entered a suspension agreement with one of the firm's clients, which was being challenged at the Court of International

Trade. He stated that if the Court reversed Commerce, Commerce would issue an antidumping order, and only at that point would the Commission's final determination be ripe for appeal.

The Commission determined that the lead attorney breached the APO by failing to destroy or return BPI within 60 days after completion of the Commission investigations. In addition, the attorney failed to certify that to his knowledge and belief all copies of the BPI had been returned or destroyed and that no copies of the BPI had been made available to any person to whom disclosure was not specifically authorized. The Commission ordered the lead attorney and all other authorized applicants at the law firm and the consulting firm to comply with the APO within 14 days. The Commission did not find any other attorneys or members of the consulting firm to have breached the APO because they were complying with the lead attorney's decision to retain that APO materials.

The Commission issued a private letter of reprimand to the lead attorney. As mitigating circumstances, the Commission considered that the lead attorney had no prior breaches and that he destroyed and certified the destruction of the APO materials once he received the Commission's instruction to destroy them. Furthermore, no unauthorized person gained access to the APO materials as a result of the breach. Finally, the lead attorney's law firm instituted a policy of seeking guidance in matters that attorneys find ambiguous instead of making a potentially incorrect independent decision regarding compliance with Commission APOs. As an aggravating factor, the Commission considered that the breach was not inadvertent. It was based on the lead attorney's decision to interpret the APO and decide how it should be applied in what he considered unique circumstances, without seeking guidance from the Commission.

Case 25: A lead attorney filed a letter with the Commission Secretary challenging certain information contained in a respondent's revised questionnaire response and in the cover letter that accompanied the revised response. The respondent's cover letter was marked "PROPRIETARY DOCUMENT" and in this letter the respondent's attorney requested proprietary treatment for that information and for the revised questionnaire response. No material in the respondent's cover letter or the response was bracketed. When the lead attorney filed his response, he sent a

confidential version of the letter to the Secretary and filed a public version. He also had the public version served on two non-signatories to the APO. One day after the lead attorney filed his letter, he realized that it might contain BPI. He notified the Secretary and filed and served revised copies of his letter.

The Commission found that the lead attorney breached the APO because the "public" version of his letter contained BPI, he served the letter on two people who were not signatories to the APO, and he failed to bracket the same BPI in the confidential version of his letter. The Commission did not agree with his argument that if unbracketed BPI had appeared in his letter, it was the fault of the respondent and its attorneys because they did not bracket or otherwise identify the BPI in their cover letter and revised response. The Commission noted that a questionnaire response is not filed with the Secretary subject to requirements of rules 201.6(b)(3) and 207.3(c), which require among other things that BPI be bracketed. Furthermore, the instructions for responding to the questionnaire indicated that each response would be automatically treated as confidential, except to the extent that data in the response are publicly available or must be disclosed by law. The lead attorney did not establish the applicability of either of the exceptions. Therefore, the respondent was under no obligation specifically to mark or bracket BPI in the revised questionnaire response.

The Commission issued a warning letter to the lead attorney. As mitigating factors, the Commission considered that the attorney did not act in bad faith, that this was the only breach in which he was involved within a period of time generally examined by the Commission for the purposes of determining sanctions, and that he took prompt action to correct the breach.

Case 26: Three attorneys, a secretary, and a paralegal prepared a postconference brief on behalf of the petitioner. One day after the attorneys filed the confidential version of the brief, they filed replacement pages for the confidential brief, and pursuant to the 24-hour rule, they filed the public version of the brief. The following workday, the Commission's Secretary notified the attorneys' law firm by telephone that several appendices in the public version of its brief contained unredacted BPI in brackets. The Secretary also noted that brackets had been removed from some of the petitioner's information in the replacement pages of the confidential brief, which was previously bracketed in the original pages of the confidential

version of the brief and had been redacted from the public version of the brief.

After the law firm received the Secretary's telephone call, it determined that some of the information that it failed to bracket in the replacement pages to the confidential brief belonged to its own client and could therefore be released as public information. The law firm also made revisions to the relevant pages of the public version of its brief and re-filed and re-served the revised pages. The law firm took several more steps to avoid dissemination of the unredacted information in the public version of the brief. It contacted lead counsel for each party to the investigation by telephone on the same day the Secretary called and requested that counsel retrieve the copies of the petitioner's postconference submissions. It prepared replacement pages that included additional bracketing on one page of its confidential brief, removed brackets from certain of its client's information in the confidential brief, and redacted bracketed information from the public version of its brief. The law firm also contacted the parties on the public service list to retrieve the pages that had contained unredacted BPI. The public service list in effect in these investigations at the time included only law firms that were approved for access to BPI under the APO. However, one of the law firms made copies of the public version of the brief and forwarded one copy to its client who was not a signatory to the APO. The information was not opened by the non-signatory and was returned to the law firm. The offending exhibit pages that were distributed to the other parties on the public service list were also returned to the law firm. The firm received assurances from the lead counsel of all of the parties on the public service list that no non-signatory had reviewed the BPI.

The Commission found that, in two sections of the brief, the attorneys, the secretary, and the paralegal did not breach the APO in failing to bracket or redact BPI because the information at issue belonged to the parties that disclosed it. However, in another section, the Commission determined that the three attorneys breached the APO by failing to redact BPI from the public version that was filed with the Commission and served on parties on the public service list.

The Commission issued warning letters to the three attorneys. As mitigating circumstances, the Commission considered that this was the only breach committed by the attorneys within the time period

generally examined by the Commission for purposes of determining sanctions, that the breach was unintentional, that prompt action was taken to remedy the breach, and that the clients who were given the brief containing the BPI neither read nor made any copies of the BPI.

The Commission decided to take no further action against the secretary or paralegal because they were responsible to and under the supervision of attorneys at all times.

Case 27: One attorney and three legal assistants served a copy of corrections to a Commission staff report containing BPI as well as a prehearing brief containing BPI, on a law firm that had been removed from the APO service list. An attorney from another law firm who was a signatory to the APO notified the attorney serving the documents that one of the firms on the certificate of service attached to the prehearing brief had withdrawn from the APO. The next day, the attorney serving the documents contacted the law firm that was no longer on the APO list and retrieved the unopened pre-hearing brief. Later that day, the attorney noticed that the corrections, which were sent six days before the brief, had also been served to the law firm that had withdrawn from the APO. The attorney contacted the firm and learned that the corrections to the preliminary staff report had already been shredded without being opened. The attorney alerted the Secretary that day to what had transpired.

One of the legal assistants prepared the service list that incorrectly included the law firm no longer on the APO service list for the corrections to the preliminary staff report. The legal assistant used the same service list for the prehearing brief. Both times he failed to check his list against the updated list available through the Commission's website. The same legal assistant arranged for the filing of the document with the Commission and for delivery of the service copies. The other two legal assistants simply served the documents on the recipients as instructed.

The Commission issued a warning letter to the attorney for breaching the APO. The Commission has consistently taken the position that a breach of the APO occurs when BPI is made available to unauthorized persons, and that it is not necessary that those persons actually view the information. Specifically, the attorney breached the APO by providing a person whose law firm had been removed from the APO service list with copies of corrections to a Commission staff report containing BPI and with a pre-hearing brief

containing BPI. The Commission also noted that the attorney was responsible for supervising the activities of the legal assistants who prepared and delivered the briefs because she signed the APO acknowledgment for clerical personnel, which she filed with the Commission. As mitigating circumstances, the Commission considered that this was the only breach for the attorney within the period generally examined by the Commission, that the breach was unintentional, that prompt action was taken to remedy the breach, and that no unauthorized person opened the packages containing the BPI.

The Commission determined that the legal assistant who prepared the erroneous service list had breached the APO and issued a warning letter to him. As mitigating circumstances, the Commission considered that this was the only breach for the legal assistant within the period generally examined by the Commission, that the breach was unintentional, that prompt action was taken to remedy the breach, and that no unauthorized person opened the packages containing the BPI.

The Commission found that the two legal assistants who served the documents did not breach the APO.

Case 28: Four attorneys filed the public version of a posthearing brief, which included an exhibit that contained BPI. The Commission found that one of the attorneys and her secretary breached the APO by failing to redact the BPI. The secretary "whited-out" the BPI electronically on her computer. She then reviewed the exhibits, both on the computer screen and as printed pages, to make sure she had redacted all BPI. Another attorney then reviewed the brief before the attorney who breached the APO made a final review and found all BPI had been redacted. Eleven days later one of the attorneys discovered the un-redacted BPI in the exhibit and notified the Commission Secretary. The attorney then redacted the BPI from the exhibit and served a replacement page on all relevant parties.

The Commission found that three of the attorneys did not breach the APO because they did not participate in the preparation or review of the exhibits in the public version of the brief. However, it initiated an additional investigation, which was still pending when this case was decided, after it discovered that another attorney who was not a signatory to the APO helped in the preparation and filing of the brief.

The Commission issued a private letter of reprimand to one of the attorneys. As mitigating circumstances, the Commission considered that this

was her first breach of an APO, that the breach was inadvertent, and that once she became aware of the breach she took prompt action to retrieve the pages containing the BPI. In deciding to issue a private letter of reprimand instead of a warning letter the Commission considered the aggravating circumstance that the non-redacted BPI was in the possession of a non-signatory for eleven days. Without evidence to the contrary, the Commission assumed that a non-signatory had reviewed the BPI because of the length of time it was in the non-signatory's possession.

The Commission issued a warning letter to the secretary. As mitigating circumstances, the Commission considered that this was the only breach of an APO in which she was involved within the period generally examined by the Commission, that the breach was unintentional, and that once her firm became aware of the breach it took prompt action to retrieve the pages containing the BPI. Although the Commission concluded that a non-signatory had reviewed the BPI, it recognized that she was under the direction and supervision of an attorney.

Case 29: Three attorneys filed the public version of a postconference brief that contained bracketed but un-redacted BPI. A secretary assisted in the brief's preparation. The Secretary noticed the breach five days after it was filed and notified the firm. The firm took steps to retrieve the copies of the public version of the brief that it had served and distributed. The attorneys also filed a replacement page that no longer contained BPI. The Commission found that the attorney who had the primary responsibility for preparing the brief and the attorney who signed the brief breached the APO. The two attorneys reviewed the brief, but failed to redact the bracketed BPI. The Commission also determined that the secretary breached the APO because she failed to run properly the law firm's computer program that redacts bracketed information from a submission after the attorneys instructed her to redact the information. The Commission found that the third attorney did not breach the APO. She was not in the office on the day that the public version of the brief was filed, and she appeared to play no role in the preparation of the brief.

The Commission issued warning letters to both attorneys. As mitigating factors, the Commission considered that the attorneys had no breaches within the time period generally examined by the Commission for the purpose of determining sanctions, that the breach

was unintentional, that prompt action was taken to remedy the breach, and that no non-signatory of the APO actually read the document.

The Commission issued a warning letter to the secretary who assisted in the brief's preparation at the instruction of her supervising attorneys. As mitigating factors, the Commission considered that the secretary had no prior breaches, that the breach was unintentional, that prompt action was taken to remedy the breach, and that no non-signatory of the APO actually read the document.

Case 30: An economist, while under the supervision of an attorney, faxed the confidential version of a prehearing brief containing BPI to a client-association who was not a signatory to the APO. The client-association subsequently faxed the confidential version to its 66 members, who were also non-signatories, the following day. Two days after the fax was sent to the client, the attorney notified the Secretary and reported that he had contacted each of the persons to whom the brief had been distributed, informed them of the seriousness of the situation, and instructed them to destroy the brief. However, the attorney and economist did not account for several of the faxed copies.

The Commission determined that both the attorney and the economist breached the APO by allowing unauthorized persons to view the BPI. The Commission sanctioned the attorney and the economist by issuing private letters of reprimand to both. As mitigating circumstances, the Commission considered that the breach was reported promptly after the attorney was advised that it had occurred, that prompt efforts were made to prevent further dissemination and to recall or destroy existing copies, that procedures were strengthened at the law firm to safeguard against future breaches, and that the attorney and the economist had no record of prior breaches. However, as aggravating circumstances the Commission considered that persons who were non-signatories to the APO actually read the BPI and that the attorney and economist did not account for all copies of the BPI that were sent by the client to its members.

Case 31: Three attorneys failed to destroy BPI within the required 60 days after the Commission made a final APO release. The lead attorney changed law firms and had the BPI covered under the APO transferred to his new law firm. The lead attorney's old law firm sent a letter to the Commission stating that they no longer represented the client, that the lead attorney continued to

represent the client, and that the APO material would remain with the lead attorney. Once at his new law firm, two other attorneys also signed the APO. Ten months after the Commission made a final APO release, the lead attorney stated that he learned that he should no longer possess the BPI after he spoke with an employee of the Commission about another matter. His client was appealing Department of Commerce findings and the lead attorney asserted that he believed that he was entitled to retain the BPI until the proceedings on the DOC appeal were completed. The other two attorneys never accessed the materials that had been released under the APO, but one of them reviewed a document drafted by the lead attorney, which contained BPI.

The Commission determined that the three attorneys breached the APO by failing to destroy all copies of BPI disclosed under the APO within 60 days of the completion of the Commission's investigation. The attorneys also failed to file a certificate attesting that to their knowledge and belief all copies of the BPI had been returned or destroyed, and that no copies of the BPI had been made available to any person to whom disclosure was not specifically authorized at the time they were required to return or destroy the BPI.

The Commission issued warning letters to the three attorneys. As mitigating circumstances, the Commission considered that this was the only breach in which any of the attorneys had been involved within the period generally examined by the Commission for purposes of determining sanctions, that the breach was unintentional, and that prompt action was taken to remedy the breach once the Secretary advised them of a potential breach.

Case 32: The Commission was notified by a lead attorney that an associate at his law firm had discovered the BPI version of a prehearing brief in a file not designated for APO materials and which was accessible by non-APO signatories. A second attorney at the law firm admitted to taking two copies of the prehearing brief, which contained BPI, into his possession, but could only account for having properly returned one of the copies to the law firm's APO filing room. No one at the firm knew how or when the document was placed in the non-APO file or whether anyone not on the APO reviewed it. Immediately after the document was discovered, the attorneys had it numbered, stamped, and filed in the appropriate APO filing room.

The Commission determined that both attorneys breached the APO. The

Commission held the lead attorney responsible because he had the ultimate responsibility for the safe keeping of the APO materials entrusted to him. Despite that responsibility, he allowed a document containing BPI to be placed in a file accessible to persons not covered by the APO. The Commission also held the second attorney responsible because he lost track of a document containing BPI and possibly caused it to be placed in a file accessible to non-signatories of the APO.

The Commission issued warning letters to both attorneys. As mitigating circumstances, it considered that both attorneys had no prior breaches in the period generally examined by the Commission for purposes of determining sanctions, that the breach was unintentional, and that prompt action was taken to remedy the breach in that the law firm changed its APO procedures and held a mandatory seminar for all personnel regarding APO materials. The Commission noted that, although it issued warning letters, issuance of a private letter of reprimand was possible if a non-signatory had actually read the BPI. However, the Commission considered it significant that the non-signatories that had access to the BPI were employees of the law firm and likely did not divulge the information to anyone outside the firm.

Case 33: An attorney filed the public version of an opposition to a motion for modification of stay orders and a motion for sanctions with the U.S. Court of Appeals for the Federal Circuit ("CAFC"). The document contained confidential business information ("CBI") obtained pursuant to a Commission APO. Seven days after the attorney filed the document, opposing counsel sent a letter to the attorney and other interested counsel informing them of the potential breach. The attorney immediately asked the CAFC to place the original opposition under seal and filed a revised public version of his opposition four days after the date of opposing counsel's notification letter. The Commission determined that the information in question was not publicly available, as argued by the attorney, and that the attorney had breached the APO.

The Commission issued a warning letter to the attorney. As mitigating factors, the Commission considered that he had no prior APO breaches, that the breach was unintentional, that prompt action was taken to remedy the breach, and that no non-signatory to the APO actually read the document.

Case 34: A law firm served the first-day BPI version of its post-conference brief on another law firm that was not

a signatory to the Commission's APO. The same day an attorney at the non-signatory firm called the law firm and stated that he had been improperly served with the BPI version of the brief. This attorney did not view the BPI and the first law firm retrieved the brief later in the day. Two days later the first law firm sent a letter to the Commission regarding the incident.

Several attorneys and consultants were involved in preparation of the post-conference brief, but not all of them had direct involvement in filing and serving the brief. Five project assistants were responsible for the filing and service of the brief.

The Commission determined that the APO had been breached because BPI was provided to unauthorized persons. The Commission found that all five project assistants, the attorney in charge of supervising the project assistants, and a consultant who signed the certificate of service breached the APO, but that the lead attorney did not breach the APO.

The Commission found that the project assistants breached the APO because they improperly labeled one of the post-conference briefs, which was sent to a non-signatory of the APO. The attorney in charge of the project assistants breached the APO because he undertook in the APO application to supervise clerical employees, which he failed to do and this failure resulted in the service of BPI on a non-signatory to the APO. The consultant who signed the certificate of service breached the APO because, although the certificate he signed included only those firms that were entitled to receive BPI under the APO, he should have ensured that the copies to be served were labeled properly. Finally, the Commission found that the lead attorney did not breach the APO because in the APO application he delegated the responsibility of supervising clerical employees to another attorney, and the Commission found that this delegation was reasonable in light of the supervising attorney's regular practice before the Commission.

The Commission issued warning letters to the five project assistants, the attorney in charge of supervising clerical personnel, and the consultant who signed the certificate of service. As mitigating circumstances the Commission considered that the breach was unintentional, that prompt action was taken to remedy the breach, that the non-signatory who received the brief containing BPI did not view the document, that there were no prior breaches within the period generally examined by the Commission for

purposes of determining sanctions, and that the law firm revised its procedures regarding APOs in light of the breaches.

Case 35: Three attorneys and a legal assistant were involved in the preparation of the public version of a prehearing brief. Twelve days after the public version of the brief was filed and served, the Secretary notified the law firm that it had failed to redact one item of bracketed BPI from a footnote in one of the exhibits. The public version of the brief, which contained unredacted BPI, was served on and possibly viewed by several non-signatories to the APO. The law firm immediately contacted all parties who had received the public version of the brief to arrange for the destruction or return of the offending page. Two days later the law firm filed a replacement page.

The Commission found that two of the attorneys (one of counsel and the other an associate) breached the APO because the lead attorney had delegated the responsibility of preparing the brief, properly bracketing BPI, and redacting BPI from the public version to the two attorneys. The Commission found that the lead attorney did not breach the APO because she reasonably delegated the responsibility of preparing and reviewing the public version of the brief to not one, but two, experienced attorneys. Furthermore, it was reasonable for the lead attorney to rely on their representations that the brief was ready for dissemination to the public when she signed the public version and had additional copies disseminated to other non-signatories. The Commission also found that the legal assistant did not breach the APO because at all times she acted under the direction and supervision of the two attorneys responsible for the brief.

The Commission sanctioned both the associate and of counsel attorneys with a private letter of reprimand. As mitigating factors, it considered that the breach was unintentional, that corrective measures were taken immediately, that the law firm followed its internal APO procedures that were in place before the breach, that these procedures were further strengthened after the breach, and that both attorneys voluntarily led a training session on the revised procedures for other attorneys and staff. The of counsel attorney also had no prior breaches in the period generally considered significant by the Commission for the purposes of determining sanctions. As aggravating circumstances, the Commission considered the fact that the Secretary and not the law firm found the unredacted BPI in the public version of the brief, that it appeared that the BPI

was viewed by the non-signatories who received it, that the unredacted BPI revealed involved information from one of two importers when the Commission's staff report did not even reveal aggregate quantities for such importers because only two parties' information was involved. The associate attorney had one prior breach in the period generally examined by the Commission for the purposes of determining sanctions, which served as another aggravating factor for him.

When the Commission sanctions someone in the associate's situation, it normally issues a private letter of reprimand, usually including additional requirements or prohibitions. However, the Commission issued only a private letter of reprimand to the associate because he voluntarily conducted a training session on the firm's APO procedures for other attorneys and staff.

Case 36: A law firm prepared the APO version of a prehearing brief containing BPI to be filed and served, but in the process of serving the brief, one copy was lost for 11 days. The law firm waited seven days before notifying the Commission of the missing brief. On the day the brief was lost, an associate with the firm went through several steps to make sure that all 14 copies of the brief were properly labeled for service. After she completed this process with the assistance of others, she arranged for a clerical worker and a legal assistant, who were both signatories to the APO, to hand carry the briefs to the Commission together to ensure that they were properly filed before the clerical worker delivered the service copies. The two employees took a taxicab to the Commission. After they filed the appropriate number of copies with the Commission, the legal assistant noticed that one of the copies was missing. The two employees presumed that they left the missing copy in the taxicab, but after contacting the cab company, the D.C. Cab Commission, and offering a \$500 reward, the missing brief did not reappear. Eleven days after the two employees lost the envelope, it arrived at the law firm specified on its address label. The envelope was unopened.

The Commission determined that the clerical worker and the legal assistant breached the APO because the service copy of the APO version of the prehearing brief was missing for 11 days and was only eventually delivered to the correct APO recipient by an unknown person, possibly the cab driver who was a non-signatory to the APO. The Commission has consistently taken the position that it is a breach of an APO to make BPI available to an unauthorized person, and that it is not

necessary for the non-signatory to view the BPI for a breach to occur. Generally, the Commission does not hold support staff responsible for breaches if they are under the direct supervision and control of another, but it found that the circumstances surrounding this incident warranted such a determination. The service copy was under their control when it disappeared, and the disappearance was directly related to their failure to safeguard all copies of the brief at all times.

The Commission determined that the lead attorney in the investigations did not breach the APO. It found that he reasonably delegated the responsibility of filing and serving the APO version of the brief to the associate who had worked in the firm's international trade practice for approximately two years, who had no prior APO breaches, and who took a number of steps to ensure that the document containing BPI received under the APO was properly served.

The Commission found that the associate did not breach the APO, notwithstanding the fact that she had been delegated the responsibility of filing and serving the APO version of the brief in compliance with the APO requirements. The associate was very involved in the preparation of the brief for filing and service and appeared to have been very diligent in checking and double-checking the number of copies, the packaging of the copies, and the potential recipients to ensure proper delivery and compliance with the APO. The associate arranged for two people to hand deliver the filings to the Commission, both of whom had made similar filings on many prior occasions and neither of whom had previously breached an APO. The Commission therefore found that the associate reasonably delegated the responsibility for physically delivering the filing and service copies. The Commission noted that the only way the associate might have prevented this breach would have been to deliver the filing and service copies herself, which would be unreasonable. The Commission added that in rare circumstances such as these, this incident should not be included in the associate's file or be held against her in any future cases.

The Commission decided to issue warning letters to the clerical worker and the legal assistant. As mitigating factors, it considered that this was the only breach the two had committed within the period generally examined by the Commission for purposes of determining sanctions, that the breach was unintentional, that prompt action was taken to remedy the breach, and

that the unknown person who eventually delivered the service copy did not open the envelope and read the BPI. One aggravating factor was that the missing service copy was not reported to the Commission until seven days after it was missing.

IV. Investigations in Which No Breach Was Found

During 2001, the Commission completed six additional investigations in which no breach was found. One investigation was not completed, but was withdrawn by the Office of General Counsel, because the revealed information was not treated as BPI by the Commission. The reasons for a finding by the Commission of no breach included:

(1) The information disclosed at the hearing was sufficiently changed to make it no longer confidential;

(2) The information revealed was publicly available;

(3) The suppliers of the BPI had consented to the use of the information in U.S. District Court litigation and, therefore, providing BPI to the district court judge for in camera inspection was not a breach;

(4) The information was not BPI because it was a general description of the channels of distribution;

(5) The information revealed was hypothetical and therefore not BPI; and

(6) The Commission did not treat the information as BPI in its staff report.

Issued June 4, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02-14386 Filed 6-6-02; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 303-TA-23, 731-TA-566-570, 731-TA-641 (Final) (Reconsideration) (Remand)]

Ferrosilicon From Brazil, China, Kazakhstan, Russia, Ukraine and Venezuela; Notice of Commission Determination to Conduct a Portion of the Hearing in Camera

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing to the public.

SUMMARY: Upon request of domestic producer Elkem Metals Co., the Commission has determined to conduct a portion of its hearing in the above-captioned proceedings scheduled for June 6, 2002, in camera. See Commission rules 207.24(d), 201.13(m)

and 201.36(b)(4) (19 CFR 207.24(d), 201.13(m) and 201.36(b)(4)). The remainder of the hearing will be open to the public. The Commission has determined that the seven-day advance notice of the change to a meeting was not possible. See Commission rule 201.35(a), (c)(1) (19 CFR 201.35(a), (c)(1)).

FOR FURTHER INFORMATION CONTACT:

Marc A. Bernstein, Office of General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202-205-3087, e-mail mbernstein@usitc.gov. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: The Commission believes that Elkem has justified the need for a closed session. Elkem seeks a closed session to allow testimony concerning the effect domestic ferrosilicon producers' agreement to establish floor prices had on U.S. ferrosilicon prices during the Commission's original periods of investigation. Because such discussions will necessitate disclosure of business proprietary information (BPI), they can only occur if a portion of the hearing is held in camera. In making this decision, the Commission nevertheless reaffirms its belief that whenever possible its business should be conducted in public.

The hearing will include public presentations by domestic producers and by respondents, with questions from the Commission. In addition, the hearing will include an in camera session for a confidential presentation by Elkem and for questions from the Commission relating to the BPI, followed by an in camera rebuttal presentation by respondents and for questions from the Commission relating to the BPI. For any in camera session the room will be cleared of all persons except those who have been granted access to BPI under a Commission administrative protective order (APO) and are included on the Commission's APO Service list in this investigation. See 19 CFR 201.35(b)(1), (2). The time for the parties' presentations and rebuttals in the in camera session will be taken from their respective overall allotments for the hearing. All persons planning to attend the in camera portions of the hearing should be prepared to present proper identification.

Authority: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR 201.39) that, in her opinion, a portion of the Commission's hearing in

Ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela, Inv. Nos. 303-TA-23, 731-TA-566-570, 731-TA-641 (Final) (Reconsideration) (Remand) may be closed to the public to prevent the disclosure of BPI.

Issued: June 4, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02-14332 Filed 6-6-02; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701-TA-416 (Final)]

Individually Quick Frozen Red Raspberries From Chile

AGENCY: International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On May 22, 2002, the Department of Commerce published notice in the **Federal Register** of a negative final determination of subsidies in connection with the subject investigation (67 FR 35961). Accordingly, pursuant to § 207.40(a) of the Commission's rules of practice and procedure (19 CFR 207.40(a)), the countervailing investigation concerning individually quick frozen red raspberries from Chile (investigation No. 701-TA-416 (Final)) is terminated.

EFFECTIVE DATE: June 3, 2002.

FOR FURTHER INFORMATION CONTACT:

Diane J. Mazur (202-205-3184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDISON-LINE) at <http://dockets.usitc.gov/eol/public>.

Authority: This investigation is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 201.10 of the Commission's rules (19 CFR 201.10).

Issued: June 4, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02-14331 Filed 6-6-02; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-1006-1009 (Preliminary)]

Urea Ammonium Nitrate Solutions From Belarus, Lithuania, Russia, and Ukraine

Determinations

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Belarus, Russia, and Ukraine of urea ammonium nitrate solutions, provided for in subheading 3102.80.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV). The Commission has determined that U.S. imports from Lithuania are negligible.²

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations with regard to Belarus, Russia, and Ukraine. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of these investigations need not enter a separate appearance for the final phase of the

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

² Commissioner Lynn M. Bragg, however, further finds that subject imports of urea ammonium nitrate solutions from Lithuania will imminently account for more than 3 percent of total import volume of all such merchandise, and determines that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of the subject merchandise from Lithuania that are alleged to be sold at LTFV.

investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On April 19, 2002, a petition was filed with the Commission and Commerce by the Nitrogen Solutions Fair Trade Committee, an ad hoc coalition of U.S. producers of urea ammonium nitrate solutions, which consists of CF Industries, Inc. of Long Grove, IL; Mississippi Chemical Corp. of Yazoo City, MS; and Terra Industries, Inc. of Sioux City, IA, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of urea ammonium nitrate solutions from Belarus, Lithuania, Russia, and Ukraine. Accordingly, effective April 19, 2002, the Commission instituted antidumping duty investigations Nos. 731-TA-1006-1009 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 29, 2002 (67 FR 20994). The conference was held in Washington, DC, on May 10, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on June 3, 2002. The views of the Commission are contained in USITC Publication 3517 (June 2002), entitled *Urea Ammonium Nitrate Solutions from Belarus, Lithuania, Russia, and Ukraine: Investigations Nos. 731-TA-1006-1009 (Preliminary)*.

Issued: June 4, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02-14387 Filed 6-6-02; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276(a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29

CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The David-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3014, Washington, 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates and publication in the **Federal Register** are in parentheses following the decisions being modified.

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General Wage Determination
Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at www.access.gpo.gov/davisbacon. They are also available electronically by subscription to the Davis-Bacon Online Service (<http://davisbacon.fedworld.gov>) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1-800-363-2068. This

subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512-1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington DC, this 30th day of May, 2002.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 02-14032 Filed 6-6-02; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to renew the information collections described in this notice, which are used in the National Historical Publications and Records Commission (NHPRC) grant program. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before August 6, 2002 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740-6001; or faxed to 301-837-3213; or electronically mailed to tamee.fechhelm@nara.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements

should be directed to Tamee Fechhelm at telephone number 301-837-1694, or fax number 301-837-3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collections are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (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 information technology. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collections:

1. *Title:* Application for attendance at the Institute for the Editing of Historical Documents.

OMB number: 3095-0012.

Agency form number: None.

Type of review: Regular.

Affected public: Individuals, often already working on documentary editing projects, who wish to apply to attend the annual one-week Institute for the Editing of Historical Documents, an intensive seminar in all aspects of modern documentary editing techniques taught by visiting editors and specialists.

Estimated number of respondents: 25.

Estimated time per response: 1.5 hours.

Frequency of response: On occasion, no more than annually (when respondent wishes to apply for attendance at the Institute).

Estimated total annual burden hours: 37.5 hours.

Abstract: The application is used by the NHPRC staff to establish the applicants qualifications and to permit selection of those individuals best qualified to attend the Institute jointly sponsored by the NHPRC, the State Historical Society of Wisconsin, and the University of Wisconsin. Selected applicants forms are forwarded to the resident advisors of the Institute, who use them to determine what areas of instruction would be most useful to the applicants.

2. *Title:* National Historical Publications and Records Commission Grant Program.

OMB number: 3095-0013.

Agency form number: None.

Type of review: Regular.

Affected public: Nonprofit organizations and institutions, state and local government agencies, Federally acknowledged or state-recognized Native American tribes or groups, and individuals who apply for NHPRC grants for support of historical documentary editions, archival preservation and planning projects, and other records projects.

Estimated number of respondents: 134 per year submit applications; approximately 100 grantees among the applicant respondents also submit semiannual narrative performance reports.

Estimated time per response: 54 hours per application; 2 hours per narrative report.

Frequency of response: On occasion for the application; semiannually for the narrative report. Currently, the NHPRC considers grant applications 2 times per year; respondents usually submit no more than one application per year.

Estimated total annual burden hours: 7,636 hours.

Abstract: The application is used by the NHPRC staff, reviewers, and the Commission to determine if the applicant and proposed project are eligible for an NHPRC grant, and whether the proposed project is methodologically sound and suitable for support. The narrative report is used by the NHPRC staff to monitor the performance of grants.

3. *Title:* Applications for Archival Administration and Historical Documentary Editing Fellowships.

OMB number: 3095-0014.

Agency form number: None.

Type of review: Regular.

Affected public: Individuals who wish to apply for an NHPRC fellowship in archival administration or historical documentary editing. Applicants for the archival administration fellowship must have at least two years professional archival work experience; applicants for the editing fellowship must hold a Ph.D. or have completed all requirements for the degree except the dissertation.

Estimated number of respondents: 9.

Estimated time per response: 8 hours.

Frequency of response: Generally one-time.

Estimated total annual burden hours: 72 hours.

Abstract: The application is used by the NHPRC staff to establish the applicants' qualifications and to permit selection by the host institution of those

individuals best qualified for the fellowships. One fellowship in archival administration and one fellowship in historical editing are awarded each year.

4. *Title:* Application for host institutions of archival administration and historical editing fellowships.

OMB number: 3095-0015.

Agency form number: None.

Type of review: Regular.

Affected public: Nonprofit institutions or organizations that have active archival or special collections programs, and historical documentary publication projects that have received an NHPRC grant.

Estimated number of respondents: 9.

Estimated time per response: 17 hours.

Frequency of response: Generally, one-time although an institution may apply in subsequent years.

Estimated total annual burden hours: 153 hours.

Abstract: The application is used by the NHPRC staff to select applicants to serve as host institutions for the two fellowships supported by the NHPRC each year.

Dated: May 30, 2002.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 02-14328 Filed 6-6-02; 8:45 am]

BILLING CODE 7515-01-P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: Under the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 67 FR 8563 and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Comments regarding these information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register**.

ADDRESSES: Written comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of NSF, including whether the information will have practical utility; (b) the accuracy of NSF's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725-17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to splimpto@nsf.gov. Copies of the submission may be obtained by calling (703) 292-7556.

FOR FURTHER INFORMATION CONTACT:

Suzanne H. Plimpton, NSF Reports Clearance Officer at (703) 292-7556 or send e-mail to splimpto@nsf.gov.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION: *Title of Collection:* Fellowship Application and Award Forms.

OMB Control No.: 3145-0023.

Abstract: Section 10 of the National Science Foundation Act of 1950 (42 U.S.C. 1861 *et seq.*), as amended, states that "The Foundation is authorized to award, within the limits of funds made available * * * scholarships and graduate fellowships for scientific study or scientific work in the mathematical, physical, medical, biological, engineering, social, and other sciences at appropriate nonprofit American or nonprofit foreign institutions selected by the recipient of such aid, for stated periods of time."

The Foundation Fellowship Programs are designed to meet the following objectives:

- To assure that some of the Nation's most talented students in the sciences

obtain the education necessary to become creative and productive scientific researchers.

- To train or upgrade advanced scientific personnel to enhance their abilities as teachers and researchers.
- To promote graduate education in the sciences, mathematics, and engineering at institutions that have traditionally served ethnic minorities.
- To encourage pursuit of advanced science degrees by students who are members of ethnic groups traditionally under-represented in the Nation's advanced science personnel pool.

The list of fellowship award programs sponsored by the Foundation includes, but may not be limited to, the following:

NSF Graduate Research Fellowships

Graduate Fellowships
 Minority Graduate Fellowships
 Mathematical Sciences Postdoctoral Research Fellowships
 NSF-NATO Postdoctoral Fellowships and Supporting Engineering
 Minority Postdoctoral Research Fellowships and Supporting Activities
 Postdoctoral Research Fellowships in Microbial Biology
 Postdoctoral Research Fellowships in Biological Informatics
 Ridge Inter-Disciplinary Global Experiments
 Advanced Study Institute Travel Awards

International Opportunities for Scientists and Engineers

Japan Research Fellows
 North American Research Fellows
 International Research Fellows

Estimate of Burden: These are annual award programs with application deadlines varying according to the fellowship program. Public burden may also vary according to program, however it is estimated that each submission is averaged to be 12 hours per respondent.

Respondents: Individuals.

Estimated Number of Responses: 13,000.

Estimated Total Annual Burden on Respondents: 156,000 hours.

Frequency of Responses: Annually.

Dated: June 4, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 02-14381 Filed 6-6-02; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION**Proposal Review; Sunshine Act Notice of Meetings**

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The majority of these meetings will take place at NSF, 4201 Wilson, Blvd., Arlington, Virginia 22230.

All of these meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meetings will no longer be announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF web-site: www.nsf.gov/home/pubinfo/advisory.htm. This information may also be requested by telephoning 703/292-8182.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02-14517 Filed 6-5-02; 2:29 pm]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION**Request to Establish an Information Collection; Comment Request**

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The Office of Management and Budget (OMB) issued government-wide guidelines under section 515 of the Treasury and General Government

Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554) to ensure and maximize the quality, objectivity, utility and integrity of information disseminated by Federal agencies. OMB's guidelines were published in the **Federal Register** on September 28, 2001 (66 FR 49718), and updated on January 3, 2002 (67 FR 369). A supplemental version of the guidelines was published in the **Federal Register** February 22, 2002 (67 FR 8452). Each Federal agency is responsible for issuing its own section 515 guidelines. As a result, The National Science Foundation (NSF) has developed corresponding information quality guidelines (the notice for which can be found at: 67 FR 21778). The full draft guidelines are found at the National Science Foundation's website: <http://www.nsf.gov/home/pubinfo/infoqual.htm>.

As part of this effort, NSF has developed a form to assist the public in reviewing NSF's information products. The form also may be found at the website above.

DATES: Written comments on this notice must be received by August 6, 2002 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

COMMENTS: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT:

Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone 703-292-7556; or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. You also may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION: *Title of Collection:* Request for Review and Correction of Information under Section 515.

OMB Number: 3145-NEW.

Expiration Date of Approval: Not applicable.

Type of Request: Intent to seek approval to carry out a new information collection.

Abstract: In accordance with section 515 of Public Law 106-554, codified at 44 U.S.C. 3516, note, the National Science Foundation (NSF) has developed mechanisms to allow affected persons to seek and obtain correction of information maintained and disseminated by this agency.

To seek a correction under section 515 of information maintained or disseminated by the National Science Foundation, individuals should follow the procedure described at <http://www.nsf.gov/locationtobedetermined>.

Estimate of Burden: 15 minutes.

Respondents: Individuals.

Estimated Number of Responses: 50.

Estimated Total Annual Burden on Respondents: 12.5 hours, based on 15 minutes per respondent.

Frequency of Responses: On occasion.

Dated: June 3, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 02-14270 Filed 6-6-02; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION**Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request**

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* Notice of Enforcement

Discretion (NOEDs) for Operating Power Reactors and Gaseous Diffusion Plants (GDP).

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* On occasion.

5. *Who will be required or asked to report:* Nuclear power reactor licensees and gaseous diffusion plant certificate holders.

6. *An estimate of the number of responses:* 17.

7. *The estimated number of annual respondents:* 17.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 2,550.

9. *An indication of whether Section 3507(d), Public Law 104-13 applies:* Not applicable.

10. *Abstract:* The NRC's Enforcement Policy addresses circumstances in which the NRC may exercise enforcement discretion. A specific type of enforcement discretion is designated as a Notice of Enforcement Discretion (NOED) and relates to circumstances which may arise where a nuclear power plant licensee's compliance with a Technical Specification Limiting Condition for Operation or with other license conditions would involve an unnecessary plant transient or shutdown, or performance of testing, inspection, or system realignment that is inappropriate for the specific plant conditions, or unnecessary delays in plant startup without a corresponding health and safety benefit. Similarly, for a gaseous diffusion plant, circumstances may arise where compliance with a Technical Safety Requirement or other condition would unnecessarily call for a total plant shutdown, or, notwithstanding that a safety, safeguards or security feature was degraded or inoperable, compliance would unnecessarily place the plant in a transient or condition where those features could be required.

A licensee or certificate holder seeking the issuance of an NOED must provide a written justification, in accordance with guidance provided in NRC Inspection Manual, Part 9900, which documents the safety basis for the request and provides whatever other information the NRC staff deems necessary to decide whether or not to exercise discretion.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O-1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC World Wide Web site: <http://www.nrc.gov/public-involve/>

[doc-comment/omb/index.html](http://www.nrc.gov/doc-comment/omb/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by July 8, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Bryon Allen, Office of Information and Regulatory Affairs (3150-0136), NEOB-10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395-3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301-415-7233.

Dated at Rockville, Maryland, this 3rd day of June, 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02-14342 Filed 6-6-02; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-325 and 50-324]

Carolina Power & Light Company; Notice of Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment Nos. 222 and 247 to Facility Operating License Nos. DPR-71 and DPR-62, respectively, to Carolina Power & Light Company (CP&L, the licensee), which revised the Facility Operating Licenses (FOLs) and Technical Specifications (TS) for operation of the Brunswick Steam Electric Plant (BSEP), Units 1 and 2, located in Brunswick County, North Carolina. The amendments are effective as of the date of issuance.

The amendments modified the FOLs and TS to allow an increase in the licensed power from 2558 megawatts thermal (MWT) to 2923 MWT. This change represents an increase of approximately 15 percent above the current licensed power for each unit and is considered an extended power uprate.

The application for the amendments 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 amendments.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for a Hearing in connection with this action was published in the **Federal Register** on February 12, 2002 (67 FR 36927). 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 (67 FR 36040, May 22, 2002).

For further details with respect to the action see (1) the application for amendments dated August 9, 2001, as supplemented October 17, November 1, 7, 28, and 30, December 4, 10, 17 (2 letters), and 20, 2001, January 24, February 1, 4, 13, 14, 21 (2 letters), and 25 (3 letters), March 4, 5, 7, 12, 14 (2 letters), 20, 22, and 25, and April 26 and 29, 2002, (2) Amendment Nos. 222 and 247 to License Nos. DPR-71 and DPR-62, 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 email to pdr@nrc.gov.

Dated at Rockville, Maryland, this 31st day of May 2002.

For the Nuclear Regulatory Commission.

Brenda L. Mozafari,

Sr. Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02-14340 Filed 6-6-02; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-10]

Exelon Generation Company, Dresden Nuclear Power Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) part 140, Section 140.11(a)(4) for Facility Operating License No. DPR-2, issued to Exelon Generation Company (EGC, the licensee), for operation of the Dresden Nuclear Power Station (DNPS), Unit 1, located approximately 50 miles southwest of Chicago, in Grundy County, Illinois. Therefore, as required by 10 CFR 51.21, the NRC is issuing the environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirement of 10 CFR 140.11(a)(4) regarding one of the two financial protection requirements.

The proposed action is in accordance with the licensee's application dated December 18, 2001, as supplement by letter dated February 13, 2002.

The Need for the Proposed Action

DNPS, Unit 1 was shut down in October 1978. On July 23, 1986, USNRC issued Amendment No. 36 to License DRP-2 for DNPS, Unit 1 changing the license to possess-but-not-operate status. The licensee at that time, Commonwealth Edison, informed the NRC that it had decided to permanently cease operations at DNPS, Unit 1, and that all fuel had been permanently removed from the reactor. In accordance with 10 CFR 50.82, upon docketing of the certifications in August 31, 1984, the facility operating license no longer authorizes the licensee to operate the reactor and to load fuel into the reactor vessel. In this permanently shutdown condition, the facility poses a reduced risk to public health and safety compared to when it was operating.

The proposed exemption is needed because the licensee's required insurance coverage exceeds the costs of potential accidents considered for a permanently defueled reactor with all spent fuel removed from the spent fuel pool. A letter received on February 13, 2002, notified the NRC that as of January 15, 2002, the DNPS, Unit 1 fuel storage pool no longer contains spent fuel assemblies. Because DNPS, Unit 1

no longer presents as great a risk as does an operating reactor plant, this reduction in risk should be reflected in the indemnification requirements to which the licensee is subject. Approval of the proposed exemption would allow a more equitable allocation of financial risk commensurate with the risks to the public.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the exemption only involves changes to indemnity insurance. The exemption would allow EGC to withdraw from participation in the secondary insurance pool based on the permanently defueled status of DNPS, Unit 1.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have the potential to affect any historic sites. It does not affect nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action and to require EGC to maintain the insurance coverage required of an operating plant (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for the Dresden Nuclear Power Station, Unit 1, dated November 1973.

Agencies and Persons Consulted

On May 9, 2002, the staff consulted with the Illinois State official, Frank

Niziolek, of the Illinois Department of Nuclear Safety, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 18, 2002, as supplemented by letter dated February 13, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams/html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1-800-397-4209 or 301-415-4737, or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 31st day of May, 2002.

For the Nuclear Regulatory Commission.

Stephen Dembek,

Chief, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02-14343 Filed 6-6-02; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension

Rule 15g-2, SEC File No. 270-381, OMB Control No. 3235-0434.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a

request for extension of the previously approved collection of information discussed below.

The "Penny Stock Disclosure Rules" (Rule 15g-2, 17 CFR 240.15g-2) require broker-dealers to provide their customers with a risk disclosure document, as set forth in Schedule 15G, prior to their first non-exempt transaction in a "penny stock". As amended, the rule requires broker-dealers to obtain written acknowledgement from the customer that he or she has received the required risk disclosure document. The amended rule also requires broker-dealers to maintain a copy of the customer's written acknowledgement for at least three years following the date on which the risk disclosure document was provided to the customer, the first two years in an accessible place.

The risk disclosure documents are for the benefit of the customers, to assure that they are aware of the risks of trading in "penny stocks" before they enter into a transaction. The risk disclosure documents are maintained by the broker-dealers and may be reviewed during the course of an examination by the Commission. The Commission estimates that there are approximately 270 broker-dealers subject to Rule 15g-2, and that each one of these firms will process an average of three new customers for "penny stocks" per week. Thus each respondent will process approximately 156 risk disclosure documents per year. The staff calculates that (a) the copying and mailing of the risk disclosure document should take no more than two minutes per customer, and (b) each customer should take no more than eight minutes to review, sign, and return the risk disclosure document. Thus, the total ongoing respondent burden is approximately 10 minutes per response, or an aggregate total of 1,560 minutes per respondent. Since there are 270 respondents, the annual burden is 421,200 minutes (1,560 minutes per each of the 270 respondents), or 7,020 hours. In addition, broker-dealers will incur a recordkeeping burden of approximately two minutes per response. Thus each respondent will incur a recordkeeping burden of 312 (156 × 2) minutes per year, and respondents as a group will incur an aggregate annual recordkeeping burden of 1,404 hours (270 × 312 / 60). Accordingly, the aggregate annual hour burden associated with Rule 15g-2 is 8,424 hours (7,020 + 1,404).

The Commission does not maintain the risk disclosure document. Instead, it must be retained by the broker-dealer for at least three years following the date on which the risk disclosure document

was provided to the customer, the first two years in an accessible place. The collection of information required by the rule is mandatory. The risk disclosure document is otherwise governed by the internal policies of the broker-dealer regarding confidentiality, etc.

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

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: May 29, 2002.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02-14297 Filed 6-6-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-25598; File No. 812-12830]

American Skandia Life Assurance Corporation, et al.; Notice of Application

May 30, 2002.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order under Section 6(c) of the Investment Company Act of 1940 (the "1940 Act" or "Act") to amend a prior order of the Commission under Section 6(c) of the 1940 Act which granted exemptions from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the 1940 Act and Rule 22c-1 thereunder to permit the recapture of credits applied to purchase payments made under certain deferred variable annuity contracts.

Applicants: American Skandia Life Assurance Corporation ("ASLAC"), American Skandia Life Assurance Corporation Variable Account B (Class 1 Sub-Accounts), American Skandia Life Assurance Corporation Variable Account B (Class 9 Sub-Accounts) (the "Account" or "Accounts"), and

American Skandia Marketing, Incorporated ("ASM"), referred to collectively herein as "Applicants".

Summary of Application: Applicants seek an order under Section 6(c) of the 1940 Act to amend a prior order under Section 6(c) of the 1940 Act ("Prior Order")¹ that, to the extent necessary, permits, under specified circumstances, the recapture of certain additional credits offered on a promotional basis ("Promotional Credits") applied to purchase payments made under certain deferred variable annuity contracts and certificates described in the application (the "Contracts"), as well as other contracts that ASLAC may issue in the future through the Accounts or any other separate account established in the future by ASLAC to support certain deferred variable annuity contracts issued by ASLAC ("Future Account") and that are substantially similar in all material respects to the Contracts (the "Future Contract(s)"). Any future Promotional Credits ("Future Promotional Credits") will be substantially similar in all material respects to the Promotional Credits described in the application. The Prior Order extends the relief to any other National Association of Securities Dealers, Inc. ("NASD") member broker-dealer controlling or controlled by, or under common control with ASLAC, whether existing or created in the future, that serves as a distributor or principal underwriter for the Contracts or Future Contracts offered through the Accounts or any Future Account. The application seeks to amend the Prior Order to permit the recapture of Promotional Credits on purchase payments applied to the Contracts or Future Contracts, under the circumstances described in the application and in detail in the application for the Prior Order ("Prior Application").

Filing Date: The application was filed on March 1, 2002 and amended and restated on May 24, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 24, 2002, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service.

¹ *American Skandia Life Assurance Corporation, Investment Company Act Release No. 25423 (File No. 812-12698).*

Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested.

Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC, 20549-0609. Applicants, c/o American Skandia Life Assurance Corporation, One Corporate Drive, Shelton, Connecticut 06484, Attn: Scott K. Richardson, Esq.

FOR FURTHER INFORMATION CONTACT:

Patrick Scott, Attorney, or Lorna MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942-0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549-0102 ((202) 942-8090).

Applicants' Representations

1. ASLAC is a stock life insurance company incorporated under the laws of Connecticut, all of whose issued and outstanding shares of capital stock are directly owned by American Skandia, Inc. ("ASI"), which in turn is ultimately wholly owned by Skandia Insurance Company Ltd., a Swedish corporation. ASLAC is licensed to do business in the District of Columbia and all of the United States.

2. American Skandia Life Assurance Corporation Variable Account B was created pursuant to the laws of the State of Connecticut on November 25, 1987. American Skandia Life Assurance Corporation Variable Account B (Class 1 Sub-Accounts) filed a Form N-8A Notification of Registration (File No. 811-5438) under the 1940 Act on December 30, 1987. American Skandia Life Assurance Corporation Variable Account B (Class 9 Sub-Accounts) filed a Form N-8A Notification of Registration (File No. 811-09989) on June 22, 2000.

3. Applicants state that the assets of the Accounts are owned by ASLAC, but are held separately from the other assets of ASLAC and are not chargeable with liabilities incurred in any other business operation of ASLAC (except to the extent that assets in the Accounts exceed the reserves and other liabilities of the Accounts). The income, capital gains and capital losses incurred on the assets of the Accounts are credited to or charged against the assets of the Accounts without regard to the income, capital gains or capital losses arising out

of any other business ASLAC may conduct.

4. Applicants represent that the Accounts and all Future Accounts will invest in shares of one or more of the investment portfolios (the "Portfolios") of American Skandia Trust ("AST"), which is registered with the Commission as an open-end, diversified management investment company, and/or any other fund or funds which are registered with the Commission as open-end, diversified or non-diversified management investment companies as may be made available by ASLAC and the Accounts or Future Accounts (which funds, including AST, are referred to as the "Funds"). The Accounts or Future Accounts are divided into separate divisions or "Sub-accounts", each of which invests in a separate Portfolio of a Fund.

5. ASM serves as the distributor and principal underwriter of the Contracts. ASM is a wholly-owned subsidiary of ASI. ASM is registered under the Securities Exchange Act of 1934 and with the NASD as a broker-dealer in securities. The Contracts will be offered through unaffiliated, registered broker-dealers, and other entities that are exempt from registration as broker-dealers, that have entered into sales agreements with ASM and ASLAC. In addition, ASM may offer Contracts directly to potential purchasers. The broker-dealers or sales representatives will be licensed by state insurance departments where required by law or regulation to represent ASLAC. The registered representatives that will solicit sale of the Contracts will be licensed insurance agents appointed by ASLAC.

6. Applicant represents that among the products ASLAC issues are individual and group flexible premium tax deferred variable annuity contracts, such as the Contracts contemplated in the Application, American Skandia XTra CreditSM FOUR ("XT FOUR") offered through American Skandia Life Assurance Corporation Variable Account B (Class 1 Sub-Accounts) and American Skandia XTra CreditSM SIX ("XT SIX") offered through American Skandia Life Assurance Corporation Variable Account B (Class 9 Sub-Accounts).

Applicants state further that the Contracts are to be used in connection with retirement plans that qualify for favorable federal income tax treatment under the Internal Revenue Code Section 403 as a tax sheltered annuity, or Section 408 as an individual retirement plan ("Qualified Plan"), or the Contracts may be purchased on a non-tax qualified basis ("Non-Qualified

Plan"). The Contracts may also be used for other purposes in the future, or offered only in connection with Qualified or Non-Qualified Plans.

7. On February 20, 2002, the Commission issued the Prior Order exempting certain transactions of Applicants from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the 1940 Act and Rule 22c-1 thereunder. The Prior Order specifically permits the recapture, under specified circumstances, of an additional amount (a "Credit") of up to 6.0% of purchase payments applied to the Contracts or Future Contracts.

ASLAC now desires to be permitted to recapture Promotional Credits and Future Promotional Credits offered on a promotional basis on purchase payments applied to the Contracts or Future Contracts.

8. Applicants state that ASLAC may add an additional Promotional Credit to account value in conjunction with each qualifying purchase payment made during distinct promotional periods equal to 1.0% of purchase payments. ASLAC will disclose the conditions under which Promotional Credits will be granted upon the commencement of each promotional period. Promotional Credits will be applied in addition to the Credit that would otherwise have applied to the purchase payment when made.

9. Under the Prior Order, ASLAC may add a Credit to the account value in conjunction with each purchase payment applied to XT FOUR, and in conjunction with purchase payments made during the first six (6) annuity years applied to XT SIX. Credits are paid for from ASLAC's own general account assets.

In the case of XT FOUR, when total purchase payments are between and \$1,000 and \$10,000, the Credits equal 1.5% of purchase payments. When total purchase payments are at least \$10,000 but less than \$5,000,000, the Credits equal 4.0% of purchase payments. When total purchase payments are greater than \$5,000,000, the Credits equal 5.0% of purchase payments.

In the case of XT SIX, ASLAC may add a Credit to the account value in conjunction with each purchase payment during the first six (6) annuity years. The amount of the Credit depends on the annuity year in which the purchase payment(s) is made, according to the following schedule: In annuity year one (1) the Credit is 6.00%, in annuity year two (2) the Credit is 5.00%, in annuity year three (3) the Credit is 4.00%, in annuity year four (4) the Credit is 3.00%, in annuity year five (5)

the Credit is 2.00%, and in annuity year six (6) the Credit is 1.00%.

10. Currently, ASLAC is offering Promotional Credits only on the XT SIX Contract. The promotional period is February 4, 2002 through August 2, 2002 ("Promotional Period"). Applicants state that during the Promotional Period, ASLAC will apply a Promotional Credit to XT SIX Contracts with a purchase payment of \$75,000 or more. The Promotional Credit will be applied in addition to the Credit that would otherwise apply to the purchase payment made. If the initial purchase payment is \$75,000 or more, ASLAC will apply the additional Promotional Credit to the initial purchase payment and any additional purchase payments made during the Promotional Period. If the initial purchase payment is less than \$75,000 but cumulative purchase payments are made during the Promotional Period of \$75,000 or more, ASLAC will apply a Promotional Credit to each additional purchase payment made during the Promotional Period once cumulative purchase payments exceed \$75,000.

11. Applicants submit that the Promotional Credits are vested when applied, and will be subject to recapture under the identical circumstances as applied to the Credits under the Prior Order, namely (a) an amount equal to any Promotional Credit will be recovered by ASLAC if the Contract owner exercises the right to cancel provision in accordance with applicable state law; (b) the amount available under the medically-related surrender provision of the Contract will not include the amount of any Promotional Credits applied to purchase payments made within 12 months prior to the date the annuitant first became eligible for the medically-related surrender; and (c) any Promotional Credits applied to the account value on purchase payments made within 12 months prior to the date of death will be recovered by ASLAC upon payment of the death benefit, subject to the limitation that Applicants will not exercise their right to recover the Credit to the extent that the death benefit payable is equal to purchase payments minus proportional withdrawals or when the death benefit is equal to the account value but after the recovery of all or a portion of the Credits, the death benefit would be equal to less than purchase payments minus proportional withdrawals.

12. Under the Prior Order, ASLAC was granted exemptive relief allowing it to apply additional Credits on Contracts

owned by a member of a Designated Class.²

13. In the case of XT FOUR, ASLAC applies Credits of 8.5% to any purchase payment made by a member of a Designated Class. In the case of XT SIX, ASLAC applies Credits on purchase payment made by a member of a Designated Class at the following percentage rates in annuity years 1, 2, 3, 4, 5, and 6, respectively: 9%, 9%, 8.5%, 8%, 7%, 6%. During annuity years 7, 8, 9 and 10, respectively, in the case of XT SIX, ASLAC may apply Credits on purchase payments made by a member of a Designated Class at the following percentage rates: 5%, 4%, 3% and 2%. Whereas, under XT SIX generally, subsequent to annuity year six, ASLAC would not apply Credits to any purchase payments.

ASLAC will not offer Promotional Credits on XT SIX Contracts owned by a member of the Designated Class. ASLAC may offer Promotional Credits on XT FOUR Contracts owned by a member of the Designated Class.

14. Applicants state that, as of the date of the Application, the Funds in which the Sub-accounts may invest are AST, Montgomery Variable Series, Wells Fargo Variable Trust, INVESCO Variable Investment Funds, Inc., Evergreen Variable Annuity Trust, ProFunds VP, First Defined Portfolio Fund LLC and The Prudential Series Fund, Inc. The assets of each Portfolio are held separately from the others and each Portfolio has its own investment objective and policies. The investment performance of one Portfolio has no effect on the investment performance of any other Portfolio. The investment

² The designated class of Contract owners includes: (a) Any parent company, affiliate or subsidiary of ASLAC; (b) an officer, director, employee, retiree, sales representative, or in the case of an affiliated broker-dealer, registered representative of such company; (c) a director, officer or trustee of any underlying mutual fund; (d) a director, officer or employee of any investment manager, sub-advisor, transfer agent, custodian, auditing, legal or administrative services provider that is providing investment management, advisory, transfer agency, custodianship, auditing, legal and/or administrative services to an underlying mutual fund or any affiliate of such firm; (e) a director, officer, employee or registered representative of a broker-dealer or insurance agency that has a then current selling agreement with ASLAC and/or with ASM; (f) a director, officer, employee or authorized representative of any firm providing us or our affiliates with regular legal, actuarial, auditing, underwriting, claims, administrative, computer support, marketing, office or other services; (g) the then current spouse of any such person noted in (b) through (f), above; (h) the parents of any such person noted in (b) through (g), above; (i) the child(ren) or other legal dependent under the age of 21 of any such person noted in (b) through (h); and (j) the siblings of any such persons noted in (b) through (h) above. All other terms and conditions of the Contract apply to owners in the designated class.

objectives and policies of each Portfolio are described in the registration statements for the Funds. Each Fund may establish additional Portfolios, or cease offering any Portfolios, existing or as may be established in the future. In addition, the Account may add Sub-accounts, and may add or cease to offer Sub-accounts, which in turn are dedicated to owning shares of a particular Portfolio of a particular Fund.

15. Applicants state that prior to the annuity date, a Contract owner may surrender the Contract in its entirety for the surrender value or withdraw a portion of the surrender value. Applicants do not seek to recover Promotional Credits applied to purchase payments upon surrender or withdrawal of a Contract, other than as described in this paragraph, in the case of a medically-related surrender. Where permitted by law, a Contract owner may request to surrender the Contract prior to the annuity date without application of any contingent deferred sales charge ("CDSC") upon occurrence of a "Contingency Event".³ If a Contingency Event occurs, the amount available for surrender is the account value less an amount equal to any Credit and Promotional Credit applied to purchase payments within twelve months prior to Contingency Event, less the amount of any Credits and Promotional Credits added in conjunction with any purchase payments received after ASLAC's receipt of the Contract owner's request for a medically-related surrender. Applicants do not assess a CDSC on a medically-related surrender that would otherwise apply to a full or partial surrender of the Contract.

16. During the accumulation phase, a death benefit is payable upon the death of the first Contract owner to die (if the Contract is owned by one or more natural persons) or upon the death of the annuitant (if the Contract is owned by an entity and there is no contingent annuitant). The amount of the death benefit is determined when ASLAC obtains satisfactory proof in writing of the applicable death, all representations required or which are mandated by applicable law or regulation to the death claim and the payment of death proceeds, and any applicable election of the mode of payment of the death benefit if not previously elected by the Contract owner.

³ A "Contingency Event" occurs if the annuitant is first confined in a specified medical care facility while the Contract is in force and remains confined for at least 90 days in a row, or is first diagnosed as having a fatal illness while the Contract is in force. Specific definitions in relation to this benefit are provided in the Contract's policy form and may differ in certain jurisdictions.

The basic Death Benefit is the greater of (1) the sum of all purchase payments less the sum of all proportional withdrawals, or (2) the sum of the account value in the variable investment options and the interim value in the fixed allocations (without application of any market value adjustment), less an amount equal to all Credits and Promotional Credits applied within 12 months prior to the date of death. ASLAC does not recover the amount equal to the Credits and Promotional Credits applied to purchase payments when the death benefit payable under the Contract is equal to purchase payments minus proportional withdrawals or when the death benefit is equal to the account value but after the recovery of all or a portion of the Credits and Promotional Credits, the death benefit would be equal to less than purchase payments minus proportional withdrawals.

17. Applicants state that each of the Contracts may offer optional benefits, including optional death benefits, for which the Contract owner may be charged an additional asset-based charge.

18. Applicants represent that, prior to the annuity date and upon surrender, ASLAC will deduct the annual maintenance fee equaling the smaller of 2% of account value or \$35 per annuity year from the Sub-account holdings attributable to any particular Contract in the same proportion as each such Sub-account holding bears to the account value of such Contract. No charges are assessed if no account value is maintained in the Sub-accounts. The annual maintenance fee can be increased only for Contracts issued subsequent to the effective date of any such change. The annual maintenance fee may be waived under certain circumstances as described in the then effective registration statements for the Contracts.

19. An insurance charge ("Insurance Charge") is deducted daily against the average assets allocated to the Account. The Insurance Charge for XT FOUR is the combination of the Mortality & Expense Risk Charge (1.25%) and the Administration Charge (0.15%); the total charge is equal to 1.40% on an annual basis. The Insurance Charge for XT SIX is the combination of the Mortality & Expense Risk Charge (0.50%) and the Administration Charge (0.15%); the total charge is equal to 0.65% on an annual basis. The Insurance Charge is intended to compensate ASLAC for providing the insurance benefits under the Contract, including the Contract's basic death benefit that provides guaranteed

benefits to the Contract owner's beneficiaries even if the market declines and the risk that persons ASLAC guarantees annuity payments to will live longer than ASLAC's assumptions. The charge also covers administrative costs associated with providing the Contract benefits, including preparation of the contract, confirmation statements, annual account statements and annual reports, legal and accounting fees as well as various related expenses. Finally, the charge covers the risk that ASLAC's assumptions about the mortality risks and expenses under the Contract are incorrect and that ASLAC has agreed not to increase these charges over time despite actual costs. ASLAC may increase the portion of the total Insurance Charge that is deducted as an Administration Charge, if permission is received from the appropriate regulatory authorities. However, any increase will only apply to Contracts issued after the date of the increase.

20. Applicants state that a distribution charge ("Distribution Charge") is deducted daily against the average assets allocated to the Sub-accounts under XT SIX. The Distribution Charge is equal to 1.00% on an annual basis in annuity years 1 through 10. After the end of the first ten annuity years, the 1.00% charge for distribution will no longer be assessed. The Distribution Charge is intended to compensate ASLAC for a portion of its sales expenses under the Contract, including promotion and distribution of the Contract. At the end of the 10th annuity year, ASLAC will process a transaction to convert the Contract owner's account value to units of the Sub-accounts that reflect only the Insurance Charge. Because units that only reflect the Insurance Charge are less expensive, the number of units attributed to a Contract is decreased and the unit value of each unit of the Sub-accounts in which the Contract owner was invested is increased. The Contract owner's account value is unchanged by the conversion of the account value to the number of units, and unit values will not affect the Contract owner's account value. Beginning on that date, the Contract owner's account value will fluctuate based on the change in the value of the units that only reflect the Insurance Charge.

21. Applicants represent that no deduction or charge will be made from purchase payments for sales or distribution expenses. However, a CDSC may be assessed on surrender or partial withdrawal from the Contract. The CDSC will be used to compensate ASLAC for sales commissions and other promotional or distribution expenses

incurred by ASLAC which are associated with the marketing of the Contracts. ASLAC does not anticipate that the CDSC will be sufficient to permit it to recoup all its sales and distribution expenses.

22. Applicants state that XT FOUR offers a free withdrawal privilege. This privilege permits a Contract owner to withdraw account value without any CDSC being imposed at the time of withdrawal. The maximum amount available as a free withdrawal during annuity year one through eight is 10% of all purchase payments. The 10% free withdrawal is not cumulative. After annuity year eight, the maximum free withdrawal amount is the sum of (a) 10% of any purchase payments applied to the Contract after the initial purchase payment, (b) 100% of the initial purchase payment and (c) 100% of any growth in the Contract, which equals the current account value minus all purchase payments that have not been previously withdrawn. The Credit and Promotional Credit amounts, which are applied to the purchase payments when applicable, are not considered growth and are not available as a free withdrawal. Amounts withdrawn under the free withdrawal provision do not reduce the CDSC that may apply to a subsequent surrender. XT SIX offers a free withdrawal privilege as well. This privilege permits a Contract owner to withdraw account value without any CDSC being imposed at the time of withdrawal. The maximum amount available as a free withdrawal during annuity year one through ten is 10% of all purchase payments. The 10% free withdrawal is not cumulative. After annuity year ten, the maximum free withdrawal amount is 100% of the account value, including any Credits and Promotional Credits.

23. Applicants represent that on full or partial surrenders under XT FOUR, the CDSC on any purchase payments surrendered in excess of the free withdrawal privilege is based on a schedule of 8.5% in year one to 0.0% in year nine and beyond. The amount of the CDSC applicable to each purchase payment decreases over time, measured from the date each purchase payment is applied.

Applicants further represent that on full or partial surrenders under the XT SIX, the CDSC on any purchase payments surrendered in excess of the free withdrawal privilege is based on a schedule of 9.0% in year one to 0.0% in year eleven and beyond. The CDSC is measured from the issue date, not from the date that each purchase payment is applied.

Applicants state that for purposes of calculating the CDSC, withdrawals will be considered to come first from any amount available as a free withdrawal, then, to the extent the amount withdrawn exceeds the free withdrawal, from purchase payments that have not previously been withdrawn subject to a CDSC. If there are multiple new purchase payments, the one received earliest is liquidated first, then the one received next, so that the lowest CDSC percentage will apply to the amount withdrawn.

Applicants Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request that the Commission amend the Prior Order to permit Applicants to rely on the exemption provided thereby from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Act, and Rule 22c-1 thereunder, to recapture, under the same circumstances described in the Prior Application, Promotional Credits and Future Promotional Credits for all Contracts and Future Contracts.

2. Applicants submit that the relief requested hereby is identical to the relief granted in the Prior Order, except that it covers Promotional Credits.

3. Applicants request that the Commission, pursuant to Section 6(c) of the Act, grant the exemptions requested below with respect to the Contracts, and any Future Contracts funded by the Accounts or Future Accounts, that are issued by ASLAC and underwritten or distributed by ASM. Applicants undertake that Future Contracts funded by the Account or any Future Account will be substantially similar in all material respects to the Contracts. Likewise, any Future Promotional Credits will be substantially similar in all material respects to the Promotional Credits described herein. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants represent that it is not administratively feasible to track the actual Promotional Credit amount in one or the other of the Accounts after the Promotional Credit is applied to

purchase payments in the Contract. Accordingly, the asset-based charges applicable to the Accounts will be assessed against the entire account value held in the respective Accounts, including the Promotional Credit amount, during the right to cancel period, for a medically-related surrender and when purchase payments are made within 12 months prior to the date of death. As a result, the aggregate asset-based charges assessed against a Contract owner's account value will be higher than that which would be charged if the Contract owner's account value did not include the Credit and the Promotional Credit. ASLAC has agreed to provide such disclosure in the prospectus.

5. Subsection (i) of Section 27 provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) of the subsection provides that it shall be unlawful for such a separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless "(A) such contract is a redeemable security." Section 2(a)(32) defines "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

6. Applicants submit that the Promotional Credit recapture provisions, like the Credit recapture provisions, would not deprive a Contract owner of his or her proportionate share of the issuer's current net assets. A Contract owner's interest in the amount of the Promotional Credit allocated to his or her annuity account value is not vested until the applicable right to cancel period has expired without return of the Contract. Similarly, a Contract owner's interest in the amount of the Promotional Credit allocated to his or her annuity account value will vest, unless ASLAC receives purchase payments within the first 12 months of the date the annuitant first became eligible for the medically-related surrender. And lastly, a Contract owner's interest in the amount of the Promotional Credit allocated to his or her annuity account value will not vest if the Promotional Credits applied to the account value are on purchase payments

made within 12 months prior to the date of death.

7. Applicants state that the recapture of any Promotional Credit, like the recapture of Credits, is intended only to protect ASLAC against anti-selection under certain specified contingencies. "Anti-selection" can generally be described as a risk that persons obtain coverage based on knowledge that the contingency that triggers payment of an insurance benefit is likely to occur, or is to occur shortly. In the case of the Contracts, Promotional Credits and Credits are provided on a guaranteed issue basis. The protection against anti-selection by persons who are ill is the reduction of the death benefit or the amount available as a medically-related surrender by the amount of a Credit and a Promotional Credit applied to purchase payments made within 12 months prior to the applicable Contingency Event. With respect to Credits and Promotional Credits allocated prior to the end of the Contract's right to cancel provision, the amount payable when such provision is exercised must be reduced by an amount equal to the Credits and Promotional Credits allocated. Otherwise, purchasers would apply for annuities for the sole purpose of making a quick profit and then exercise the right to cancel provision.

8. Applicants represent that, until or unless the amount of any Promotional Credit is vested, ASLAC retains the right to, and interest in, the Promotional Credit amount, although not in the earnings attributable to that amount. Thus, when ASLAC recaptures any Promotional Credit it is simply retrieving its own assets, and because a Contract owner's interest in the Promotional Credit is not vested the Contract owner has not been deprived of a proportionate share of the applicable Account's assets, *i.e.*, a share of the applicable Account's assets proportionate to the Contract owner's account value (including the Promotional Credit).

9. For the foregoing reasons, Applicants state, the provisions for recapture of any Promotional Credit or Future Promotional Credit under the Contracts do not, and any such Future Contract provisions will not, violate Section 2(a)(32) and 27(i)(2)(A) of the Act. Indeed, a contrary conclusion would be inconsistent with a stated purpose of NSMIA, which is "to amend the [Act] to * * * provide more effective and less burdensome regulation." Sections 26(e) (now renumbered as Section 26(f)) and 27(i) were added to the Act pursuant to Section 205 of NSMIA to implement the

purposes of NSMIA and the Congressional intent. Thus, as with the application of a Credit, the application of a Promotional Credit to contributions made under the Contracts should not raise any questions as to ASLAC's compliance with the provisions of Section 27(i). Nevertheless, to avoid any uncertainties, Applicants request an exemption from Sections 2(a)(32) and 27(i)(2)(A), to the extent deemed necessary, to permit the recapture of any Promotional Credit under the circumstances described herein with respect to Contracts and any Future Contracts, without the loss of the relief from Section 27 provided by Section 27(i).

10. Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company to accomplish the same purposes as contemplated by Section 22(a). Rule 22c-1 thereunder prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

11. ASLAC's recapture of the Promotional Credit arguably might be viewed as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the Sub-accounts. The recapture of the Promotional Credit is not violative of Rule 22c-1. The recapture of the Promotional Credit does not involve either of the evils that Rule 22c-1 was intended to eliminate or reduce as far as reasonably practicable, namely: (i) The dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption or repurchase at a price above it, and (ii) other unfair results, including speculative trading practices. These evils were the result of backward pricing, the practice of basing the price of a mutual fund share on the net asset value per share determined as of the close of the market on the previous day. Backward pricing allowed investors to take advantage of increases or decreases in net asset value that were not yet

reflected in the price, thereby diluting the values of outstanding mutual fund shares.

12. Applicants state that the proposed recapture of the Promotional Credit poses no such threat of dilution. To effect a recapture of a Promotional Credit, ASLAC will redeem interests in a Contract owner's account at a price determined on the basis of the current net asset value of the respective Sub-Accounts. The amount recaptured will equal the amount of the Credit and the Promotional Credit that ASLAC paid out of its own general account assets. Although Contract owners will be entitled to retain any investment gain attributable to the Promotional Credit, the amount of such gain will be determined on the basis of the current net asset value of the respective Sub-accounts. Thus, no dilution will occur upon the recapture of the Promotional Credit. Applicants also submit that the second harm that Rule 22c-1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Promotional Credit.

Because neither of the harms that Rule 22c-1 was meant to address is found in the recapture of the Promotional Credit, Rule 22c-1 should have no application to any Promotional Credit. However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from the provisions of Rule 22c-1 to the extent deemed necessary to permit them to recapture the Promotional Credit under the Contracts and Future Contracts.

In addition, Applicants state that the Commission has previously granted exemptive relief to permit the recapture of credits under variable annuity contracts with total credits exceeding the combination of the Credits described in the Prior Order and any Promotional Credits described in the Application.

Conclusion

Applicants submit, based on the grounds summarized above, that their exemptive request meets the standards set out in section 6(c) of the Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-14135 Filed 6-6-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Federal Register Citation of Previous Announcement: [67 FR 38529, June 4, 2002]

Status: Closed Meeting.

Place: 450 Fifth Street, NW., Washington, DC.

Date and Time of Previously Announced Meeting: Wednesday, June 5, 2002, at 2 p.m.

Change in the Meeting: Deletion of Item.

The following item will not be considered at the closed meeting scheduled for Wednesday, June 5, 2002: Litigation matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

Dated: June 5, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-14526 Filed 6-5-02; 2:40 pm]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45994; File No. SR-DTC-2002-02]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Modifications to the Existing Operational Arrangements

May 29, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on February 26, 2002, The Depository Trust Company ("DTC") 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 primarily by DTC. The Commission is publishing this notice to

¹ 15 U.S.C. 78s(b)(1).

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 proposed rule change consists of modifications to the existing Operational Arrangements necessary for a securities issue to become eligible for the services of DTC. These updated operational arrangements are set forth in a document entitled "Operational Arrangements (Necessary for an Issue to Become and Remain Eligible for DTC Services)" dated February 2002.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC's Operational Arrangements memorandum was first published in June 1987. It was then updated in June 1988, in February 1992, in December 1994, and most recently in January 1998.³ The purpose of this proposed rule change is to update DTC's issue eligibility requirements. In particular, the arrangements now expand use of blanket letters of representation ("BLORs").

DTC's Operational Arrangements are designed to maximize the number of issues that can be made eligible while ensuring orderly processing and timely payments to participants. DTC's experience demonstrates that when issuers, underwriters, and their counsel are aware of DTC's requirements, those requirements can be met almost without exception.⁴

² The Commission has modified parts of these statements.

³ Securities Exchange Act Release Nos. 24818 (August 19, 1987), 52 FR 31833 [File No. DTC-87-10]; 25948 (July 27, 1988), 53 FR 29294 [File No. DTC-88-13]; 30625 (April 23, 1992), 57 FR 18534 [File No. DTC-92-06]; 35649 (April 26, 1995), 60 FR 21576 [File No. DTC-94-19]; and 39894 (April 21, 1998), 63 FR 23310 [File No. DTC-97-23].

⁴ In 2001 a total of 181,599 new issues (CUSIPs) were made eligible for DTC's services, representing over 99% of all new issues submitted to DTC's

The most significant difference between the new Operational Arrangements and the Operational Arrangements currently in effect is DTC's expansion of the use of BLORs to cover corporate book-entry-only ("BEO") issues.

In the interest of providing some background, DTC made eligible 181,599 CUSIPs last year, approximately 90% of which were BEOs. All BEO issues were covered by either a letter of representation ("LOR") or in the case of some municipal issues a BLOR. LORs often cover multiple CUSIPs.

In 1998, DTC first introduced the use of an issuer BLOR on an optional basis for all municipal issues.⁵ An issuer needs to submit a BLOR only once to DTC for all issues. This eliminates the need to submit individual LORs each time the issuer wishes to distribute securities of a type for which DTC requires an LOR.⁶ These modified arrangements now extend the use of BLORs to corporate issues.

DTC's experience with BLORs in municipal issues has been quite encouraging. In 2001, 85% of all municipal BEO issues that were made DTC-eligible were covered by BLORs. This past year, 2,330 new BLORs were filed for municipals and an additional 12,138 issues were covered by existing BLORs⁷ while 2,550 issues were covered by individual LORs.

DTC estimates somewhat conservatively that the cost to the industry in legal fees and delivery costs related to each individual LOR approximates \$250 per LOR. Even on the basis of such a conservative estimate, the savings to the industry last year alone resulting from DTC making the blanket letter process available to the 14,468 municipal issues for which it was used exceeded \$3.6 million.

Underwriting Department for eligibility determinations during the year. These figures include equity, corporate debt, municipal debt, and U.S. Government and Agency securities. In the unusual circumstance in which the processing characteristics of a new issue that is being structured would not meet DTC's Operational Arrangements, if contacted early enough in the planning process DTC staff is often able to assist in suggesting restructuring alternatives that would permit the issue to be made eligible at the depository.

⁵ Securities Exchange Act Release No. 39894 (April 21, 1998), 63 FR 23310 [File No. DTC-97-23].

⁶ DTC undertakes to make available to issuers that execute BLORs any future modifications in the Operational Arrangements through publication on DTC's website at www.DTC.org. Upon review, issuers will have the opportunity to withdraw their BLORs.

⁷ As of end-of-year 2001, 22,603 municipal issuers had filed BLORs with DTC since 1998 to cover their issues.

In contrast 4,533 individual corporate LORs were submitted last year to cover corporate issues. DTC now wishes to extend BLOR savings and efficiencies to corporate BEO issues that are DTC-eligible.

The proposed rule change is consistent with the requirements of Section 17A of the Act and the regulations thereunder because it promotes efficiencies in the clearance and settlement of securities transactions. It will expedite the process of making securities eligible for DTC's services and will reduce risks and associated costs to DTC participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, in the public interest, and for the protection of investors.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments from DTC's participants have not been solicited nor received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act⁸ and Rule 19b-4(f)(4)⁹ promulgated thereunder because the proposal effects a change in an existing service of DTC that (A) does not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which it is responsible and (B) does not significantly affect the respective rights or obligations of DTC or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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.

⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

⁹ 17 CFR 240.19b-4(f)(4).

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the DTC. All submissions should refer to the File No. SR-DTC-2002-02 and should be submitted by June 28, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-14301 Filed 6-6-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46018; File No. SR-DTC-2002-03]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Enhancements to the New York Window Service Allowing Participants to Custody Sealed Envelopes at DTC

June 3, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on April 8, 2002, The Depository Trust Company ("DTC") 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 primarily by DTC. 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 proposed rule change provides an enhancement to the New York Window service² of DTC, which is part of DTC's Custody service.³ The enhancement, "the Sealed Envelope Service," allows DTC participants to custody sealed envelopes at DTC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.⁴

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to enhance DTC's New York Window service, which is part of DTC's Custody service. The proposed rule change expands upon a service currently offered by DTC's New York Window service, pursuant to which sealed envelopes are received from participants for immediate delivery to other participants but are not held in custody. As part of DTC's role in supporting the securities industry goal of immobilization, DTC's participants have requested that DTC expand the number of instruments it holds in custody. The instruments that could be deposited in the Sealed Envelope Service are paper documents that are not securities otherwise eligible for DTC's Custody service which include, but are not limited to, wills, deeds, bills of sale, confirmations, mortgages, letters of credit, vouchers, option agreements, annuities, loan agreements, and other contracts. DTC will not accept any assets in the Sealed Envelope Service that are not documents, such as gold bars, jewelry, coins, etc.

² For additional information on DTC's New York Window service, see Securities Exchange Act Release No. 40179 (July 8, 1998), 63 FR 30543 [File No. SR-DTC-98-9].

³ For additional information on DTC's Custody service, see Securities Exchange Act Release No. 37314 (June 14, 1996), 61 FR 29158 [File No. SR-DTC-96-8].

⁴ The Commission has modified parts of these statements.

The instruments will be deposited in sealed envelopes, which will be held in one of DTC's vaults. The contents of the envelopes cannot be viewed when sealed. DTC retains the right to reject any deposited envelope that it considers not properly sealed. Each envelope will be assigned by DTC a user number for tracking and record keeping purposes. Depositing participants will be required to list the contents of the envelope on the outside of the envelope; however, DTC will not verify the contents of the envelope. Participants will balance their sealed envelopes daily with DTC in the same manner as they presently do with securities held in the Custody service.

DTC will not open any sealed envelopes. If the depositing participant wants to view the contents of a sealed envelope that has been deposited with DTC, the participant must withdraw the envelope, using the normal Custody service withdrawal procedures. For security purposes, DTC reserves the right to x-ray all sealed envelopes sent to DTC.

Due to the nature of these instruments and the fact that the contents of the sealed envelopes cannot be verified, DTC's liability with respect to the sealed envelopes will be strictly limited. The liability and indemnity standard applicable to the Sealed Envelope Service is based on the standard currently applicable to the New York Window service.⁵

DTC will apply its current Custody service fees to envelopes deposited in the Sealed Envelope Service. Those fees are a long position fee of \$.56 per month per envelope, a deposit fee of \$.86 per envelope, and a withdrawal fee of \$16.91 per envelope.

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it supports the securities industry goal of immobilization. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible since the operation of the New York Window service, which is part of the Custody service as modified by the proposed rule change, will be similar to the current operation of the New York Window and Custody services.

⁵ The standard of liability is attached as Exhibit 2 to DTC's filing. Basically, as between DTC and a participant using the Sealed Envelope Service, the participant shall be solely responsible for and shall bear any loss, cost, damage, or expense which the participant may suffer or incur on account of or as a result of any use by the participant of the Sealed Envelope Service.

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no adverse impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments from DTC's participants have not been solicited nor received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act⁶ and Rule 19b-4(f)(4)⁷ promulgated thereunder because the proposal effects a change in an existing service of DTC that (A) does not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which it is responsible and (B) does not significantly affect the respective rights or obligations of DTC or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for

inspection and copying at the principal office of the DTC. All submissions should refer to the File No. SR-DTC-2002-03 and should be submitted by June 28, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-14302 Filed 6-6-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46006; File No. SR-NASD-2002-66]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Limit Order Protection and the Facilitation of Other Customer Orders on a Riskless Principal Basis

May 30, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 28, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to establish a riskless principal customer facilitation exemption to NASD Interpretative Material 2110-2-Trading Ahead of Customer Limit Order ("Manning Interpretation" or "Manning"). Proposed additions are italicized.

IM-2110-2. Trading Ahead of Customer Limit Order

(a)-(b) No Change.

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(c) Exemption for the Facilitation on a Riskless Principal Basis of Other Customer Orders

A member shall be exempt from the obligation to execute a customer limit order in a manner consistent with this interpretation if such member engages in trading activity to facilitate the execution, on a riskless principal basis, of another order from its customer (whether its own customer or the customer of another member) (the "facilitated order"), provided that all of the following requirements are satisfied:

(1) The handling and execution of the facilitated order must satisfy the definition of a "riskless" principal transaction, as that term is defined in NASD Rules 4632(d)(3)(B), 4642(d)(3)(B) and 4652(d)(3)(B);

(2) A member that relies on this exemption to this interpretation must give the facilitated order the same per-share price at which the member accumulated or sold shares to satisfy the facilitated order, exclusive of any markup or markdown, commission equivalent or other fee;

(3) A member must submit, contemporaneously with the execution of the facilitated order, a report as defined in NASD Rules 4632(d)(3)(B)(ii), 4642(d)(3)(B)(ii) and 4652(d)(3)(B)(ii) to the Automated Confirmation Transaction Service;

(4) Members must have written policies and procedures to assure that riskless principal transactions relied upon for this exemption comply with NASD Rules 4632(d)(3)(B), 4642(d)(3)(B) and 4652(d)(3)(B). At a minimum these policies and procedures must require that the customer order was received prior to the offsetting transactions, and that the offsetting transactions are allocated to a riskless principal account in a consistent manner and within 60 seconds of execution. Members must have supervisory systems in place that produce records that enable the member and NASD Regulation to accurately and readily reconstruct, in a time-sequenced manner, all orders which a member relies in claiming this exemption.

Any transaction handled by a member on other than an agency basis that does not satisfy all of the above requirements remains a transaction that, where required by this interpretation, gives rise to the obligation to protect and execute customer limit order(s). This exemption applies only to the actual number of shares that are required to satisfy the facilitated order.

⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

⁷ 17 CFR 240.19b-4(f)(4).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD's current Manning Interpretation prohibits market makers from trading at prices equal or superior to customer limit orders they hold without executing those limit orders. In addition, Nasdaq has adopted price-improvement standards that obligate market makers to execute held customer limit orders unless the market maker either buys at a price sufficiently higher than a customer's buy order, or sells at a price sufficiently lower than a customer's sell order.

Nasdaq has determined to adopt a customer facilitation exemption to Manning that would exempt from Manning single-priced riskless principal transactions done by market makers who are buying or selling securities to satisfy the order(s) of other customers. In these situations, since the true beneficiary of the market maker's activity is another customer, and not the firm's proprietary account, Manning will be interpreted to exempt such trading from being considered triggering trades obligating the market maker to protect other held customer limit orders.³ Additionally, this proposed exemption addresses some of the consequences created by Manning's minimum price improvement standard in a decimal environment.

To ensure that market maker transactions that will not trigger Manning obligations are being done for the ultimate benefit of other customers, the customer facilitation exemption will be strictly construed. As such, only those market maker trades meeting all of

the following requirements would be eligible for an exemption from Manning:

(1) The handling and execution of the facilitated order must satisfy the definition of a "riskless" principal transaction, as that term is defined in NASD Rules 4632(d)(3)(B), 4642(d)(3)(B) and 4652(d)(3)(B);

(2) A member that relies on this exemption to this interpretation must give the facilitated order the same per-share price at which the member accumulated or sold shares to satisfy the facilitated order, exclusive of any markup or markdown, commission equivalent or other fee;

(3) A member must submit, contemporaneously with the execution of the facilitated order, a report as defined in NASD Rules 4632(d)(3)(B)(ii), 4642(d)(3)(B)(ii) and 4652(d)(3)(B)(iii) to the Automated Confirmation Transaction Service;

(4) Members must have written policies and procedures to assure that riskless principal transactions relied upon for this exemption comply with NASD Rules 4632(d)(3)(B), 4642(d)(3)(B) and 4652(d)(3)(B). At a minimum these policies and procedures must require that the customer order was received prior to the offsetting transactions, and that the offsetting transactions are allocated to a riskless principal account within 60 seconds of execution. Members must have supervisory systems in place that produce records that enable the member and NASD Regulation to accurately and readily reconstruct, in a time-sequenced manner, all orders on which a member relies in claiming this exemption.

Non-agency trades not meeting all of these standards would remain subject to Manning and require, upon execution, the protection and execution of appropriate limit orders in full conformity with the Interpretation. This exemption would apply only to the actual number of shares executed by the member necessary to fill the customer order(s).

In Nasdaq's view, a transaction meeting these requirements is closely akin to an agency trade and does not materially implicate a market maker's proprietary trading. Nasdaq notes that the Commission in its recent release concerning the availability of the Section 28(e) safe harbor also highlighted the similarities in compensation transparency provided by agency and riskless principal trade reporting pursuant to NASD Rules 4632(d)(3)(B), 4642(d)(3)(B), and 6420(d)(3)(B), coupled with the requirements of Exchange Act Rule 10b-10.⁴ As such, Nasdaq will not consider riskless principal trades meeting the requirements of the exemption as triggering trades for the market maker's own market-making account for purposes of Manning. This view rests primarily on the requirement that only

trades where a market maker gives the customer a trade price that reflects the market maker's actual cost in acquiring the stock be eligible for the exemption. This obligation to trade flat effectively removes concerns about a member breaching its fiduciary duty to customer limit orders that it holds that underlie the Manning protections in other trading contexts. Nasdaq believes that the above exemption draws an appropriate balance between the important customer protections afforded by Manning and the practical needs of market participants to assist other customers.

As to the Manning/price improvement issue, the Manning rule currently dictates that a market maker does not have an obligation to execute customer limit orders if it trades for its own account for at least a minimum amount more than the customer order. The amount that a market maker must better a customer's order depends on whether the customer limit order is priced at or inside the best bid and best offer, or outside of it. For limit orders that are priced at or inside the best inside market displayed in Nasdaq, a market maker must execute its trade at a price at least \$0.01 better than the customer limit order. For limit orders priced outside the best inside market displayed in Nasdaq, the market maker must trade at a price at least equal to the next rounded penny increment better than that customer limit order.⁵ Some market participants assert that the operation of Manning's price improvement standards in a market where spreads are at a penny, forces them to accept losses if they choose to both accept sub-penny orders and facilitate the execution of other customer orders. The following example illustrates the issue:

Market is 10.01 (bid) to 10.02 (offer) with 1,000 shares on each side.

Market Maker A ("MMA") receives limit order from Customer #1 to buy 1,000 shares @ 10.0101 and, after rounding, displays it in its market maker quote @10.01.

MMA subsequently receives a market order to buy from Customer #2.

To facilitate the execution of Customer #2 market order, MMA sends a SuperSOES order to the market maker or ECN at the inside offer price of 10.02 for 1,000 shares

MMA receives an execution of its SuperSOES order, thus buying 1,000 shares at 10.02. MMA then sells to Customer 2 at 10.02, and reports the trade consistent with riskless principal trade reporting requirements.

Under the current interpretation of Manning, MMA owes Customer #1's resting 10.0101 limit order a fill since

³In this sense, the exemption is similar in purpose and effect to the treatment of agency executions in IM-2110-2. Specifically, if a broker-dealer executes a customer order on an agency basis, the firm is not required to protect (execute) other customer limit orders.

⁴ See Securities Exchange Act Release No. 45194 (January 2, 2002), 67 FR 6 (January 2, 2002).

⁵ See Securities Exchange Act Release No. 44164 (April 6, 2001), 66 FR 19268 (April 13, 2001).

MMA sold at 10.02 and did not meet the minimum price improvement required by the Manning rule (*i.e.*, .01 over Customer #1's order to buy at 10.0101). In effect, MMA has just bought stock at 10.02 and must sell that same amount of stock to Customer #1 at 10.0101 and thus lose .0099 cents per share on the interactions between these transactions. Under the proposed interpretation, MMA would no longer be required to fill both Customer orders since MMA acted as riskless principal for Customer #2.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act⁶ in that it is designed to: (1) Promote just and equitable principles of trade; (2) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities; (3) perfect the mechanism of a free and open market and a national market system; and (4) protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq 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

Written comments relating to the proposed rule change have not yet been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Nasdaq. All submissions should refer to file number SR-NASD-2002-66 and should be submitted by June 28, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 02-14299 Filed 6-6-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46016; File No. SR-NASD-2002-71]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend a Pilot that Permits SuperSOES To Trade Through the Quotations of UTP Exchanges That Do Not Participate in the Nasdaq National Market Execution Service

May 31, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 31, 2002, the National Association of Securities Dealers, Inc. ("NASD"), acting through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD filed the proposal pursuant to section 19(b)(3)(A)¹ of the Act, and Rule 19b-

4(f)(6) thereunder,² which renders the proposal effective on filing with the Commission.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

There is no new language. The pilot rule language is as follows:

4710. Participant Obligations in NNMS

(a)-(e) No Change.

(f) UTP Exchanges.

(i) A UTP Exchange may voluntarily participate in the NNMS System according to the approved rules for the NNMS System if it executes a Nasdaq Workstation Subscriber Agreement, as amended, for UTP Exchanges.

(ii) If a UTP Exchange does not participate in the NNMS System, the UTP Exchange's quote will not be accessed through the NNMS, and the NNMS will not include the UTP Exchange's quotation for order processing and execution purposes.

(iii) For purposes of this rule the term "UTP Exchange" shall mean any registered national securities exchange that has unlisted trading privileges in Nasdaq-listed securities pursuant to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination Of Quotation and Transaction Information For Exchange-Listed Nasdaq/National Market System Securities Traded On Exchanges On An Unlisted Trading Privilege Basis ("Nasdaq UTP Plan").

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 basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

² 17 CFR 240.19b-4(f)(6).

³ Nasdaq asked the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

⁶ 15 U.S.C. 78o-3.

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(3)(A).

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is filing to extend until October 31, 2002, a pilot pertaining to a change to NASD Rule 4710, which specifies that if a UTP Exchange elects not to participate in SuperSOES, SuperSOES will not include the UTP Exchange's quotation for order processing and execution purposes.⁴

The pilot is consistent with Nasdaq's long-standing goal to improve the quality of its market. Establishing SuperSOES as the primary platform for trading Nasdaq-listed securities is a critical step in that respect. Nasdaq's successful implementation of SuperSOES has significantly improved The Nasdaq Stock Market. In particular, Nasdaq's initial assessment based on preliminary data shows that SuperSOES orders are processed quickly, enjoy high fill rates, and execute at the current market price. Moreover, neither SuperSOES nor the pilot has had a significant negative impact on spreads, depth or volatility. The ease with which the market reopened on September 17, 2001, appears to be directly connected to the efficiency of SuperSOES. In addition, the Chicago Stock Exchange ("CHX") and the Boston Stock Exchange participate in SuperSOES.⁵

While SuperSOES is improving the operation of The Nasdaq Stock Market, Nasdaq has identified an area of concern that it believes must be addressed immediately to ensure the smooth functioning of the Nasdaq system. Specifically, if a UTP Exchange chooses to access Nasdaq but does not accept automatic executions through SuperSOES, there is a potential for queuing in the system that could disrupt and slow the market, when that exchange is alone at the best quote in The Nasdaq Stock Market. To improve the trading environment for all of Nasdaq's market participants, and to avoid potential significant market disruptions, Nasdaq is proposing to modify SuperSOES to remove non-automatic execution UTP Exchanges from the SuperSOES execution and order processing function.

Background. On January 14, 2000, the Commission approved a rule change to

establish the Nasdaq National Market Execution System ("NNMS") and to modify Nasdaq's SelectNet Service with respect to Nasdaq National Market securities ("NNM").⁶ On July 30, 2001, NNMS and the changes to SelectNet were implemented for all NNM issues. As approved and implemented, Nasdaq market participants can use two systems to trade NNM issues: a reconfigured Small Order Execution System ("SOES")—the NNMS—and a reconfigured SelectNet system. SuperSOES is an automated execution system that allows the entry of orders for up to 999,999 shares.⁷ By removing the size and capacity restrictions from its principal automatic execution system, Nasdaq intended for most of the orders executed through Nasdaq's systems to migrate to SuperSOES. Consistent with that approach, access to SelectNet was limited to certain types of non-liability orders that require negotiation with the receiving market participant.⁸

As was the case with SOES, Nasdaq market makers are required to participate in SuperSOES and, therefore, to accept automatic execution against their displayed quotations. However, UTP Exchanges are not required to accept automatic executions. Whereas Nasdaq can require, by rule, that its member ECNs provide immediate response to an inbound SelectNet order, it has no authority to extend that requirement to a UTP Exchange. As a result, when a UTP Exchange is alone at the best bid/best offer for a particular security, and that UTP Exchange is only accessible via telephone, SuperSOES will stop processing orders in that security and will hold those orders in queue for up to 90 seconds.

This pause serves two purposes. First, it provides a Nasdaq market participant the opportunity to contact the UTP Exchange,⁹ but at the risk of substantial

queuing of market and marketable limit orders for that security as the Nasdaq market participant awaits a response to its order. Second, it enables a SuperSOES market participant (*i.e.*, market maker, Full Participant ECN, or participating UTP Exchange) to join the current best bid/best offer or create a new best bid/best offer.¹⁰

If, after 90 seconds, a SuperSOES market participant does not join the current best bid/best offer, and the UTP Exchange does not move its quote, SuperSOES returns the orders that are in queue and the system shuts down for that security. The system will only resume once the UTP Exchange moves its quote away from the inside.¹¹ Nasdaq believes that such delays will adversely affect Nasdaq's ability to ensure the proper functioning of its market through a major Nasdaq market system, and to enable market participants to obtain executions for their customers.

SuperSOES increases the speed of executions and improves the access of all market participants to the full depth of a security's trading interest. The volume and speed at which trading occurs in Nasdaq have increased dramatically from when SuperSOES was first proposed nearly two and a half years ago. Market participants demand and require the ability to access liquidity at the best prices instantaneously. Because Nasdaq cannot compel UTP Exchanges to provide an automated, immediate response to outbound Nasdaq orders, Nasdaq must be able to trade through the quotations of UTP Exchange participants that do not participate in Nasdaq via automatic execution.

Proposed Amendment. To address these problems, Nasdaq proposed, and the Commission approved, a pilot to amend NASD Rule 4710 to require that UTP Exchanges that choose to trade Nasdaq securities through Nasdaq market systems either participate fully

On Exchanges On An Unlisted Trading Privilege Basis (the "Nasdaq UTP Plan") it provides telephone access to its quotes.

¹⁰ This pause occurs because the quotes of UTP Exchanges and Order Entry ECNs are not accessible through SuperSOES, but only through the order-delivery portion of the system.

¹¹ To illustrate, assume CHX does not participate in SuperSOES and is alone at the current best bid of \$20 for 1000 shares of ABCD. MMA enters an order into SuperSOES, and MMB directs (or preferences) 1,000 shares via SelectNet to CHX. If no other market maker or Full Participant ECN joins the current best bid of \$20, SuperSOES stops processing orders in ABCD for 90 seconds. CHX waits 2 minutes before responding to MMB's preferred SelectNet liability order either by filling or declining the order. (This delay could occur if there are equipment problems at CHX, in Nasdaq, or both.) The result is that the market in ABCD effectively is held up for 2 minutes and SuperSOES is shut off for ABCD (after 90 seconds.)

⁴ The temporary approval of the pilot expires May 31, 2002. See Exchange Act Release No. 45496 (March 1, 2002), 67 FR 10785 (March 8, 2002).

⁵ In July 2001, the Commission approved a rule change to permit UTP Exchanges to participate on a voluntary basis in SuperSOES. See Exchange Act Release No. 44526 (July 6, 2001), 66 FR 36814 (July 13, 2001).

⁶ See Exchange Act Release No. 42344 (January 14, 2000), 65 FR 3987 (January 25, 2000).

⁷ SOES was limited to small agency orders for customers.

⁸ As originally proposed, market participants were permitted to enter into the modified SelectNet only: (1) those orders that specify a minimum acceptable quantity for a size that is at least 100 shares greater than the posted quote of the receiving market participant; or (2) All-or-None orders that are at least 100 shares in excess of the displayed bid/offer size. Since the original proposal, the SEC has also approved the entry of non-liability, inferior-priced orders through SelectNet.

⁹ The Cincinnati Stock Exchange does not participate in any Nasdaq market systems. Instead, consistent with The Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination Of Quotation and Transaction Information For Exchange-Listed Nasdaq/National Market System Securities Traded

in the automatic executions through SuperSOES, or have their quotations removed from the SuperSOES execution and order processing functionality. Specifically, if a UTP Exchange elects not to participate in SuperSOES, SuperSOES will trade through the UTP exchange's quote. This will prevent a UTP Exchange that is not otherwise accessible via SuperSOES from effectively shutting down the market in that security.¹²

UTP Exchanges that choose this option would be accessible by telephone as contemplated in the Nasdaq UTP Plan,¹³ or via a mutually agreed-upon alternative bilateral link created by the UTP Exchange.¹⁴ Nasdaq welcomes the opportunity to explore the possibility of bilateral linkages, which Nasdaq anticipates could be formed via separate agreement between Nasdaq and the exchange(s).

Nasdaq proposed the pilot for a number of reasons. First, significant changes in market conditions have resulted in the need for Nasdaq, via SuperSOES, to increase the speed of executions and improve the access of all market participants to the full depth of a security's trading interest. The volume and speed at which trading occurs in Nasdaq have increased dramatically since SuperSOES was first proposed nearly two and a half years ago. Market participants demand and require the ability to access liquidity at the best prices instantaneously. SuperSOES is a significant improvement over prior Nasdaq execution systems, and has become the backbone of Nasdaq's marketplace by providing market participants with a more efficient trading platform as evidenced by faster executions, higher fill rates, larger orders, and prices at the best bid or best offer.

Nasdaq wants to ensure that the market in a particular security does not shut down—thereby harming investors and the market—if there is an unresponsive UTP Exchange setting the current best bid/best offer for that security. Nasdaq recognizes the

importance of maintaining price priority and ensuring that market participants receive the best possible price in the market. As such, SuperSOES was originally designed not to trade through the best quote that appears in the Nasdaq montage. However, that premise assumed all quotes would be immediately accessible.¹⁵ SuperSOES must be able to continue operating when a particular quote is not accessible by market participants. To that end, if a UTP Exchange chooses not to participate in SuperSOES, and that UTP Exchange sets the inside bid or ask, Nasdaq will enable SuperSOES not to include that UTP Exchange's quotation for order processing and execution.

Participation in SuperSOES by a UTP Exchange is a voluntary action by each exchange. Nasdaq is not obligated to provide UTP Exchanges with access to any of Nasdaq's proprietary systems. Nasdaq's voluntary action, designed to improve efficiency and maintain an orderly market, should not become an opportunity for a Nasdaq competitor to harm the ability of Nasdaq to improve its markets.

Overall, Nasdaq believes it was appropriate to alter the terms under which a UTP Exchange participates in The Nasdaq Stock Market to address all of the concerns described in this proposal. For the same reasons, it is important to continue the pilot program to preserve the status quo as additional UTP Exchanges prepare to commence trading Nasdaq securities.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,¹⁶ in that the proposal is designed to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, Nasdaq believes that modifying SuperSOES to trade through quotations of non-automatic execution UTP Exchanges is necessary for the fair and orderly operation of The Nasdaq Stock Market by helping to reduce the potential for order queuing or for system stoppages, when a UTP Exchange's quote is

inaccessible and is alone at the best bid or best offer.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

- (i) significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act¹⁷ and Rule 19b-4(f)(6), thereunder.¹⁸ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive the 30-day operative delay. The Commission finds good cause to waive both the 5-day pre-filing notice requirement and the 30-day operative delay, because the waivers are consistent with the protection of investors and the public interest. Acceleration of the operative date will permit the NASD pilot to continue in operation without interruption. Nasdaq states that the pilot reduces the potential for a shut down in Nasdaq's automatic execution systems. Up to three additional securities exchanges plan to begin trading Nasdaq securities within several months. Nasdaq's inability to maintain the status quo during that period would create unnecessary, harmful uncertainty. For these reasons, the Commission finds good cause to waive both the 5-day pre-

¹² The Nasdaq UTP Plan governs the trading of Nasdaq-listed securities pursuant to unlisted trading privileges. Subsection (b) of Section IX of the Nasdaq UTP Plan states, in pertinent part, that Plan participants "shall have direct telephone access to the trading desk of each Nasdaq market participant in each [eligible] security in which the [participant] displays quotations." See Section IX, Market Access, of the Nasdaq UTP Plan.

¹³ We note that this currently is the method that the Cincinnati Stock Exchange has elected to use for trading Nasdaq securities under the Nasdaq UTP Plan.

¹⁴ This proposal would not preclude a UTP Exchange from forming a link with Nasdaq outside Nasdaq's market system or the parameters of an NMS plan.

¹⁵ Order Entry ECNs are not subject to inbound automatic executions in SuperSOES. However, as NASD members, Order Entry ECNs are subject to NASD Rules and the enforcement and disciplinary powers granted therein. As non-members, UTP Exchanges are not subject to the same regulatory infrastructure.

¹⁶ 15 U.S.C. 78o-3(b)(6).

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6).

filing requirement and the 30-day operative date.¹⁹

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-2002-71 and should be submitted by June 28, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁰

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02-14303 Filed 6-6-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46005; File No. SR-OCC-2001-09]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Regarding Access to the Option Clearing Corporation's Information and Data Systems Via Electronic Means

May 30, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on August 1, 2001, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") and on April 23, 2002, amended the proposed rule change as

¹⁹ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

described in Items I, II, and III below, which items have been prepared primarily by OCC. 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 proposed rule change would amend OCC's Rules regarding access to its information and data systems via electronic means.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, OCC Rules support on-line data entry and data retrieval, but these provisions are limited solely to direct access via on-line terminals. OCC is in the process of developing a new clearance and settlement system to replace its existing system.³ The new system will support internet access at a clearing member's election. The proposed rule change would add the definition of "electronic data entry," which would be broken down into "electronic data entry" and "electronic data retrieval," to Rule 101 to provide a more flexible and broader description of electronic means to communicate with clearing members.⁴

² The Commission has modified parts of these statements.

³ As previously reported to the Commission, OCC is developing a new clearance and settlement system known as ENCORE to replace its existing system, INTRACS. OCC's implementation strategy is to replace INTRACS on a modular basis with new development code modules replacing targeted pieces of INTRACS which will then be "decommissioned". Newly developed and installed code will interface with remaining portions of INTRACS until the old system is completely replaced.

⁴ Under the proposal, "electronic data entry" would be defined as the transmission by a clearing member to OCC via electronic means of reports, notices, instructions, data, or other items. "Electronic data retrieval" would be defined as the retrieval by a clearing member via electronic means

The proposed rule change would also eliminate outdated provisions that require clearing members to send representatives to access lock boxes to obtain papers and documents distributed by OCC and would clarify the manner in which clearing members exchange information with OCC. Under the proposed rule change, Rules 205 ("Submission of Items to Corporation [OCC]") and 206 ("Retrieval of Items from Corporation [OCC]") would require that a clearing member submit and retrieve instructions, notices, reports, data, and other items via electronic data entry or electronic data retrieval unless otherwise prescribed by OCC. Rules 205 and 206 would also provide that such electronic transmissions would constitute valid "writings" for purposes of applicable law. In the event unusual or unforeseen conditions prevent a clearing member from submitting or retrieving such items electronically, OCC would retain discretion to designate alternative means or to extend any applicable time cut-off times as may be deemed reasonable, practicable, and equitable under the circumstances.

The proposed rule change would amend Rule 208 ("Reports by the Corporation [OCC]") to provide clearing members with the ability to notify OCC via facsimile or e-mail of any errors contained in reports made available by OCC.

Under the proposed rule change, a new Rule 212 ("Security Measures") would set forth the obligations of clearing members to comply with security measures implemented by OCC, including access codes and authorization stamps. Under Rule 212, a clearing member would be bound by submissions made using a current access code or authorization stamp.

Finally, the proposed rule change would make conforming changes to Interpretations and Policies under Rules 801 ("Exercise of Options") and 1606A ("Alternative Settlement Procedures") to delete references to "on-line data entry" and to replace those references with the newly defined "electronic data entry." Interpretations and Policies .01 under Rule 801 also would be amended to accurately reference amended Rule 205 relating to the extension of cut-off times in the event of unusual or unforeseen conditions.

Attached as Exhibit B to the proposed rule change is the "Supplement to the Agreement for OCC Services for Internet Access" proposed to be entered into between OCC and its clearing members. OCC is developing a front-end portal

of reports, notices, instructions, data, and other items made available by OCC.

called MyOCC that will provide a unified access point from which clearing members will be able to obtain information from various applications contained within MyOCC for which the clearing member is authorized to have access. Access to MyOCC will be available to clearing members through the internet, existing enhanced clearing member interface terminals, or dedicated leased lines. To the extent clearing members elect to access OCC's information and data systems through internet connections, the Supplement specifies requirements relating to access codes, registration, authorization, and security.

This Supplement is structured to fit within OCC's existing framework of the "Agreement for OCC Services".⁵ Provisions of the Supplement, which are generally self-explanatory, describe the respective responsibilities of the clearing member and OCC. Section 1 describes the scope of information and data systems that will be made available through the internet. Section 2 creates a requirement on the part of the clearing member to maintain a backup communication channel as a means to obtain access to OCC's information and data systems. Sections 3 and 4 set forth criteria relating to the right to use internet access. Section 5 allocates responsibility relating to the confidentiality and security of access codes. That section also requires the clearing member to provide information as may be necessary to register its authorized users for internet access and to maintain its own equipment. Section 5 also requires the clearing member to represent and warrant that it is authorized to obtain internet access on behalf of a managed clearing member. Sections 6 through 9 set forth further rights and responsibilities of the parties including limitations on liability, indemnification, and termination provisions, *etc.* Section 10 discloses that OCC may monitor the use of internet access to ensure compliance with the Supplement. Section 11 contains general terms including interpretation, severability, waiver, survival, and governing law.

The proposed rule change is consistent with section 17A of the Act because it promotes new data processing and communications techniques resulting in more efficient, effective, and safe procedures for clearance and settlement activities.

⁵ See Securities Exchange Act Release No. 21015, 49 FR 23971 (June 4, 1984) (File No. SR-OCC-84-7) for the text of the Agreement for OCC Services.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the File No. SR-OCC-2001-09 and should be submitted by June 24, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-14298 Filed 6-6-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45993; File No. SR-OCC-2002-05]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Closing Values for Index Options

May 29, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on March 4, 2002, The Options Clearing Corporation ("OCC") 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 primarily by OCC. 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 proposed rule change would amend OCC's Rule 1804 to authorize OCC if it cannot obtain a closing value for an underlying index on the last trading day before expiration to fix a closing price for an index for exercise by exceptions purposes on whatever basis it deems appropriate, including using the most recent index value available.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified parts of these statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OCC proposes amend the term "closing price" as defined in Rule 1804, which sets forth the "exercise by exception" processing procedure for index options. Exercise by exception is the procedure by which options that are in the money at expiration by more than a specified amount are exercised unless the clearing member carrying the position directs otherwise and options that are in the money by less than the specified amount are not exercised unless the carrying clearing member directs otherwise. An option is considered in the money for exercise by exception processing if the "closing price" of the underlying interest at expiration is more (in the case of a call) or less (in the case of a put) than the option's exercise price.

The term "closing price"³ is defined for underlying securities by Rule 805 and for underlying indexes by Rule 1804. Rule 805 generally sets forth OCC's expiration date exercise procedures, including exercise by exception rules for equity options. In 1999, Rule 805 was amended to provide that if an underlying security did not trade on its primary market on the last trading day before expiration or if it did trade but OCC was unable to obtain a closing price, OCC could choose to exercise its discretion to fix a closing price on whatever basis it deemed appropriate including using the last sale price on the most recent trading day for which a price was available.⁴ However, no parallel change was made to Rule 1804.

If there is no reported closing value for an underlying index on the last trading day before expiration, there is no "closing price" for that index for exercise by exception purposes. This result could create operational problems for clearing members and other securities firms whose customer agreements contain provisions that expiring options will be exercised only if OCC's closing price for the underlying interest exceeds (in the case of a call) or is less than (in the case of a put) the exercise price by the OCC specified threshold (unless a customer instructs otherwise). Accordingly, the proposed

³ The closing price of an underlying equity is normally the last reported sale price on the OCC-designated primary market on the last trading day before expiration. The closing price of an index is the index level at the close of trading on the last trading day before expiration.

⁴ Securities Exchange Act Release No. 41089 (February 23, 1999), 64 FR 10051 [File No. SR-OCC-98-14].

modifications to Rule 1804 authorize OCC to fix a "closing price" for an underlying index on whatever basis it deems appropriate (including using the most recent index value available) if a closing value is not reported to or obtainable by OCC on the trading day preceding expiration. This change gives OCC the same authority to fix a closing price for index options as it has for equity options under Rule 805.

OCC believes that the proposed rule change is consistent with the purposes and requirements of section 17A of the Act because it promotes the prompt clearance and settlement of expiring index options.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(i) of the Act⁵ and Rule 19b-4(f)(1)⁶ promulgated thereunder because the proposal constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of OCC. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

VI. 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

⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

⁶ 17 CFR 240.19b-4(f)(2).

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the File No. SR-OCC-2002-05 and should be submitted by June 28, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-14300 Filed 6-6-02; 8:45 am]

BILLING CODE 8010-01-P

SMALL BUSINESS ADMINISTRATION

Notice of Sale of Business and Disaster Assistance Loans

AGENCY: Small Business Administration.

ACTION: Notice of sale of Business and Disaster Assistance Loans—Loan Sale #6.

SUMMARY: This notice announces the intention of the Small Business Administration (SBA) to sell approximately 30,000 secured and unsecured business and disaster assistance loans, (collectively referred to as the Loans). The total unpaid principal balance of the Loans is approximately \$690 million. This is the sixth sale of loans originated under the SBA's Business Loan Programs and the fifth sale of Disaster Assistance Loans (both business and home loans). SBA previously guaranteed some of the Loans under various sections of the Small Business Act, as amended, 15 U.S.C. 695 *et seq.*; however, any SBA guarantees have been paid and no SBA guaranty is available to the successful bidder in this sale. The majority of the Loans were originated and are serviced by SBA. The collateral for the secured Loans includes commercial and residential real estate and other business and personal property located nationwide. This notice also summarizes the bidding process for the Loans.

⁷ 17 CFR 200.30-3(a)(12).

DATES: The Bidder Information Package is scheduled to be available to qualified bidders as of June 5, 2002. The Bid Date is scheduled for August 6, 2002, and closings are scheduled to occur between August 15 and August 31, 2002. These dates are subject to change at SBA's discretion.

ADDRESSES: Bidder Information Packages will be available from the SBA's Transaction Financial Advisor, Cushman & Wakefield, Inc. (C&W). Bidder Information Packages will only be made available to parties that have submitted a completed and executed Confidentiality Agreement and Bidder Qualification Statement and have demonstrated that they are qualified bidders. The Confidentiality Agreement and Bidder Qualification Statement are available on the SBA website at http://www.sba.gov/assets/current_sale/sale6.html or by calling the SBA Loan Sale #6 Center toll-free at (866) 822-6102. The completed and executed Confidentiality and Bidder Qualification Statement can be sent to the attention of Paul Badamo, SBA Loan Sale #6, by either fax, at (202) 293-9049, or by mail, to Cushman & Wakefield, 1801 K Street, NW, Suite 1100-L, Washington, DC 20006.

The Due Diligence Facility is scheduled to open on June 10, 2002 and will close on August 5, 2002. These dates are subject to change at SBA's discretion.

FOR FURTHER INFORMATION CONTACT: Mel O. Bradburn, Program Manager, Small Business Administration, 409 Third Street, SW, Washington, DC 20416: 202-205-2415. This is not a toll free number. Hearing or speech-impaired individuals may access this number via TDD/TTY by calling the Federal Information Relay Service's toll-free number at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: SBA intends to sell approximately 30,000 secured and unsecured business and disaster assistance loans, collectively referred to as the "Loans". The Loans include performing, sub-performing and non-performing loans. The Loans will be offered to qualified bidders in pools or blocks that will be based on such factors as performance status, collateral status, collateral type and geographic location of the collateral. A list of the Loans, loan pools, pool descriptions, blocks and block descriptions is contained in the Bidder Information Package. SBA will offer interested persons an opportunity to bid competitively on loan pools and/or blocks, subject to conditions set forth in the Bidder Information Package. SBA

shall use its sole discretion to evaluate and determine winning bids. No loans will be sold individually. The Loans to be sold are located throughout the United States as well as Puerto Rico and the U.S. Virgin Islands.

The Bidding Process: To ensure a uniform and fair competitive bidding process, the terms of sale are not subject to negotiation. SBA will describe in detail the procedure for bidding on the Loans in the Bidder Information Package, which will include a non-negotiable loan sale agreement prepared by SBA ("Loan Sale Agreement"), specific bid instructions, as well as pertinent loan pool and block information such as total outstanding unpaid principal balance, interest rate, maturity term, aggregate payment history and collateral information including geographic location and type. The Bidder Information Package also includes CDs that contain information pertaining to the Loans.

The Bidder Information Package will be available approximately 9 weeks prior to the Bid Date. It contains procedures for obtaining supplemental information about the Loans. Any interested party may request a copy of the Bidder Information Package by sending a written request together with a duly executed Confidentiality Agreement and a Bidder Qualification Statement to the address specified in the **ADDRESSES** section of this notice.

Prior to the Bid Date, a Bidder Information Package Supplement will be mailed to all recipients of the original Bidder Information Package. It will contain the final list of loans included in Sale #6 and any final instructions for the sale.

Deposit and Liquidated Damages: Each bidder must submit a deposit as specified in the Bidder Information Package. If a successful bidder fails to close within the time period specified in the Loan Sale Agreement, SBA will retain the deposit as liquidated damages.

Due Diligence Facility: The bidder due diligence period begins on June 10, 2002. During the bidder due diligence period, qualified bidders may, for a non-refundable assessment of \$1,000 US dollars, review all asset file documents that have been imaged onto a database by visiting the due diligence facility located at 499 South Capital Street, SW, Suite 300; Washington, DC 20003 and/or via remote access as well as receive the due diligence CDs. Bidders may request only the due diligence CDs that contain substantial due diligence materials such as loan payment history and updated third party reports and visit the due diligence facility for a non-

refundable assessment of \$500 US dollars.

Specific instructions for ordering information in electronic format or making an appointment to visit the due diligence facility are included in the Bidder Information Package and on the SBA website (http://www.sba.gov/assets/current_sale/sale6.html).

SBA Reservation of Rights: SBA reserves the right to add or remove loans from the sale as set forth in the Bidder Information Package.

SBA also reserves the right to terminate this sale in whole or in part at any time.

SBA reserves the right to use its sole discretion to evaluate and determine winning bids. SBA also reserves the right in its sole discretion and for any reason whatsoever to reject any and all bids.

SBA reserves the right to conduct a "best and final" round of bidding in which bidders will be given the opportunity to increase their bids. A best and final round shall not be construed as a rejection of any bid or preclude SBA from accepting any bid made by a bidder.

Ineligible Bidders: The following individuals and entities (either alone or in combination with others) are ineligible to bid on the Loans included in the sale:

(1) Any employee of SBA, any member of any such employee's household and any entity controlled by a SBA employee or by a member of such employee's household.

(2) Any individual or entity that is debarred or suspended from doing business with SBA or any other agency of the United States Government.

(3) Any contractor, subcontractor, consultant, and/or advisor (including any agent, employee, partner, director, principal, or affiliate of any of the foregoing) who will perform or has performed services for, or on-behalf of SBA in connection with the Loans, this sale or the development of SBA's loan sale program.

(4) Any individual that was an employee, partner, director, agent or principal of any entity, or individual described in paragraph (3) above at any time during which the entity or individual performed services for, or on behalf of SBA in connection with the Loans, this sale or the development of SBA's loan sale program.

(5) Any individual or entity that has used or will use the services, directly or indirectly, of any person or entity ineligible under any of paragraphs (1) through (4) above to assist in the preparation of any bid in connection with this sale.

Loan Sale Procedure: SBA will use a competitive online block auction process as the method to sell the majority of the Loans. SBA will offer certain pools of Loans in an online designated loan pool auction format. SBA believes a competitive bid auction sale optimizes the return on the sale of loans and attracts the largest field of interested parties. A competitive bid auction also provides the quickest and most efficient vehicle for SBA to dispose of the Loans.

Post Sale Servicing Requirements: The Loans will be sold servicing released. Purchasers of the Loans and their successors and assigns will be required to service the Loans in accordance with the applicable provisions of the Loan Sale Agreement for the life of the Loans. In addition, the Loan Sale Agreement establishes certain requirements that a servicer must satisfy in order to service the Loans.

Scope of Notice: This notice applies to Loan Sale #6 and does not establish agency procedures and policies for other loan sales. If there are any conflicts between the Bidder Information Package and this Notice, the Bidder Information Package shall prevail.

Dated: May 30, 2002.

LeAnn M. Oliver,

Acting Associate Administrator for Financial Assistance.

[FR Doc. 02-14245 Filed 6-6-02; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF STATE

[Public Notice 4034]

Culturally Significant Objects Imported for Exhibition Determinations: "Anne Vallayer-Coster: Painter to the Court of Marie-Antoinette"

AGENCY: 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 "Anne Vallayer-Coster: Painter to the Court of Marie-Antoinette," 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 National Gallery of Art, Washington, DC, from on or about June 30, 2002, to on or about September 25, 2002; the Dallas Museum of Art, Dallas, TX, from on or about October 13, 2002, to on or about January 5, 2003; The Frick Collection, New York, NY, from on or about January 21, 2003, to on or about March 23, 2003, and at possible additional venues yet to be determined, 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 Orde F. Kittrie, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/401-4779). The address is U.S. Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: June 3, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02-14374 Filed 6-6-02; 8:45 am]

BILLING CODE 4710-08-P

DEPARTMENT OF STATE

[Public Notice 3989]

Advisory Committee on International Economic Policy; Open Meeting Notice

The Advisory Committee on International Economic Policy (ACIEP) will meet from 9 a.m. to 11:45 a.m. on Tuesday, June 18, 2002, in Room 1107, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520. The meeting will be hosted by Committee Chairman R. Michael Gadbow and Assistant Secretary of State for Economic and Business Affairs E. Anthony Wayne.

The ACIEP serves the U.S. Government in a solely advisory capacity concerning issues and problems in international economic policy. The objective of the ACIEP is to provide expertise and insight on these issues that are not available within the U.S. Government.

Topics for the June 18 meeting will be:

- Current Development and Trade Events
- The Administration's Millennium Challenge Account
- Explaining America Overseas

The public may attend these meetings as seating capacity allows. The media is welcome but discussions are off the

record. Admittance to the Department of State building is by means of a pre-arranged clearance list. In order to be placed on this list, please provide your name, title, company or other affiliation if appropriate, social security number, date of birth, and citizenship to the ACIEP Executive Secretariat by fax (202) 647-5936 (Attention: Cecelia Walker); Tel: (202) 647-0847; or email: (walkercr@state.gov) by June 14, 2002. On the date of the meeting, persons who have pre-registered should come to the 23rd Street entrance. One of the following valid means of identification will be required for admittance: a U.S. driver's license with photo, a passport, or a U.S. Government ID.

For further information about the meeting, contact Deborah Grout, ACIEP Secretariat, U.S. Department of State, Bureau of Economic and Business Affairs, Room 3526, Main State, Washington, DC 20520. Tel: 202-647-1826.

Dated: June 3, 2002.

Deborah Grout,

Executive Secretary of the Advisory Committee on International Economic Policy, Department of State (TC).

[FR Doc. 02-14373 Filed 6-6-02; 8:45 am]

BILLING CODE 4710-07-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Cancellation of Environmental Impact Statement for Toledo Express Airport, Toledo, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Cancellation of Environmental Impact Statement Process.

SUMMARY: The Federal Aviation Administration (FAA), Great Lakes Region, planned to prepare an Environmental Impact Statement for proposed implementation of air traffic control noise abatement procedures, construction of a new air cargo and large aircraft maintenance facility, and associated noise compatibility program mitigation measures at Toledo Express Airport. The Notice of Intent to Prepare an Environmental Impact Statement (EIS) and Hold a Public Scoping Meeting was published in the **Federal Register** on June 27, 1996 (61 FR 33573). Two scoping meetings were held on August 6, 1996. The Draft EIS was released on January 29, 1999. A notice to hold a public hearing was published in the **Federal Register** on February 2, 1999 (64 FR 5089-5090). The public hearing was held on March 10, 1999. On

April 13, 1999, the FAA published in the **Federal Register** (64 FR 18065) a notice to extend the public comment period until April 30, 1999.

On June 26, 2001 the FAA received notification from the Toledo-Lucas County Port Authority that it wished to release from consideration construction of the proposed new air cargo hub and large aircraft maintenance facility. As such, the FAA is hereby canceling the environmental impact statement process.

The Toledo-Lucas County Port Authority desires to retain for environmental consideration implementation of the air traffic control noise abatement procedures and associated noise compatibility program mitigation measures. The FAA will examine the environmental effects of the proposed air traffic procedures and mitigation measures through preparation of an environmental assessment. To facilitate receipt of comments on the environmental assessment, a public hearing will be scheduled in the near future. Notice of availability of the draft environmental assessment and conduct a public hearing will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Annette Davis, Federal Aviation Administration, Great Lakes Region, Air Traffic Division, 2300 East Devon Avenue, Des Plaines, Illinois, 60018, (847) 294-8091.

Issued in Des Plaines, Illinois on May 21, 2002.

Nancy B. Shelton,

Manager, Air Traffic Division.

[FR Doc. 02-14355 Filed 6-6-02; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Program Management Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Program Management Committee meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Program Management Committee.

DATES: The meeting will be held June 25, 2002 starting at 9 am.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW, Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW,

Suite 850, Washington, DC 20036; telephone (202) 833-9339; fax (202) 833-9434; web site <http://www.rtca.org>.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., appendix 2), notice is hereby given for a Program Management Committee meeting. The agenda will include:

- June 25:
 - Opening Session (Welcome and Introductory Remarks, Review/Approve Summary of Previous Meeting).
 - Publication Consideration/Approval:
 - Final Draft, Minimum Operational Performance Standards for Aircraft VDL Mode 2 Physical, Link and Network Layers; RTCA Paper No. 100-02/PMC-210, prepared by SC-172.
 - Final Draft, DO-242A, Minimum Aviation system Performance Standards for Automatic Dependent Surveillance Broadcast (ADS-B), RTCA Paper No. 106-02/PMC-211, prepared by SC-186.
 - Final Draft, Minimum Interoperability Requirements Standard for ATN Baseline 1 (INTEROP ATN B1), RTCA Paper No. 107-02/PMC-212, prepared by SC-189.

- Discussion:
 - Matters Regarding Cospas-Sarsat 406 MHz Beacons.
 - Update—RTCA SC-181/EUROCAE WG-13 Joint Activity.
 - Special Committee Chairman's Reports.

- Action Item Review:
 - Action Item 08-01, SC-187 Transponder Activity.
 - Status and Review—Change 1 to DO-181C—Hijack Mode Operations.
 - Review/Status—All Open Action Items.

- Closing Session (Other Business, Document Production, Date and Place of Next Meeting, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 29, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02-14354 Filed 6-6-02; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Discretionary Cooperative Agreements To Assist in the Development of Crash Outcome; Data Evaluation System

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of availability—discretionary cooperative agreements to assist in the development and use of Crash Outcome Data Evaluation System.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces a discretionary cooperative agreement program to assist states in the development and use of Crash Outcome Data Evaluation System (CODES) and solicits applications for projects under this program from states that have not previously been funded to develop CODES. Under this program, states will link their existing statewide traffic records with injury outcome and charge data. The linked data will be used to support highway safety decision-making at the local, regional, and state levels to reduce deaths, non-fatal injuries, and health care costs resulting from motor vehicle crashes.

DATES: Applications must be received at the office designated below by 3 pm on or before July 24, 2002.

ADDRESSES: Applications must be submitted to DOT/National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD-30), ATTN: Amy Poling, 400 7th Street SW, Room 5301, Washington, DC 20590. All applications submitted must include a reference to NHTSA Cooperative Agreement Program No. DTNH22-02-H-07270.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Amy Poling, Office of Contracts and Procurement. All questions and requests for copies may be directed by e-mail at apoling@nhtsa.dot.gov or, by telephone, at (202) 366-9552. Programmatic questions relating to this cooperative agreement program should be directed to Barbara Rhea, CODES Contracting Officer's Technical Representative (COTR), at NHTSA, Room 6125, (NRD-33) 400 7th Street SW, Washington, DC 20590, or by e-mail at brhea@nhtsa.dot.gov, or by telephone at (202) 366-2714.

SUPPLEMENTARY INFORMATION:

Statement of Work

Background

Crash data alone are unable to convey the magnitude of the injury and financial consequences of the injuries resulting from motor vehicle crashes or the success of highway safety decision-making to prevent them. Outcome information describing what happens to all persons involved in motor vehicle crashes, regardless of injury, are needed.

Person-specific outcome information is collected at the crash scene and en route by EMS personnel, at the emergency department, in the hospital, and after discharge. When these data are computerized and merged statewide, they generate a source of population-based data that is available for use by state and local traffic safety and public health professionals. Linking these records to statewide crash data collected by police at the scene is the key to identifying the relationships among specific vehicle, crash, or occupant behavior characteristics and their injury and financial outcomes.

The feasibility of linking crash and injury outcome (EMS, emergency department, hospital discharge, death certificate, claims, etc.) data was demonstrated by the CODES project. This project evolved from the Intermodal Surface Transportation Efficiency Act of 1991, which mandated that NHTSA prepare a Report to Congress about the benefits of safety belt and motorcycle helmet use. NHTSA provided funding to the States of Hawaii, Maine, Missouri, New York, Pennsylvania, Utah, and Wisconsin to link their state data and use the linked data to analyze the effectiveness of safety belts and motorcycle helmets. The Report was delivered to Congress in February 1996. In 1996, three CODES states (New York, Pennsylvania, and Wisconsin) and three states which linked crash and injury data without CODES funding (Alaska, Connecticut, and New Mexico) were awarded NHTSA research funds to develop state-specific applications for linked data. In 1997, NHTSA awarded grants for CODES linkage to Connecticut, New Hampshire, Maryland, North Dakota, South Dakota, Oklahoma, and Nevada. Iowa, Kentucky, Massachusetts, Nebraska, and South Carolina were funded to implement the CODES linkage in 1998. Arizona, Delaware, Minnesota and Tennessee were funded in 1999. Georgia and Rhode Island were funded in 2000. The CODES project also demonstrated that linked data have many uses for decision-making related to highway safety and injury control. In addition to demonstrating the

effectiveness of safety belts and motorcycle helmets in preventing death, injury, and costs, the linked data were used to identify populations at risk for increased injury severity or high health care costs, the impact of different occupant behaviors on outcome, the safety needs at the community level, the allocation of resources for emergency medical services, the injury patterns by type of roadway and geographic location, and the benefits of collaboration on data quality. Crash outcome information enables decision-makers to target those prevention programs that have the most impact on preventing or reducing the injury and financial costs associated with motor vehicle crashes.

Data linkage fulfills expanded data needs without the additional expense and delay of new data collection. The linkage process itself provides feedback about data quality, which, when improved, enhances the state data for their original purposes. Thus, it is in NHTSA's interest to encourage states to qualify for CODES funding. NHTSA benefits from the improved quality of the state data, while the states benefit from state-specific injury and financial outcome information about motor vehicle crashes.

Objective

The objective of this Cooperative Agreement program is to provide resources to the applicant to:

1. Coordinate the development and institutionalization of the capability to link state crash and injury outcome data to identify the injury and financial consequences of motor vehicle crashes.
2. Utilize this information in crash analysis, problem identification, and program evaluation to improve decision-making at the local, state, and national levels related to preventing or reducing deaths, injuries, and direct medical costs associated with motor vehicle crashes.
3. Provide NHTSA with population-based linked crash and injury data to analyze specific highway safety issues in collaboration with the CODES states.
4. Develop data linkage capabilities as a means of improving the quality of state data that support NHTSA's national data.

State data systems are stronger and more likely to survive when developed and supported by state funds. So, this cooperative agreement is not intended to fund basic development of state data systems, but rather to enhance their value via linkage. States with insufficient state data to perform the CODES linkages are encouraged to use

state resources to improve their state data and qualify for CODES funding.

General Project Requirements

The grantees of this cooperative agreement will be required to:

1. Link statewide population-based crash to injury data for any two calendar years available since 1998 to produce a linked data file that, if not statewide, reflects a contiguous geographical area that contains at least three (3) million residents and all levels of emergency medical care so that persons involved in crashes do not need to be transferred elsewhere except in rare occurrences. The linked data must be representative and generalizable for highway traffic safety purposes in the state or within an area in the state. All applicants must be able to clearly document what data are available and what data are missing and the significance of the missing data for highway traffic safety planning efforts.

- a. Develop a state/area-wide CODES that includes outcome information for all persons, injured and uninjured, involved in police reported motor vehicle crashes.

- (1) The CODES should consist of person-specific crash data linked to hospital and either EMS or emergency department data, preferably both. States without EMS or emergency department data are eligible if this type of outpatient information can be obtained from insurance claims data.

- (2) Additional state/area-wide data (driver licensing, vehicle registration, citation/conviction records, insurance claims, HMO/managed care, outpatient records, etc.) should be linked as necessary to meet state/area-wide objectives.

- b. Set up processes for collaboration among the technical experts who manage the data files being linked.

- c. Assign an agency to be responsible for:

- (1) Obtaining a computer to be dedicated to CODES activities (the computer and linkage software resources may not be permanently tied to an existing computer network in such a way as to preclude their movement in the future, as directed by the CODES Board of Directors, to another organization more interested in continuing the linkage and application for the linked data);

- (2) Implementing CODES 2000 probabilistic linkage software and specified statistical techniques to perform the linkage of the crash and injury state data;

- (3) Validating the linkage results by evaluating the rate of false positives and false negatives among the linked and unlinked records;

(4) Analyzing the linked data; and
(5) Cross-training sufficient staff to ensure continuation of the linkage capability when unexpected changes occur in organizational priorities or personnel during or after the project period.

d. Document the file preparation, linkage and validation processes so that the linkage can be repeated efficiently during subsequent years after Federal funding ends and provide evidence of this documentation.

e. Provide NHTSA a version of the linked data file, per NHTSA's guidelines, including, documentation of the file structure and its conformance with State laws and regulations governing patient/provider confidentiality.

2. Use the linked data to influence highway traffic safety and injury control decision-making by implementing at least one application of linked data that is expected to have a positive impact on reducing death, injury, and direct medical costs.

3. Use the linked data to prepare management reports using a format standardized by NHTSA for a national CODES report.

4. Develop the computer programs needed to translate the linked data into information useful for highway traffic safety and injury control at the local, regional, or state/area-wide level.

a. Develop, for access within the State, a public-use version of the linked data, copies of which will be distributed upon request.

b. Develop the resources necessary to produce and distribute routine reports, respond to data requests, and provide access to the linked data for analytical, management, planning, and other purposes after Federal funding ends.

c. Use the Internet and other electronic mechanisms to efficiently distribute and share information generated from the linked data.

5. Promote collaboration between the owners and users of the state/area-wide data to facilitate data linkage and applications for linked data.

a. Establish a state/area-wide CODES collaborative network.

(1) Convene a Board of Directors consisting of the data owners and major users of the state/area-wide data. The CODES Board of Directors will be responsible for managing and institutionalizing the linked data, establishing the data release policies for the linked data, supporting the activities of the grantee, ensuring that data linkage and application activities are appropriately coordinated within the state/area, and resolving common issues related to data accessibility, availability,

completeness, quality, confidentiality, transfer, ownership, fee for service, management, etc. The CODES Board of Directors shall meet twice a month either in person or via conference call.

(2) Convene a CODES Advisory Group consisting of the CODES Board of Directors and other stakeholders interested in the use of linked data to support highway safety, injury control, EMS, etc. The CODES Advisory Group will be informed of the results of the data linkage, application of the data for decision-making, the quality of the state/area-wide data for linkage and the quality of the linked data for analysis. The CODES Advisory Group shall meet in person twice a year.

b. Promote coordination of the various stakeholders through use of the Internet, teleconferencing, joint meetings, and other mechanisms to ensure frequent communication among all parties to minimize the expense of travel.

6. Work collaboratively with NHTSA to implement the Cooperative Agreement.

a. Attend Initial Briefing Meeting. Each grantee shall attend a briefing meeting (date and time to be scheduled within 30 days after the award) in Washington, D.C. with NHTSA staff. The purpose of the meeting will be to review the goals and objectives of the project, discuss implementation of the linkage software, review the tasks to be specified in the action plan for the data linkage and applications of the linked data for highway safety or injury control decision-making and discuss the agendas for the Board of Directors and Advisory Group.

b. Submit Detailed Action Plan and Schedule. Within 30 days after the briefing meeting, the grantee shall deliver a detailed action plan and schedule, covering the remaining funding period, for accomplishing the data linkage and incorporating information generated from linked data into the processes for highway safety or injury control decision-making. The action plan shall be subject to the technical direction and approval of NHTSA.

c. Attend Technical Workshops. All grantees together shall attend two technology transfer workshops during project performance at locations convenient to the majority of CODES grantees. The first meeting, to be scheduled during the middle of the period of funding, will be organized to share data linkage experiences, discuss standardized formats for management reports, review the proposed state-specific highway safety applications of linked data, and resolve common problems. The second meeting will be

scheduled at the end of the funding period for the purpose of sharing results and making recommendations for future CODES projects.

d. Progress Report. Grantee shall submit quarterly progress reports. During the period of performance, the grantee will provide letter-type written reports to the COTR. These reports will compare what was proposed in the Action Plan with actual accomplishments during the past quarter; what commitments have been generated; what follow up and state-level support is expected; what problems have been experienced and what may be needed to overcome the problems; and what is specifically planned to be accomplished during the next quarter. These reports will be submitted seven days after the end of each quarter. Minutes of the meetings of the Board of Directors during the quarter must be attached to the Progress Report.

e. Develop a plan to institutionalize the data linkage and applications for linked data after Federal funding ends. By the end of the 15th month of funding, each grantee shall submit a long-range plan and schedule to institutionalize data linkage and the use of linked data for highway safety and injury control decision-making within the state.

f. Project Report. The grantee shall deliver to NHTSA, at the end of the project, a final report describing the results of the data linkage process, and the applications of the linked data generated during the project. This report will follow guidelines provided by the COTR.

NHTSA Involvement

NHTSA will be involved in all activities undertaken as part of the Cooperative Agreement program and will:

1. Provide a Contracting Officer's Technical Representative (COTR) to participate in the planning and management of the Cooperative Agreement and coordinate activities between the grantee and NHTSA.

2. Provide, at no cost to the grantee, training and technical assistance by a CODES expert for up to two weeks on-site and off-site during the project to assist the grantee in preparing the files for linkage, implementing probabilistic linkage and other statistical techniques, validating the linkage results, developing applications for the linked data, and organizing the CODES Board of Directors and Advisory Group.

3. Develop a format in which the linked data and supporting documentation will be delivered to NHTSA.

4. Conduct Initial Briefing at NHTSA Headquarters in Washington, DC (Date and time to be scheduled within 30 days after the award.) The purpose of the meeting will be to review the goals and objectives of the project, discuss implementation of the linkage software, identify the tasks to be specified in the action plan for the data linkage and applications of the linked data for highway safety or injury control decision-making, and discuss agendas for the Board of Directors and Advisory Group.

5. Conduct two Technical Assistance meetings for the purpose of technology transfer. The first meeting, to be scheduled during the middle of the period of funding, will be organized to share data linkage experiences, develop a standardized format for management reports, review the proposed state-specific highway traffic safety applications of linked data, and resolve common problems. The second meeting will be scheduled at the end of the funding period for the purpose of sharing results and making recommendations for future CODES projects. Locations for the Workshops will be determined based on the location of the Grantees. However, for the purpose of cost estimation, assume the workshops will be held in Washington, DC.

6. Collaboratively work with the state when using the state's linked data to analyze and report on specific highway safety issues.

7. When appropriate, NHTSA will publish state-specific reports on CODES applications.

Number of Cooperative Agreements, Award Amounts, and Period of Support

The project study effort described in this announcement will be supported through the award of up to four (4) Cooperative Agreements, depending upon the merit of the applications received and the availability of funding. It is anticipated that individual award amounts will be up to \$187,500. Project efforts involving linkage of the state/area-wide data and applications for the linked data must be completed within twenty-one months after funding.

Eligibility Requirements

The grantee must be a State agency involved with highway traffic safety, such as a State Highway Safety Office, Department of Transportation or other State agency with demonstrated activities in the highway traffic safety areas, to ensure active involvement by highway traffic safety stakeholders. States that have previously been funded to develop CODES are not eligible. Only

one application should be submitted for a state. Because this Cooperative Agreement program requires extensive collaboration among the data owners in order to achieve the program objectives, it is envisioned that the grantee agency may need to actively involve the data owners in the development of the formal application and may need to subcontract activities with at least one of them to implement a successful CODES.

While the general eligibility requirements are broad, applicants are advised that this Cooperative Agreement program is not designed to support basic developmental efforts. Although no single organization within any state or area within the state has all of the required data capabilities, the application should demonstrate strong collaborative agreements with the data owners and access to at least the state/area-wide crash, hospital, and either EMS or emergency department data, or both, by the time of the award. States/areas that collect at least the date of birth and zip code of residence on their crash data and have state/area-wide health and/or vehicle insurance claims information may be eligible, in spite of the lack of EMS or emergency department information, if the claims data include everyone involved in motor vehicle crashes. In addition, it is important that the application indicate the level of commitment by the state, in terms of funding and/or shared resources, to meet program objectives, particularly institutionalization of the data linkage and applications for linked data.

Application Procedure

Each applicant must submit one original and four (4) copies of the application package to: DOT/National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD-30), ATTN: Amy Poling, 400 7th Street, SW., Room 5301, Washington, DC 20590. Applications must be typed on one side of the page only.

Applications must include a reference to NHTSA Cooperative Agreement Program Number DTNH22-02-H-07270. Only complete application packages received on or before 3 p.m. on July 24, 2002, will be considered.

Application Contents

1. The application package must be submitted with OMB Standard Form 424 (REV. 7-97, including 424A and 424B), Application for Federal Assistance, with the required information filled in and assurances signed (SF 424B). While the Form 424A deals with budget information and section B identifies Budget Categories,

the available space does not permit a level of detail that is sufficient to provide for a meaningful evaluation of the proposed total costs. A supplemental sheet shall be provided which presents a detailed breakdown of the proposed costs (direct labor, including labor category, level of effort, and rate; direct materials including itemized equipment; travel and transportation, including projected trips and number of people traveling; subcontractors/subgrants, with similar detail, if known; and overhead), as well as any costs the applicant proposes to contribute or obtain from other sources in support of the project. Applicants shall assume that awards will be made during September 2002 and should prepare their applications accordingly.

2. The application shall include a program narrative statement of not more than 20 pages, which addresses the following as a minimum:

a. A brief description of the state/area in terms of its highway safety and injury control decision-making processes for planning, performance monitoring and other functions aimed at reducing death, injury, and costs of injuries resulting from motor vehicle crashes. This description should indicate how linked data would make a difference to the decision-making processes.

b. A brief description of the existing crash and injury outcome data files. Applicants will link state/area-wide population-based crash data to EMS (and/or emergency department or insurance claims) and hospital discharge data to obtain injury and financial outcomes for persons injured in motor vehicle crashes for any two calendar years of data available since 1998. Linkages to census, other traffic records (vehicle registration, driver licensing, roadway, conviction/citation, etc.), insurance claims, etc., are encouraged to meet priorities for highway safety and injury control decision-making. The following information should be included describing the state/area-wide data:

(1) The total crashes, total persons involved in crashes, total victims with injuries caused by a motor vehicle crash as identified or estimated and a descriptive profile of the total injuries by police-reported severity level (killed, incapacitating injury, non-incapacitating injury, possible injury, unknown if injured), if available, state/area-wide.

(2) Information about the current status of the data files to be linked, recorded using the format below:

Data files	Reporting threshold (A)	Rate of compliance with (A)	Data years to be linked (19xx-19xx)	Month and year when most recent data year will become available	Percent of records computerized	Can remaining records be computerized? (Y/N)
Crash						
EMS						
ED						
Hospital						
Other						

(3) The data elements available to identify persons and crashes and the missing data rate for each.

c. A brief description of how staff from the various data owners will be cross-trained in the CODES linkage to compensate for potential future changes in organizational priorities and personnel.

d. A brief description of the process to be used to ensure adequate documentation of the data files and linkage process.

e. A brief description of how the linked data will be converted into information useful for the highway safety and injury control decision-making processes for the purpose of reducing death, injury, and costs resulting from motor vehicle crashes.

Describe:

(1) The different types of decision-making processes, currently being utilized in the state/area, that identify highway traffic safety and injury control objectives and prioritize prevention programs that have the most impact on reducing death, injury and direct medical costs associated with motor vehicle crashes; and

(2) Why linked data are needed to make these decision-making processes more effective and how the data will be incorporated.

f. A brief description of each data owner member of the CODES Board of Directors including the process that must be implemented to access the owner's data.

3. The application shall include an appendix. A large appendix is strongly discouraged. Materials not listed below should be included only if it is necessary to support information about data linkage, applications for linked data or institutionalization discussed in the application.

Do not send copies of brochures, documents, etc., developed as the result of a collaborative effort in the state/area. The appendix should include the following:

a. Letters of support from each proposed member of the CODES Board of Directors. A letter of support should reflect the signer's level of commitment to the CODES project and thus should not be a form letter. The letter of support should document:

(1) Why linked data are important to the agency.

(2) The priority assigned by the agency to obtain linked data compared to other responsibilities.

(3) The agency's level of commitment in terms of the number of staff and the dollars or shared resources which will be available to support and institutionalize CODES.

(4) The agency's willingness to collaborate with other data owners to support shared ownership of the linked data.

(5) The agency's permission to collaborate with NHTSA during the project and to release the linked data (or description of policies which would restrict transfer) to NHTSA at the end of the project.

b. A brief description or letters of support should be included for the other stakeholders to be represented on the CODES Advisory Group. The letters of support should indicate the stakeholder's need for the linked data, and willingness to facilitate the linkage of state/area-wide data or use of linked data for decision-making.

c. A list of major activities in chronological order and a time line to show the expected schedule of accomplishments and their target dates.

d. Descriptions of the proposed project personnel as follows:

(1) Project Director: Include a resume along with a description of the director's leadership capabilities to make the various stakeholders work together.

(2) Key personnel proposed for the data linkage and applications of linked data, and other personnel considered critical to the successful accomplishment of this project: Include a brief description of qualifications, employment status (permanent,

temporary) in the organization, and respective organizational responsibilities. The proposed level of effort in performing the various activities should also be identified.

e. A brief description of the applicant's organizational experience in performing similar or related efforts, and the priority that will be assigned to this project compared to the organization's other responsibilities.

f. A brief description of any potential delays in implementing the project because of requirements for legislative approval before CODES funds can be expended.

g. Data Use Agreement. A description of the existing State laws and Privacy Act regulations governing patient/provider confidentiality in the data files being linked that would restrict use of the data for linkage at the state level and/or for transfer of the CODES linked data to NHTSA for its use.

Application Review Process and Evaluation Factors

Initially, all application packages will be reviewed to confirm that the applicant is an eligible recipient and to ensure that the application contains all of the items specified in the Application Content section of this announcement. Each complete application from an eligible recipient will then be evaluated by an Evaluation committee. The applications will be evaluated using the following criteria which are listed in descending order of importance:

1. Understanding the intent of the program (30%). The applicant's recognition of the importance of CODES to obtain injury and financial outcome data which are necessary for a comprehensive evaluation of the impact of highway safety and injury control countermeasures. The applicant's understanding of the importance of developing CODES as a meaningful and appropriate strategy for improving traffic records capabilities and ensuring

the continuation of CODES after completion of this project.

2. Technical approach for project completion (30%). The reasonableness and feasibility of the applicant's approach for successfully achieving the objectives of the project within the required time frame. The appropriateness and feasibility of the applicant's proposed plans for data linkage and applications for the linked data. Evidence that the applicant has the necessary authorization and support from data owners to access injury and traffic records state/area-wide data, particularly total charges and information about type and severity of injury, which are not routinely available for highway safety analyses, and the authorization to collaborate with NHTSA.

3. Project personnel (20%). The adequacy of the proposed personnel to successfully perform the project study, including qualifications and experience (both general and project related), the various disciplines represented, and the relative level of effort proposed for the professional, technical and support staff.

4. Organizational capabilities (20%). The adequacy of organizational resources and experience to successfully manage and perform the project, particularly to support the collaborative network and respond to the increasing demand for access to the linked data. The proposed coordination with and use of other organizational support and resources, including other sources of financial support.

An organizational representative of the National Association of Governors' Highway Safety Representatives will be assisting in NHTSA's technical evaluation process.

Special Award Selection Factors

After evaluating all applications received, in the event that insufficient funds are available to award to all meritorious applicants, NHTSA may consider the following special award factors in the award decision:

1. Priority may be given to those applicants that have statewide data available for linkage.

2. Priority may be given to applicants who have the highest probability of maintaining the collaborative network of data owners and users, of institutionalizing the linkage of the crash and injury outcome data on a routine basis, and of continuing to respond to data requests after the project is completed.

3. Priority may be given to an applicant on the basis that the application fits a profile of providing

NHTSA with a broad range of population densities (rural through metropolitan) with different highway safety needs.

Terms and Conditions of the Award

1. Prior to award, each grantee must comply with the certification requirements of 49 CFR part 20, Department of Transportation New Restrictions on Lobbying, and 49 CFR part 29, Department of Transportation Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug Free Workplace (Grants). In addition, grantees must certify that data release agreements have been signed by the owners of the data files being linked to transfer the CODES linked database to NHTSA, according to NHTSA specifications.

2. Reporting Requirements and Deliverables:

a. Detailed Action Plan and Schedule. Within 30 days after the briefing meeting, the grantee shall deliver a detailed action plan and schedule for accomplishing the data linkage and applications of linked data for decision-making, showing any revisions to the approach proposed in the grantee's application. This detailed action plan will be subject to the approval of NHTSA and will describe the following:

- (1) The personnel who will perform the tasks.
- (2) The time period for obtaining the different files required for linkage.
- (3) The milestones for completing the various phases of the probabilistic linkage and validation processes.
- (4) The milestones for proposed meeting schedules and actions by the Board of Directors and Advisory Group.
- (5) Date(s) for providing the linked data to NHTSA.
- (6) The milestones for implementing the applications.

b. Quarterly Progress Report. During the performance, the grantee will provide letter-type written reports to the NHTSA COTR. These reports will compare what was proposed in the Action Plan with actual accomplishments during the past quarter; what commitments have been generated; what follow-up and state-level support is expected; what problems have been experienced and what may be needed to overcome the problems; and what is specifically planned to be accomplished during the next quarter. These reports will be submitted seven days after the end of each quarter.

c. Board of Directors and Advisory Group Meetings. Copies of the agenda and minutes for each Board of Directors

and Advisory Group Meetings held during the quarter shall be attached to the Progress Report submitted to NHTSA.

d. Institutionalization Plan. The grantee shall deliver to NHTSA, by the end of the 15th month of funding, a long-range plans and schedule to institutionalize data linkage and the use of linked data for highway safety and injury control decision-making within the state.

e. Project Report. The grantee shall deliver to NHTSA, at the end of the project, a final report that describes the results of the data linkage process, and the applications of the linked data. The report shall follow the content outline mandated by NHTSA and include the following:

- (1) A description of the state/area wide linked crash and injury data;
- (2) A description of the file preparation;
- (3) A description of the linkage, validation processes and results;
- (4) A description of the extent of the documentation and how the documentation will facilitate linkage in subsequent years;
- (5) A discussion of the limitations of the linked data and subsequent applications of these data;
- (6) A description of the applications of linked data implemented for decision-making and results of the decision-making;
- (7) A description of how the data linkage and use of linked data for decision-making has been institutionalized for decision-making;
- (8) A description of the documentation created to facilitate repeating of the linkage process and an estimate of how much time is needed to repeat the linkage in subsequent years;
- (9) A copy of the public-use formats that were successful for incorporating linked data into the decision-making processes for highway safety and injury control; and
- (10) A copy of the management reports prepared using the standardized format for the national CODES report.

f. CODES Linked Database. The grantee shall deliver to NHTSA after linkage, at the date specified in the Action Plan, the CODES linked databases. NHTSA will use the data to help facilitate the development of data linkage capabilities at the state/area-wide level and to encourage use of the linked data for decision-making.

The deliverables will include:

- (1) The database in an electronic media and format acceptable to NHTSA, including all persons, regardless of injury severity (none, fatal, non-fatal), involved in a reported motor vehicle

crash for any two calendar years of available data since 1998, and including injury and financial outcome information for those who are linked.

(2) A copy of the file structure for the linked data file.

(3) Documentation of the definitions and file structure for each of the data elements contained in the linked data files.

(4) An analysis of the quality of the linked data and a description of any data bias that may exist, based on an analysis of the false positive and false negative linked records.

3. During the effective performance period of Cooperative Agreements awarded as a result of this announcement, the agreement shall be subject to the National Highway Traffic Safety Administration's General Provisions for Assistance Agreements.

Raymond P. Owings,

Associate Administrator for Research and Development, National Highway Traffic Safety Administration.

[FR Doc. 02-14223 Filed 6-6-02; 8:45 am]

BILLING CODE 4910-12-P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepeth, Director, Office of Hazardous Materials, Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400

Seventh Street, SW, Washington, DC 20590-0001, (202) 366-4535

Key to "Reasons for Delay"

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of exemption applications.

Meaning of Application Number Suffixes

- N—New application
M—Modification request
PM—Party to application with modification request

Issued in Washington, DC, on June 3, 2002.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTION APPLICATIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
11862-N	The BOC Group, Murray Hill, NJ	4	06/28/2002
11927-N	Alaska Marine Lines, Inc., Seattle, WA	4	06/28/2002
12381-N	Ideal Chemical & Supply Co., Memphis, TN	4	07/31/2002
12412-N	Great Western Chemical Company, Portland, OR	4	07/31/2002
12440-N	Luxfer Inc., Riverside, CA	4	06/28/2002
12571-N	Air Products & Chemicals, Inc., Allentown, PA	4	06/28/2002
12630-N	Chemetall GmbH Gesellschaft, Langelisheim, DE	4	07/31/2002
12648-N	Stress Engineering Services, Inc., Houston, TX	4	06/28/2002
12676-N	Hawks Logistics, Edmond, OK	4	06/28/2002
12690-N	Air Liquide America Corporation, Houston, TX	4	06/28/2002
12701-N	Fuel Cell Components & Integrators, Inc., Hauppauge, NY	1	07/31/2002
12706-N	Raufoss Composites AS, Raufoss, NO	4	06/28/2002
12715-N	Arkansas Eastman Division, Eastman Chemical Co., Batesville, AR	4	08/30/2002
12716-N	Air Liquide America Corporation, Houston, TX	4	06/28/2002
12718-N	Weldship Corporation, Bethlehem, PA	4	07/31/2002
12751-N	Defense Technology Corporation, Casper, WY	4	06/28/2002
12753-N	Praxair, Inc., Danbury, CT	4	06/28/2002
12820-N	Trinity Manufacturing, Hamlet, NC	4	06/28/2002
12840-N	GreenField Compression, Inc., Richardson, TX	4	06/28/2002
12843-N	United States Enrichment Corporation, Bethesda, MD	4	06/28/2002
12845-N	Qantas Airways Limited, Los Angeles, CA	4	06/28/2002
12859-N	Atlantic Research Corporation, Gainesville, VA	4	06/28/2002
12867-N	G.L.I. Citergaz, 964 Civray, FR	4	06/28/2002
12871-N	Southern California Edison, San Clemente, CA	4	07/31/2002
12872-N	Southern California Edison San Clements, CA	4	06/28/2002
12874-N	Zomeworks Corporation, Albuquerque, NM	4	07/31/2002
12876-N	Asai Glass Fluoropolymers USA, Inc., Bayonne, NJ	4	07/31/2002
12900-N	Syngenta Crop Protection, Inc., Greensboro, NC	4	07/31/2002
12924-N	Infineum USA LP, Linden, NJ	4	06/28/2002
12928-N	Pacer Global Logistics, Dublin, OH	4	06/28/2002

MODIFICATIONS TO EXEMPTIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
4884-M	Matheson Tri-Gas, East Rutherford, NJ	4	06/28/2002
6805-M	Air Liquide America Corporation, Houston, TX	4	06/28/2002
7060-M	Federal Express, Memphis, TN	4	06/28/2002
7277-M	Structural Composites Industries, Pomona, CA	4	06/28/2002
8162-M	Structural Composites Industries, Pomona, CA	4	06/28/2002
8215-M	Olin Corp., Brass & Winchester, Inc., East Alton, IL	4	07/31/2002
8308-M	Tradewind Enterprises, Inc., Hillsboro, OR	4	06/28/2002
8308-M	American Courier Express Corporation, Miramar, FL	4	06/28/2002
8554-M	Orica USA Inc., Englewood, CO	4	06/28/2002
8718-M	Structural Composites Industries, Pomona, CA	4	06/28/2002
10019-M	Structural Composites Industries, Pomona, CA	4	06/28/2002
10440-M	Mass Systems (A Unit of Ameron Global, Inc.), Baldwin Park, CA	4	06/28/2002
10832-M	Autoliv ASP, Inc., Ogden, UT	1	06/28/2002
11327-M	Phoenix Services, Inc., Pasadena, MD	1	06/28/2002
11380-M	Baker Atlas (Houston Technology Center), Houston, TX	4	06/28/2002
11537-M	JCI Jones Chemicals, Inc., Milford, VA	4	06/28/2002
11769-M	Great Western Chemical Company, Portland, OR	4	06/28/2002
11769-M	Great Western Chemical Company, Portland, OR	4	06/28/2002
11769-M	Hydrite Chemical Company, Brookfield, WI	4	06/28/2002
11791-M	The Coleman Company, Inc., Wichita, KS	4	06/28/2002
11850-M	Air Transport Association, Washington, DC	4	06/28/2002
11911-M	Transfer Flow, Inc., Chico, CA	4	06/28/2002
11911-M	Transfer Flow, Inc., Chico, CA	4	07/31/2002
12065-M	Petrolab Company, Latham, NY	4	06/28/2002
12449-M	Chlorine Service Company, Inc., Kingwood, TX	4	06/28/2002
12599-M	Voltaix, Inc., North Branch, NJ	4	06/28/2002

[FR Doc. 02-14356 Filed 6-6-02; 8:45 am]
 BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Superior Federal Bank, FSB; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in Section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Federal Deposit Insurance

Corporation as sole Receiver for Superior Federal Bank, FSB, Hinsdale, Illinois (OTS No. 17925), on May 31, 2002.

Dated: June 4, 2002.

By the Office of Thrift Supervision.

Nadine Y. Washington,
Corporate Secretary.

[FR Doc. 02-14316 Filed 6-6-02; 8:45 am]

BILLING CODE 6720-01-M

Corrections

Federal Register

Vol. 67, No. 110

Friday, June 7, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 11

Delegation of Authority to the Director of the Division of Enforcement To Institute Subpoena Enforcement Proceedings

Correction

In rule document 02-13300 beginning on page 37322 in the issue of Wednesday, May 29, 2002, make the following correction:

On page 37322, in the first column, under "EFFECTIVE DATE" "June 28, 2002" should read "May 29, 2002".

[FR Doc. C2-13300 Filed 6-6-02; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0069]

Federal Aquisition Regulation; Information Collection; Indirect Cost Rates

Correction

In notice document 02-9720 beginning on page 19558 in the issue of Monday, April 22, 2002, make the following correction:

On page 19559, in the first column, under "DATES" "May 22, 2002" should read "June 21, 2002".

[FR Doc. C2-9720 Filed 6-6-02; 8:45 am]

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT-001-0007, MT-001-0008, MT-001-0009 and MT-001-0010; FRL-7175-1]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Billings/Laurel Sulfur Dioxide State Implementation Plan

Correction

In rule document 02-10332 beginning on page 22168 in the issue of Thursday, May 2, 2002, make the following correction:

On page 22204, in the first column, in footnote "22", in the tenth line, "1000 ppm" should read, "100 ppm".

[FR Doc. C2-10332 Filed 6-6-02; 8:45 am]

BILLING CODE 1505-01-D

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1230

RIN 3095-AB06

Micrographic Records Management

Correction

In rule document 02-10588, originally printed Thursday, May 9, 2002 at 67 FR 31692-31697, and reprinted as R2-10588, Tuesday, May 14, 2002 at 67 FR 34574-34579, make the following correction:

§1230.2 [Corrected]

On page 34575, column two, §1230.2 is correctly added to read as follows:

§ 1230.2 What is the authority for this part?

44 U.S.C. chapters 29 and 33, authorize the Archivist of the United States to:

(a) Establish standards for copying records by photographic and microphotographic means;

(b) Establish standards for the creation, storage, use, and disposition of microform records in Federal agencies; and

(c) Provide centralized microfilming services for Federal agencies.

[FR Doc. C2-10588 Filed 6-6-02; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02-ACE-5]

Amendment to Class E Airspace; Fremont, NE

Correction

In rule document 02-13549 beginning on page 37667 in the issue of Thursday, May 30, 2002, make the following corrections:

1. On page 37668, in the first column, under the heading **SUPPLEMENTARY INFORMATION:**, in the ninth line from the bottom, "fee" should read "feet".

2. On the same page, in the second column, in the fifth line "of" should read "on".

§ 71.1 [Corrected]

3. On the same page, in the third column, in § 71.1, the heading "**ACE NE E55 Fremont, NE [Revised]**" should read "**ACE NE E5 Fremont, NE [Revised]**".

[FR Doc. C2-13549 Filed 6-6-02; 8:45 am]

BILLING CODE 1505-01-D



Federal Register

**Friday,
June 7, 2002**

Part II

Securities and Exchange Commission

**Self-Regulatory Organizations; Notice of
Filing of Amendment No. 2 to a
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. 34-45991; File No. SR-NASD-2001-90]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 2 to a 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

May 28, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 24, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") Amendment No. 2³ to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The proposed rule change, incorporating Amendment No. 1, was published for comment in the **Federal Register** on January 3, 2002.⁴ The Commission is publishing this notice to solicit comments on Amendment No. 2 to the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In response to comments on the original proposal, the NASD is proposing additional amendments to its rules relating to Nasdaq's proposed separation from the NASD and the establishment of the NASD Alternative Display Facility. Proposed new language is in italics; proposed deletions are in brackets. The text of the proposed rule change is marked to show additions and deletions from the NASD's rules as they currently exist. The discussion section of this notice, Section II.A.1 below, however, details the specific changes made between Amendment No. 2 and the original filing and provides explanations regarding the same. For an explanation of the original filing, see the release cited in footnote 4.

* * * * *

¹ 15 U.S.C. 78s(b)(1).
² 17 CFR 240.19b-4.
³ Amendment No. 2 replaces and supersedes the original filing in its entirety.
⁴ Securities Exchange Act Release No. 45156 (December 14, 2001), 67 FR 388.

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.
* * * * *

1032. Categories of Representative Registration

(a) through (e) No change.

(f) Limited Representative—Equity Trader

(1) Each person associated with a member who is included within the definition of a representative as defined in Rule 1031 must register with the Association as a Limited Representative—Equity Trader if, with respect to transactions in equity, preferred or convertible debt securities effected *on the Nasdaq Stock Exchange* or otherwise than on a securities exchange, such person is engaged in proprietary trading, the execution of transactions on an agency basis, or the direct supervision of such activities, other than any person associated with a member whose trading activities are conducted principally on behalf of an investment company that is registered with the Commission pursuant to the Investment Company Act of 1940 and that controls, is controlled by or is under common control, with the member.

(2) 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

(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 Nasdaq-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. [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 Nasdaq-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

¹ 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).

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]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.

* * * * *

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.

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.

* * * * *

2300. Transactions With Customers

2310. No Change.

* * * * *

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] Listed 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 listed as Nasdaq National Market Securities, [M]members 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

Rule 2520. Margin Requirements

- (a) through (e)(8) No change.
- (e)(9) *Notwithstanding the other provisions of this Rule, any security that is: (1) quoted on the Bulletin Board Service operated by the NASD or The Nasdaq Stock Exchange; or (2) listed on the Bulletin Board Exchange operated by the NASD or The Nasdaq Stock Exchange, shall be subject to initial and maintenance margin of 100%, unless the security is registered on a national securities exchange other than The Nasdaq Stock Exchange. The provisions of this rule shall apply irrespective of whether the security has been admitted to unlisted trading privileges on a national securities exchange.*

(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.

* * * * *

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.

* * * * *

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 ($0\frac{1}{16}$) 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) $\frac{3}{4}$ of \$1, if the member's bid price is \$.50 or less;]

[(2) $\frac{1}{2}$ of \$1, if the bid price is more than \$.50 but does not exceed \$1.00;]

[(3) $\frac{3}{4}$ of \$1, if the bid price is more than \$1.00 but does not exceed \$2.00; or]

[(4) \$1, if the bid price is more than \$2.00;]

[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 for 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.]

* * * * *

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.

* * * * *

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.

* * * * *

3220. Adjustment of Open Orders

A member shall adjust the price and/or size of open orders for securities traded otherwise than on an exchange in response to issuer corporate actions as follows:

(a) through (e) No change.

(f) Mandatory Open Order

Conversion for Securities Commencing Decimal Pricing] [All open orders in Nasdaq securities priced in fractions remaining in a firm's internal system on the evening prior to, or received thereafter and prior to, the security's commencing decimal pricing pursuant to the Decimals Implementation Plan for the Equities and Options Markets shall be converted, no later than midnight on that evening prior to their first day of decimal pricing, as follows:]

[(1) Prior to the conversion, member firms should notify their customers and inform them of the change to their open fractional order(s) as a result of the conversion to decimal pricing.

Customers should be afforded the opportunity to take action if they do not wish to participate in the conversion. Customers not wishing to participate in the mandatory conversion should be allowed the opportunity to cancel their open order(s) prior to the evening of the conversion.]

[(2) No later than midnight on the evening prior to a security's first day of decimal pricing, all open orders priced in fractions that have not been canceled, including those with price qualifiers such as DNR and DNI, shall be converted as follows:]

• The fractional price of all open Buy Orders (GTC, GTX, Buy Stop and Buy Stop Limits) will be converted to their decimal equivalent and then "rounded down" to the nearest \$0.01.]

• The fractional price of all open Sell Orders (GTC, GTX, Sell Stop and Sell Stop Limits) will be converted to their decimal equivalent and then "rounded up" to the nearest \$0.01.]

[Example: Buy 1000 MSFT 88 $\frac{1}{16}$ would convert to B 1000 MSFT 88.06 ($\frac{1}{16} = 0.0625$)

Sell 1000 MSFT 88 $\frac{1}{16}$ would convert to S 1000 MSFT 88.07]

[This rule is to be in effect only in preparation for the first day of decimal trading of the newly-converted security. After conversion, firms may accept orders of any number of spaces beyond the decimal point in the newly-converted security and submit them, after appropriate rounding (See NASD Rule 4613 (a)(1)(D)), to Nasdaq for display.]

* * * * *

[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. *For the purposes of this rule, the term "customer" includes a non-member broker/dealer.*

(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 an 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.]

[(I) This Rule shall be in effect until March 1, 2002.]

* * * * *

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 *national 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 $\frac{1}{16}$ point above the current inside bid when the current inside spread is $\frac{1}{16}$ point or greater. The last sale report for such a trade would, therefore, be above the inside bid by at least $\frac{1}{16}$ of a point. If the current spread is less than $\frac{1}{16}$ 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 $\frac{1}{16}$ point above the *best bid* when the current spread is $\frac{1}{16}$ or greater and equal to or greater than the offer when the current spread is less than $\frac{1}{16}$ 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 $\frac{1}{16}$) for the purpose of facilitating the execution of a short sale at a price less than $\frac{1}{16}$ 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.

* * * * *

3360. Short-Interest Reporting

(a) Each member shall maintain a record of total "short" positions in all customer and proprietary firm accounts in securities [included in The Nasdaq Stock Market and in each other security] listed on a registered national securities exchange and not otherwise reported to another self-regulatory organization and shall regularly report such information to the Association in such a manner as may be prescribed by the Association. Reports shall be made as of the close of the settlement date designated by the Association. Reports shall be received by the Association no later than the second business day after the reporting settlement date designated by the Association.

(b) No change.

3370. Prompt Receipt and Delivery of Securities

(a) No change.

(b) (1) No change.

(2) "Short Sales"

(A) No change.

(B) Proprietary short sales

No member shall effect a "short" sale for its own account in any security unless the member or person associated with a member makes an affirmative determination that the member can borrow the securities or otherwise provide for delivery of the securities by the settlement date. This requirement will not apply to transactions in corporate debt securities, to bona fide market making transactions by a member in securities in which it is registered as a [Nasdaq] market maker, to bona fide market maker transactions in [non-Nasdaq] securities in which the market maker publishes a two-sided quotation in an independent quotation medium, or to transactions [which] that result in a fully hedged or arbitrated position.

(C) No change.

(3) through (5) 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 Nasdaq.

(9) "Nasdaq SmallCap Market" or "SCM" is a distinct tier of The Nasdaq Stock Market comprised 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 and members of a national securities exchange direct electronic

access, if requested, and allow for indirect electronic access, as defined below. 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.

(3) Market Participants shall share equally the costs of providing to each other the direct electronic access required pursuant to paragraph (a)(1), unless those Market Participants agree upon another cost-sharing arrangement.

(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 from another broker-dealer 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 from another broker-dealer 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 Negotiable Flag
- (H) Time In Force (i.e. regular hours, entire day, other)
- (I) Order Date
- (J) Order Time (including seconds)
- (K) Minimal Acceptable Quantity (i.e. ANY, all or none (AON), volume)
- (L) Market Making Firm (MMID)
- (M) Trade-or-Move Flag

The information described in paragraphs (A) through (M) 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 received via direct or indirect access from another broker-dealer 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, I=Price improvement)

(C) Order Response Time (including seconds)

(D) Quantity

(E) Price

The information described in paragraphs (A) through (E) must be reported to the NASD within 10 seconds of any response to or action taken regarding an order. In the event that a member receives and executes an order within 10 seconds, the member may submit a single report that contains the information required in (b)(1) and (b)(2).

(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 permissible under the federal securities laws, the rules and regulations thereunder, and the Rules of the Association), 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).

(e) *Minimum Performance Standards*

(1) *Direct electronic access provided by a Market Participant must allow the Market Participant the technological ability to respond to an order in two seconds or less. The two-second standard shall be measured from the time an order is received from the broker-dealer sending the order to the time an execution report or notice to decline the order is sent from the Market Participant to the broker-dealer that sent the order. With respect to orders received from other Market Participants, Market Participants must have in place a system that can accomplish turnaround of an order in three or fewer seconds, measured from the time an order is released by a Market Participant until the time an execution report is received by the Market Participant that placed the order. As a precondition to becoming a registered member of the NASD Alternative Display Facility, Market Participants must certify to the NASD their compliance with this paragraph based on reasonable forecasts of peak volume activity.*

(2) *In the event that a Market Participant experiences three (3) unexcused system outages during a period of five (5) business days, the Market Participant shall be suspended from quoting in the NASD Alternative Display Facility in all issues for a period of twenty (20) business days. For the purposes of this paragraph, a "system outage" shall mean an inability to post*

quotations in the NASD Alternative Display Facility or an inability to respond to orders.

(3) *Officers of NASD or its subsidiaries designated by the Chief Executive Officer of NASD shall, pursuant to the procedures set forth in paragraph (f) below, have the authority to review any system outage to determine whether the system outage should be excused. An officer may deem a system outage excused upon proof by the Market Participant that the system outage resulted from circumstances not within the control of the Market Participant. The burden shall rest with the Market Participant to demonstrate that a system outage should be excused.*

(4) *A Market Participant may contact NASD Alternative Display Facility Operations and request that a system outage be deemed excused, whether or not the system outage resulted from circumstances within the control of the Market Participant; however, if NASD Alternative Display Facility Operations becomes aware of the system outage prior to the Market Participant's request for an excused system outage, NASD Alternative Display Facility Operations may, at its own discretion, deem the system outage to be unexcused, based on the specific facts and circumstances surrounding the outage. In any event, a Market Participant shall be granted no more than five (5) excused system outages within 30 calendar days.*

(f) *Procedures for Reviewing System Outages*

(1) *Any Market Participant that seeks to have a system outage reviewed pursuant to paragraph (e)(3) hereof, shall submit a written request, via facsimile or otherwise, to NASD Alternative Display Facility Operations by close of the business day on which the system outage occurs, or the following business day if the system outage occurs outside of normal market hours.*

(2) *A Market Participant that seeks review of a system outage shall supply any supporting information for a determination under paragraph (e)(3) to the NASD staff by the close of business on the day following the system outage.*

(3) *A Market Participant that seeks review of a system outage shall supply the NASD staff with any information requested to make a determination pursuant to paragraph (e)(3).*

(4) *An officer shall, in accordance with paragraph (e)(3), make a determination whether a system outage is excused by the close of business on the day following the receipt of information supplied pursuant to paragraphs (f)(2) and (f)(3).*

(5) *A Market Participant may appeal a determination made under paragraph (e)(3) to the NASD Alternative Display Facility Operations Committee in writing, via facsimile or otherwise, by the close of business on the day a determination is rendered pursuant to paragraph (e)(3). An appeal to the Committee shall operate as a stay of the determination made pursuant to paragraph (e)(3). Once a written appeal has been received, the Market Participant may submit any additional supporting written documentation, via facsimile or otherwise, up until the time the appeal is considered by the Committee. The Committee shall render a determination by the close of business following the day a notice of appeal is received. The Committee's determination shall be final and binding.*

* * * * *

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 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 p.m. Eastern time and 6:30 p.m. Eastern Time. Registered Market Makers whose quotes are open after 4 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 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 resubmitted 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 ("ATs"), 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. Members must report through TRACS trades in eligible securities effected otherwise than on an exchange whenever they do not report such transactions to a national securities exchange or another self-regulatory organization.

(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 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 a.m. and 9:30 a.m. and 4 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 a.m.

(A) A Reporting NASD Member shall transmit last sale reports to TRACS between 8 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 p.m.

(A) A Reporting NASD Member shall transmit last sale reports to TRACS on

the next business day (T+1) between 8 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.

(3)(A) In the event that the MMID side or the OEID side determines that any information provided pursuant to subparagraphs (e)(2)(D), (E), (F), (G), or (H)(i) is inaccurate or incomplete, the MMID side or OEID side, as applicable, must submit a trade report addendum

within fifteen (15) minutes of the submission of the original trade report to correct or provide some or all of the following information:

(i) Short sale indicator;

(ii) Volume related to short sale indicator change;

(iii) Capacity Indicator;

(iv) Volume related to capacity change; or

(v) Branch Sequence Number

(B) The trade report addendum feature of TRACS may also be used by members to add or modify the User Assigned Reference Number.

(C) Each trade report addendum must contain the following information:

(i) Reference number for the original trade report that is being amended or modified;

(ii) OEID side or MMID side flag; and

(iii) MPID.

(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 may submit three party trade reports. Riskless principal trades also 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.

(3)(A) In the event that the MMID side or the OEID side determines that any information provided pursuant to subparagraphs (f)(2)(G)(i), (I), (O), (V), or (W) is inaccurate or incomplete, the MMID side or OEID side, as applicable, must submit a trade report addendum within fifteen (15) minutes of the submission of the original trade report to correct or provide some or all of the following information:

(i) Short sale indicator;

(ii) Volume related to short sale indicator change;

(iii) Capacity Indicator;

(iv) Volume related to capacity change; or

(v) Branch Sequence Number

(B) The trade report addendum feature of TRACS may also be used by members to add or modify the User Assigned Reference Number.

(C) Each trade report addendum must contain the following information:

(i) Reference number for the original trade report that is being amended or modified;

(ii) OEID side or MMID side flag; and

(iii) MPID.

(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.

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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 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 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 a.m.; 5:30 a.m. to 9 a.m., and 7:30 a.m. to 9 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 a.m. segment and others during the 7:30 a.m. to 9 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:]

[Delete Table]

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

SPREAD GUIDELINES—Continued

Average spread	Maximum allowable spread
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 transaction: 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 CTCL. 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 close the NASD Alternative Display Facility to quotation activity whenever the NASD Alternative Display Facility is unable to transmit real-time quotation or trade reporting information to the applicable Securities Information Processor.

(4) May, in its discretion, halt all trading by ITS Market Makers participating in the ADF in a security listed on a national securities exchange when (i) a national securities exchange imposes a trading halt in an ITS Security because of an order imbalance or influx ("operational trading halt"), or (ii) when the security is a derivative or component of an ITS Security listed on a national securities exchange and a national securities exchange imposes an operational trading halt in that security. ITS Market Makers may commence quotations and trading at any time following initiation of operational trading halts, without regard to procedures for resuming trading set forth in paragraph (b).

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.

IM-5200-1. Market Closing Policy

Since 1988, the NASD has consistently asserted that circuit breakers should only be used in response to extraordinary price movement. The NASD's strong preference is that markets remain open wherever possible and, most importantly, remain open at the end of the day.

The NASD recognizes, however, the risks imposed on any single market that remains open while all other U.S. markets have halted trading in response to extraordinary price movements. Therefore, the NASD Board of Governors has determined to halt, upon SEC request, all domestic trading in all equity and equity-related securities trading in the over-the-counter market should other major securities markets initiate market-wide trading halts in response to extraordinary market conditions.

This determination reflects the NASD's long-time policy of cooperation with the Commission and other market participants on issues relating to trading halts and represents the Association's continued commitment to the establishment of circuit breaker standards that both keep markets open longer during periods of market stress and that are also more reflective of market activity as a whole.

Towards that end, the NASD believes that additional future changes to circuit breakers are warranted. In particular, the NASD is concerned that the Dow Jones Industrial Average, despite recent improvements including the addition of a small number of Nasdaq stocks remains an inappropriately narrow indicator of market price declines. As an alternative, the NASD believes that the Commission should consider replacing the DJIA with the larger and more diverse Standard and Poor's 500 Index as the measure that best reflects overall market activity for circuit breaker purposes. The NASD hopes to revisit this issue with the Commission in the future.

This Market Closing Policy shall remain in effect until April 30, 2003, unless otherwise modified, or extended prior thereto, by the NASD Board of Governors.

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 \$15 or over ..	1/8 point. 1 1/4 point.
Network B	Under \$5 \$5 or over	1/8 point. 2 1/4 point.

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.

For transactions involving securities trading in decimal-based increments, the "applicable price changes" are:

Security	Consolidated closing price	Applicable price change (more than)
Network A	Under \$15	0.10
	\$15 or over	³ 0.25
Network B	Under \$5	0.10
	\$5 or over	⁴ 0.25

³If 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.

⁴If 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.

(2) A pre-opening notification shall:

(A) Be designated as a pre-opening notification (POA);

(B) Identify the ITS/ADF[CASES] 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 range
Network A	Under \$50	1/2 point.
	\$50 or over	1 point. ⁵
Network B	Under 10	1/2 point.
	\$10 or over	1 point. ⁶

⁵If 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.

⁶If 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.

For transactions involving securities trading in decimal-based increments, the price range shall not exceed the "applicable price range" shown below:

Security	Consolidated closing price	Price range
Network A	Under \$50	\$0.50
	\$50 or over	⁷ 1.00
Network B	Under \$10	0.50

Security	Consolidated closing price	Price range
	\$10 or over	⁸ 1.00

⁷If 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.

⁸If 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 1/8-5/8 price range would be permissible if the previous day's consolidated closing price were 1/8 or 5/8, but not if the closing price were 1/4, 3/8 or 1/2).

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: 30-30 1/2; 30 1/8-30 5/8; or 30 1/4-30 3/4. It is then determined that the stock will open at 29 3/4 or 29 7/8. Under paragraph (b)(2)(A), the specialist "shall" send cancellation notification. If it is subsequently determined that stock will open at 30, 30 1/8, or 30 1/4, 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 $\frac{1}{8}$ 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 $\frac{1}{8}$ -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]f 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]Participant 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]Participant 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]Participant 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]System 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., 40 3/8), 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 40 3/8

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]Participant 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]market, did not halt trading in the security reasonably contemporaneously with the Participant [M]market 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.

[5262]6562. Trade-Throughs

(a) A member registered as an ITS/ ADF[CAES] Market Maker in an ITS/ ADF[CAES] [s]Security, 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]arket [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]Participating [m]Market [c]Center 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]Rule 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]Rule 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]Market [c]Center 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]Participating [m]Market [c]Center 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]Security 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]Participating market or other ITS/ADF[CAES] Market Maker, shall, upon executing the block trade, send to each other [p]Participating 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]Participating 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]Participating [m]Market [c]Center; 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]Participating [m]Market [c]Center (or any derivative phrase), as that term is used in this Rule, means the current quotations from another ITS [p]Participating [m]Market [c]Center 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]Participating [m]Market [c]Center.

(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]Participating [m]Market [c]Center 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]Participating [m]Market [c]Center 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]Market [c]Center 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]Participating [m]Market [c]Center whose members were relieved of their obligations with respect to such bid or offer under SEC Rule 11Ac1-1(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 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 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]6576. "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]6577. 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]6578. 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 and 6400 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, 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) T+N Trade Processing

T+N entries may be submitted until 6:30 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.

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6200. To be replaced in its entirety by SR-NASD-99-65, which currently is expected to be effective on February 1, 2002.

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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, excluding ECNs that are not participating in ITS, must enter and maintain two-sided quotations through the NASD Alternative Display Facility. All CQS market maker's quotations 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"). Members must report through TRACS trades in eligible securities effected otherwise than on an exchange whenever they do not report such transactions to a national securities exchange or another self-regulatory organization.

(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 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 p.m. and 6:30 p.m.; trades executed and reported after 4 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 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.

(3)(A) In the event that the MMID side or the OEID side determines that any information provided pursuant to subparagraphs (d)(2)(D), (E), (F), (G), or (H)(i) is inaccurate or incomplete, the MMID side or OEID side, as applicable, must submit a trade report addendum within fifteen (15) minutes of the submission of the original trade report to correct or provide some or all of the following information:

(i) Short sale indicator;

(ii) Volume related to short sale indicator change;

(iii) Capacity Indicator;

(iv) Volume related to capacity change; or

(v) Branch Sequence Number.

(B) The trade report addendum feature of TRACS may also be used by

members to add or modify the User Assigned Reference Number.

(C) Each trade report addendum must contain the following information:

- (i) Reference number for the original trade report that is being amended or modified;
- (ii) OEID side or MMID side flag; and
- (iii) MPID.

(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 may only submit three party trade reports. Riskless principal trades also 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.

(3) (A) In the event that the MMID side or the OEID side determines that any information provided pursuant to subparagraphs (e)(2)(G)(i), (I), (O), (V), or (W) is inaccurate or incomplete, the MMID side or OEID side, as applicable, must submit a trade report addendum within fifteen (15) minutes of the submission of the original trade report to correct or provide some or all of the following information:

- (i) Short sale indicator;
- (ii) Volume related to short sale indicator change;
- (iii) Capacity Indicator;
- (iv) Volume related to capacity change; or

(v) Branch Sequence Number.

(B) The trade report addendum feature of TRACS may also be used by members to add or modify the User Assigned Reference Number.

(C) Each trade report addendum must contain the following information:

- (i) Reference number for the original trade report that is being amended or modified;
- (ii) OEID side or MMID side flag; and
- (iii) MPID.

(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 39³/₄, which includes a 1/8 mark-down from prevailing market of 39⁷/₈;

REPORT 100 shares at 39⁷/₈.

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 40¹/₈, which includes a 1/8 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 of 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.

(D) To any purchase or sale for which a member has negotiated specific terms and conditions applicable to the acceptance of limit orders that are:

(i) For customer accounts that meet the definition of an "institutional account" as that term is defined in Rule 3110(c)(4); or

(ii) for 10,000 shares or more, unless such orders are less than \$100,000 in value.

(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.
AND	Alden Electronic.
AFISD	Amer. Financial Corp. Pfd.D.
AFISE	Amer. Financial Corp. Pfd.E.
AFISF	Amer. Financial Corp. Pfd.F.
AFISG	Amer. Financial Corp. Pfd.G.
AFISH	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.
RELZ	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 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 "OTC Equity Securities"). Members shall [utilize] use

the Automated Confirmation Transaction (ACT) for trade reporting in OTC Equity Securities.

Those members effecting transactions otherwise than on an exchange in OTC Equity Securities shall have in place contractual agreements with Nasdaq to use ACT for trade reporting. Members who use ACT for trade reporting or to compare trades must comply with the applicable Nasdaq trade reporting or 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 OTC Equity Securities. Regarding those 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 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 Equity Security" means any non-exchange-listed security and certain exchange-listed securities that do not otherwise qualify for real-time trade reporting.

(f) [(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 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 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 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 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 OTC Equity Securities executed between 8 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 OTC Equity Securities executed between the hours of 4 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 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 OTC Equity Securities executed outside the hours of 8 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 OTC Equity Securities that are executed between midnight and 8 a.m. Eastern Time shall be transmitted through ACT between 8 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 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 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 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 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 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 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 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 (1/2) 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 p.m. Eastern Time.*

(3) *This rule shall be in effect until February 8, 2002.*

[67]6650. 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

Price (bid or offer)	Minimum quote size
.51-1.00	2,500
1.01-10.00	500
10.01-100.00	200
100.01-200.00	100
200.01+	50

An [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]

* * * * *

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].

6954. Recording of Order Information

(a) through (c) No change.

(d) Order Modifications, Cancellations, and Executions

Order information required to be recorded under this Rule when an order is modified, canceled, or executed includes the following.

(1) and (2) No change.

(3) When a Reporting Member executes an order, in whole or in part, the Reporting Member shall record:

(A) The order identifier assigned to the order by the Reporting Member,

(B) The market participant symbol assigned by the Association to the Reporting Member,

(C) The date the order was first originated or received by the Reporting Member,

(D) The Reporting Member's number assigned for purposes of identifying transaction data in ACT,

(E) The designation of the order as fully or partially executed,

(F) The number of shares to which a partial execution applies and the number of unexecuted shares remaining,

(G) The identification number of the terminal where the order was executed, [and]

(H) The date and time of execution[.] and

(I) *National securities exchange or facility operated by a registered securities association where the trade was reported.*

* * * * *

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.

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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.

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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.]

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11300. Delivery of Securities

11310. Book-Entry Settlement

(a) through (c) No Change.

(d) (1) No Change.

(2) A determination under r[R]ules [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] securities 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 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 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 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 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, NASD Regulation included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Set forth below is a discussion of comments⁵ and the NASD's response to comments, including proposed rule amendments.

Viability of ADF and Effect on Competition

Several commenters expressed the view that the proposed ADF and accompanying rules would not provide a viable alternative to Nasdaq. At the outset, the NASD notes that the Commission's SuperMontage Approval Order⁶ does not require that the NASD build an alternative facility that replicates all of the capabilities and features of Nasdaq. Rather, the SEC requires only that the NASD "offer a quote and trading reporting alternative that satisfies the Order Handling Rules, Regulation ATS, and other regulatory requirements for ATSS, ECNs, and

⁵ The Commission received 12 comment letters on the proposed rule change. See Letters from NexTrade Incorporated to Jonathan G. Katz, SEC, dated January 18, 2002 and April 8, 2002 ("NexTrade"); Letters from Philadelphia Stock Exchange to Jonathan G. Katz, SEC, dated January 24, 2002 and February 15, 2002 ("Phlx"); Letter from Member Associations of the American Stock Exchange to Jonathan G. Katz, SEC, dated January 29, 2002 ("Amex"); Letter from Securities Industry Association to Jonathan G. Katz, SEC, dated February 5, 2002 ("SIA"); Letter from Knight Trading Group to Jonathan G. Katz, SEC, dated February 6, 2002 ("Knight"); Letter from Bloomberg Tradebook, LLC to Jonathan G. Katz, SEC, dated February 7, 2002 ("Bloomberg"); Letters from Brut, LLC to Jonathan G. Katz, SEC, dated February 13, 2002 and March 20, 2002 ("Brut"); Letter from Instinet Group Incorporation to Jonathan G. Katz, SEC, dated February 13, 2002 ("Instinet"); and Letter from New York Stock Exchange to Jonathan G. Katz, SEC, dated February 15, 2002 ("NYSE").

⁶ Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001).

market makers * * *." The Commission's order does not require the NASD to provide an execution service, but instead mandates that the facility provide "access to its quotes on a market-neutral basis." The NASD believes that the ADF proposal satisfies the Commission's order and all other applicable rules and statutory requirements.

Notwithstanding the language and scope of the SuperMontage Order, the commenters raised three general issues that they believe call into question the ADF's viability: (1) The absence of order routing and execution capability; (2) the costs to link up with other ADF market participants and to report trades; and (3) the technological capabilities of the ADF system.⁷ Commenters asserted that these issues cast doubt on whether the ADF promotes competition in the marketplace and whether it meets the statutory requirements related to operation of the over-the-counter market.

NexTrade's comment letter voiced most of these general concerns. For example, NexTrade asserted that the ADF proposal does not satisfy the statutory obligations of Section 11A(a)(1) and Section 15A(b)(6) of the Act because it does not assure economically efficient execution of securities transactions and does not promote fair competition in the marketplace. More specifically, NexTrade contended that since the ADF will not provide the same SelectNet and SOES order routing and execution systems used by Nasdaq, and since ADF market participants will have to incur costs to set up their own electronic links and to subscribe to the new TRACS trade reporting system, the ADF proposal necessarily will result in less efficiency and will discourage competition. The SIA also expressed concern that the absence of an order router and the costs to participate in the ADF could prevent the ADF from being a competitive residual marketplace.

Notwithstanding the comments by NexTrade and others, the NASD believes the ADF proposal captures the Congressional intent of the cited authority and will achieve its desired competitive effect.

The legislative history of the Act shows that Congress did not intend to dictate how market-related facilities

⁷ Commenters including SIA and Instinet stated that they also needed to know the ADF fee structure to assess the viability of the ADF. NASD filed a separate fee proposal with the SEC on February 20, 2002. See Securities Exchange Act Release No. 45501 (March 4, 2002), 67 FR 10942 (March 11, 2002) (File No. SR-NASD-2002-28). The comment period on the fee proposal expired April 1, 2002.

should be designed. Instead, Congress provided the framework for efficient and competitive markets and gave the markets and market participants, with SEC oversight, wide latitude within which to configure themselves to meet technological and competitive challenges. The ADF proposal is well within the Congressional framework. It provides a facility with everything necessary—quote collection, trade reporting and comparison services, a market neutral linkage rule, and integration with existing NMS systems—for market participants to trade over-the-counter and leaves it to the market participants to decide how to best utilize the facility and communicate with each other. The NASD believes that, given the rapid and ongoing advances in technology, it is more economically efficient to have the market participants determine and operate the links and execution components than to have the NASD impose specific technology and pricing. In addition, there are private sector solutions available that meet the needs of the marketplace.

SIA and other commenters questioned whether the rule proposal meets the SEC's requirement to provide a "market neutral linkage." NASD believes the proposal satisfies this condition because it allows market participants to establish private links and favors no type of linkage over another.

NASD recognizes that the ADF proposal would require market participants to bear the costs of linkage and participation. SIA commented that firms are "currently accustomed to relying on their self-regulatory organization to provide means for obtaining access to quotes," and NexTrade similarly suggested that NASD has an obligation to continue providing the same type of systems that Nasdaq has provided in the past. Contrary to these comments, the NASD believes that it has no statutory obligation to provide a linkage mechanism or to subsidize the initial costs of developing and establishing such a mechanism as other markets previously have chosen to do. Section 15A(b)(11) of the Act requires that the NASD promulgate rules to govern the form and content of quotations relating to securities sold otherwise than on an exchange. The statute further requires that those rules "be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collection, distributing, and publishing quotations." The NASD believes the ADF rules satisfy the statutory requirements.

NASD believes that the rule proposal will minimize costs because it provides for indirect linkage, which is less expensive than mandating hard links between all ADF users. Furthermore, NASD understands that many order linkage mechanisms already exist between and among potential ADF participants and their customers.

Some firms commented that the ADF should meet certain testing standards and other technical requirements and demonstrate adequate capacity before being deemed "viable." NASD believes that the ADF should meet high-end standards, and therefore the ADF will be subject to rigorous testing standards and also will comply with the SEC's Automated Review Process ("ARP"), which ensures that the system meets requisite capacity and reliability standards. Bloomberg and Instinet further suggested that the SEC should require the ADF to demonstrate its efficacy by operating for a trial period before the Commission grants approval to Nasdaq's exchange registration and SuperMontage. The NASD believes that once the ADF has successfully completed its own testing protocols, satisfied the SEC's ARP requirements, and received rule approval, it will be ready to operate. Nasdaq's exchange registration application and the implementation and operation of the SuperMontage facility are independent issues for the SEC to consider.

Order Access Rule

The comment letters raised several issues about the requirements, operation and effects of the proposed order access rule. The issues, discussed in more detail below, can be broadly grouped as follows: general requirements; connectivity and access fees; quote reliability and accessibility; regulatory programs and procedures; submission of real-time order reports; and best execution obligations.

General Requirements

Some commenters sought general clarification about their linkage obligations under the rule. Generally, proposed Rule 4300 requires NASD "market participants" to provide "direct electronic access" to other "market participants" and to provide to all other NASD members "direct electronic access" or allow for "indirect electronic access" to the individual market participant's quote. The rule defines "market participants" as either an NASD Registered Market Maker, an ATS, or an NASD Registered ECN. In other words, "market participants" are those members that post quotations in the ADF.

The rule requires these market participants to provide other market participants with direct electronic access to their quotes. "Direct electronic access" is defined in the rule as the ability to deliver an order for execution directly against an individual NASD market participant's best bid or offer without the need for voice communication, with equivalent speed, reliability, availability, and cost, as are made available to the NASD market participant's own customers. Therefore, while the linkage must be electronic—telephone access is insufficient—the proposed rule allows market participants flexibility to determine the type and method of linkage. For example, the proposed rule would permit market participants to link directly among themselves bilaterally using their own technology or to use a provider with multilateral order routing facilities to satisfy the linkage requirements. The rule requires that a market participant be equally accessible to all other market participants via this electronic link.

The rule proposal also would require market participants to provide all other NASD broker-dealer members (*i.e.*, those members that do not quote in the ADF but want to access ADF quotes) with direct electronic access or allow for "indirect electronic access" through their customer broker-dealers. Instinet commented that the proposed order access rule created ambiguity as to whether a market participant was required to provide indirect access if it was willing to provide direct access. The rule does not give a market participant the option to deny indirect access to its quotes by requiring that all broker-dealers link directly to it. Market participants must make themselves accessible to those broker-dealers that wish to link with them directly and also must permit access indirectly through their customer-broker dealers. Similarly, the requirement to allow for indirect access does not permit market participants to refuse direct access to broker-dealers that would prefer direct connectivity; rather, it creates an additional means for non-market participant broker-dealers to access market participants' quotes. Accordingly, NASD is amending its proposal to clarify that market participants must provide both direct electronic access to those who want it and also allow for indirect electronic access through their customer broker-dealers. In addition, NASD is amending the rule filing to require market participants to provide the same combination of direct and indirect

electronic access to members of national securities exchanges that seek access to quotes in the ADF.

The rule is intended to ensure access to quotes displayed in the ADF for all broker-dealers and exchange members that are not market participants. NASD believes that this purpose can only be achieved effectively if broker-dealers have the option to access quotes through indirect electronic access. If indirect access were not available, the NASD believes it could be overly burdensome and prohibitively expensive on members—particularly smaller broker-dealers—if they were obligated to link directly to every market participant. For many broker-dealers, indirect access will be a less costly and more efficient means to reach quotes displayed in the ADF.

"Indirect electronic access" is defined in the proposal as the ability to route an order through a market participant's customer broker-dealer for execution against the market participant's best bid and offer, 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 access to the market participant's quotes. Accordingly, market participants must allow for indirect access through all of their customer broker-dealers that choose to provide it. In addition, market participants must provide comparable services at comparable prices to those customer broker-dealers that provide indirect access.

For example, if five ECNs and five market makers were quoting in the ADF, each ECN and market maker (collectively, market participants) would be required to be directly linked to each other via bilateral links, multilateral linkages, or a combination of both. An NASD or exchange member that wants access to the ADF but is not a customer or subscriber of a market participant would have to either (1) become a customer or subscriber of one or more market participants, or (2) contract and link with an established customer broker-dealer of each ADF market participant whose quotes they wish to indirectly access. The proposed rule, however, is not intended to impose a specific business model on market participants. For example, a market participant that solely posts its customers' quotes, but typically does not send outbound orders to other quoting market participants, would not be required to provide other broker-dealers that are not market participants with the ability to reach other market participants' quotes in the ADF. On the

other hand, it may be possible for a broker-dealer to access the entire ADF through a market participant that chooses to both post customer quotes and send outbound orders.

NexTrade called the order access rule “unworkable” because it leaves order routing and execution in the hands of the market participants. The NASD, as well as other commenters, disagrees. The rule proposal provides an efficient, fair and competitive means to access quotes that are displayed in the ADF. The proposal provides the essential rules and technological framework for a quotation and trade reporting facility, while maintaining the NASD’s primary role as a regulator. As Brut, another ECN, commented: “Recent improvement in technological efficiency and Commission regulation now provide every broker-dealer with a variety of means to ensure access to information from and execution in all market centers * * *. [T]he NASD need not provide a mandatory execution facility as part of the ADF, as it would be an inexorable first step towards re-creating the competitive issues the ADF is intended to resolve.”⁸

Even today, only approximately one-third of share and trade volume in over-the-counter trading of Nasdaq securities is executed through Nasdaq systems. For example, statistics provided on Nasdaq’s website indicate that 31.9% of Nasdaq share volume and 34.5% of Nasdaq trades in March 2002 were executed through use of Nasdaq’s SOES and SelectNet systems. Thus, private links are commonly used today to effectuate a significant volume of over-the-counter trades.

Instinet, while expressing support generally for the proposal’s rule-based approach to order access, suggested a number of changes to the rule. Foremost, Instinet believes that market participants should have more flexibility over the prices they charge for access to their order books, particularly if order book data is “redistributed.” Instinet contended that market participants should not be required to permit indirect access to their quotes, nor should they be required to grant indirect access to all broker-dealers on the same terms. Instinet asserts that ADF market participants should be free to determine the terms on which they will afford access to their quotations, provided that no broker-dealer is unreasonably denied access.

The objective of the order access rule is not to impose economic regulation on ADF market participants. Rather, the rule is meant to ensure the integrity,

accessibility and reliability of the quotes displayed in the ADF.⁹ For the ADF to be a useful alternative facility in the absence of an order router—and Instinet agrees that an order router is unnecessary—members must have a way to reliably reach a market participant’s best bid and offer. The order access rule provides that mechanism and further prohibits market participants from in any way discouraging or discriminating against members that wish to reach their quotes. The NASD believes this approach is the most appropriate means to ensure equal and universal access by its members to the quotations displayed in the ADF.

Instinet suggested that the NASD adopt changes that would allow market participants the freedom to negotiate access to its quotations on any terms—including the flexibility to deny such access—so long as they do not unreasonably prohibit or limit the ability of other broker-dealers to execute orders against their best bids and offers in the ADF. This approach, Instinet asserted, generally would be similar to the fair and equivalent access standards in the SEC Order Handling Rules and Regulation ATS. Those SEC rules foster transparency by ensuring that quotes are accessible. While other market centers have opted to provide their own systems to ensure accessibility of their quotes, no statutes, rules or regulations require such systems. NASD has instead opted for a rules-based approach that also will ensure accessibility and reliability of quotes in the ADF.

NASD notes that the order access rule applies only to a market participant’s top of book, i.e., the best bid and offer that is displayed in the ADF. Therefore, market participants retain substantial flexibility to negotiate the terms of many other services, such as full book access, placing orders, and use of reserve sizes. As detailed below, ECNs may continue to charge for access to their quotes, while market makers may not. Moreover, ECNs are permitted under the proposed rule to charge more for “hit or take” access only—purely a liquidity taking function—than for full subscriber services, provided that the fee is reasonable, based on objective criteria, and not imposed discriminatorily.

SIA inquired whether there existed any situations where a market

participant could deny direct access to other market participants by establishing fair access standards. A market participant may deny access only in the limited circumstances where a broker-dealer fails to pay contractually obligated costs for access to a market participant’s quotes; otherwise, market participants must provide access to their quotes displayed in the ADF to all broker-dealers seeking such access.

Connectivity and Access Fees

The comments illuminated some confusion about how the costs associated with connectivity and access to a market participant’s top-of-the-book quotes should be allocated among ADF users. First, NASD is amending its rule proposal to require market participants to share equally the costs of providing to each other the direct electronic access required by rule, unless those market participants agree upon another cost-sharing arrangement. For example, assume the ADF consisted of five market participants and a sixth broker-dealer registered as an ADF market participant. Under this scenario, each of the five existing market participants would be required to split with the new market participant the costs to establish their respective bilateral links with the new market participant, unless the parties agreed upon a different cost allocation.

Second, market participants must pay the costs to enable direct electronic access, as defined in the proposed rule, to their quotes. Thus, a market participant must bear the costs to build, upgrade or otherwise reconfigure its technology to allow other broker-dealers to connect to it, including the costs to accommodate additional volume resulting from indirect electronic access order flow through customer broker-dealers. NASD believes that these costs are part and parcel of choosing to operate in the ADF as a market participant and therefore must be borne by the market participant. Similarly, those non-market participant broker-dealers seeking access to a market participant’s quote must bear the line or other costs necessary to connect with a market participant’s network to send and receive orders.

Third, a customer broker-dealer may charge its customers a fee to provide indirect access to a market participant’s quotes. Under the rule proposal, a market participant may not influence or prescribe what a customer broker-dealer may charge its customers for indirect

⁹In footnote 19 of its comment letter, Instinet states that where an SRO or NMS plan operator have dominant market power, indirect access requirements could be necessary. This comment similarly misstates the purpose of the order access rule. It is not a means to regulate market power any more than it is a means to regulate pricing. Its purpose is to maintain the integrity of the quotes that appear in the ADF.

⁸Brut Letter at 3.

access to the market participant.¹⁰ Nor may the market participant preclude or discourage a specific customer broker-dealer from providing indirect access, either through discriminatory pricing or by degrading its quality of service to its customer broker-dealer. A market participant may, however, offer to provide direct electronic access at a competitive price as part of the services it provides to customers, as described below.

The connectivity costs described above should be distinguished from (1) fees for various other services provided by market participants and (2) per share access fees that ECNs are permitted to charge to execute against their top-of-the-book quote. As to the former, NASD recognizes that market participants have a variety of existing business relationships with other broker-dealers for which they charge fees for services rendered, *e.g.*, the handling of limit orders, price improvement opportunities, and liquidity enhancement. Market makers may continue to assess fees for these types of services, as permissible under current rules and regulations. There is no limitation on market makers' ability to charge fees for these services, so long as they do not effectively constitute a per-share charge to access a displayed quotation.

As to the latter, under current SEC rules, only ECNs may charge a post-transaction fee for execution against their displayed quotations. Knight understood the rule proposal also to allow market makers to charge a fee for accessing their quotes in the ADF, thereby alleviating a distinction that currently exists between market makers and ECNs under SEC rules. It was not NASD's intention to deviate from those existing SEC rules that govern such quote access fees. NASD recognizes from the Knight comment letter that the language in the proposal could be misconstrued, and therefore NASD has proposed to amend Rule 4300 to make clear that charges for access to market participants' quotes must be in accordance with SEC rules.

While ECNs may charge to execute against their best bid and offer, the fee must be based on reasonable and objective criteria. And while ECNs are permitted under the proposal to charge more for hit-or-take access than for full service access, they may not impose hit-or-take fees in a way that discriminates against a particular broker-dealer or

class of broker-dealers. Thus, in setting its fee schedule, an ECN may not look through its order flow to identify and discriminate against the source of the order flow, *e.g.*, a competitor or a broker-dealer that is accessing the quote indirectly. Rather, an ECN may set a reasonable fee for order flow that takes liquidity—a fee that may be higher than for order flow that provides liquidity—and apply that fee to all such order flow, irrespective of its origin. Similarly, an ECN that offers a volume discount must offer the same terms to all broker-dealers accessing its quote, without regard to the identity of the broker-dealer or the source of its order flow. NASD believes that this rule is necessary to ensure fair and equitable access to ECN quotes displayed in the ADF.

Quote Reliability and Accessibility

Several commenters suggested that the NASD establish minimum technological specifications for linkages between ADF users and minimum turnaround times for the execution of orders. Because the ADF will not provide an order router or automatic execution system, NASD agrees that a minimum performance standard is appropriate to ensure that ADF quotes are reliable and accessible. Therefore, NASD is proposing an amendment to the rule filing to impose a technological requirement on market participants, mandating that their order linkage system provide them the capability to respond to an order—*i.e.* accept or decline it—from another market participant or customer broker-dealer, within two seconds of receipt. Additionally, market participants will be required to have in place a system that can accomplish a "round trip" of an order from another market participant in three or fewer seconds, measured from the time an order is released by a market participant until the time notification of action taken on the order is received back by the market participant with which the order originated. In short, there are two relevant time standards to ensure a minimum performance capability: three-second turnaround for communications between market participants and two seconds for execution of orders received by market participants from other market participants, as well as customer broker-dealers.

Market participants will be required to certify that their systems can meet these standards at peak capacity, based on reasonable forecasts, before they are authorized to post quotes on the ADF. On an ongoing basis, market participants will be required to re-

certify that they can meet these performance standards when volumes exceed those on which the initial certification was based. NASD will review test data to confirm the accuracy of such certifications.

NASD believes these proposed requirements obviate the need to dictate particular technological specifications for line speed or protocols—market participants may employ any technology that will achieve compliance with the prescribed response times.

The proposed performance standards are independent of existing firm quote requirements in Exchange Act Rule 11Ac1-1, proposed NASD Rule 4613(b) and existing NASD Rule 3320, which require immediate execution of an order up to the quotation size displayed by the market participant upon receipt of an order to buy or sell. The performance standards ensure that all market participants have adequate technology that will not degrade the overall accessibility of ADF quotes, both intramarket and intermarket. By comparison, the firm quote rule addresses market participants' obligation to honor their quotes when they receive an order and prohibits backing away. Accordingly, the proposal would not require market makers to fill orders in two seconds. However, due to their structure, ECNs in most cases would be expected to fill orders in less than two seconds.

In addition, to further ensure the reliability of linkages and the integrity of the ADF, the NASD is proposing to suspend from quoting for 20 business days any market participant that experiences three unexcused, confirmed system outages during any period of five business days. NASD proposes to define system outages as (1) an inability to quote or (2) an inability to respond to orders. The proposal provides for a review and appeal process, where the burden will rest with the market participant to establish that a confirmed system outage was attributable to another party. The proposal also would give the NASD the discretion to excuse certain outages where the market participant voluntarily brings the matter to the attention of NASD.

Regulatory Programs and Procedures

Knight encouraged NASD to establish a program to monitor market participants' technological ability to comply with response time requirements and to remove quotes of market participants that fail to update their quotes expeditiously. Similarly, in response to Knight and other comments received, the SEC has asked that the NASD describe its procedures generally

¹⁰ The fact that a market participant has an ownership interest in a customer broker-dealer or multilateral linkage provider does not, in itself, constitute influence for the purposes of this proposed rule.

to monitor compliance with the firm quote rule and the order access rule, including the performance standards.

NASD will implement for the ADF the same systems and procedures to receive and investigate complaints that currently are employed in connection with trading on Nasdaq. With respect to firm quote compliance, the NASD will employ an automated surveillance system that will permit resolution of backing-away complaints on a real-time basis and monitor for patterns of violative behavior.¹¹ The system will review the regulatory data provided on a real-time basis by market participants for broker-dealer orders that are received via direct or indirect electronic access. Specifically, the NASD will follow similar procedures as exist today to institute proceedings to immediately address backing-away complaints. Generally, any potential backing-away complaint must be brought to the attention of the NASD within five minutes of the alleged backing-away by calling a toll-free number. Firms also would be encouraged, but not required, to contact the other firm to seek resolution of their complaint. Failure of the complaining firm to contact the market maker or the staff within five minutes of the alleged backing-away is not, and has never been interpreted by the NASD as, a defense to a backing-away violation.

In processing the alleged backing-away complaints and certain other potential rule violations identified by the surveillance system, the NASD will not pursue immediate disciplinary action for an individual backing-away complaint in which a contemporaneous trade execution is obtained or offered. The staff will investigate individual instances of backing-away and consider disciplinary action if the staff believes that a contemporaneous execution is warranted, but the market maker refuses to provide the fill upon the staff's request. In addition, the staff will keep a record of, and gather information concerning, backing-away incidents to determine if a firm has demonstrated a pattern of non-compliance with the firm quote rule. Thus, "pattern or practice" violations could result in disciplinary action.

NASD also will set up a system to receive and investigate complaints related to failure to provide direct or indirect access. Furthermore, as discussed above, the NASD is implementing a testing and certification

process to ensure that ADF market participants can meet the performance standards, and further is proposing to suspend a market participant from quoting for 20 business days in the event it experiences three unexcused system failures within five business days.

Submission of Real-Time Order Reports

Instinet and NexTrade commented that the rule proposal is overly burdensome in its requirement that market participants deliver to NASD within 10 seconds certain regulatory information on all orders received via direct or indirect access. These commenters stated that the information required is duplicative of data already submitted to the NASD through the Order Audit Trail System ("OATS"). Moreover, they noted that OATS data may be transmitted at any time up to 4 a.m. the following business day, while the order access rule would effectively require real-time submission. Instinet suggested that, at a minimum, the rule should be changed to conform with existing OATS rules. NexTrade also cited the increased costs that firms would have to incur to provide the requisite data.

NASD must have real-time access to certain order information to conduct real-time surveillance for compliance with, among other things, the firm quote rule, the locked/crossed market rule, and the "trade or move" rule (collectively referred to as "real-time market surveillance"). The OATS and real-time order report data sources are not fungible or interchangeable. First, because OATS information is not received real-time, it is inadequate for real-time market surveillance. Indeed, the NASD currently does not rely upon OATS data for its real-time market surveillance—that information comes directly from Nasdaq systems. Because the ADF will not have a proprietary order delivery/routing system from which to access this order data, it must obtain the data directly from ADF market participants real-time. Second, OATS data requirements include orders received by members from customers, while the real-time order report data applies only to those orders received from other broker-dealers. Conversely, OATS data does not include proprietary orders originated by a trading desk in the ordinary course of a member's market making activities, while the real-time order report data would include all orders received from other broker-dealers, notwithstanding whether the order represented market making activity. Finally, OATS requirements do not apply to CQS securities.

Accordingly, the NASD has tailored the information required in the order reports to include only that information necessary to do real-time market surveillance—the data required is far less than that required by OATS.

Instinet commented that the rule proposal is overbroad in that it covers even internalized orders. The NASD agrees and is amending the proposed rule to narrow the scope of the reporting requirement to encompass broker-dealer orders only. Thus, orders sent directly from a non-broker-dealer customer, such as an institutional client, to a market participant would not be subject to the recording and reporting requirements. Accordingly, market participants must provide real-time information to the NASD only on those orders where a broker-dealer is accessing an ADF quote, for itself or on behalf of a customer.

Instinet also commented that the rule proposal does not provide a means for submitting the order data to the NASD. The NASD has developed specifications for submitting order report data that will be provided shortly to market participants.

Best Execution Obligations

SIA and NexTrade questioned how ADF market participants would satisfy their best execution obligations in the absence of an ADF order router and automatic execution system. The NASD believes that the ADF environment does not differ significantly from current market structure. Presently, there are two types of market system environments: automatic execution and automatic order delivery. These two types of systems currently co-exist and will continue to co-exist with or without the ADF. The NASD has proposed an order delivery system by rule that will rely upon private links. The proposal creates the virtual equivalent of a SelectNet-type automatic order delivery system. Accordingly, the ADF creates a market environment consistent with existing structure. There is no statutory obligation to provide an automatic execution system to satisfy best execution requirements. Indeed, as one example, there currently is no mandated automatic execution system for trades between Nasdaq and other markets under the Unlisted Trading Privileges ("UTP") Plan for Nasdaq securities.

A related concern raised regarding best execution is whether quotes in the ADF will be reliable and accessible. As discussed in detail above, the NASD has taken several steps to ensure the integrity of the ADF quotes, including establishing technological performance standards and mandating fair and equitable access to all broker-dealers.

¹¹ See Notice to Members 97-67 (October 1997) for a description of the current firm quote compliance procedures applicable to trading on Nasdaq.

Within the ADF, broker-dealers will be able to satisfy their best execution obligations because all market participants would be directly linked. For Amex and New York Stock Exchange-listed securities, broker-dealers can satisfy best execution obligations through ITS or private links. For Nasdaq securities, if a broker-dealer is a member only of Nasdaq, the broker-dealer can either become a member of the NASD or arrange to route orders directly or indirectly through an ADF market participant or one of their broker-dealer customers. In short, the NASD believes that the ADF system and the proposed rules provide sufficient quote reliability and accessibility necessary to meet best execution obligations.

OATS Requirements

For NASD members, OATS requirements will remain substantially the same as current requirements. The NASD, however, is proposing to require that members complete an additional field on the OATS execution report indicating where the order was reported. This requirement will enable the NASD to clearly identify which execution reports are associated with ADF trade reports and which are associated with Nasdaq trade reports and, thereby, keep this data separate and confidential, as necessary.

All NASD members must continue to record in electronic form and report to NASD on a daily basis certain information with respect to orders originated, received, transmitted, modified, canceled, or executed ("reportable events") by NASD members relating to equity securities traded on Nasdaq. Once the ADF is operating and Nasdaq is operating as an exchange, NASD members, in many cases, will have at least two options as to where they may choose to report their transactions in Nasdaq securities. As such, the NASD will be required to "match" OATS execution reports to either TRACS data or ACT data (or neither) depending upon where the transaction was reported. By having a field in the OATS execution report indicating where the order was reported, NASD systems will be able to more efficiently compare the execution report to the appropriate trade report.

Close Proximity Rule

NexTrade, Phlx, and Brut criticized proposed Rule 4613(e)(2), which would require ADF market participants to maintain in close proximity to their ADF terminals or displays consolidated quotation data from other market centers. NexTrade stated that the rule

would inhibit intermarket transparency because it would require market participants to obtain additional hardware and software to receive quotations in Nasdaq securities from other market centers. NexTrade also remarked about the costs associated with buying other market centers' data. Brut suggested that such a rule should apply more broadly, so that Nasdaq would be required to have ADF quotation information in certain securities that traded a minimum daily volume percentage. Phlx cited this close proximity rule as evidence to question whether the ADF intends to be a viable alternative to Nasdaq.

NASD will provide ADF quotation data and an ADF best bid and offer ("ABBO") to its market participants. NASD believes this proposed rule is the most cost effective means to ensure that market participants also have intermarket data. There is a tradeoff between the cost for the ADF to provide this data—costs that would be passed on to market participants—and the cost to purchase it from existing data sources. In what the NASD expects to be predominantly an application programming interface ("API") environment, the NASD believes it will be less costly for the industry participants to purchase the data. NASD also notes that a similar "close proximity" requirement currently is imposed by Nasdaq on CQS market makers.

Brut's recommendation noted above could not be imposed unilaterally by the NASD because it would be Nasdaq's decision to determine what rules will govern its marketplace after it becomes an exchange. In addition, NASD disagrees with the Phlx contention that the rule is an indication that ADF is not intended to be a viable alternative facility to quote and report trades. The structure reflects a prudent decision to keep ADF development costs low without compromising the breadth of data that ADF market participants should have available when trading based on ADF quote information.

Trading Halts

Instinet questioned whether the rule proposal provided the NASD unnecessarily broad trading halt authority. In particular, Instinet does not believe the NASD should have discretionary authority to halt trading when a national securities exchange imposes a trading halt in a security because of an order imbalance or influx. Instinet is concerned that ADF discretionary trading halt authority might be used arbitrarily to shield exchanges that experience operational

difficulties from the consequences of limitations in capacity and design.

The proposed trading halt rule would impose mandatory trade halts in the ADF when the primary market halts for certain defined regulatory reasons, but grants the NASD discretion to halt when the primary market halts for operational reasons. The latter rule is intended to provide notice of an operational halt to ITS/ADF market participants, but does not require them to halt trading in the particular security. The rule is intended to permit those ITS/ADF market participants to comply with operational trading halts so that they may preserve their ability to participate in the ITS pre-opening once the operational halt is lifted. In this regard, the proposal is intended to operate as existing Rule 4120(a)(3) does today, except that it accounts for optional ITS participation by ADF market participants. NASD is amending its proposal to better reflect this intention.

Instinet also questioned whether the NASD should have the authority to halt trading through the ADF in the event that the facility cannot transmit real-time quotation and trade reporting information to the Securities Information Processor ("SIP"). NASD believes it must have this authority to ensure that necessary and reliable information will be disseminated from the ADF to the marketplace. However, the proposal would not restrict, in the event of an ADF operational halt, continued over-the-counter trading in ADF-eligible securities outside of the ADF.¹² By comparison, the proposal is intended to impose a halt in all over-the-counter trading in ADF-eligible securities whenever a market-wide trading halt is in effect under circuit breaker rules of a primary exchange. NASD is amending its proposal to clarify this distinction.

Intermarket Trading System (ITS)

Amex disagrees with the proposal that participation in ITS be optional for ADF market participants. Amex believes the proposal improperly allows market participants that trade exchange-listed securities to avoid the trade-through restrictions that currently are imposed on ITS market makers. Amex asserted that the rule proposal therefore is contrary to the goal of integrating third market participants into the national

¹² Nevertheless, depending on the facts and circumstances, a material operational failure of the ADF could lead the NASD to exercise its emergency authority to halt trading in the over-the-counter market.

market system and will cause fragmentation.¹³

NASD believes that the rule proposal allows for full integration among third market participants because those ADF market participants that opt out of ITS will be required to be fully accessible to members of all exchanges seeking such access under the proposed order access rule. NASD further believes that the proposed relief from trade-through rules for those who opt out of ITS would foster increased competition and transparency in the marketplace because it would remove an impediment that to date has largely prevented some ECNs from displaying quotes and trading certain listed securities. As such, NASD believes the rule proposal is well-founded because of the heightened transparency and increased competition that would result from integration of ECNs quotes into the consolidated best bid and offer for trading in listed securities.

In addition, this aspect of the proposal is not inconsistent with broker-dealers achieving best execution. Best execution applies to all trading and, given the quickness of ECNs and rapid quote changes (often in small increments), no longer should it be assumed that best execution can only be achieved in an environment where ITS participation is mandatory. The NASD believes it is consistent with the satisfaction of best execution for broker-dealers to execute customer orders in a manner that values immediacy over possible price protection. This is not to say, however, that valuing immediacy over price will always constitute best execution.

Instinet supported the NASD's proposal for optional participation in ITS. However, Instinet questioned the necessity of the proposed requirement that ADF members participating in ITS continue to expose orders in the ADF for 30 seconds after first probing interest within ADF, and before routing the balance of such orders to ITS as commitments to trade. NASD agrees that the additional 30 second exposure requirement is unnecessary and therefore has amended its proposal to eliminate that requirement.

TRACS

NexTrade commented that members should be able to report transactions in non-exchange listed securities through TRACS instead of ACT. NASD believes

that it will be more convenient and will speed implementation of the ADF for firms to use the existing ACT system to report trades in non-exchange listed securities because the lines and systems are already in place to accommodate these activities. NASD cannot use the ACT system to report trading in ADF-eligible securities (i.e. Nasdaq and listed securities). The NASD believes it must establish a new system such as TRACS for reporting trades in ADF-eligible securities because Nasdaq will be trading many of the same securities and therefore conflicts could arise. In contrast, Nasdaq will not be trading the non-exchange-listed securities that would be reported to ACT under the rule proposal, and thus no similar conflicts issues exist with that arrangement.

Market Rules

Short Sale Rule

Bloomberg and Brut expressed concern that there could be practical problems in complying with proposed Rule 5100 (the "short sale rule") because the proposal contains a different bid test than Nasdaq employs. Specifically, the ADF short sale rule is triggered by a down bid of the national best bid, while the comparable rule for Nasdaq exchange participants would be triggered by a down bid in the Nasdaq best bid. Bloomberg also noted that timing and reporting disparities between these data streams could result in conflicting assessments of the best inside bid. Brut urged a consistent, market-wide standard.

NASD finds these comments well-founded and agrees that consistency is desirable. At the same time, the NASD believes that the national best bid is the most appropriate test on which to base its short sale rule because it incorporates market-wide quotes, including those in the ADF. Thus, the NASD is not amending our proposal and will maintain a short sale rule based on the national best bid.

In addition, consistent with changes being proposed by Nasdaq to its short sale rule as part of its Exchange registration, NASD is proposing to amend its proposed short sale rule to clarify that it applies to orders received from non-member broker-dealers. Currently, the definition of customer in Rule 0110 does not include broker-dealers. As a result, the short sale rule technically would not apply to short sale orders from non-member broker-dealers. Therefore, NASD is amending the proposed short sale rule to clarify that it does apply to short sale orders

received by members from non-member broker-dealers.

Locked and Crossed Markets

Instinet commented that ADF market participants should not be prohibited from maintaining locked or crossed quotes on the ADF and, by extension, suggested there is no need for "trade-or-move" rules. NASD believes that locked and crossed rules are part of the basic market rules that have developed to ensure orderly markets. As such, NASD believes they are appropriately included in the rule proposal. Instinet also stated that "trade-or-move" messages are technically infeasible on the ADF since standard interfaces in use between potential ADF market participants do not support those messages. NASD is amending proposed Rule 4300(b) to include a trade-or-move flag, where applicable, in the order reports that must be submitted by market participants. Those reports will suffice to comply with the trade-or-move rule, as they are the functional equivalent of a SelectNet order today on Nasdaq, which is the means by which firms currently satisfy the trade-or-move requirements.

Bloomberg suggested that locked and crossed rules should be consistent across markets. NASD would support a uniform rule; however, NASD cannot impose it unilaterally—it would require action by national market plan participants or by the SEC. Bloomberg also contended that market participants should be permitted to lock the market when they are willing to transact a size greater than the quote it would lock. As an example, Bloomberg states that if there is an offer for 1,000 shares at 30, a market participant should be able to send an order to buy 1,000 shares at 30 and at the same time enter a locking bid for 30 at an additional quantity. NASD strongly believes that market participants, in such instances, must first provide the other market participant the opportunity to trade the size displayed as well as the full order and/or move its quotation.

Depth of Market

Bloomberg commented that market participants should be able to display their depth of market data in the ADF and similarly receive that information from other market participants. There is no statutory obligation under Rule 11Ac1-1 of the Act to display more than the top of a market participant's file. Due to time and cost constraints, the ADF as designed will only collect and distribute market participants' top of book, which in itself will be some indication of the depth of market. While

¹³ Amex also asserts that the rule proposal is contrary to NASD's obligations under the ITS plan. While NASD disagrees with Amex, the NASD does not address the issue here because the ITS plan is currently the subject of adjudicatory and rulemaking proceedings before the Commission.

NASD does not currently plan to collect and distribute each market participant's depth of market, it will consider that possibility for the future.

SEC Rules 11Ac1-5 and 11Ac1-6

Bloomberg also sought guidance on how the ADF will affect members' obligations under Exchange Act Rules 11Ac1-5 and 11Ac1-6, which require certain disclosures about order execution quality and order routing practices. The ADF has no impact on the requirements under these rules. The national best bid and offer ("NBBO") is a benchmark for evaluating execution quality under Rule 11Ac1-5 and ADF quotes will be included in the calculation of the NBBO. As described above, ADF quotes will be reliable and accessible. NASD currently serves as a "designated participant" for purposes of Rule 11Ac1-5 and will continue to do so. NASD believes any other questions specific to the application of those SEC rules are properly directed to the Commission.

Trade Reporting

NYSE commented that there exists a conflict under the proposed Nasdaq and NASD trade reporting rules that would require some trades to be reported to both organizations. The NASD does not believe that such a conflict exists within the proposed trade reporting rule. Proposed Rules 4633 (Nasdaq securities) and 6420 (CQS securities) govern generally trade reporting for transactions effected "otherwise than on an exchange." The proposal defines "otherwise than on an exchange" to mean a trade effected by a NASD member otherwise than on or through a national securities exchange. The proposal leaves the determination of what constitutes "on or through" a particular exchange to the respective exchanges, provided, of course, it complies with applicable law.

NYSE criticized this definition because it allows Nasdaq to determine which transactions are effected on its exchange, and NYSE has strong objections to Nasdaq's proposal on this issue. In fact, NASD's rule is neutral because it allows each exchange to define what constitutes a trade on or through its exchange. To the extent NYSE disagrees with Nasdaq's proposal in that area, those comments are properly directed to the Commission in reference to Nasdaq's exchange registration and proposed rules.

Proposed Rules 4633(d)(6) and 6420(c)(7) govern where to report trades effected otherwise than on an exchange when the transactions involve an NASD-only member and an NASD

member that also is a member of a national securities exchange. In those circumstances, the proposal states that the party with reporting responsibility shall report the trade to the NASD when it has a choice of reporting venues and chooses not to report to the national securities exchange. Therefore, the conflict identified by NYSE does not exist in the rule proposal.

The NASD notes, however, that the proposed trade reporting rules do not expressly state the obligation of a member to report trades to the NASD whenever they are not reporting to a national securities exchange or other self-regulatory organization. Accordingly, the NASD is amending its proposal to make that obligation explicit.

One-Sided Quotes

Bloomberg commented that ECNs should not be required to enter two-sided quotes in the ADF. In the absence of any SEC rules to contrary, NASD agrees that it is unnecessary to require ECNs to post two-sided quotes. Proposed Rule 4613(a) only requires ADF market makers to enter and maintain two-sided quotes in Nasdaq securities—no such requirement exists for ECNs. As for CQS securities quoted in the ADF, NASD will amend proposed Rule 6330 to make clear that ADF market makers must post two-sided quotes but that ECNs may post one-sided quotes. NASD notes, however, that ECNs participating in ITS must continue to quote two-sided markets.

Nasdaq's Exchange Registration Rule Filing

Many of the comment letters received by the SEC raise concerns about various aspects of the Nasdaq rule filing in connection with its exchange application, including Nasdaq's proposed trade reporting rules. Amex and NYSE, for example, commented that internalized trades should not be required to be reported to Nasdaq just because quotes are displayed in Nasdaq. Those comments are properly directed to Nasdaq or the SEC and will not be addressed in this response. As discussed above, NASD's rule proposal will require trades to be reported to NASD whenever members are not otherwise obligated to report to another exchange or self-regulatory organization.

Other Issues

Instinet and Brut stated that references to Nasdaq and NASD's determination to track Nasdaq market rules where possible suggested a bias in favor of Nasdaq as the primary market for over-the-counter trading. Those

comments are misplaced. Nasdaq is only referenced where necessary in the rule proposal. NASD believes that tracking Nasdaq's market rules in most instances will lead to greater consistency across markets and that generally the status quo will ease the compliance burden on ADF members, many of which also may be members of Nasdaq.

Instinet also suggested that the ADF be renamed the NASD Display Facility. NASD finds such a change unnecessary.

Bloomberg and Brut commented that NASD should have to completely divest ownership of Nasdaq to avoid any perception of favoritism. Those firms also suggested that NASD should reveal how the ADF will be financed and to what extent it will be supported by Nasdaq trading volume. To that end, they requested details of NASD's contract to provide regulatory services to Nasdaq after Nasdaq becomes an exchange.

NASD no longer holds any common stock in Nasdaq, except the stock that underlies the warrants issued in the Nasdaq private placement. The management of NASD and Nasdaq are already completely independent—the only NASD control over Nasdaq is that required by the Commission until Nasdaq becomes a registered exchange. By the time the ADF goes live, assuming Nasdaq has been granted approval for its exchange registration, Nasdaq and NASD will have separate boards and will be fully independent in their decision-making. Moreover, the NASD Board of Governors established a special Fairness Committee to ensure fairness during the restructuring of the NASD, including the Nasdaq spin-off. NASD negotiated its regulatory services contract with Nasdaq at arms length—the terms are proprietary, and the NASD believes need not be revealed to assess this rule proposal.

Instinet urged the NASD to allow members to formally participate in the governance of the ADF. NASD agrees that it should receive regular input from ADF participants about governance issues and will consider the appropriate forum or means to obtain that input.

Amendments

The NASD believes that the foregoing fully responds to material issues raised by the commenters. In response to certain comments identified above, and upon further consideration of the rule proposal, NASD hereby amends the rule filing as follows (deleted text from the proposal is bracketed; new text is underlined):

1. Proposed Interpretive Material 2310-2(e)(2) refers to Hybrid Securities

and Selected Equity-Linked Debt Securities that have been "designated" as Nasdaq National Market securities. Since those securities will be listed on Nasdaq upon its exchange registration, the proposal has been amended as follows:

* * * * *

(2) Hybrid Securities and Selected Equity-Linked Debt Securities ("SEEDS") [Designated] *Listed* as Nasdaq National Market System Securities

With respect to Hybrid Securities and Selected Equity-Linked Debt Securities ("SEEDS") that have been [designated] *listed* as Nasdaq National Market Securities, members are obligated to comply with any Rules, regulations, or procedures applicable to such securities, including those of Nasdaq, as well as any other applicable Rule, regulation, or procedure of the Association.

* * * * *

2. The rule filing left unchanged existing Rule 3360(a), related to short-interest reporting. The rule makes separate references "securities included in the Nasdaq Stock Market" and securities "listed on a national securities exchange." Upon approval of its registration as an exchange, there will be no need for the distinction. Accordingly, NASD amends the rule proposal as follows:

3360. Short-Interest Reporting

(a) Each member shall maintain a record of total "short" positions in all customer and proprietary firm accounts in securities [included in The Nasdaq Stock Market and in each other security] listed on a registered national securities exchange and not otherwise reported to another self-regulatory organization and shall regularly report such information to the Association in such a manner as may be prescribed by the Association. Reports shall be made as of the close of the settlement date designated by the Association. Reports shall be received by the Association no later than the second business day after the reporting settlement date designated by the Association.

* * * * *

3. The rule filing left unchanged existing Rule 3370, Prompt Receipt and Delivery of Securities. However, Rule 3370(b)(2)(B) includes references to a "Nasdaq market maker" and to "non-Nasdaq securities" that should have been changed to properly reflect the separation of Nasdaq upon its approval as a national securities exchange.

Therefore, NASD amends the rule proposal as follows:

(2) "Short Sales"

(A) No change.

(B) Proprietary short sales

No member shall effect a "short" sale for its own account in any security unless the member or person associated with a member makes an affirmative determination that the member can borrow the securities or otherwise provide for delivery of the securities by the settlement date. This requirement will not apply to transactions in corporate debt securities, to bona fide market making transactions by a member in securities in which it is registered as a [Nasdaq] market maker, to bona fide market maker transactions in [non-Nasdaq] securities in which the market maker publishes a two-sided quotation in an independent quotation medium, or to transactions [which] *that* result in a fully hedged or arbitrated position.

* * * * *

4. NASD is proposing several amendments to proposed Rule 4300, the order access rule. First, proposed Rule 4300 requires market participants to send certain information to the NASD for all orders they receive via direct or indirect electronic access. As discussed above, the rule filing contained an overly broad scope of orders for which information would be required to be submitted.

Second, the rule filing inadvertently omitted in Rule 4300(b)(1) the requirement to flag whether an order included a trade-or-move message. The rule proposal already required that orders pursuant to a trade-or-move message carry a symbol indicating such, so the amendment will not impose a new trading requirement on market participants. Additionally, the order report provisions of the rule proposal required some duplicative information and some extraneous information related to execution. The rule is intended to require only that information needed to surveil for firm quote compliance and so the NASD has deleted some fields.

Third, the rule proposal allows for optional participation in ITS, provided that a member that opts out of ITS makes its quotes accessible in accordance with the order access requirements of proposed Rule 4300(a). The text of Rule 4300 does not make clear that market participants (market makers and ECNs) must provide members of a national securities exchange the same direct or indirect access to its quotes as they do for NASD member broker-dealers that are not ADF

market participants. Accordingly, NASD is amending the rule to effectuate this clarification.

Fourth, as referenced in the response to comments, the order access rule was not intended to change the current ability of ECNs, but not market makers, to charge a fee to access a quote. To eliminate that suggestion, NASD clarified above that market makers may not charge fees to access their quotes in the ADF. In addition, NASD proposes to amend the definition of "direct electronic access" in the rule filing to clarify that access fees are subject to existing statutes, regulations and rules.

Fifth, NASD is amending the rule to clarify that a market participant must both provide direct access to non-market participant broker dealers and national securities exchange members that seek such access and allow for indirect access to those individuals and firms through the market participant's customer broker-dealers.

Finally, as discussed above, NASD is proposing in the rule a technological performance standard that will require market participants to have the capability to respond to an order—i.e. accept or decline it—within two seconds of receipt. Additionally, market participants will be required to have in place a system that can accomplish a turnaround in an order received from another market participant in three or fewer seconds, measured from the time an order is released by a market participant until the time an execution report is received by that market participant that placed the order.

NASD further is proposing to suspend from quoting any market participant that experiences three unexcused system outages within a period of five business days. The proposed amendment includes provisions that define an excused system outage, grant NASD authority to review system outages to determine whether they should be excused, and procedures for a market participant to obtain such a review and to appeal an adverse determination.

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 and members of a national securities exchange direct electronic access, if requested, [or] and 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.

(3) Market Participants shall share equally the costs of providing to each other the direct electronic access required pursuant to paragraph (a)(1), unless those Market Participants agree upon another cost-sharing arrangement.

(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 from another broker-dealer 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 from another broker-dealer 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 Negotiable Flag[Price Modifier (i.e. .N)]
- (H) Time In Force (i.e. regular hours, entire day, other[3 minutes, day, etc.])
- (I) Order Date
- (J) Order Time (including seconds)
- (K) Minimal Acceptable Quantity (i.e. ANY, all or none (AON), volume[C1, M1, AON, etc.])
- (L) Market Making Firm (MMID)
- (M) Trade-or-Move Flag

The information described in paragraphs (A) through (L)M 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 received via direct or indirect access from another broker-dealer 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, I=Price improvement [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 (E)G must be reported to the NASD within 10 seconds of any response to or action taken regarding an order. In the event that a member receives and executes an order within 10 seconds, the member may submit a single report that contains the information required in (b)(1) and (b)(2).

(3) through (7) No Change.

(c) No Change.

(d) Definitions

(1) No Change.

(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 permissible under the federal securities laws, the rules and regulations thereunder, and the Rules of the Association), as are made available to the NASD Market Participant's own customer broker-dealers or other active customers or subscribers.

(3) through (6) No Change.

(e) Minimum Performance Standards

(1) Direct electronic access provided by a Market Participant must allow the Market Participant the technological ability to respond to an order in two seconds or less. The two-second standard shall be measured from the time an order is received from the broker-dealer sending the order to the time an execution report or notice to decline the order is sent from the Market Participant to the broker-dealer that sent the order. With respect to orders received from other Market Participants, Market Participants must have in place a system that can accomplish turnaround of an order in three or fewer seconds, measured from the time an order is released by a Market Participant until the time an execution report is

received by the Market Participant that placed the order. As a precondition to becoming a registered member of the NASD Alternative Display Facility, Market Participants must certify to the NASD their compliance with this paragraph based on reasonable forecasts of peak volume activity.

(2) In the event that a Market Participant experiences three (3) unexcused system outages during a period of five (5) business days, the Market Participant shall be suspended from quoting in the NASD Alternative Display Facility in all issues for a period of twenty (20) business days. For the purposes of this paragraph, a "system outage" shall mean an inability to post quotations in the NASD Alternative Display Facility or an inability to respond to orders.

(3) Officers of NASD or its subsidiaries designated by the Chief Executive Officer of NASD shall, pursuant to the procedures set forth in paragraph (f) below, have the authority to review any system outage to determine whether the system outage should be excused. An officer may deem a system outage excused upon proof by the Market Participant that the system outage resulted from circumstances not within the control of the Market Participant. The burden shall rest with the Market Participant to demonstrate that a system outage should be excused.

(4) A Market Participant may contact NASD Alternative Display Facility Operations and request that a system outage be deemed excused, whether or not the system outage resulted from circumstances within the control of the Market Participant; however, if NASD Alternative Display Facility Operations becomes aware of the system outage prior to the Market Participant's request for an excused system outage, NASD Alternative Display Facility Operations may, at its own discretion, deem the system outage to be unexcused, based on the specific facts and circumstances surrounding the outage. In any event, a Market Participant shall be granted no more than five (5) excused system outages within 30 calendar days.

(f) Procedures for Reviewing System Outages

(1) Any Market Participant that seeks to have a system outage reviewed pursuant to paragraph (e)(3) hereof, shall submit a written request, via facsimile or otherwise, to NASD Alternative Display Facility Operations by close of the business day on which the system outage occurs, or the following business day if the system outage occurs outside of normal market hours.

(2) A Market Participant that seeks review of a system outage shall supply any supporting information for a determination under paragraph (e)(3) to the NASD staff by the close of business on the day following the system outage.

(3) A Market Participant that seeks review of a system outage shall supply the NASD staff with any information requested to make a determination pursuant to paragraph (e)(3).

(4) An officer shall, in accordance with paragraph (e)(3), make a determination whether a system outage is excused by the close of business on the day following the receipt of information supplied pursuant to paragraphs (f)(2) and (f)(3).

(5) A Market Participant may appeal a determination made under paragraph (e)(3) to the NASD Alternative Display Facility Operations Committee in writing, via facsimile or otherwise, by the close of business on the day a determination is rendered pursuant to paragraph (e)(3). An appeal to the Committee shall operate as a stay of the determination made pursuant to paragraph (e)(3). Once a written appeal has been received, the Market Participant may submit any additional supporting written documentation, via facsimile or otherwise, up until the time the appeal is considered by the Committee. The Committee shall render a determination by the close of business following the day a notice of appeal is received. The Committee's determination shall be final and binding.

* * * * *

5. The ADF will permit registered ECNs to submit one-sided quotes for both Nasdaq and CQS securities. Proposed Rule 4613(a) expressly requires ADF market makers in Nasdaq securities to maintain continuous two-sided quotes. Since that rule does not reference ECNs, by implication the rule permits ECNs to submit one-sided quotes to the ADF in Nasdaq securities. Rule 6330 governs obligations of CQS market makers. The rule proposal maintains the historical use of the term "CQS market maker" to refer to either a market maker or ECN that quotes CQS securities in the ADF. To make clear that ECNs also may submit one-sided quotes to the ADF in CQS securities, NASD is amending Rule 6330 as follows:

6330. Obligations of CQS Market Makers

(a) No Change.

(b) A CQS market maker, excluding ECNs that are not participating in ITS, must enter and maintain two-sided quotations through the NASD

Alternative Display Facility. All CQS market maker[']s' quotations must be at least one normal unit of trading.

(c) through (e) No Change.

* * * * *

6. Proposed Rule 6440(f)(3) inadvertently left out paragraph 6440(f)(3)(D), which contains the existing exception from the prohibitions of Rule 6440(f) for the purchase or sale of a security for which a member has negotiated specific terms and conditions applicable to the acceptance of limit orders for institutional accounts and for certain large orders. NASD amends the rule proposal to reinsert the paragraph as follows:

(f)(1) No change.

(2) No change.

(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.

(D) To any purchase or sale for which a member has negotiated specific terms and conditions applicable to the acceptance of limit orders that are:

(i) For customer accounts that meet the definition of an "institutional account" as that term is defined in Rule 3110(c)(4); or

(ii) For 10,000 shares or more, unless such orders are less than \$100,000 in value.

* * * * *

7. The proposed Rule 6600 Series would require members to report and compare through ACT trades effected otherwise than on an exchange in OTC Equity Securities, as defined in the proposed rule. The rule filing did not make clear that members must comply with both Nasdaq's trade reporting and trade comparison rules as part of their contractual agreement to use ACT for those specified transactions. In addition, NASD is clarifying the scope of securities that members are required to trade report under the Rule 6600 Series. Specifically, the trade reporting obligations under these rules also apply to certain exchange-listed securities that do not otherwise qualify for real-time trade reporting. Accordingly, NASD is amending the proposed Rule 6600 Series to include these securities within the scope of the trade reporting requirements as follows:

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 "OTC Equity Securities" ["non-exchange-listed securities"]). Members shall use the Automated Confirmation Transaction (ACT) for trade reporting in OTC Equity Securities [non-exchange-listed securities].

Those members effecting transactions otherwise than on an exchange in OTC Equity Securities [non-exchange-listed securities] shall have in place contractual agreements with Nasdaq to use ACT for trade reporting. Members who use ACT for trade reporting or to compare trades must comply with the applicable Nasdaq trade reporting or trade comparison rules. Members should refer to the Nasdaq rules for the specific rules that govern trade reporting and comparison through ACT.¹⁴

6610. Definitions

(a) No change.

(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" means any equity security that is not traded on any national securities exchange. The term "non-exchange-listed securities" 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 6700 Series.

¹⁴ The staff notes in the original rule filing, this paragraph was not properly underlined to indicate that the paragraph in its entirety represented new proposed rule text.

(e) “OTC Equity Security” means any non-exchange-listed security and certain exchange-listed securities that do not otherwise qualify for real-time trade reporting.

[(e)] (f) “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 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 p.m. and 5:15 p.m. Eastern Time shall also be transmitted through the NASD within 90 seconds after execution; trades executed and reported after 4 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 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 a.m. Eastern Time shall be transmitted through ACT between 8 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 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 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 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) and (6) No change.

(b) No Change

(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) and (2) No change.
- (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 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) No change.

(e) No Change

* * * * *

8. NASD is proposing to require that members complete an additional field on the OATS execution report indicating where the order was reported.

6954. Recording of Order Information

(a) through (c) No change.

(d) Order Modifications, Cancellations, and Executions

Order information required to be recorded under this Rule when an order is modified, canceled, or executed includes the following.

- (1) and (2) No change.
- (3) When a Reporting Member executes an order, in whole or in part, the Reporting Member shall record:

(A) The order identifier assigned to the order by the Reporting Member,

(B) The market participant symbol assigned by the Association to the Reporting Member,

(C) The date the order was first originated or received by the Reporting Member,

(D) The Reporting Member's number assigned for purposes of identifying transaction data in ACT,

(E) The designation of the order as fully or partially executed,

(F) The number of shares to which a partial execution applies and the number of unexecuted shares remaining,

(G) The identification number of the terminal where the order was executed, [and]

(H) The date and time of execution[.] and

(I) *National securities exchange or facility operated by a registered securities association where the trade was reported.*

9. As requested by the SEC, the NASD is proposing that securities quoted on the OTC Bulletin Board and/or securities that are, in the future, listed on the Bulletin Board Exchange to be operated by the NASD or The Nasdaq Stock Exchange, be subject to 100% initial and maintenance margin, irrespective of whether the security has been admitted to unlisted trading privileges on a national securities exchange.

Rule 2520. Margin Requirements

(a) through (e)(8) No change.

(e)(9) *Notwithstanding the other provisions of this Rule, any security that is: (1) quoted on the Bulletin Board Service operated by the NASD or The Nasdaq Stock Exchange; or (2) listed on the Bulletin Board Exchange operated by the NASD or The Nasdaq Stock Exchange, shall be subject to initial and maintenance margin of 100%, unless the security is registered on a national securities exchange other than The Nasdaq Stock Exchange. The provisions of this rule shall apply irrespective of whether the security has been admitted to unlisted trading privileges on a national securities exchange.*

10. The TRACS system will not allow order entry firms to submit trade reports to TRACS. Therefore, TRACS will not include batch type comparison and aggregate volume of previously unreported trade reports. Accordingly, NASD is amending proposed Rule 6140 to delete a provision that assumed that capability. Also, NASD is amending the proposed rule to allow T+N entries to be submitted until 6:30 pm each business day.

6140. TRACS Processing

Locked-in trades may be determined through the TRACS trade comparison feature through one of the following methods:

(a) No Change.

[(b) *Aggregate Volume Match*

A batch type comparison will be run at the end of trade date and will aggregate volume of previously entered unreported 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]6:30 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.

* * * * *

11. As discussed above, NASD is proposing to amend the rule filing to eliminate the requirement that members participating in ITS expose their orders within the ADF for an additional 30 seconds before routing them as outbound ITS commitments.

6561. Obligation Before Issuing External ITS Commitments

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].

12. NASD is amending Rule 3220 to clarify that its provisions apply only to

securities traded otherwise than on an exchange. For securities traded on a national securities exchange, members must follow the rules of that exchange regarding adjustment of quotes and orders. Also, the amendment deletes the provision of the rule that relates to the conversion to decimalization, which is now obsolete.

3220. Adjustment of Open Orders

A member shall adjust the price and/or size of open orders for securities traded otherwise than on an exchange in response to issuer corporate actions as follows:

(a) through (e) No change.

[(f) *Mandatory Open Order Conversion for Securities Commencing Decimal Pricing*]

[All open orders in Nasdaq securities priced in fractions remaining in a firm's internal system on the evening prior to, or received thereafter and prior to, the security's commencing decimal pricing pursuant to the Decimals Implementation Plan for the Equities and Options Markets shall be converted, no later than midnight on that evening prior to their first day of decimal pricing, as follows:]

[(1) Prior to the conversion, member firms should notify their customers and inform them of the change to their open fractional order(s) as a result of the conversion to decimal pricing. Customers should be afforded the opportunity to take action if they do not wish to participate in the conversion. Customers not wishing to participate in the mandatory conversion should be allowed the opportunity to cancel their open order(s) prior to the evening of the conversion.]

[(2) No later than midnight on the evening prior to a security's first day of decimal pricing, all open orders priced in fractions that have not been canceled, including those with price qualifiers such as DNR and DNI, shall be converted as follows:]

[The fractional price of all open Buy Orders (GTC, GTX, Buy Stop and Buy Stop Limits) will be converted to their decimal equivalent and then "rounded down" to the nearest \$0.01.]

[The fractional price of all open Sell Orders (GTC, GTX, Sell Stop and Sell Stop Limits) will be converted to their decimal equivalent and then "rounded up" to the nearest \$0.01.]

[Example: Buy 1000 MSFT 88^{1/16} would convert to B 1000 MSFT 88.06^(1/16 = 0.0625)

Sell 1000 MSFT 88^{1/16} would convert to S 1000 MSFT 88.07] [This rule is to be in effect only in preparation for the first day of decimal trading of the newly-converted security. After

conversion, firms may accept orders of any number of spaces beyond the decimal point in the newly-converted security and submit them, after appropriate rounding (See NASD Rule 4613(a)(1)(D)), to Nasdaq for display.]

* * * * *

13. NASD is amending the trade reporting rules in several ways. First, the amendment makes explicit in Rules 4633(a) and 6420(a) that a member has an obligation to report trades to the NASD whenever they are not reporting a trade to a national securities exchange or another self-regulatory organization. Second, the rule proposal requires a three-party trade report when the reporting party is a registered ECN, and permits such reports by market makers that execute riskless principal transactions. The proposal was intended to streamline the reporting process by reducing from three or two to one the number of trade reports for most ECN and riskless principal transactions. However, it has come to the attention of the NASD that some ECNs or their private service providers do not have the technological capability to process three-party trade reports as set forth in the rule proposal. Therefore, NASD is amending proposed rules 4633(f)(1) and 6420(e)(1) to make three-party trade reports optional for ECNs with trade reporting obligations and for all riskless principal transactions by ECNs or market makers.

Finally, NASD is amending its proposed trade reporting rules for both Nasdaq and CQS securities to require market participants and other members to submit trade report addenda for transactions effected through the ADF when necessary to correct or add to previous trade report information. The amendment would require that either the market maker ("MMID") side or the order entry firm ("OEID") side of a trade submit an addendum, if necessary, within 15 minutes of submission of the original trade report.

4633. Transactions Reported by Members

(a)(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. *Members must report through TRACS trades in Nasdaq securities effected otherwise than on an exchange whenever they do not report such transactions to a national securities exchange or another self-regulatory organization.*

(a)(2) through (d) No change.

(e) Information To Be Reported—Two Party Trade Reports

(1) through (2) No change.

(3)(A) *In the event that the MMID side or the OEID side determines that any information provided pursuant to subparagraphs (f)(2)(G)(i), (I), (O), (V), or (W) is inaccurate or incomplete, the MMID side or OEID side, as applicable, must submit a trade report addendum within fifteen (15) minutes of the submission of the original trade report to correct or provide some or all of the following information:*

- (i) Short sale indicator;
- (ii) Volume related to short sale indicator change;
- (iii) Capacity Indicator;
- (iv) Volume related to capacity change; or

(v) Branch Sequence Number
(B) *The trade report addendum feature of TRACS may also be used by members to add or modify the User Assigned Reference Number.*

(C) *Each trade report addendum must contain the following information:*

- (i) Reference number for the original trade report that is being amended or modified;
- (ii) OEID side or MMID side flag; and
- (iii) MPID.

(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] may submit three party trade reports. Riskless principal trades also may be submitted by reporting members as three party trade reports.

(2) No change.

(3)(A) *In the event that the MMID side or the OEID side determines that any information provided pursuant to subparagraphs (f)(2)(G)(i), (I), (O), (V), or (W) is inaccurate or incomplete, the MMID side or OEID side, as applicable, must submit a trade report addendum within fifteen (15) minutes of the submission of the original trade report to correct or provide some or all of the following information:*

- (i) Short sale indicator;
- (ii) Volume related to short sale indicator change;
- (iii) Capacity Indicator;
- (iv) Volume related to capacity change; or

(v) Branch Sequence Number
(B) *The trade report addendum feature of TRACS may also be used by members to add or modify the User Assigned Reference Number.*

(C) *Each trade report addendum must contain the following information:*

- (i) Reference number for the original trade report that is being amended or modified;
- (ii) OEID side or MMID side flag; and
- (iii) MPID.

* * * * *

6420. Transaction Reporting

(a)(1) This Rule governs the reporting of trades in eligible securities through the NASD's Trade Reporting and Comparison Service ("TRACS"). *Members must report through TRACS trades in eligible securities effected otherwise than on an exchange whenever they do not report such transactions to a national securities exchange or another self-regulatory organization.*

(a)(2) through (c) No change.

(d) Information To Be Reported—Two Party Trade Reports

(1) through (2) No change.

(3)(A) *In the event that the MMID side or the OEID side determines that any information provided pursuant to subparagraphs (d)(2)(D), (E), (F), (G), or (H)(i) is inaccurate or incomplete, the MMID side or OEID side, as applicable, must submit a trade report addendum within fifteen (15) minutes of the submission of the original trade report to correct or provide some or all of the following information:*

- (i) Short sale indicator;
- (ii) Volume related to short sale indicator change;
- (iii) Capacity Indicator;
- (iv) Volume related to capacity change; or

(v) Branch Sequence Number
(B) *The trade report addendum feature of TRACS may also be used by members to add or modify the User Assigned Reference Number.*

(C) *Each trade report addendum must contain the following information:*

- (i) Reference number for the original trade report that is being amended or modified;
- (ii) OEID side or MMID side flag; and
- (iii) MPID.

(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] may submit three party trade reports. Riskless principal trades also may be submitted by reporting members as three party trade reports.

(2) No change.

(3)(A) *In the event that the MMID side or the OEID side determines that any information provided pursuant to subparagraphs (e)(2)(G)(i), (I), (O), (V), or (W) is inaccurate or incomplete, the MMID side or OEID side, as applicable, must submit a trade report addendum within fifteen (15) minutes of the submission of the original trade report to correct or provide some or all of the following information:*

(i) Short sale indicator;

(ii) Volume related to short sale indicator change;

(iii) Capacity Indicator;

(iv) Volume related to capacity change; or

(v) Branch Sequence Number

(B) *The trade report addendum feature of TRACS may also be used by members to add or modify the User Assigned Reference Number.*

(C) *Each trade report addendum must contain the following information:*

(i) Reference number for the original trade report that is being amended or modified;

(ii) OEID side or MMID side flag; and

(iii) MPID.

* * * * *

14. NASD is amending the proposed trade halting rules to make several clarifications. First, proposed Rule 5200(a)(3) is being amended to clarify that the NASD must halt trading, i.e. close the ADF, in the event the ADF is unable to transmit real-time quotation or trade reporting information to the applicable SIP, but that other over-the-counter trading may continue. Second, the proposal is being amended to add IM-5200-1, which states that a halt in all over-the-counter trading will be imposed when trading is halted due to the imposition of a market-wide circuit breaker by a primary exchange. Third, proposed Rule 5200(a) is being amended to clarify that ITS/ADF market makers have discretion whether to follow an operational halt that is imposed by a primary exchange due to order imbalance or influx, but that those market makers may continue to trade if they wish to participate in the pre-opening.

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) through (2) No change.

(3) shall close [halt all trading (a) through] the NASD Alternative Display Facility to quotation activity 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 by ITS Market Makers participating in the ADF [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 an ITS [s]Security because of an order imbalance or influx ("operational trading halt"), or (ii) when the security is a derivative or component of an ITS [s]Security listed on a national securities exchange and a national securities exchange imposes an operational trading halt in that security. ITS Market Makers may commence quotations and trading at any time following initiation of operational trading halts, without regard to procedures for resuming trading set forth in paragraph (b).[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) through (d) No Change.

IM-5200-1. Market Closing Policy

Since 1988, the NASD has consistently asserted that circuit breakers should only be used in response to extraordinary price movement. The NASD's strong preference is that markets remain open wherever possible and, most importantly, remain open at the end of the day.

The NASD recognizes, however, the risks imposed on any single market that

remains open while all other U.S. markets have halted trading in response to extraordinary price movements. Therefore, the NASD Board of Governors has determined to halt, upon SEC request, all domestic trading in all equity and equity-related securities trading in the over-the-counter market should other major securities markets initiate market-wide trading halts in response to extraordinary market conditions.

This determination reflects the NASD's long-time policy of cooperation with the Commission and other market participants on issues relating to trading halts and represents the Association's continued commitment to the establishment of circuit breaker standards that both keep markets open longer during periods of market stress and that are also more reflective of market activity as a whole.

Towards that end, the NASD believes that additional future changes to circuit breakers are warranted. In particular, the NASD is concerned that the Dow Jones Industrial Average, despite recent improvements including the addition of a small number of Nasdaq stocks remains an inappropriately narrow indicator of market price declines. As an alternative, the NASD believes that the Commission should consider replacing the DJIA with the larger and more diverse Standard and Poor's 500 Index as the measure that best reflects overall market activity for circuit breaker purposes. The NASD hopes to revisit this issue with the Commission in the future.

This Market Closing Policy shall remain in effect until April 30, 2003, unless otherwise modified, or extended prior thereto, by the NASD Board of Governors.

* * * * *

15. NASD is amending existing Rule 1032(f), Limited Representative—Equity Trader, to reflect that the rule will apply to transactions effected on the Nasdaq Stock Exchange once Nasdaq becomes a registered exchange.

1032. Categories of Representative Registration

(a) through (e) No change.

(f) *Limited Representative—Equity Trader*

(1) Each person associated with a member who is included within the definition of a representative as defined in Rule 1031 must register with the Association as a Limited Representative—Equity Trader if, with respect to transactions in equity, preferred or convertible debt securities effected on the Nasdaq Stock Exchange

or otherwise than on a securities exchange, such person is engaged in proprietary trading, the execution of transactions on an agency basis, or the direct supervision of such activities, other than any person associated with a member whose trading activities are conducted principally on behalf of an investment company that is registered with the Commission pursuant to the Investment Company Act of 1940 and that controls, is controlled by or is under common control, with the member.

(2) No change.

* * * * *

16. NASD is amending proposed Rule 5100 to clarify that it applies to short sales by non-member broker-dealers.

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 is below the preceding national best (inside) bid in the security. *For purposes of this rule, the term "customer" includes a non-member broker/dealer.*

17. NASD is amending the definition of "Nasdaq security" in proposed Rule 4200(a)(8) to make clear that it covers all tiers of securities listed by Nasdaq.

4200. Definitions

(a)(1) through (7) No change.

(8) "Nasdaq security" means a security that is listed on [the]Nasdaq [Stock Exchange].

(9) through (17) No change.

(b) No change.

18. NASD is amending the definitions section of the TRACS Trade Comparison Service rule to delete references to reporting trades in non-exchange-listed securities through TRACS. Pursuant to proposed Rule 6600, those transactions must be reported through Nasdaq's Automated Confirmation Transaction service.

6100. TRACS Trade Comparison Service

6110. Definitions

(a) through (g) No change.

(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 and[,] 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) through (k) No change.

(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 [s]Series.

* * * * *

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act,¹⁵ 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that Amendment No. 2 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.

¹⁵ 15 U.S.C. 78o-3(b)(6).

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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether the amendment is consistent with the Act.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of 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 June 28, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-14009 Filed 6-6-02; 8:45 am]

BILLING CODE 8010-01-P

¹⁶ 17 CFR 200-3(a)(12).



Federal Register

**Friday,
June 7, 2002**

Part III

Department of Health and Human Services

Office of Community Services

**Research and Studies Related to Social
Services and Compassion Capital Fund
Demonstration Program; Notices**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Community Services

[Program Announcement No. 2002-15]

Research and Studies Related to Social Services Provided by Faith-Based and Community-Based Organizations

AGENCY: The Office of Community Services (OCS), Administration for Children and Families, Department of Health and Human Services.

ACTION: Announcement of the request for applications and the availability of funds for research and studies related to social services provided by faith-based and community-based organizations.

SUMMARY: The Administration for Children and Families (ACF) announces that competing applications are being accepted for grant funding to stimulate research and support a range of studies and analyses to examine the role and promising and "best practices" of faith- and community-based organizations providing services in targeted study areas. The priority study areas are: Homelessness, hunger, at-risk children and youth, transition from welfare to work, or intensive rehabilitation services for those most in need such as addicts and prisoners.

DATES: The closing date for submitting applications under this announcement is July 22, 2002. Mailed applications received after the closing date will be classified as late. See Part IV of this announcement for more information on submitting applications.

In order to determine the number of expert reviewers that will be necessary, if you plan to submit an application, you are requested to mail or fax written notification of your intentions at least 30 calendar days prior to the submission deadline date. Send the notification with the name, address, telephone and fax numbers, and e-mail address of the project director and the name of the applicant organization to: OCS Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, Virginia 22202 or fax to (703) 248-8765 or email to OCS@lcgnet.com. Label all submissions as follows: Intent to Apply for Research Under the Compassion Capital Fund.

ADDRESSES: Mailed applications should be sent to: OCS Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, Virginia 22202, and labeled as follows: "Application for Research Under the Compassion Capital Fund."

Hand delivered, courier or overnight delivery applications are accepted

during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday (excluding Federal holidays), on or prior to the established closing date. All packages should be clearly labeled as follows: Application for Research Under the Compassion Capital Fund. The address for these applications is: OCS Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, Virginia 22202, telephone: 1-800-281-9519.

The printed **Federal Register** notice is the only official program announcement. Any corrections to this announcement will be published in the **Federal Register** as well as published on the ACF World Wide Web Pages. The Web Site is: <http://www.acf.dhhs.gov/programs/opre/frpa.htm>.

Although reasonable efforts are taken to assure that the files on the ACF World Wide Web Pages containing electronic copies of this Program Announcement are accurate and complete, they are provided for information only. The applicant bears sole responsibility to assure that the copy downloaded and/or printed from any other source is accurate and complete.

FOR FURTHER INFORMATION CONTACT : LCG OCS Operations Center, 1-800-281-9519; email: OCS@lcgnet.com.

Required application forms are available at: <http://www.acf.dhhs.gov/programs/ofs/forms.htm>.

SUPPLEMENTARY INFORMATION: This program announcement consists of four parts. Part I: Background and Program Purpose—background, legislative authority, project purpose, funding availability and instruments, project and budget periods. Part II: Project and Applicant Eligibility—eligible applicants. Part III: The Review Process—intergovernmental review, initial ACF screening, general instructions for the Uniform Project Description, competitive review and evaluation criteria, and the review process. Part IV: The Application Process—required forms, application limits, checklist for a complete application, closing date for receipt of applications, and Paperwork Reduction Act.

Part I. Background and Program Purpose

A. Background

Faith- and community-based organizations play a major role in aiding and supporting individuals, families, and communities in need. Often, these organizations have a long history of service in their communities, are well known and trusted by local residents,

and have a stake in the communities they serve. In recognition of the unique contribution that these organizations can make in meeting an array of special needs within their communities, there have been important new steps taken to assist faith- and community-based organizations to further develop their capacity and capabilities for delivering services and assistance to individuals, families and communities in need. In federal fiscal year 2002, in an effort to broaden Federal efforts to work with faith-based and community-based organizations, the Congress appropriated funds for the Compassion Capital Fund to provide technical assistance to faith-based and community-based organizations to address an array of issues to help them build their capacity and expand and replicate model programs. The funds are also to be used to support research on the "best practices" of faith- and community-based organizations. This announcement is one part of the strategy within the Compassion Capital Fund and it will support research regarding the roles and promising approaches, "best practices," and model programs operated by faith- and community-based organizations in five target areas: homelessness, hunger, at-risk children, transition from welfare to work, and intensive rehabilitation services for those most in need such as addicts and prisoners.

B. Legislative Authority

This announcement is authorized by Section 1110 of the Social Security Act (42 U.S.C. 1310). (Catalog of Federal Domestic Assistance 93.647) and the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2002, Public Law 107-116, Title II (2002).

C. Project Purpose

The primary purpose of this announcement is to build knowledge regarding the roles and promising approaches by diverse types of faith- and community-based organizations to provide services within five priority areas: homelessness, hunger, at-risk children, the transition from welfare to work, and intensive services for those most in need such as addicts and prisoners. Approved studies must utilize sound analytical methods to address important research questions related to the priority study areas. Applications for research related to study areas not included in this announcement may be considered by ACF but will not be given priority. Given the important contribution that

new research can make in the study areas and the need for information, ACF is supporting short-term research and data analysis projects that are designed to be completed within 12–17 months.

D. Funding Availability and Instruments

ACF will issue the Financial Assistance Awards under this announcement as grants. Approximately \$1 million is expected to be available from ACF in funds appropriated for fiscal year 2002. We estimate that this level of funding will support between 5 and 8 awards with total budgets (including indirect costs) ranging from \$125,000 to about \$250,000 for short-term projects. These figures are provided as guidance and do not constitute minimum or maximum limits.

No Federal funds received as a result of this announcement can be used to purchase computer equipment and no funds may be paid as profit to grantees or sub-grantees (i.e., any amount in excess of allowable direct and indirect costs of the recipient (45 CFR 74.81)). Further, funds may not be used to support the provision of services. The funding is intended to sponsor research and analytic work.

Grantees should provide at least five percent of the total approved cost of the project. The total approved cost of the project is the sum of the Federal share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet the cost share through cash contributions. As an example of cost sharing, a project requesting \$200,000 in Federal funds would include a cost share of at least \$10,526 (because \$200,000 is 95% of \$210,526).

E. Project and Budget Periods

This announcement is inviting applications for short-term projects with project and budget periods up to 17 months.

Part II. Project and Applicant Eligibility

Eligible Applicants

Pursuant to section 1110 of the Social Security Act, any public organization, including state and local governments, and private nonprofit organizations, including universities and other institutions of higher education, as well as faith-based organizations, may apply. Applications may also be submitted by private-for-profit organizations. However, no grant funds may be paid as profit, i.e., any amount in excess of allowable direct and indirect costs of the recipient (45 CFR 74.81).

Part III. The Review Process

A. Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, states may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of April 8, 2002, the following jurisdictions have elected *not* to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by federally recognized Indian Tribes need take no action in regard to Executive Order 12372:

Alabama; Alaska; Arizona; Colorado; Connecticut; Kansas; Hawaii; Idaho; Indiana; Louisiana; Massachusetts; Minnesota; Montana; Nebraska; New Jersey; New York; Ohio; Oklahoma; Oregon; Palau; Pennsylvania; South Dakota; Tennessee; Vermont; Virginia; Wyoming; and Washington.

Although the jurisdictions listed above no longer participate in the process, grant applicants are still eligible to apply for a grant even if a state, territory, commonwealth, etc. does not have a Single Point of Contact (SPOC). All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official state process recommendations that may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and

Human Services, Administration for Children and Families Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 4th floor West, Washington, D.C. 20447.

A list of the Single Points of Contact for each participating State and Territory is included with the application materials for this program announcement. The list can also be found on the following web site: <http://www.whitehouse.gov/omb/grants/spoc.html>.

B. Initial ACF Screening:

Each application submitted under this program announcement will undergo a pre-review to determine that (1) the application was received by the closing date and submitted in accordance with the instructions in this announcement and (2) the applicant is eligible for funding.

C. General Instructions for the Uniform Project Description:

The following ACF Uniform Project Description has been approved under OMB Control Number 0970–0139, which expires 12/31/2003. This format is to be used to submit an application under this announcement. 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. Consistent with the Uniform Project Description format, the specific criteria applicable to this program follows in section D.

1. Objectives and Need for Assistance: Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

2. Results or Benefits Expected: Identify the results and benefits to be derived. For example, when applying for a grant to analyze the role of

government funding in the services offered by faith- and community-based organizations, describe the ways in which this information will be useful to various interested parties (e.g., government officials, faith-based providers of services).

3. *Approach:* Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information that is conducted or sponsored by ACF."

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

4. *Geographic Location:* Describe the precise location of the project and boundaries of the area to be served by the proposed project. Maps or other graphic aids may be attached.

5. *Staff and Position Data:* Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

6. *Budget and Budget Justification:* Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF-424. Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

Budget and Budget Justification Guidelines: The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, "Federal resources" refers only to the ACF grant for which you are applying. Non-federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel). *Justification:* For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF sponsored workshops should be detailed in the budget.

Equipment

Description: "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established

by the organization for the financial statement purposes, or (b) \$5,000 (Note: Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the equipment category. *Justification:* Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those that belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at \$100,000). Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency,

the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Construction

N/A.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgment that the applicant is accepting a lower rate than allowed.

Program Income

Description: The estimated amount of income, if any, expected to be generated from this project.

Justification: Describe the nature, source and anticipated use of program income in the budget or refer to the

pages in the application which contain this information.

Non-Federal Resources

Description: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF424.

Justification: The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each funding source.

Note: In the SF424A, Section B, Budget Categories, list in column 2 non-federal resources separately from federal resources, which must be listed in column 1.

D. Competitive Review and Evaluation Criteria

Applications which pass the initial ACF pre-review screening will be evaluated and rated by an independent review panel on the basis of specific evaluation criteria. The evaluation criteria were designed to assess the quality of the proposed project and to determine the likelihood of its success. The evaluation criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications that are responsive to the evaluation criteria within the context of this program announcement.

Narrative sections of the application should follow the outline (headings) of the Uniform Project Description as presented above and address the criteria below.

Proposed projects will be reviewed using the following evaluation criteria:

(1) Approach: (40 points)

The application should describe in detail the proposed methods for answering the research questions proposed or otherwise carrying out the study and explain why the methods proposed are adequate to address the research questions and study objectives. The application should discuss the evidentiary basis that will be used to support a classification of approaches by faith- and community-based organizations as a "best practice" or promising approach. The application should note any weaknesses in the proposed research design and what will be done to compensate for those weaknesses. The application should discuss the type of data to be used in the study, the sources of data, the availability of and access to needed data, and any issues related to data quality and how such issues will be addressed. As a part of the proposed approach, the application should

identify the key, relevant organizations that will be involved in project activity and generally describe operational relationships that exist or will be put into place among relevant organizations for the conduct of the study.

The application will be judged on the extent to which the data to be used, proposed project design (methods), and approaches to project activities are adequate and appropriate to accomplish the objectives set out within the time specified.

(2) Results or Benefits Expected: (20 points)

The application should describe who the results will benefit (e.g., various levels of government, direct service providers), how the results may benefit such individuals or organizations, and why the results would be expected to be beneficial.

The application will be judged on the extent to which the results are likely to be beneficial (e.g., provide policy or program guidance) to clearly identifiable parties (i.e., governmental agencies, direct providers).

(3) Objectives and Need for Assistance: (15 points)

The application must include the principal questions to be addressed by the study and the research hypotheses related to those questions, if appropriate, and indicate why the applicant believes the questions are important and what contribution the work will make. If the application to ACF is for funding of a particular component of a larger study, the applicant should describe the objective of the entire study and explain in detail the questions to be addressed by the activities for which ACF funding is requested.

The application will be judged on the extent to which the questions identified include important unanswered questions about the priority study areas and about which additional information is most critically needed and which will discern the best practices of charitable organizations. Applications will be judged on the relevance of the proposed work to the program objectives set out within this announcement. The application will be judged on the extent to which the proposed study will help to build the knowledge base and have wide applicability or relevance.

(4) Staff and Position Data: (10 Points)

The application should list key individuals who will work on the project along with a description of the nature of their contribution. The application should provide evidence of

the key staff's experience in conducting the sort of study or research proposed and describe their relevant academic training. The application should also describe the organizational support that will be available to carry out the work proposed.

The application will be judged on the extent to which proposed staff has relevant experience and expertise for carrying out the overall work proposed and for conducting the specific activities or types of analysis to be assigned to them. The application will be judged on the appropriateness of the management plan to ensure that the work is accomplished as proposed and on schedule.

(5) Budget and Budget Justification: (10 points)

The application must include a narrative description and justification for proposed budget line items (as described in the detailed budget instructions included above) and demonstrate that the project's costs are adequate, reasonable and necessary for the activities or personnel to be supported. The application will be judged on the extent to which the budget is necessary and reasonable for the proposed set of activities.

(Applicants should refer to the budget information presented in the Standard Forms 424 and 424A and to the budget justification instructions in section C. *General Instructions for the Uniform Project Description*. Since non-Federal reviewers will be used in the review of applications, applicants may omit from the copies of the application submitted (not from the original), the specific salary rates or amounts for individuals in the application budget and instead provide only summary information.)

(6) Geographic Location: (5 points)

The application should include a brief discussion of the geographic location relevant to the study proposed. The application will be judged on the extent to which the geographic area proposed is reasonable given the proposed study approach.

E. The Review Process

Applications received by the due date will be reviewed and scored competitively. Experts in the subject and technical areas will use the evaluation criteria listed in Part III of this announcement to review and score the applications. The results of this review are a primary factor in making funding decisions. ACF may also solicit comments from Regional Office staff and other Federal agencies. The Assistant Secretary may also consider a

variety of factors in funding decisions, including variation in geographic regions of study, type of applicant organization, or approaches or data sources for the studies.

Please note that applicants that do not comply with the requirements in the section on "Eligible Applicants" will not be included in the review process.

Part IV. The Application Process

A. Required Forms

Eligible applicants interested in applying for funds must submit a complete application including the required forms. All necessary forms are available at: <http://www.acf.dhhs.gov/programs/ofsf/forms.htm>.

In order to be considered for a grant under this announcement, an application must be submitted on the Standard Form 424 approved by the Office of Management and Budget under Control Number 0348-0043. A copy has been provided. Each application must be signed by an individual authorized to act for the applicant and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, Assurances: Non-Construction Programs (approved by the Office of Management and Budget under control number 0348-0040). Applicants must sign and return the Standard Form 424B with their application.

Applicants must provide a certification concerning lobbying. Prior to receiving an award in excess of \$100,000, applicants shall furnish an executed copy of the lobbying certification (approved by the Office of Management and Budget under control number 0348-0046). Applicants must sign and return the certification with their application.

Applicants must make the appropriate certification of their compliance with the Drug-Free Workplace Act of 1988. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for award. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

B. Application Limits

The application should be double-spaced and single-sided on 8 1/2" x 11" plain white paper, with 1" margins on

all sides. Use only a standard size font no smaller than 12 pitch throughout the application. All pages of the application (including appendices, resumes, charts, references/footnotes, tables, maps and exhibits) must be sequentially numbered, beginning on the first page after the budget justification, the principal investigator contact information and the Table of Contents. Although there is no limitation regarding number of pages, applicants are urged to be concise and limit applications to no more than 25 pages. Applicants are requested not to send pamphlets, brochures, or other printed material along with their applications as these pose copying difficulties. These materials, if submitted, will not be included in the review process. In addition, applicants must not submit any additional letters of endorsement beyond any that may be required. Applicants are encouraged to submit curriculum vitae in a biographical format.

C. Checklist for a Complete Application

The checklist below is for your use to ensure that the application package has been properly prepared.

- One original, signed and dated application plus two copies.
- Attachments/Appendices, when included, should be used only to provide supporting documentation such as resumes, and letters of agreement/support.
 - (1) Application for Federal Assistance (SF-424, Rev. 7-97)
 - (2) Budget information-non-construction programs (SF424A&B)
 - (3) Budget Justification, including subcontract agency budgets
 - (4) Application Narrative and Appendices
 - (5) Assurances Non-Construction Program
 - (6) Certification Regarding Lobbying
 - (7) If appropriate, a completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF-424, REV. 7-97

D. Closing Date for Receipt of Applications

The closing (deadline) time and date for receipt of applications is 4:30 p.m. (Eastern Time Zone) on the date indicated under DATES at the beginning of this announcement. Applications received after 4:30 p.m. will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at: OCS Operations Center, 1815 North Fort

Myer Drive, Suite 300, Arlington, Virginia 22202 and labeled: Application for Research Under the Compassion Capital Fund. Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications handcarried by applicants, applicant couriers, or other representatives of the applicant or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m. at: OCS Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, Virginia 22202 and labeled: Application for Research Under the Compassion Capital Fund. Applicants are cautioned that express/overnight mail services may not always deliver as agreed.

ACF cannot accommodate the transmission of applications by FAX or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

Late applications: Applications that do not meet the criteria stated above are considered late applications. ACF will notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend an application deadline for applicants affected by acts of God such as floods and hurricanes, when there is widespread disruption of mail service, or for other disruptions of services, such as a prolonged blackout, that affect the public at large. A determination to waive or extend deadline requirements rests with the Chief Grants Management Officer.

E. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, Public Law 104-13, the Department is required to submit to OMB for review and approval any reporting and record keeping requirements in regulations including program announcements. All information collections within this program announcement are approved under the following current valid OMB control numbers 0348-0043, 0348-0044, 034800040, 0348-0046, 0925-0418 and 0970-0139.

Public reporting burden for this collection is estimated 10 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection of 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.

Dated: May 31, 2002.

Wade F. Horn,

Assistant Secretary for Children & Families.

[FR Doc. 02-14318 Filed 6-6-02; 8:45 am]

BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Community Services

[Program Announcement No. 2002-14]

Compassion Capital Fund Demonstration Program

AGENCY: The Office of Community Services (OCS), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Announcement of the request for competitive applications and the availability of federal funding to organizations to provide technical assistance to help faith-based and community-based organizations.

SUMMARY: This announcement, together with other steps that HHS is taking, lays a foundation for expanding the role in social services of faith-based and other community-serving groups, building capacity and knowledge among these organizations to better meet the needs of the poor and low-income families and individuals, and encouraging the replication of effective programs. The program announced here will provide Compassion Capital funds to organizations (herein referred to as "intermediary organizations") that have demonstrated an ability to assist faith- and community-based organizations, particularly smaller organizations, in a variety of areas, including, but not limited to, their efforts to effectively operate and manage their programs, access funding from varied sources, develop and train staff, expand the types and reach of social services programs in their communities, or replicate promising models or programs. (Throughout this document "social services" be taken to include promotion, treatment, and prevention services related to primary health care, substance abuse treatment, mental health treatment, HIV/AIDS and related aspects of public health services directed to low-income families and individuals.) In addition, recipients of awards under this announcement will issue awards or

sub-awards for start-up and operational costs to qualified faith- and community-based organizations to expand or replicate promising or best practices in targeted areas.

The Administration for Children and Families (ACF) is the agency designated to issue initial awards under the Fund. However, the work supported through such awards is expected to address a broad array of services and programs and to complement related activities in other parts of HHS and other federal departments. The Compassion Capital Fund will help further the President's goals and objectives regarding faith- and community-based organizations and will enhance work being supported by multiple federal agencies. ACF estimates that the funds available under this announcement will support 15-25 cooperative agreements¹ with intermediary organizations. The Federal government plans to work in partnership with others who have similar goals and interests in strengthening organizations operating closest to those most in need. Therefore, ACF seeks applicants who can share in the cost of the activities described in this announcement. Applicants are expected to provide at least 50 percent of the amount of Federal funds requested (*i.e.*, one-third of the proposed total budget).

DATES: The closing date for submission of applications is July 22, 2002. Mailed applications received after the closing date will be classified as late. See Part IV of this announcement for more information on submitting applications.

In order to determine the number of expert reviewers that will be necessary, if you plan to submit an application, you are requested, but not required, to mail, fax, or e-mail written notification of your intentions at least 30 calendar days prior to the submission deadline date. Send the notification, with the following information: the name, address, telephone and fax numbers, and e-mail address of the project director and the name of the applicant to: OCS Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, Virginia 22202 or fax to (703) 248-8765 or e-mail to OCS@lcnnet.com. Label all submissions as follows: Intent to Apply for Compassion Capital Fund Demonstration Program.

ADDRESSES: Mailed applications should be sent to OCS Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, Virginia 22202 and labeled as

¹ A cooperative agreement allows substantial Federal involvement in the activities undertaken with Federal financial support.

follows: Application for Compassion Capital Fund Demonstration Program.

Hand delivered, courier or overnight delivery applications are accepted during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday (excluding Federal holidays), on or prior to the established closing date. All packages should be clearly labeled as follows: Application for Compassion Capital Fund Demonstration Program. The address for these applications is: OCS Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, Virginia 22202.

The printed Federal Register notice is the only official program announcement. Any corrections to this announcement will be published in the **Federal Register** as well as published on the ACF World Wide Web Pages. The Web site is <http://www.acf.dhhs.gov/programs/opre/frpa.htm>.

Although reasonable efforts are taken to assure that the files on the ACF World Wide Web Pages containing electronic copies of this Program Announcement are accurate and complete, they are provided for information only. The applicant bears sole responsibility to assure that the copy downloaded and/or printed from any other source is accurate and complete.

FOR FURTHER INFORMATION CONTACT: LCG OCS Operations Center, 1-800-281-9519; e-mail: OCS@lcnnet.com. ACF intends to post answers to frequently asked questions on the ACF Web site at <http://www.acf.dhhs.gov/programs/ocs>. Required application forms are available at: <http://www.acf.dhhs.gov/programs/ofs/forms.htm>.

SUPPLEMENTARY INFORMATION: This program announcement consists of four parts: Part I: Background and Program Purpose—legislative authority, background, and program purpose and objectives; Part II: Project and Applicant Eligibility—eligible applicants, funding availability and instruments, cost sharing, and roles and responsibilities under the cooperative agreement; Part III: The Review Process—intergovernmental review, initial ACF screening, general instructions for the Uniform Project Description, competitive review and evaluation criteria, and review process; and Part IV: The Application Process—required forms, application limits, checklist for complete application, application submission, and Paperwork Reduction Act.

Part I. Background and Program Purpose

A. Legislative Authority

Funding under this announcement is authorized by section 1110 of the Social Security Act governing Social Services Research and Demonstration activities (Catalog of Federal Domestic Assistance 93.647) and the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2002, Pub. L. 107-116, Title II (2002).

B. Background

Support and assistance for individuals and families in need can come from many sources. While governments play a vital role in providing services, the nonprofit sector—secular and religiously affiliated providers, civic groups, foundations and other grant-givers—has long been a vital and valued partner of government. Faith-based and community-based organizations have a long history of providing an array of important services to people and communities in need of charitable services in the United States. These groups have unique strengths that government cannot duplicate. They often operate very close to the daily lives of individuals and families in need and, thus, can reach needy individuals and families that government cannot reach. They are part of their communities. They hold the trust of their community neighbors and leaders and have great understanding of the needs of the community and its systems. They are well positioned to understand the needs of individuals and families, particularly those with the greatest needs such as families in poverty, prisoners reentering the community and their families, children of prisoners, homeless families, and at-risk youth. Furthermore, the sense of mission from which they work often translates into a unique approach to service delivery, a dedication of service to others, and a cultural awareness of issues and relationships specific to their surrounding communities.

In recognition of this history and ability, President Bush believes it is in the public's interest to broaden federal efforts to work with faith-based and community-based organizations and has made improving funding opportunities for such organizations a priority. On January 29, 2001, President Bush issued Executive Order 13198 directing the heads of the Departments of Health and Human Services, Justice, Education, Labor, and Housing and Urban Development to establish within their

respective departments a Center for Faith-Based and Community Initiatives.

The goal of these Centers is to make their agencies as open and supportive as possible to successful faith-based and grassroots organizations. They are responsible for coordinating efforts to eliminate regulatory, contracting, and other programmatic obstacles to the full participation of faith-based and community organizations in the provision of social services. In addition, they work to create a hospitable environment for groups that have not traditionally collaborated with government, make sure that departmental communications and technical assistance efforts are open to faith-based and community organizations, and implement special programs designed to showcase and pioneer innovative efforts.

A key part of the effort to enhance and expand the participation of faith-based and community-based groups in serving those in need is the Compassion Capital Fund program described in this announcement. Funds awarded under this program will be used to support the work of intermediary organizations to increase the capacity and capability of faith-based and community-based organizations, to assist them in competing for funding from varied sources (e.g., federal/state/local governments, private charitable organizations/foundations) and in partnering with other organizations in their localities, and to help them implement best practices in program management and in the services they provide to individuals and families. The entities awarded funds under this announcement will serve as partners to both the federal government and to the faith- and community-based organizations that they assist. The intermediaries will represent a diverse set of ideas and organizational and/or religious affiliations. They will work with a diverse group of community-level organizations with differing service goals, target populations, and religious and community affiliations and beliefs.

The program described in this announcement is the centerpiece of this year's Compassion Capital Fund initiative. ACF expects to award a total of up to \$24.5 million under this announcement. ACF estimates that 15–25 intermediary organizations can be supported by this level of funding. The level of funding includes funds that will be used by intermediary organizations to provide technical assistance and make sub-awards to help the faith-based and community-based organizations that they assist to replicate or expand

best practices and model programs in targeted areas. In addition to activities supported through this announcement, the Compassion Capital Fund will also be used to provide funding for other activities that will support the intermediary organizations in their work, provide capacity-building support at the national level, identify and disseminate information about best practices, and build knowledge related to a broad array of questions regarding faith- and community-based organizations and the intermediary organizations that work with them.²

These activities lay the groundwork for what will be an on-going effort to expand the role in social services of faith-based and other community-serving groups. Future Compassion Capital Funds will be used to build on and expand this effort. Applicants that receive awards pursuant to this announcement may be eligible for continuation grants and additional intermediary organizations may be funded. In addition, we will explore other means to assist faith-based and community-based groups. Further, we will work closely with others sponsoring and conducting related activities within the Federal government and outside of it to build on their experience and ours to formulate future plans for the types of activities and work that should be supported.

C. Program Purpose and Objectives

The purposes of this Compassion Capital Fund program are to help build capacity and knowledge among faith- and community-based organizations and encourage the replication of effective approaches and programs to better meet the needs of poor and low-income individuals and families. This will be accomplished through the funding of intermediary organizations that have demonstrated expertise in working with and providing technical assistance to a diverse set of faith- and community-based organizations in a variety of areas, including, but not limited to, their efforts to effectively operate and manage their programs, access governmental and private funding sources, develop and train staff, expand the types and reach of services in their communities, or replicate promising models or programs. The types of faith- and community-based organizations to be served by the intermediary organizations are expected to be diverse

in size, range of experiences, types of services provided (e.g., family crisis services, welfare-to-work services, services for at-risk youth, preventive health services, and other services directed to address problems stemming from poverty), types of individuals or families served, types of organizations, religious or organizational affiliation, and in other dimensions. It is our objective that Compassion Capital Funds be directed at those organizations that primarily focus their services on those most in need. The program purposes will be further accomplished through the issuance of sub-awards by the funded intermediary organizations to a diverse set of faith- and community-based organizations for start-up, operations, or expansions of promising operating systems or social service programs ("best practices"). ACF expects that intermediary organizations will develop a coherent plan that utilizes both technical assistance and sub-awards and that provides for the establishment of ongoing supportive relationships with those faith- and community-based organizations served, rather than on single or short-term interactions.

The technical assistance activities are to be conducted at no cost to interested faith- and community-based organizations and may include, but are not limited to, the following:

- Needs assessments for faith- and community-based organizations to identify internal areas needing improvement or areas in which to develop or expand services in the community to address service gaps;
- Guidance and direction with strategic planning and project development;
- Provision of legal assistance in various areas such as the process of incorporation, obtaining tax-exempt status, tax issues, or establishing oversight/governance boards;
- Development and implementation of appropriate and adequate internal operating controls and procedures related to all aspects of business management;
- Training and assistance in grant writing and business proposal development and how to access government (e.g., federal/state/local) and private funding sources (e.g., private charitable organizations/foundations);
- Training and information on applicable federal and other funding requirements (e.g., administrative requirements, cost principles, regulations, circulars);
- Training and information on appropriate approaches for financial management and accounting;

- Training and information on the development and use of outcome measurements and methods of evaluation;
- Expert assistance in understanding findings related to "best practices" and how to interpret the findings and address potential barriers and incorporate "best practices" into their programs to improve effectiveness;
- Training and information on developing or improving public relations or internal and external communication;
- Recommendations and information about expanding outreach and client screening, intake or tracking methods;
- Expert assistance or facilitation in linking and networking with other agencies to improve service coverage, avoid duplication, improve coordination within the service area, or create opportunities for sharing resources (e.g., audit, bookkeeping or information technology services); or
- Information on and referrals to other information sources including regional and national organizations that provide expert advice or offer professional support services in areas not otherwise covered.

This is an illustrative, not exhaustive, listing of the sort of activities that may be provided by the intermediary organizations awarded funds under this announcement. The technical assistance portion of the award may not be used for direct services to needy individuals or families and shall not supplant existing funding available for similar activities. Compassion Capital Funds shall not be used to support religious practices such as religious instruction, worship or prayer.

As indicated above, in addition to supporting technical assistance, funds provided through this announcement will also be used to make sub-awards to a diverse set of faith- and community-based organizations for start-up or operational costs related to the replication or expansion of "best" or "promising" practices. Priority for sub-awards should be given to programs that address homelessness, hunger, at-risk children, transition from welfare to work, and those in need of intensive rehabilitation such as addicts or prisoners. Applicants may also propose to use non-federal funds to make awards for these purposes (e.g., one of the uses of funds that meet the cost sharing provision described below). These awards or sub-awards may not supplant funding that the faith- or community-based grantees rely on for current operations of program services. Further, as appropriate, the technical assistance

² The other activities include the establishment of a Compassion Capital National Resource Center and research to build knowledge in this important area. Additional information about these other activities will be available as soon as the information is public.

provider may assist faith- and community-based organizations in seeking additional funds from other sources for the activities supported by the award or sub-award. The approach the intermediary will use for seeking applications or otherwise responding to requests for funding, making sub-awards, and accounting for their use may vary across intermediary organizations. However, each approved intermediary organization must develop and submit a plan for this process to ACF for review and approval within 60 days of receipt of award under this announcement and prior to the issuance of any sub-awards using federal funds awarded under this announcement. Intermediary organizations must report on the use of funds for sub-awards as they do for other types of expenditures of Federal funds received as a result of an award under this announcement and as specified in the Cooperative Agreement. Intermediary organizations must also develop and submit a plan for working with sub-awardees to develop outcome measures and to evaluate the activities supported by the sub-awards made with Federal funds under this announcement.

Further, approved applicants must be willing to work closely with ACF and any entities funded by ACF to coordinate, assist, or evaluate the activities of the intermediary organizations providing technical assistance. Proposed budgets should include the cost of travel related-expenses for key personnel with responsibility for the Compassion Capital Fund award to attend two meetings with Federal officials and others in Washington, DC during the first 12-month budget period. The first meeting will be held shortly after awards are made under this announcement and will focus on orientation to Federal objectives for the project, information about related activities supported by HHS and other Federal agencies,³ Federal grants management requirements, and coordination between and among the approved intermediary organizations and other entities funded by ACF to be involved in the Compassion Capital Fund initiative.

The Federal government is interested in partnering with applicant organizations who share the same

³ Under the President's Faith-based and Community Initiative program, Federal agencies have begun to provide technical assistance and training services to faith- and community-based organizations and address barriers to their participation in federally sponsored programs. Successful applicants under this announcement must coordinate and not duplicate services.

vision, have similar goals, and are willing to share in the cost of this important set of activities. Therefore, ACF is seeking applicants who can provide funding for the proposed project that equal at least 50 percent of the amount of Federal funds requested (*i.e.*, one-third of the total budget).

Part II. Project and Applicant Eligibility

The Administration for Children and Families (ACF), Department of Health and Human Services (HHS) invites eligible entities to submit competing applications for the Compassion Capital Fund Demonstration Program.

A. Eligible Applicants

ACF invites applications from a wide variety of types of organizations or entities that can demonstrate knowledge and experience in the provision of the types of technical assistance described herein to a diverse group faith-based and community-based organizations representing different organizational or religious affiliations. Further, ACF encourages applications from applicants that propose to work with and have experience working with faith- and community-based organizations that historically have not been well served or supported by governmental funds and have the greatest needs.

Nongovernmental organizations, non-profit agencies, including faith-based organizations, public agencies, State and local governments, colleges and universities, and for-profit entities may submit applications under this announcement. It should be noted, however, that no federal funds received as a result of this announcement can be paid as profit to grantees or sub-grantees, *i.e.*, any amount in excess of allowable direct and indirect costs of the recipient (45 CFR 74.81).

B. Funding Availability and Instruments

Project and Budget Periods—This announcement is soliciting applications for project periods up to 3 years (36 months). Awards, on a competitive basis, will be for a 12-month budget period, although project periods may be for 3 years. Applications for continuation grants beyond the first 12-month budget period but within the 36-month project period will be entertained in subsequent years on a noncompetitive basis, subject to the availability of funds, satisfactory progress of the grantee, and a determination that continued funding would be in the best interest of the Federal Government.

Instrument and Funding: ACF will issue the Financial Assistance Awards under this announcement as cooperative

agreements. ACF expects to award a total of up to \$24.5 million under this announcement. ACF estimates that 15–25 intermediary organizations can be supported by this level of funding. The level of funding includes funds that will be used by intermediary organizations to provide technical assistance and make sub-awards to help the smaller faith-based and community-based organizations that they assist. Applicants shall specify in their budget documents estimates of the amount of funds to be used for each purpose (technical assistance and sub-awards). ACF expects to award funds both to applicants that propose to provide technical assistance and sub-awards in single geographic coverage areas and those that propose to provide technical assistance and sub-awards in multiple areas. ACF expects that the amount of the funding requested per applicant will reflect the coverage area proposed in the application as well as the range of activities proposed and justified in the application. It is anticipated that applicants that propose to provide technical assistance and make sub-awards over a larger coverage area (*e.g.*, regional or multi-city/county) will require more support than applicants proposing to cover smaller areas (*e.g.* a single city/county).

C. Cost Sharing

Grantees should provide a minimum cost share of fifty (50) percent of the total Federal funds requested for each 12-month budget period. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet the cost share through cash contributions. As an example, an applicant requesting \$1 million in Federal funds would include a cost share of at least \$500,000 (*i.e.*, the non-Federal funds equal 50% of the Federal funds requested) and an applicant requesting \$500,000 in Federal funds would include a cost share of at least \$250,000.

D. Roles and Responsibilities Under the Cooperative Agreement

Federal Officials Minimum Responsibilities

1. Promote collaborative relationships and facilitate the exchange of information (*e.g.*, identified technical assistance and training needs, emerging issues, research findings, available resources, model programs) among intermediary organizations funded under this announcement and between the funded intermediaries and other entities or organizations engaged by

ACF for purposes related to the Compassion Capital Fund.

2. Provide consultation to each approved intermediary organization with regard to the development of work plans, special issues and concerns and approaches to address problems that arise, and identification of any special focus areas for technical assistance.

3. Provide timely review, comment, and approval on sub-award plans and procedures submitted by approved intermediary organizations.

4. Sponsor meetings of all technical assistance providers funded under the Compassion Capital Fund demonstration program to promote coordination, information sharing, and access to resources, training and learning opportunities.

5. Work together to address issues or problems identified by the intermediary organization, ACF, or others with regard to the applicant's ability to carry out the full range of activities included in the approved application in the most efficient and effective manner.

Applicant Minimum Responsibilities

1. Develop and implement work plans that will ensure that the services and activities included in the approved application address the needs of faith- and community-based organizations in an efficient, effective and timely manner.

2. Submit for Federal approval plans and procedures for the issuance of sub-awards within 60 days of receipt of approval under this announcement and prior to the issuance of any such sub-awards. The plan shall indicate how priority will be given to programs that address homelessness, hunger, at-risk children, welfare-to-work transition, and individuals needing intensive rehabilitation such as addicts and prisoners. Submit regular reports, no less frequently than quarterly, on sub-awards made with Federal funds that include, at a minimum, name and description of the organization receiving the sub-award, summary of the purpose of the award (how the funds are to be used), the amount of award, and the proposed plan for outcomes measurement and program evaluation of the activities that will be supported with sub-award funds made with Federal funds awarded under this announcement.

3. Work collaboratively with ACF officials, other Federal agency officials conducting similar activities, the other intermediary organizations approved under this announcement, and other entities or organizations engaged by ACF to assist in carrying out the

purposes of the Compassion Capital Fund program.

4. Ensure that key staff attends and participates in ACF sponsored workshops and meetings.

5. Develop a reporting system and submit required quarterly progress and financial reports timely and completely. In addition to information about sub-awards as specified in item 2, above, the regular quarterly reports shall include, at a minimum, information about the technical assistance provided and unduplicated listings of the organizations receiving assistance during the period. Such listings shall include the organization name, type (e.g., faith-based, community-based), location, a brief description of the organization, and brief summary of the technical assistance provided.

Part III. The Review Process

A. Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, states may design their own processes for reviewing and commenting on proposed applications for Federal assistance under covered programs.

As of April 8, 2002, the jurisdictions listed below have elected *not* to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by federally recognized Indian Tribes need take no action in regard to Executive Order 12372. Although the jurisdictions listed below no longer participate in the process, grant applicants are still eligible to apply for a grant even if a state, territory, commonwealth, etc. does not have a Single Point of Contact (SPOC).

Alabama; Alaska; Arizona; Colorado; Connecticut; Kansas; Hawaii; Idaho; Indiana; Louisiana; Massachusetts; Minnesota; Montana; Nebraska; New Jersey; New York; Ohio; Oklahoma; Oregon; Palau; Pennsylvania; South Dakota; Tennessee; Vermont; Virginia; Washington and Wyoming.

All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. The applicant must submit all required materials, if any, to the SPOC and indicate the date of the submittal (or the

date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. Applicants must submit any required material to the SPOCs as soon as possible so that the Federal program office can obtain and review SPOC comments as part of the award process. A listing of the SPOC for each participating state and territory with contact and address information is available at: <http://www.whitehouse.gov/omb/grants/spoc.html>.

B. Initial ACF Screening

Each application submitted under this program announcement will undergo a pre-review to determine that (1) the application was received by the closing date and submitted in accordance with the instructions in this announcement and (2) the applicant is eligible for funding.

C. General Instructions for the Uniform Project Description

The following ACF Uniform Project Description has been approved under OMB Control Number 0970-0139, which expires 12/31/2003. This format is to be used to submit an application under this announcement. 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.

Consistent with the Uniform Program Description format, the specific evaluation criteria applicable to this program follows in section D.

1. *Objectives and Need for Assistance:* Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be

outside the scope of the program announcement.

2. *Results or Benefits Expected:* Identify the results and benefits to be derived. For example, when applying for an award to provide technical assistance to community and faith-based charitable organizations, describe specific goals of the proposed technical assistance strategy; e.g., expansion of program capacity; increase in types of services offered; increased access to funding from different sources and sectors; improvement in staff capabilities; or replication of successful program models ("best practices").

3. *Approach:* Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement. Describe how the faith- and community-based organizations with which they would work have been underserved by Federal and other resources in the past and the reasons why the applicant believes its services would benefit the types of faith- and community-based organizations intended to be served through the Compassion Capital Fund. Describe past experience working with faith-based and community organizations to address social needs.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in, for example, such terms as the average number of days of technical assistance to be provided, the number of faith and/or community-based organizations to be provided services, or number of sub-awards to be issued to faith- or community-based organizations. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information that is conducted or sponsored by HHS." List organizations, cooperating entities, consultants, or other key individuals whom will work on the project along

with a short description of the nature of their effort or contribution.

4. *Geographic Location:* Describe the precise location of the project and boundaries of the area to be served by the proposed project. Maps or other graphic aids may be attached.

5. *Staff and Position Data:* Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

6. *Budget and budget justification:* Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF-424. Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

Budget and Budget Justification Guidelines: The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, "Federal resources" should refer only to the HHS grant for which you are applying. For these purposes, "Non-federal resources" are all other resources. If other Federal resources will be used, they should be included under Non-Federal for budget display purposes but other Federal resources may NOT be used to meet the cost sharing provision, as discussed in Part II, section D. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific

project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend HHS sponsored workshops should be detailed in the budget.

Equipment

Description: "Equipment" means an article of tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) \$5,000. (**Note:** Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other

information which supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those that belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at \$100,000). Recipients might be required to make available to HHS pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Construction

N/A.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency. Applicants without an approved indirect cost rate may charge related costs as direct costs.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgment that the applicant is accepting a lower rate than allowed.

Program Income

Description: The estimated amount of income, if any, expected to be generated from this project.

Justification: Describe the nature, source and anticipated use of program income in the budget or refer to the pages in the application which contain this information.

Non-Federal Resources

Description: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF424.

Justification: The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each funding source.

Note: In the SF424A, Section B, Budget Categories, list in column 2 non-federal resources separately from federal resources, which must be listed in column 1.

D. Competitive Review and Evaluation Criteria

Applications which pass the initial ACF pre-review screening will be evaluated and rated by an independent review panel on the basis of specific evaluation criteria. The evaluation criteria were designed to assess the quality of the proposed project and to determine the likelihood of its success. The evaluation criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to

applications that are responsive to the evaluation criteria within the context of this program announcement.

There is no formal page limit for the complete application. However, ACF estimates that applicants should require no more than 30 pages to provide needed information. Applicants are highly encouraged to be concise and only provide the information requested and needed. Supplementary information (e.g., brochures, reports) not required in this announcement will not be reviewed. More information about application submission is provided under Part IV, below.

Proposed projects will be reviewed using the following evaluation criteria:

(1) Approach: (40 Points)

The proposed program approach should consist of two parts: (1) A technical assistance strategy; and, (2) a plan for the issuance of awards or sub-awards by the applicant to faith- and community-based organizations.

The application should describe the proposed approaches for assessing the range of needs and for the design and delivery of customized technical assistance to faith- and community-based organizations within the geographic area proposed to be covered. The application should include discussion of the types of assistance and supports that are to be provided with Federal funds, describe in detail the proposed approaches to identify diverse organizations that might benefit from the services available, and discuss methods to reach and involve large numbers of such organizations, including small organizations and those with which the applicant has less experience. In addition, the application should describe proposed methods to effectively address a variety of needs of such organizations to increase their capacity and effectiveness, and whether the methods have been effectively used by successful service programs. The application should describe how the proposed geographic area will be covered. Further, the application should include discussion of the proposed schedule for accomplishing the activities planned and factors that may negatively affect the project, and suggestions for addressing such factors.

The application should provide information about the methods expected to be used to make sub-awards including: Methods for informing potential applicants about the funds available; methods for soliciting applications or requests for sub-awards; the proposed application and/or decision making process; the criteria to be used for identifying "best" or

“promising” practices when sub-awards would be made to replicate or expand such practices; the methods to be used to make award and process sub-awards; and the plan for outcomes measurement and program evaluation of the activities that will be supported with sub-award funds made with Federal funds awarded under this announcement.

The application will also be judged on the extent to which the proposed approaches to providing technical assistance to faith- and community-based organizations are thorough, adequate, workable, and likely to meet successfully a range of needs of such organizations and the stated objectives under this announcement. In addition, the application will be judged on the reasonableness and appropriateness of the approach proposed in relation to the geographic area proposed to be covered, the range of types of organizations expected to be assisted within the coverage area, and methods to inform and reach varied types of organizations particularly small organizations that have typically not been involved in similar activities.

The application will also be judged on the extent to which the plan for sub-awards is clear, well conceived, reasonable, likely to meet the objectives for the activity as set out in this announcement, including making sub-awards to address the priority areas identified. In addition, the application will be judged on the extent to which the plan is fiscally responsible and sound but not overly burdensome for faith- and community-based organizations. Further, the application will be judged on the extent to which both parts of the program approach (technical assistance and sub-awards) are combined to form a coherent plan to achieve the expected results and benefits, establish positive, ongoing relationships between the intermediary and smaller organizations, and meet the objectives of the Compassion Capital Fund. The application will also be judged on the reasonableness of the proposed schedule for accomplishing tasks proposed.

(2) Results or Benefits Expected: (15 points)

The application should include discussion of the specific goals of the proposed technical assistance strategy and sub-awarding process. The application should describe who the results will benefit, how the results may benefit such individuals or organizations, and why the results would be expected to be beneficial. The application will be judged on the extent to which the benefits proposed by the

applicant are reasonable and likely, will support the stated goals under this announcement, and can be expected to have a positive impact on faith- and community-based organizations, particularly very small organizations or those which have not traditionally been served by Federal and other resources. The application will be judged on the extent to which the results are likely to be beneficial to a wide range of clearly identifiable parties.

(3) Staff and Position Data: (15 Points)

The application should include a listing of key positions required to carry out the project as proposed, the key individuals proposed to fill the positions (*i.e.*, both in the management/oversight arena and in the area of day-to-day operations) and a detailed description of the kind of work the individuals will perform within the project. The application should provide evidence of the staff's skill, knowledge and experience in carrying out the sort of activities to be assigned to them and describe their relevant training. Similar information should be provided with regard to consultants or staff from other organizations proposed to work on the project. The application should also describe the applicant organization, its mission, and experience in supporting the types of activities and staffing likely to be required under this announcement and the types of support expected to be provided by the organization for the project. The application should clearly describe past experiences working with faith- and community-based organizations to address social needs.

The application will be judged on the extent to which proposed staff has demonstrated skills, knowledge, and experience in providing technical assistance and support of the types set out under this announcement and required by faith- and community-based organizations and in carrying out the specific activities to be assigned to them. The application will be also be judged on the extent of demonstrated organizational experience and capability to support and conduct work on the scope and scale as proposed in the application.

Further, the application will be judged on the appropriateness of the management plan to ensure that: work is accomplished as proposed and on schedule; appropriate lines of communication and oversight are established; appropriate methods to monitor quality of work are proposed; and appropriate methods to work closely and cooperatively with ACF and other entities funded by ACF are addressed.

(4) Objectives and Need for Assistance: (10 points)

The applications should include discussion of (1) the needs and types of technical assistance required by faith- and community-based organizations in the geographic area that the applicant proposes to serve; and (2) the issues and challenges the applicant has considered and dealt with in designing and providing technical assistance and support to faith-based and community-based organizations. In addition, the application should include a discussion of the extent to which faith- and community-based organizations with which they would work have been underserved by Federal and other resources in the past and reasons why the applicant believes its services would benefit the types of faith- and community-based organizations intended to be served through the Compassion Capital Fund. Applications will be judged on the clarity and thoroughness of the discussion and its relevance to the program objectives set out within this announcement.

(5) Geographic Location: (10 points)

The application should include a description of the precise geographic location proposed to be served, including the boundaries of the area, and the rationale for the geographic area proposed. Maps or other graphic aids may be included. Applications should include information about the experience and capability of the applicant to address the needs of faith- and community-based organizations in the proposed geographic area.

The application will be judged on the extent to which the proposed geographic coverage area is clearly defined, reasonable given the relevant background and experience of the applicant organization, reasonable given the proposed approach, staffing, and project budget, and reasonable and adequate to allow the activities as described in this announcement to be provided to a range of faith- and community-based organizations in need of such services.

(6) Budget and Budget Justification: (10 points)

The application must include a narrative description and justification for each of the proposed budget line items (as described in the detailed budget instructions included above) and demonstrate that the project's costs are adequate, reasonable and necessary for the activities or personnel to be supported. The proposed budget must clearly distinguish between the two

program activities: technical assistance and awards/sub-awards, and set out the Federal share and non-Federal share of project costs.

Applications that do not include the cost sharing amount specified in Part II will not receive any points under this criteria. For those that meet the cost share provision, the application will be judged on the extent to which the budget is clear, adequate, reasonable, and necessary to support and successfully carry out the tasks and activities proposed and support the number and kinds of staff necessary.

(Applicants should refer to the budget information presented in the Standard Forms 424 and 424A and to the budget justification instructions in section C. *General Instructions for the Uniform Project Description*. Since non-Federal reviewers will be used in the review of applications, applicants may omit from the copies of the application submitted (not from the original), the specific salary rates or amounts for individuals in the application budget and instead provide only summary information.)

E. The Review Process

Applications received by the due date will be reviewed and scored competitively. Experts in the field, generally persons from outside the Federal Government, will use the evaluation criteria listed in Part III of this announcement to review and score the applications. The results of this review are a primary factor in making funding decisions. ACF may also solicit comments from Regional Office staff and other Federal agencies. In order to ensure that the interests of the Federal Government are met in making the final selections, in addition to the review criteria identified above, ACF may consider a variety of factors including geographic diversity/coverage and types of applicant organizations. Further, ACF may limit the number of awards made to the same or affiliated organizations although they would serve different geographic areas. In this way ACF may increase opportunities for learning about different ways to provide technical assistance and support to faith- and community-based organizations.

Please note that applicants that do not comply with the requirements in the section on "Eligible Applicants" will not be included in the review process.

Part IV. The Application Process

A. Required Forms

Eligible applicants interested in applying for funds must submit a complete application including the

required forms listed under the "Checklist for complete application" in Part IV of this announcement. All necessary forms are available at: <http://www.acf.dhhs.gov/programs/ofsf/forms.htm>.

In order to be considered for a grant under this announcement, an application must be submitted on the Standard Form 424 approved by the Office of Management and Budget under Control Number 0348-0043. Each application must be signed by an individual authorized to act for the applicant and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, Assurances: Non-Construction Programs (approved by the Office of Management and Budget under control number 0348-0040). Applicants must sign and return the Standard Form 424B with their application.

Applicants must provide a certification concerning lobbying. Prior to receiving an award in excess of \$100,000, applicants shall furnish an executed copy of the lobbying certification (approved by the Office of Management and Budget under control number 0348-0046). Applicants must sign and return the certification with their application.

Applicants must make the appropriate certification of their compliance with the Drug-Free Workplace Act of 1988. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for award. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

B. Application Limits

The application should be double-spaced and single-sided on 8 1/2" x 11" plain white paper, with 1" margins on all sides. Use only a standard size font no smaller than 12 pitch throughout the application. All pages of the application (including appendices, resumes, charts, references/footnotes, tables, maps and exhibits) must be sequentially numbered, beginning on the first page after the budget justification, the principal investigator contact information and the Table of Contents. Although there is no limitation regarding number of pages, applicants are urged to be concise and limit

applications to no more than 30 pages. Applicants are requested not to send pamphlets, brochures, or other printed material along with their applications as these pose copying difficulties. These materials, if submitted, will not be included in the review process. In addition, applicants must not submit any additional letters of endorsement beyond any that may be required. Applicants are encouraged to submit curriculum vitae in a biographical format.

C. Checklist for a Complete Application

The checklist below is for your use to ensure that the application package has been properly prepared.

- One original, signed and dated application plus two copies.
- Attachments/Appendices, when included, should be used only to provide supporting documentation such as resumes, and letters of agreement/support.
 - (1) Application for Federal Assistance (SF-424, Rev. 7-97)
 - (2) Budget information-non-construction programs (SF424A&B)
 - (3) Budget Justification, including subcontract agency budgets
 - (4) Application Narrative and Appendices
 - (5) Assurances Non-Construction Program
 - (6) Certification Regarding Lobbying
 - (7) If appropriate, a completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF-424, REV. 7-97

D. Application Submission

Deadline. The closing (deadline) time and date for receipt of applications is 4:30 p.m. (Eastern Time Zone) on the date indicated under CLOSING TIME AND DATE at the beginning of this announcement. Applications received after 4:30 p.m. will be classified as late.

Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the: OCS Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, Virginia 22202 and labeled: Application for Compassion Capital Fund Demonstration Program. Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications handcarried by applicants, applicant couriers, or other representatives of the applicant or by overnight/express mail couriers shall be considered as meeting an announced

deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m. at: OCS Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, Virginia 22202 and labeled: Application for Compassion Capital Fund Demonstration Program. Applicants are cautioned that express/overnight mail services may not always deliver as agreed.

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

Late applications. Applications that do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its

application will not be considered in the current competition.

Extension of deadlines. ACF may extend an application deadline for applicants affected by acts of God such as floods and hurricanes, when there is widespread disruption of the mail service, or for other disruptions of services, such as a prolonged blackout, that affect the public at large. A determination to waive or extend deadline requirements rest with ACF's Chief Grants Management Officer.

E. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, Public Law 104-13 the Department is required to submit to OMB for review and approval any reporting and record keeping requirements in regulations including program announcements. All information collections within this

program announcement are approved under the following current valid OMB control numbers 0348-0043, 0348-0044, 034800040, 0348-0046, 0925-0418 and 0970-0139.

Public reporting burden for this collection is estimated to average 25 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection of 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.

Dated: May 31, 2002.

Wade F. Horn,

Assistant Secretary for Children and Families.
[FR Doc. 02-14319 Filed 6-6-02; 8:45 am]

BILLING CODE 4184-01-P



Federal Register

**Friday,
June 7, 2002**

Part IV

Department of Education

**Disability and Rehabilitation Research
Projects (DRRP) Program; Notices**

DEPARTMENT OF EDUCATION**Disability and Rehabilitation Research Projects (DRRP) Program**

AGENCY: National Institute on Disability and Rehabilitation Research (NIDRR), Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priorities.

SUMMARY: The Assistant Secretary announces final priorities for one or more Burn Model Systems (BMS) Projects, one Burn Data Center (BDC), and for a Traumatic Brain Injury Model Systems (TBIMS) Program. The Assistant Secretary may use one or more of these priorities for competitions in FY 2002 and in later years. We take this action to focus research attention on identified national needs. We intend these priorities to improve the rehabilitation services and outcomes for individuals with severe burn injuries and Traumatic Brain Injury (TBI).

EFFECTIVE DATE: These priorities are effective June 7, 2002.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3412, Switzer Building, Washington, DC 20202-2645. Telephone: (202) 205-5880 or via the Internet: donna.nangle@ed.gov.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205-4475.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

The purpose of the DRRP Program is to plan and conduct research, demonstration projects, training, and related activities that help to maximize the full inclusion and integration of individuals with disabilities into society and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (the Act).

This priority reflects issues discussed in the New Freedom Initiative (NFI) and NIDRR's Long-Range Plan (the Plan). The NFI can be accessed on the Internet at: <http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html>.

The Plan can be accessed on the Internet at: <http://www.ed.gov/offices/OSERS/NIDRR/Products>.

We published a notice of proposed priorities (NPP) for the Burn Model

Systems (BMS) Projects and the Burn Data Center (BDC) in the **Federal Register** on March 5, 2002 (67 FR 10088). We also published a separate notice of proposed priority for Traumatic Brain Injury Model Systems (TBIMS) in the **Federal Register** on March 5, 2002 (67 FR 10094). We have combined in this notice of final priorities the priorities for the BMS, BDC, and TBIMS. This NFP contains several significant changes from the NPP. Specifically for the BMS, we have made the conference reflect the topic rather than the title. We will determine the location of the project directors' meeting after award, rather than specify at this time that the meeting must be held in Washington, DC. Specifically for the TBIMS, we added a priority on measures, we added neurological recovery as a possible research issue, and we expanded the settings in which research on diagnostic procedures can occur. We fully explain these changes in the Analysis of Comments and Changes elsewhere in this notice.

The backgrounds for each of the priorities were published in their respective notices of proposed priority.

Analysis of Comments and Changes

In response to our invitation in the NPPs, several parties submitted comments on the proposed priorities (seven parties for the BMS, one party for the BDC, and 28 parties for the TBIMS). An analysis of the comments and of any changes in the priorities since publication of the NPPs is published as an appendix at the end of this notice. We discuss comments under the priority to which they pertain.

Generally, we do not address technical and other minor changes and suggested changes the law does not authorize us to make under the applicable statutory authority.

Note: This notice does not solicit applications. In any year in which we choose to use these priorities, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational.

Priorities*Priority 1—Burn Model System Projects*

This priority supports one or more Burn Model System projects for the purpose of generating new knowledge through research to improve treatment and service delivery outcomes for persons with burn injury. A BMS project must:

(1) Establish a multidisciplinary system that begins with acute care and encompasses rehabilitation services

specifically designed to meet the needs of individuals with burn injuries. This system must encompass a continuum of care, including emergency medical services, acute care services, acute medical rehabilitation services, post-acute services, psychosocial/vocational services, and long-term community follow up.

(2) Participate as directed by the Assistant Secretary in national studies of burn injuries by contributing to a national database and by other means as required by the Assistant Secretary; and

(3) Conduct no more than five research studies in burn injury rehabilitation, ensuring that each project has sufficient sample size and methodological rigor to generate robust findings that will contribute to the advancement of knowledge in accordance with the NFI and the Plan. These studies may be done in collaboration with other BMS projects.

In proposing research studies, applicants must demonstrate their potential impact on rehabilitation goals and objectives. Applicants may select from the following research directives related to specific areas of the NFI and the Plan:

- *Integrating Individuals with Disabilities into the Workforce:* (1) Assess intervention strategies for improving employment outcomes of individuals surviving severe burns; or (2) Identify environmental factors that either enable or impede community and workplace integration.

- *Maintaining Health and Function:* (1) Study interventions to improve rehabilitation potential in the acute care setting such as nutritional support, early therapeutic exercise to increase mobility, treatment for scar tissue, or the prevention and treatment of secondary conditions; (2) Develop and evaluate rehabilitation treatment/interventions for individuals surviving severe burns; or (3) Design and test service delivery models that provide quality rehabilitation care for burn survivors under constraints imposed by recent changes in the health care financing system.

- *Assistive and Universally Designed Technologies:*

(1) Evaluate the impact of selected innovations in technology (e.g., assistive devices, biomaterials) on outcomes such as function, independence, and employment of individuals with burn injuries; or (2) Investigate the impact of national telecommunications and information policy on the access of individuals with burn injuries to related education, work, and other opportunities.

- *Full Access to Community Life:* Assess the value of peer support and early onset of services from community and social support organizations to improve outcomes such as independence, community integration, employment, function, and health maintenance.

- *Associated Areas:* Develop and refine measures of treatment effectiveness in burn rehabilitation to incorporate environmental factors in the assessment of function.

(4) Provide widespread consumer-oriented dissemination activities to other burn projects, rehabilitation practitioners, researchers, individuals with burn injuries and their families and representatives, and other public and private organizations involved in burn care and rehabilitation.

In carrying out these purposes, the projects must:

- Involve individuals with disabilities or their family members or both, individuals who are members of groups that have traditionally been underrepresented, and consumers, as appropriate, in all stages of the research and demonstration endeavor;

- Demonstrate culturally appropriate and sensitive methods of data collection, measurements, and dissemination addressing needs of burn survivors with diverse backgrounds;

- Demonstrate the research and clinical capacity to participate in collaborative projects, clinical trials, or technology transfer with other BMS projects, other NIDRR grantees, and similar programs of other public and private agencies and institutions; and

- In conjunction with other BMS projects, plan and conduct a state-of-the-science conference late in the fourth year on new trends in burn injury rehabilitation and publish a comprehensive report on the final outcomes of the conference. The report must be published in the fifth year of grant.

Priority 2—Burn Data Center

This priority supports a Burn Data Center (BDC) for the purpose of managing and facilitating the use of information collected by the BMS projects on individuals with burn injury. The BDC must:

(1) Establish and maintain a database repository for data from BMS projects while providing for confidentiality, quality control, and data retrieval capabilities, using cost-effective and user-friendly technology;

(2) Ensure data quality, reliability, and integrity by providing training and technical assistance to BMS projects on

data collection procedures, data entry methods, and use of study instruments;

(3) Provide consultation to NIDRR and to directors and staff of the BMS projects on utility and quality of data elements;

(4) Support efforts to improve the research findings of the BMS projects by providing statistical and other consultation regarding the national database;

(5) Facilitate dissemination of information generated by the BMS projects, including statistical information, scientific papers, and consumer materials;

(6) Evaluate the feasibility of linking and comparing BMS data to population-based data sets or other available burn data and provide technical assistance for such linkage, as appropriate; and

(7) Develop guidelines to provide access to BMS data by individuals and institutions, ensuring that data are available in accessible formats for individuals with disabilities.

In carrying out these purposes, the center must:

- Demonstrate knowledge of culturally appropriate methods of data collection, including understanding of culturally sensitive measurement approaches; and

- Collaborate with other NIDRR-funded projects, e.g., the Model Spinal Cord Injury and TBIMS Data Centers, regarding issues such as database development and maintenance, center operations, and data management.

Priority 3—Traumatic Brain Injury Model Systems

This priority supports Traumatic Brain Injury Model System projects for the purpose of generating new knowledge through research to improve treatment and services delivery outcomes for individuals with TBI. A TBIMS project must:

(1) Have a multidisciplinary system of rehabilitation care specifically designed to meet the needs of individuals with TBI. This system must: (a) Encompass a continuum of care, including emergency medical services, acute care services, acute medical rehabilitation services, and post-acute services; and (b) demonstrate the ability to enroll adequate numbers of subjects in order to conduct rigorous research projects.

(2) Conduct no more than three research studies focused on areas identified in the NFI and the Plan, ensuring that each project has sufficient sample size and methodological rigor to generate robust findings. These studies may be done in collaboration with other TBIMS projects.

(3) Participate as directed by the Assistant Secretary in national studies of TBI by contributing to a national database and by other means as required by the Assistant Secretary, collect data on TBIMS participants, adhering to data collection and data quality guidelines developed by the TBINDC in consultation with NIDRR, and demonstrating capacity to maintain long-term retention of participants.

(4) Disseminate research findings to clinical and consumer audiences, using accessible formats, and evaluate impact of these findings on improved outcomes for individuals with TBI.

(5) Collaborate, as appropriate, with other system projects in ongoing research and dissemination efforts, providing information on coordination mechanisms, quality control, and impact on overall management of the system project.

In carrying out these purposes, the TBIMS project may select one of the following research objectives related to specific areas of the NFI or the Plan:

- *Integrating Individuals with Disabilities into the Workforce:* (1) Develop and evaluate strategies that improve the employment outcomes of individuals with TBI, particularly focusing on job quality and job stability; and (2) Investigate the relationship between treatment in TBIMS and improved employment outcomes for individuals with TBI.

- *Maintaining Health and Function:* (1) Study the impact of diagnostic innovations, such as use of intracranial pressure and functional MRI, on management of rehabilitation outcomes; (2) Identify pharmacologic interventions of psychoactive drugs and other pharmacologic agents to enhance cognitive and behavioral outcomes, (3) Design and test rehabilitation interventions that improve neurological recovery (including motor and cognitive recovery), functional, and long-term outcomes of individuals with TBI; or (4) Examine treatment alternatives for depression and other affective disorders.

- *Assistive and Universally Designed Technologies:* (1) Evaluate the impact of selected innovations in technology or rehabilitation engineering or both on outcomes such as function, independence, and employment; or (2) Evaluate the impact of selected innovations in technology or rehabilitation engineering or both on service delivery to individuals with TBI.

- *Full Access to Community Life:* (1) Develop and test strategies for improving the independent living/ community integration outcomes of individuals with TBI, including identifying predictors of community

participation and interventions that may affect it; (2) Evaluate the role of family and social supports in facilitating the independent living/community integration outcomes of individuals with disabilities; or (3) Examine the impact of environmental and attitudinal barriers on the outcomes of individuals with TBI.

- *Associated Areas:* Conduct research to develop new or assess existing measures to support the research goals described above.

In carrying out these purposes, the TBIMS project must:

- Involve, as appropriate, individuals with disabilities or their family members or both, individuals who are members of groups that have traditionally been underrepresented in all aspects of the research as well as in design of clinical services and dissemination activities.

- Demonstrate knowledge of culturally appropriate methods of data collection, including understanding of culturally sensitive measurement approaches; Collaborate with other related projects, including the other funded TBIMS projects.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Applicable Program Regulations: 34 CFR part 350.

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Program Authority: 29 U.S.C. 762(g) and 764(b).
(Catalog of Federal Domestic Assistance Number 84.133A, Disability and Rehabilitation Research Project)

Dated: June 3, 2002.

Robert H. Pasternack,
Assistant Secretary for Special Education and Rehabilitative Services.

Appendix—Analysis of Comments and Changes

Priority 1—Burn Model Systems (BMS) Projects

Comment: One commenter asked that the priority include a focus on unique issues regarding social integration and psychosocial rehabilitation faced by children with severe burn injuries.

Discussion: An applicant could propose a study pertaining to these issues; however, NIDRR has no basis to determine that all applicants should be required to focus on these issues. The peer review process will evaluate merits of the proposal.

Changes: None.

Comment: Several commenters noted that the new model seems to emphasize the clinical and logistical aspects of rehabilitation (e.g., functional recovery, ADLs), but lacked emphasis on psychological interventions and treatments for targeting problems of self-image, pain, or depression.

Discussion: Psychological treatment is an important component of burn care rehabilitation. An applicant could propose a study pertaining to these issues; however, NIDRR has no basis to determine that all applicants should be required to focus on these issues. The peer review process will evaluate merits of the proposal.

Changes: None.

Comment: One commenter suggested that, in the background statement, scars, contractures, etc. should be identified as primary complications rather than secondary complications.

Discussion: NIDRR's concern is the impact of complications in general on outcomes of individuals with serious burns. An applicant could propose a study pertaining to these issues; however, NIDRR has no basis to determine that all applicants should be required to focus on these issues. The peer review process will evaluate merits of the proposal.

Changes: None.

Comment: One commenter stated that neuropathy is not a common complication.

Discussion: Literature cited in the notice of proposed priorities identified neuropathy as a common complication in older and critically ill individuals with severe burn.

Changes: None.

Comment: One commenter asked that the state-of-the-science conference be held at Year five instead of Year four.

Discussion: NIDRR views the state-of-the-science conference as an important dissemination effort to stakeholders, scientific, and consumer communities, as well as burn survivors and their families. On this basis, NIDRR decided that the conference should be held late in the Year four so that the conference proceedings can be published during Year five.

Changes: None.

Comment: One commenter suggested that the conference title be changed to "Current Status of Burn Rehabilitation."

Discussion: Funded centers will have the opportunity to name the conference.

Changes: Priority has been changed to reflect the conference topic rather than title.

Comment: One commenter suggested that funded centers meet at the American Burn Association (ABA) once a year and not in Washington, DC.

Discussion: Funded centers will have the opportunity to discuss this issue at the first Project Director's meeting in Washington, DC. Meeting in Washington, DC would allow other NIDRR staff to attend Project Directors' meetings.

Changes: We are no longer requiring the meeting to be in held in Washington, DC. NIDRR will make this determination after award, rather than specify at this time that the meeting must be held in Washington, DC.

Comment: One commenter suggested removing reference to crab shells research.

Discussion: Applicants may choose to conduct research to evaluate the impact of selected innovations in technology. Choice of technologies for study, such as bio-technology based products, is up to the applicant; however, NIDRR has no basis to determine that all applicants should be required to focus on these issues. The peer review process will evaluate merits of the proposal.

Changes: None.

Comment: One commenter suggested expanding the focus on Telehealth.

Discussion: NIDRR concurs that Telehealth has potential for advancing burn care rehabilitation. An applicant could propose a study pertaining to this; however, NIDRR has no basis to determine that all applicants should be required to focus on this issue. The peer review process will evaluate merits of the proposal.

Changes: None.

Comment: One commenter suggested that the background discussion of environmental factors reflect both reality and the new paradigm.

Discussion: An applicant could propose a study pertaining to these issues; however, NIDRR has no basis to determine that all applicants should be required to focus on these issues. The peer review process will evaluate merits of the proposal.

Changes: None.

Comment: Several commenters asked for clarification regarding the number of proposed site-specific projects and collaborative projects.

Discussion: Applicants may choose to propose up to five research projects. One project must be designed as a collaborative study. NIDRR imposed a limit of five projects in order to encourage applicants to focus and to design more rigorous studies. The peer review process will evaluate merits of the proposal.

Changes: None.

Comment: Several commenters asked about the funding level and number of proposed centers.

Discussion: The Notice Inviting Applications will specify the proposed number of centers and the proposed funding level.

Changes: None.

Comment: One commenter suggested that research on long-term behavioral adjustment not be limited to pediatric burn survivors.

Discussion: An applicant could propose a study pertaining to these issues; however, NIDRR has no basis to determine that all applicants should be required to focus on these issues. The peer review process will evaluate merits of the proposal.

Changes: None.

Priority 2—Burn Data Center (BDC)

Comment: One commenter suggests that the BDC create formal linkages between the Burn Model Systems Data and the ABA/TRACS National Burn Repository.

Discussion: NIDRR will explore the mechanism to link the two centers within the context of the Department's policy.

Changes: None.

Priority 3—Traumatic Brain Injury Model Systems (TBIMS)—General Comments

Traumatic Brain Injury Model Systems (TBIMS)—General

Comment: A number of commenters asked whether there is a requirement that three projects be proposed.

Discussion: Applicants must conduct at least one but no more than three research studies. There is no requirement that applicants must propose three projects.

Changes: None.

Comment: A number of commenters asked whether the proposed research studies must fall within one single area or research objective.

Discussion: There is no requirement that all projects fall into one area. Applicants may propose projects that fall into different areas or across areas.

Changes: None.

Comment: A commenter asked for clarification on how the proposed limit of no more than three studies will be applied over a multiyear grant. For instance, does NIDRR expect each study to run for the complete multiyear funding period? Can serial substudies be proposed over multiple years in a single study for up to three study areas?

Discussion: The design and duration of research studies is left up to each individual applicant. There is no requirement that each study run for the complete multiyear funding period. Serial substudies can be proposed over multiple years in a single study for up to three study areas.

Changes: None.

Comment: Several commenters asked if multi-center collaborations are allowed in addition to the three projects referenced in the announcement, stressing the importance of such collaboration for increasing sample size and reducing repetitive efforts.

Discussion: The purpose of the limit of three projects is to encourage applicants to focus and to design more rigorous studies. For this reason, NIDRR has determined that applicants should not propose more than three projects in total. However, nothing prohibits an applicant from proposing collaborative efforts as one of the three research projects. In fact, NIDRR has supported increased collaboration across centers and plans to fund multi-center collaborative TBI research projects in FY03.

Changes: None.

Comment: One commenter asked if new applicants for TBIMS have to compete with currently funded projects.

Discussion: The competition is for the next five years of funding for the TBIMS. It is open to all eligible applicants, including currently funded projects that must compete for renewed funding.

Changes: None.

Comment: One commenter asked how likely is it that newcomers (e.g., first-time applicants) could be successful in applying for this grant program.

Discussion: Applications for the TBIMS grant program are subject to an independent peer review process. Each application is reviewed on its merits based upon the evaluation criteria published with the final notice. Prior membership in the TBIMS is not an evaluation criterion.

Changes: None.

Comment: A number of commenters requested that the priority include consideration of children age 16 and younger. Children sustain significant physical, neurocognitive, psychosocial, and developmental deficits as a result of TBI.

Discussion: NIDRR is very concerned about the rehabilitation of children who experience TBI and currently funds several projects examining rehabilitation interventions and outcomes of individuals under age 16. The TBIMS projects were designed to focus on adult populations. At this time, NIDRR does not propose to expand the TBIMS projects to include children. However, NIDRR is considering mechanisms by which to expand research on rehabilitation for adolescents and children with TBI.

Changes: None.

Comment: One commenter noted that achieving good rehabilitation outcomes requires addressing the needs of the family system. Therefore, projects should examine the impact of brain injury on families and the impact of families on rehabilitation outcomes.

Discussion: An applicant could propose a study pertaining to these topics; however, NIDRR has no basis to determine that all applicants should be required to focus on these issues. The peer review process will evaluate merits of the proposal.

Changes: None.

Comment: One commenter identified a need for the TBIMS projects to adopt a broader view of rehabilitation for brain injury. The TBIMS projects have historically been managed by medical schools and centers and, therefore, focused on medical models of rehabilitation. University-based schools of education, for example, could collaborate with other partners to examine such topics as education for children, youth, and young adults.

Discussion: NIDRR will consider applications from any applicant that meets the statutory requirements under the funding authority, encompassing States, public or private agencies, including for-profit agencies, public or private organizations, including for-profit organizations, institutions of higher education, and Indian tribes and tribal organizations. The peer review process will evaluate the merits of the approach used by the applicant.

Changes: None.

Comment: Several commenters spoke to the need for TBIMS projects to collaborate formally or informally with other nationally funded projects, such as State projects funded by the Health Resources Services Administration's Maternal and Child Health Bureau, Center for Disease Control projects, or State initiatives.

Discussion: NIDRR encourages collaboration across Federal, State, and other funding mechanisms. The peer review process will evaluate merits of the proposal. However, NIDRR has no basis to determine that all applicants should be required to collaborate with other national or State-funded projects.

Changes: None.

Comment: One commenter asked whether letters of collaboration are required for proposed collaboration sites.

Discussion: The evaluation criteria include a requirement that evidence of commitment be provided for collaborators.

Changes: None.

Comment: One commenter asked how applicants can be expected to specify the type and number of staff, staff deployment, and training and supervision for longitudinal data collection when the priority does not specify what data will need to be collected, where, and with what frequency. Future changes in inclusion criteria could also have significant implications for the volume, site, and nature of data collection.

Discussion: Applicants should budget costs associated with data collection on elements in the current data base (the data elements are available by linking to <http://www.tbims.org>

Changes: None.

Comment: One commenter expressed concern about using the current inclusion criteria for the TBIMS. These inclusion criteria target individuals who receive inpatient rehabilitation immediately following acute care. Four issues are identified: (1) a sample using this approach will be unrepresentative of persons with moderate and severe TBI; (2) required enrollment volumes will be increasingly difficult to maintain; (3) applications of individual centers in geographic areas with high managed care penetration may be penalized, and (4) recruitment and followup costs will be impossible to project if inclusion criteria are to be changed partway through a funding cycle.

Discussion: Changing the inclusion criteria was a subject of considerable discussion among the model systems directors during the last funding cycle; however, the model systems' directors reached no final decision on this issue. NIDRR anticipates that further discussion of inclusion criteria will occur and that modifications to the inclusion criteria are likely. For purposes of this priority, applicants must use the existing criteria for making projections of the number of subjects submitted to the model system database. NIDRR will work collectively and individually with programs to solve any cost implications that may result from changes to the inclusion criteria during the funding cycle.

Changes: None.

Comment: One commenter recommended that a quota be established for national database enrollment so that all centers will be required to submit the same number of cases per year.

Discussion: While not planning on establishing a quota for enrollment, NIDRR plans to monitor closely proposed and actual numbers of cases submitted to the national database during the funding cycle. Projects proposing to submit fewer than 35 cases per year would seem to be seriously limited in their ability to carry out rigorous research. The peer review process will evaluate merits of the proposal. For purpose of responding to this notice, prospective applicants should base their proposals on the anticipated numbers of individuals who meet the current inclusion criteria of the TBIMS.

Changes: None.

Comment: One commenter expressed concern that required collaboration could not take place if one or more of the involved projects are not funded.

Discussion: It seems reasonable to assume that, given the anticipated number of centers, it will be possible to replace a collaborator who is not funded. NIDRR recommends that applicants propose collaborations as deemed necessary for the studies that each project undertakes. NIDRR will work with any center where the lack of funding of a proposed collaborator creates a problem.

Changes: None.

Comment: One commenter expressed concern about how changes to data requirements for the national dataset would impact collaborative and other research.

Discussion: Changes involving the national dataset will be applied to every center equally. One criterion by which to evaluate decisions to remove data elements from the data set will be whether these are currently being used in a study. Also, an individual project or collaborating group has the option of continuing to collect data for purposes of an individual study even if the data are no longer required for the national dataset. Thus, it would appear that there is no limitation resulting from potential changes to the longitudinal dataset.

Changes: None.

Comment: One commenter expressed concern that the priority provides a disincentive to performance of high-quality efficacy research as planning multi-center treatment trials with unknown collaborators is virtually impossible.

Discussion: NIDRR will be announcing its TBI collaborative research funding grant program soon after the announcement of awards for the TBIMS. NIDRR anticipates that there will be 2-3 awards under this program, with funding sufficient to carry out multi-center trials and maintain research management oversight. For the current competition, NIDRR recommends collaboration as appropriate to increase sample size.

Changes: None.

Specific

Comment: Several commenters expressed concern about the study of diagnostic interventions, inquiring about the acceptability of conducting studies of

positron emission tomography (PET), SPECT, TMS, etc. on the management of rehabilitation outcomes.

Discussion: The diagnostic procedures mentioned in the proposed priority are examples. An applicant could propose a study pertaining to these; however, NIDRR has no basis to determine that all applicants should be required to focus on these issues. The peer review process will evaluate merits of the proposal.

Changes: None.

Comment: Several commenters stated that the study of diagnostic innovations should not be limited to acute management (in reference to point 1 of the Health and Function research area). Persons with TBI in the post-acute period often have residual impairments that may benefit from innovative new diagnostic procedures that may lead to more appropriate treatments.

Discussion: These comments make a valid point. NIDRR is interested in research that may improve outcomes for persons with TBI across the continuum of health care.

Changes: The word acute has been eliminated from this point in the final priority.

Comment: One commenter argued that research in the employment area should focus on developing a knowledge base to support specific interventions that address the unique challenges faced by individuals with brain injury while engaging in work.

Discussion: NIDRR strongly supports efforts to translate research into practice. Employment is a critical issue for persons with TBI. Applicants could propose to address this issue within the priority areas outlined in the priority. The peer review process will evaluate merits of the proposal.

Changes: None.

Comment: One commenter urged NIDRR to consider the impact of failure to classify TBI properly in the emergency room or in other service delivery settings in establishing its priorities.

Discussion: An applicant could propose a study pertaining to this; however, NIDRR has no basis to determine that all applicants should be required to focus on this issue. The peer review process will evaluate merits of the proposal.

Changes: None.

Comment: One commenter suggested that natural supports and volunteerism be included as possible research topics for the model systems.

Discussion: An applicant could propose a study pertaining to these research topics; however, NIDRR has no basis to determine that all applicants should be required to focus on these issues. The peer review process will evaluate merits of the proposal.

Changes: None.

Comment: One commenter was concerned about a perceived emphasis on predictors within the priority, stating that predictors may be used to screen out people from treatments or resources.

Discussion: NIDRR is interested in identifying factors that help predict whether interventions contribute to positive outcomes for persons with TBI. It is not interested in funding research that limits access to treatments or resources for individuals with TBI.

Changes: None.

Comment: Several commenters focused on the need for strong dissemination plans. TBIMS projects should be encouraged to have clear management plans with strong dissemination components. Model Systems should be charged with producing more materials that are research based and widely disseminated to the field, concerning subjects that are of importance to the field.

Discussion: Dissemination and operational plans are selection criteria for TBIMS projects. Thus, applicants are encouraged to provide evidence of their strengths in both dissemination and management, providing, for example, information on strategies, tools, and personnel to manage the project and disseminate its findings. The peer review process will evaluate merits of the proposal.

Changes: None.

Comment: Applicants should be required to focus research in areas of critical need for research-to-practice and to provide strong training components within each project.

Discussion: NIDRR supports training through a number of mechanisms, including the Fellowship program, the Advanced Rehabilitation Research Training program, and the Rehabilitation Research Training Center program. Because of funding levels, the TBIMS projects are not required to provide training as a component of the program but rather are required to emphasize service delivery and research as well as longitudinal data collection on the natural history of individuals with TBI.

Changes: None.

Comment: One commenter asked why the priority does not give mention activities described in Chapter 7 of NIDRR's Long-Range Plan, "Associated Disability Research Areas." There is a need for validation and development of measures of environment and accommodation, especially as the latter may apply to cognitive abilities. Other constructs such as community integration and quality of life require measurement refinement. It was suggested that some mention be given to these areas as they might relate to the four areas of research delineated in the proposed priority.

Discussion: NIDRR agrees that development of measures across the four areas delineated in the proposed priority could be an appropriate research activity for TBIMS projects.

Changes: The priority has been modified to permit applicants to choose to do research on TBI measures.

Comment: Consistent with the World Health Organization's shift to a multifaceted conceptualization of health and functioning as reflected in the recent publication of the International Classification of Functioning and Disability, TBIMS projects should focus on environmental barriers and facilitators.

Discussion: An applicant could propose a study pertaining to these topics; however, NIDRR has no basis to determine that all applicants should be required to focus on these issues. The peer review process will evaluate merits of the proposal.

Changes: None.

Comment: The TBIMS would be able to recruit substantially more participants if they were permitted to enroll subjects at the point

of admission to acute rehabilitation instead of acute care. This option preserves premium rehabilitation care and enhances the national database.

Discussion: The TBIMS project directors discussed this possibility during the last funding cycle. It is anticipated that there will be further discussion in the future.

Changes: None.

Comment: The use of the word "impact" in the priority, "Study the impact of diagnostic interventions * * *" suggests that the diagnostic innovations should be studied in relation to treatment interventions based on the results of the testing. However, basic studies establishing a relationship between neuroimaging results and rehabilitation outcome must be done before interventions can be designed. Can the priority include wording that allows for pre-interventional studies such as those assessing the predictive ability of diagnostic innovations?

Discussion: NIDRR funds applied rehabilitation research. While applicants are not precluded from proposing pre-interventional studies, they are urged to demonstrate the potential for designing new interventions. NIDRR has no basis to determine that all applicants should be required to focus on these issues. The peer review process will evaluate merits of the proposal.

Changes: None.

Comment: One commenter suggested that research on the use of homeopathic medicine in treating persons with traumatic rehabilitation be added to the priority.

Discussion: An applicant could propose a study pertaining to this; however, NIDRR has no basis to determine that all applicants should be required to focus on this issue. The peer review process will evaluate merits of the proposal.

Changes: None.

Comment: In the ER setting, a person may be diagnosed with a spinal cord injury or multiple trauma. Due to the nature of the emergency, TBI, especially mild TBI, is frequently overlooked. Can NIDRR require that the TBIMS address these issues?

Discussion: NIDRR agrees that mild TBI and dual diagnoses are a significant problem. TBIMS focus on moderate to severe health injury, but NIDRR funds other research on mild head injury. An applicant could propose a study pertaining to these topics; however, NIDRR has no basis to determine that all applicants should be required to

focus on these issues. The peer review process will evaluate merits of the proposal.

Changes: None.

Comment: Several commenters urged NIDRR to ensure that the TBIMS projects have true participatory involvement of people who have sustained brain injuries.

Discussion: NIDRR concurs with this comment, and the priority reflects its commitment to consumer participation.

Changes: None.

Comment: It is recommended that the TBIMS projects include development and evaluation of TBI education and service referral methods that will improve individual transition to the community, especially those individuals who have received medical and rehabilitation services at a location other than their home community.

Discussion: An applicant could propose a study pertaining to this; however, NIDRR has no basis to determine that all applicants should be required to focus on this issue. The peer review process will evaluate merits of the proposal.

Changes: None.

Comment: One commenter encouraged the use of a variety of research methodologies based on the nature of the research question to be addressed as well as multidisciplinary research that encourages, respects, and validates the breadth of research perspectives.

Discussion: NIDRR agrees with this comment and urges applicants to be cognizant of these issues in writing their applications.

Changes: None.

Comment: Add the following research objectives to the section on Integrating Persons with Disabilities into the Workforce: (a) Develop and evaluate strategies that improve employment outcomes of persons with TBI, including transition and youth; and (b) Identify effective employment strategies such as job sharing and self-employment.

Discussion: Applicants may propose these topics as they fall within the priorities as written. However, NIDRR has no basis to determine that all applicants should be required to focus on these issues. The peer review process will evaluate merits of the proposal.

Changes: None.

Comment: Add the following objective to Full Access to Community Life: a) Examine the impact of environmental and attitudinal barriers on the outcomes of persons with TBI.

Discussion: NIDRR concurs with this recommendation.

Changes: The priority has been modified to allow applicants to choose to do research on attitudinal barriers.

Comment: One commenter proposed that the priority include a requirement to design and test rehabilitation interventions that improve neurological recovery (including motor and cognitive recovery), functional, and longterm outcomes for persons with TBI.

Discussion: NIDRR concurs with this recommendation.

Changes: The priority has been modified to include neurological recovery (including motor and cognitive recovery).

[FR Doc. 02-14384 Filed 6-6-02; 8:45 am]

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.133A]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research—Disability Rehabilitation Research Projects (DRRP) Program; Notice Inviting Applications for Fiscal Year (FY) 2002

Purpose of the Program: The purpose of the DRRP Program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973 (the Act), as amended.

For FY 2002 the competition for new awards focuses on projects designed to meet the priorities we describe in the PRIORITIES section of this application notice. We intend these priorities to improve the rehabilitation services and outcomes for individuals with severe burn injuries and traumatic brain injury.

Eligible Applicants: Parties eligible to apply for grants under this program are States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education; and Indian tribes and tribal organizations.

APPLICATION NOTICE FOR FISCAL YEAR 2002 DISABILITY REHABILITATION RESEARCH PROJECTS, CFDA NO. 84-133A

Funding priority	Application available	Deadline for transmittal of applications	Estimated available funds	Maximum award amount (per year) *	Estimated number of awards	Project period (months)
84.133A-1, Burn Model Systems	June 7, 2002	July 22, 2002	\$1,200,000	\$300,000	4	60
84.133A-4, Burn Data Center	June 7, 2002	July 22, 2002	250,000	250,000	1	60
84.133A-5, Traumatic Brain Injury Model Systems.	June 7, 2002	July 22, 2002	5,475,000	365,000	15	60

* **Note:** We will reject without consideration any application that proposes a budget exceeding the stated maximum award amount in any year (See 34 CFR 75.104(b)).

Note: The Department is not bound by any estimates in this notice.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, 86 and 97, and (b) The program regulations 34 CFR part 350.

Priorities

This competition focuses on projects designed to meet the priorities in the notice of final priorities for these programs, published elsewhere in this issue of the **Federal Register**. The priorities are:

Priority 1—Burn Model System Projects

Priority 2—Burn Data Center

Priority 3—Traumatic Brain Injury Model Systems

For FY 2002 these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet one or more of these priorities.

Selection Criteria

We use the following selection criteria to evaluate applications under this program.

The maximum score for all of these criteria is 100 points.

The maximum score for each criterion is indicated in parentheses.

An additional 10 points may be earned by an applicant depending on how well they meet the additional selection criterion elsewhere in this notice.

Priority 1—Burn Model Systems Projects and Priority 3—Traumatic Brain Injury Model Systems

We use the following selection criteria to evaluate applications for the Burn Model Systems Projects and for the Traumatic Brain Injury Model Systems.

(a) *Responsiveness to an absolute or competitive priority* (6 points).

(1) The Secretary considers the responsiveness of the application to an absolute or competitive priority published in the **Federal Register**.

(2) In determining the application's responsiveness to the absolute or competitive priority, the Secretary considers one or more of the following factors:

(i) The extent to which the applicant addresses all requirements of the absolute or competitive priority. (3 points)

(ii) The extent to which the applicant's proposed activities are likely to achieve the purposes of the absolute or competitive priority. (3 points)

(b) *Design of research activities* (40 points).

(1) The Secretary considers the extent to which the design of research activities is likely to be effective in

accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers one or more of the following factors:

(i) The extent to which the research activities constitute a coherent, sustained approach to research in the field, including a substantial addition to the state-of-the art. (10 points)

(ii) The extent to which the methodology of each proposed research activity is meritorious, including consideration of the extent to which—

(A) The proposed design includes a comprehensive and informed review of the current literature, demonstrating knowledge of the state-of-the art; (5 points)

(B) Each research hypothesis is theoretically sound and based on current knowledge; (8 points)

(C) Each sample population is appropriate and of sufficient size; (7 points)

(D) The data collection and measurement techniques are appropriate and likely to be effective; (5 points)

(E) The data analysis methods are appropriate. (5 points)

(c) *Design of dissemination activities* (8 points).

(1) The Secretary considers the extent to which the design of dissemination activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers one or more of the following factors:

(i) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format. (4 points)

(ii) The extent to which the materials and information to be disseminated and the methods for dissemination are appropriate to the target population. (2 points)

(iii) The extent to which the information to be disseminated will be accessible to individuals with disabilities. (2 points)

(d) *Plan of operation* (8 points).

(1) The Secretary considers the quality of the plan of operation.

(2) In determining the quality of the plan of operation, the Secretary considers the adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks. (8 points)

(e) *Collaboration* (5 points).

(1) The Secretary considers the quality of collaboration.

(2) In determining the quality of collaboration, the Secretary considers one or more of the following factors:

(i) The extent to which the applicant's proposed collaboration with one or more agencies, organizations, or institutions is likely to be effective in achieving the relevant proposed activities of the project. (3 points)

(ii) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant. (2 points)

(f) *Adequacy and reasonableness of the budget* (5 points).

(1) The Secretary considers the adequacy and the reasonableness of the budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers one or more of the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities. (3 points)

(ii) The extent to which the applicant is of sufficient size, scope, and quality to effectively carry out the activities in an efficient manner. (2 points)

(g) *Plan of Evaluation* (10 points).

(1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(i) Are clearly related to the intended outcomes of the project and expected impacts on the target population; (5 points) and

(ii) Are objective, and quantifiable or qualitative, as appropriate. (5 points)

(h) *Project Staff* (8 points).

(1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (2 points)

(3) In addition, the Secretary considers one or more of the following:

(i) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities. (2 points)

(ii) The extent to which the commitment of staff time is adequate to

accomplish all the proposed activities of the project. (2 points)

(iii) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas. (2 points)

(i) *Adequacy and accessibility of resources* (10 points).

(1) The Secretary considers the adequacy and accessibility of the applicant's resources to implement the proposed project.

(2) In determining the adequacy and accessibility of resources, the Secretary considers one or more of the following factors:

(i) The quality of an applicant's past performance in carrying out a grant. (1 point)

(ii) The extent to which the applicant has appropriate access to clinical populations and organizations representing individuals with disabilities to support advanced clinical rehabilitation research. (8 points)

(iii) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project. (1 point)

Priority 2—Burn Data Center

We use the following selection criteria to evaluate applications for the Burn Data Center.

(a) *Responsiveness to an absolute or competitive priority* (15 points total).

(1) The Secretary considers the responsiveness of the application to the absolute or competitive priority published in the **Federal Register**.

(2) In determining the responsiveness of the application to the absolute or competitive priority, the Secretary considers the following factors:

(i) The extent to which the applicant addresses all requirements of the absolute or competitive priority (5 points).

(ii) The extent to which the applicant's proposed activities are likely to achieve the purposes of the absolute or competitive priority (10 points)

(b) *Quality of the project design* (35 points total).

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers one or more of the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable (5 points).

(ii) The quality of the methodology to be employed in the proposed project (15 points).

(iii) The extent to which the design of the proposed project is appropriate to and will successfully address the needs of the target population or other identified needs (5 points).

(iv) The extent to which the proposed development efforts include adequate quality controls and, as appropriate, repeated testing of products (5 points).

(v) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and federal resources (5 points).

(c) *Design of dissemination activities* (15 points total).

(1) The Secretary considers the extent to which the design of dissemination activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the projects, the Secretary considers the following factors:

(i) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format (8 points).

(ii) The extent to which the materials and information to be disseminated and the methods for dissemination are appropriate to the target population, including consideration of the familiarity of the target population with the subject matter, format of the information, and subject matter (7 points).

(d) *Technical Assistance* (10 points).

(1) The Secretary considers the extent to which the design of technical assistance activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers one or more of the following factors:

(i) The extent to which the methods for providing technical assistance are of sufficient quality, intensity, and duration (5 points).

(ii) The extent to which the technical assistance is appropriate to the target population, including consideration of the knowledge level of the target population, needs of the target population, and format for providing information (5 points).

(e) *Plan of evaluation* (10 points).

(1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the following factors:

(i) The extent to which the plan of evaluation provides for periodic assessment of progress toward—

(A) Implementing the plan of operation (3 points); and

(B) Achieving the project's intended outcomes and expected impacts (2 points).

(ii) The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that is based on identified performance measures that—

(A) Are clearly related to the intended outcomes of the project and expected impacts on the target population (3 points).

(B) Are objective, and quantifiable or qualitative, as appropriate (2 points).

(f) *Project Staff* (10 points).

(1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (2 points).

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities (3 points).

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project (3 points).

(iii) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas (2 points).

(g) *Adequacy and reasonableness of the budget* (5 points total).

(1) The Secretary considers the adequacy and the reasonableness of the proposed budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities (2 points).

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities (3 points).

Additional Selection Criterion (10 points).

We use the following additional criterion to evaluate applications under each priority.

Up to 10 points based on the extent to which an application includes

effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under these absolute priorities. In determining the effectiveness of those strategies, we will consider the applicant's prior success, as described in the application, in employing and advancing in employment qualified individuals with disabilities.

Thus, for purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for these priorities. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting to discuss the funding priorities and to receive technical assistance through individual consultation and information about the funding priorities. The pre-application meeting will be held on June 28, 2002 either by conference call or in person at the Department of Education, Office of Special Education and Rehabilitative Services, Switzer Building, room 3065, 330 C Street, SW., Washington, DC between 9 a.m. and 11 a.m. NIDRR staff will also be available from 12:30 p.m. to 4 p.m. on that same day to provide technical assistance through individual consultation and information about the funding priority. For further information or to make arrangements to attend contact Donna Nangle, Switzer Building, room 3412, 330 C Street, SW., Washington, DC 20202. Telephone (202) 205-5880 or via Internet: donna.nangle@ed.gov.

If you use a telecommunication device for the deaf (TDD), you may call (202) 205-4475.

Assistance to Individuals With Disabilities at the Public Meetings

The meeting site is accessible to individuals with disabilities, and a sign language interpreter will be available. If you will need an auxiliary aid or service other than a sign language interpreter in order to participate in the meeting (e.g., other interpreting service such as oral, cued speech, or tactile interpreter; assistive listening device; or materials in alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after this date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Application Procedures

The Government Paperwork Elimination Act (GPEA) of 1998 (Pub. L. 105-277) and the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106-107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

We are requiring that applications to the FY 2002 Disability Rehabilitation Research Projects (DRRP) Program be submitted electronically using e-Application available through the Education Department's e-GRANTS system. The e-GRANTS system is accessible through its portal page at: <http://e-grants.ed.gov>.

Applicants who are unable to submit an application through the e-GRANTS system may apply for a waiver to the electronic submission requirement. To apply for a waiver, applicants must explain the reason(s) that prevent them from using the Internet to submit their applications. The reason(s) must be outlined in a letter addressed to: Ruth Brannon, U.S. Department of Education, 400 Maryland Avenue, SW., room 3413, Switzer Building, Washington, DC 20202-2645. Please submit your letter no later than two weeks before the closing date.

Any application that receives a waiver to the electronic submission requirement will be given the same consideration in the review process as an electronic application.

Waiver of Proposed Rulemaking

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2002, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional

formula grant programs and additional discretionary grant competitions. The Disability Rehabilitation Research Projects (DRRP) Program—CFDA 84.133A is one of the programs included in the pilot project. If you are an applicant under the DRRP, you must submit your application to us in electronic format or receive a waiver.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We shall continue to evaluate its success and solicit suggestions for improvement.

Please note the following:

- Do not wait until the deadline date for the transmittal of applications to submit your application electronically. If you wait until the deadline date to submit your application electronically and you are unable to access the e-Application system, you must contact the Help Desk by 4:30 p.m. Washington DC time on the deadline date.

- Keep in mind that e-Application is not operational 24 hours a day every day of the week. Click on Hours of Web Site Operation for specific hours of access during the week.

- You will have access to the e-Application Help Desk for technical support: 1-888-336-8930 (TTY: 1-866-697-2696, local 202-401-8363). The Help Desk hours of operation are limited to: 8 a.m.-6 p.m. Washington DC time Monday-Friday.

- If you submit your application electronically by the transmittal date but also wish to submit a paper copy of your application, then you must mail the paper copy of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA # 84.133A, 7th and D Streets, SW., Room 3671, Regional Office Building 3, Washington, DC 20202-4725.

- You can submit all documents electronically, including the Application for Federal Assistance (ED 424 Standard Face Sheet), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

- Within three working days of submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424 Standard Face Sheet) to the Application Control Center after following these steps:

1. Print ED 424 from the e-APPLICATION system.
2. Make sure that the institution's Authorizing Representative signs this form.
3. Before faxing this form, submit your electronic application via the e-

APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).

4. Place the PR/Award number in the upper right hand corner of ED 424.

5. Fax ED 424 to the Application Control Center at (202) 260-1349.

- We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the DRRP at: <http://e-grants.ed.gov>.

FOR FURTHER INFORMATION CONTACT:

Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202-2645.

Telephone: (202) 205-5880 or via Internet: Donna.Nangle@ed.gov.

If you use a telecommunications device for the deaf (TDD), may call the TDD number at (202) 205-4475.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: www.ed.gov/legislation/FedRegister.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC area at (202) 512-1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>.

Program Authority: 29 U.S.C. 762(g) and 764(b).

Dated: June 3, 2002.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix

Frequent Questions

1. *Can I Get an Extension of the Due Date?*

No. On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. *What Should be Included in the Application?*

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is *not* useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. *What Format Should Be Used for the Application?*

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. *May I Submit Applications to More Than One NIDRR Program Competition or More Than One Application to a Program?*

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. *What Is the Allowable Indirect Cost Rate?*

The limits on indirect costs vary according to the program and the type of application. An applicant for an RRTC is limited to an indirect rate of 15%. An applicant for a Disability and Rehabilitation Research Project should limit indirect charges to the organization's approved indirect cost rate. If the organization does not have an approved indirect cost rate, the application should include an estimated actual rate.

6. *Can Profitmaking Businesses Apply for Grants?*

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. *Can Individuals Apply for Grants?*

No. Only organizations are eligible to apply for grants under NIDRR programs. However, individuals are the only entities eligible to apply for fellowships.

8. *Can NIDRR Staff Advise Me Whether My Project Is of Interest To NIDRR or Likely To Be Funded?*

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. *How Do I Assure That My Application Will Be Referred to the Most Appropriate Panel for Review?*

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including a project title that describes the project.

10. *How Soon After Submitting My Application Can I Find Out if It Will Be Funded?*

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. *Can I Call NIDRR To Find Out if My Application Is Being Funded?*

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. *If My Application Is Successful, Can I Assume I Will Get the Requested Budget Amount in Subsequent Years?*

No. Funding in subsequent years is subject to availability of funds and project performance.

13. *Will All Approved Applications Be Funded?*

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

[FR Doc. 02-14385 Filed 6-6-02; 8:45 am]

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Federal Register

**Friday,
June 7, 2002**

Part V

Environmental Protection Agency

40 CFR Part 144

**Underground Injection Control Program—
Notice of Final Determination for Class V
Wells; Final Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 144

[FRL -7225-8]

RIN 2040-AD63

Underground Injection Control Program—Notice of Final Determination for Class V Wells

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination; and final rule.

SUMMARY: Today, the Environmental Protection Agency (EPA) is announcing a final determination for all sub-classes of Class V injection wells not included in the final rulemaking on Class V motor vehicle waste disposal wells and large-capacity cesspools (December 7, 1999). These include shallow non-hazardous industrial waste disposal wells, large-capacity septic systems, agricultural and storm water drainage wells, and other wells. The Agency has determined that the existing Federal underground injection control (UIC) regulations are adequate to prevent these Class V wells from endangering underground sources of drinking water (USDWs) and no new rulemaking is necessary at this time.

Because today's action fulfills the Agency's obligation with regard to Class V wells as stated in section 1421 of the Safe Drinking Water Act, EPA is also amending its UIC rules by removing outdated references regarding future Class V regulations. In addition, some minor changes were made to correct mistakes and omissions within the CFR.

DATES: The final determination and rule revisions will be effective on June 7, 2002. Pursuant to 40 CFR 23.7, for the purposes of judicial review, this final determination and rule revisions are issued/promulgated as of 1:00 p.m. Eastern Time on June 7, 2002.

ADDRESSES: The determination and supporting documents, including public comments and EPA responses, are available for review in the UIC Class V, W-98-05V Water Docket, U.S. Environmental Protection Agency, 401 M Street, SW., East Tower Basement, Room 57, Washington, DC, 20460. For information on how to access Docket materials, please call (202) 260-3027 between 9 a.m. and 3:30 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For technical inquiries, contact Robyn Delehanty, Office of Ground Water and Drinking Water (mailcode 4606M), Environmental Protection Agency, 1200

Pennsylvania Ave, NW., Washington, DC, 20460. Phone: 202-564-3880. For general information, contact the Safe Drinking Water Hotline at 800-426-4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 9 a.m. to 5:30 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION: *Affected Entities:* Today's determination and rule applies to owners or operators of any type of Class V well that is not a large-capacity cesspool or a motor vehicle waste disposal well, as described in the December 7, 1999 Class V Rule (64 FR 68546) at 40 CFR 144.81(2) and 144.81(16), respectively. The following table lists sub-classes and examples of entities that may have wells covered by this action. This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by, or interested in, this action. Other types of entities not listed in the table could also be interested. To determine whether your injection well is affected by this action, examine the applicability criteria in 40 CFR 144.1(g). If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Category	Examples of entities potentially affected by this action
Industry and Commerce	Farms, animal feeding operations, and other agricultural sites that drain excess surface or subsurface water into wells; sites that have storm water drainage wells, facilities operating large-capacity septic systems, or nonhazardous waste disposal wells including disposal of byproducts from industrial operations; facilities that extract minerals from brine and then inject the spent brine underground; mines that backfill materials into mine shafts, pipelines, or other holes that are deeper than they are wide; aquaculture facilities that dispose of wastewater in underground wells; solution mines that use injection wells in the recovery of minerals from ore bodies that have already been conventionally mined; sites that use injection wells as part of aquifer remediation activities; geothermal power plants that reinject fluids into the ground; facilities that extract direct heat from geothermal fluids and then return those fluids underground; and sites that use "open-loop" heat pump/air conditioning systems.
State and Local Government	Municipalities that use storm water drainage wells; publicly owned treatment works that inject sewage treatment effluent underground; and State and local government entities that inject water underground for the purpose of aquifer recharge or aquifer storage and recovery.
Federal Government	Any Federal Agency that owns or operates one of the above types of wells.

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I. Background

A. Statutory and Regulatory Framework

Class V wells are regulated under the authority of Part C of the Safe Drinking Water Act (SDWA or the Act) (42 U.S.C. 300h *et seq.*). The SDWA authorizes EPA to protect the quality of drinking water in the United States, and Part C specifically mandates the regulation of underground injection of fluids through wells. The Agency has promulgated a series of underground injection control (UIC) regulations under this authority.

Section 1421 of the Act requires EPA to propose and promulgate regulations specifying minimum requirements for effective State programs to prevent underground injection that may endanger drinking water sources. EPA promulgated administrative and permitting regulations, now codified in 40 CFR Parts 144 and 146, on May 19, 1980 (45 FR 33290), and technical requirements in 40 CFR Part 146 on June 24, 1980 (45 FR 42472). The regulations were subsequently amended on August 27, 1981 (46 FR 43156), February 3, 1982 (47 FR 4992), January 21, 1983 (48 FR 2938), April 1, 1983 (48 FR 14146), July 26, 1988 (53 FR 28118), December 3, 1993 (58 FR 63890), June 10, 1994 (59 FR 29958), December 14, 1994 (59 FR 64339), June 29, 1995 (60 FR 33926), and December 7, 1999 (64 FR 68546).

Section 1422 of the Act provides that States may apply to EPA for primary enforcement responsibility to administer the UIC program; States receiving such authority are referred to as "primacy States." Where States do not seek this responsibility or fail to demonstrate that they meet EPA's minimum requirements, EPA is required to prescribe a UIC program for such States by regulation. These direct implementation (DI) program regulations were issued in two phases on May 11, 1984 (49 FR 20138) and November 15, 1984 (49 FR 45308). For the remainder of this preamble, references to the UIC Program "Director" mean either the Director of the EPA program (where the program is implemented directly by EPA) or the Director of the primacy State program (where the State is responsible for implementing the program). Also, currently all UIC programs in Indian Country are directly implemented by EPA. Therefore, for the remainder of this preamble, references to DI programs include UIC programs in Indian Country.

B. History of This Rulemaking

1. 1987 Report to Congress

In accordance with the 1986 Amendments to the SDWA, EPA summarized information on 32 subclasses of Class V wells in a Report to Congress entitled *Class V Injection Wells—Current Inventory; Effects on Ground Water; and Technical Recommendations*, September 1987 (EPA 1987). This report presented a national overview of Class V injection practices and State recommendations for Class V well design, construction, installation, and siting requirements at that time. These State recommendations, however, did not give EPA a clear mandate on what, if any, additional measures were needed to control Class V wells on a national level. For any given type of well, the recommendations varied broadly and were rarely made by more than two or three States.

2. 1994 Consent Decree With the Sierra Club

On December 30, 1993, the Sierra Club filed a complaint in the United States District Court for the District of Columbia alleging that EPA failed to comply with section 1421 of the SDWA regarding publication of proposed and final regulations for Class V injection wells. The complaint alleged that EPA's then current regulations regarding Class V wells did not meet the SDWA's statutory requirements to "prevent underground injection which endangers drinking water sources." (EPA 1994c).

To resolve the issue, EPA entered into a consent decree with the Sierra Club on August 31, 1994. This consent decree required that, no later than August 15, 1995, the Administrator sign a notice to be published in the **Federal Register** proposing regulatory action that fully discharged the Administrator's rulemaking obligation under section 1421 of SDWA, 42 U.S.C. 300h, with respect to Class V injection wells. A final rulemaking on the matter was required to be signed by no later than November 15, 1996.

3. 1995 Proposed Determination

On August 15, 1995, the Administrator signed a notice of proposed rulemaking that proposed a regulatory determination on Class V injection wells intended to fulfill EPA's obligation under the 1994 consent decree with the Sierra Club (60 FR 44652, August 28, 1995). In this notice, EPA proposed not to adopt additional Federal regulations for any types of Class V wells. Instead, the Agency proposed to address the risks posed by

certain wells using existing authorities and a Class V management strategy designed to speed up the closure of potentially endangering wells, and promote the use of best management practices to ensure that other Class V wells of concern did not endanger USDWs. Several factors led EPA to propose this approach: (1) The wide diversity in the types of fluids being injected, ranging from high risk to not likely to endanger; (2) the large number of facilities to be regulated; and (3) the nature of the regulated community, which is comprised largely of small businesses.

4. 1997 Modified Consent Decree

Based on public comments received on the 1995 proposal, EPA decided to reconsider its proposed approach. Because this reconsideration would extend the time necessary to complete the rulemaking for Class V wells, EPA and the Sierra Club entered into a modified consent decree on January 28, 1997 (EPA 1997) that extended the dates for rulemaking in the 1994 decree. The modified decree required three actions.

First, by no later than June 18, 1998, the EPA Administrator was required to sign a notice to be published in the **Federal Register**, proposing regulatory action that fully discharged the Administrator's rulemaking obligation under section 1421 of the SDWA with respect to those types of Class V injection wells determined to be high risk for which EPA did not need additional information. The Administrator was required to sign a final determination for these endangering Class V wells by no later than July 31, 1999. Short extensions were subsequently granted for both of these deadlines.

Second, by no later than September 30, 1999, EPA was required to complete a study of all Class V wells not included in the first rulemaking on endangering Class V injection wells. The information collected for the study was to be used as the basis for EPA's determination on Class V wells not included in the Class V rule.

Third, by no later than April 30, 2001, the EPA Administrator was required to sign a notice to be published in the **Federal Register** proposing to discharge the Administrator's rulemaking obligations under section 1421 of the SDWA with respect to all Class V injection wells not included in the first rulemaking for Class V injection wells. The Consent Decree required that the Administrator either: (1) Propose regulations fully implementing section 1421 with respect to all such Class V injection wells; (2) propose a decision

that no further rulemaking is necessary in order to fully discharge the Administrator's rulemaking obligations under section 1421 with respect to all such Class V injection wells; or (3) propose regulations fully implementing section 1421 with respect to some of these remaining Class V injection wells and propose a decision that no further rulemaking is necessary in order to fully discharge the Administrator's rulemaking obligations under section 1421 with respect to all other Class V injection wells not already covered. Finally, the Administrator must sign a final determination for these remaining Class V wells by no later than May 31, 2002.

5. 1998 Proposal and 1999 Final Rule

On July 29, 1998 (63 FR 40586), in response to the first action required under the modified consent decree with the Sierra Club, EPA proposed revisions to the UIC regulations that would add new requirements for three sub-classes of Class V wells that were believed to endanger USDWs. According to this proposal, Class V motor vehicle waste disposal wells in ground water protection areas (as defined in the rule) would either be banned, or would have to get a permit that required fluids released in those wells to not exceed the drinking water maximum contaminant levels (MCLs) and other health-based standards at the point of injection. Class V industrial waste disposal wells in ground water protection areas also would be required to not exceed the MCLs and other health-based standards at the point of injection, and large-capacity cesspools in such areas would be banned.

EPA received 97 letters from public commentators as well as recommendations from the National Drinking Water Advisory Council, which formed a Federal Advisory Committee Act (FACA) working group to address Class V UIC and Source Water Protection Program integration issues. This FACA workgroup met twice in 1999 to discuss the proposed Class V regulation. In addition, on May 21, 1999 (64 FR 27741), the Agency published a notice of data availability and further request for comment related to the 1998 proposal. A total of 14 public comment letters were received in response to this request.

Taking all the public input into account, EPA issued final revisions to the UIC regulations for Class V wells on December 7, 1999 (64 FR 68546). The final rule added new requirements for Class V motor vehicle waste disposal wells and large-capacity cesspools. Existing motor vehicle waste disposal

wells in "ground water protection areas" and "other sensitive ground water areas" were banned with a provision that allows owners and operators of such wells to seek a waiver from the ban and obtain a permit (§ 144.88(b)). New Class V motor vehicle waste disposal wells and new and existing large-capacity cesspools were banned nationwide (§§ 144.88(a) and (b)). If a State fails to complete their assessments of ground water protection areas or delineate other sensitive ground water areas by January 1, 2004, then all existing motor vehicle waste disposal wells in that State become subject to the new requirements. These new requirements are minimum Federal standards—primacy States may impose more stringent requirements. The final rule, however, did not adopt the proposed additional requirements for industrial waste disposal wells.

6. 1999 Class V Study

On September 30, 1999, in response to the second action required under the modified consent decree with the Sierra Club, EPA issued a study (EPA 1999a) of all Class V wells not included in the 1998 proposal (EPA 1998a). The Class V study consisted of two major components: (1) An information collection effort for the remaining universe of Class V wells, which was divided into 23 different sub-classes for the purpose of analysis; and (2) an "inventory modeling" exercise to estimate the number of storm water drainage wells and large-capacity septic systems, two types of wells that were believed to be quite prevalent, but for which adequate inventory information was particularly lacking.

As described in detail in Volume 1 of the Class V Study, the information collection effort consisted of a comprehensive literature search, State and EPA regional data collection, requests to the public for data, and peer review. As part of the State and EPA regional data collection, the Agency distributed nearly 700 questionnaires to EPA regional, State, and local program staff in all 50 States and U.S. territories, including staff responsible for managing Class V wells in Indian Country in EPA Regions 5, 8, 9, and 10. The Agency supplemented the information from the questionnaires with follow-up telephone interviews and on-site file searches in 11 primacy States, 3 DI States, and 2 Regional Offices with DI States. The Agency also supplemented the survey results with visits to a number of injection well sites, including geothermal electric power well sites in California and food processing waste

disposal well sites in Tennessee and Maine.

For the inventory modeling, EPA selected and visited 99 census tracts across the nation to collect data on the number of storm water drainage wells and large-capacity septic systems and factors that influence their prevalence. Storm water drainage wells were found in 22 of the 99 census tracts visited and large-capacity septic systems were found in 88 of the 99 census tracts visited. EPA used the data collected from the visits to develop mathematical models for predicting the number of these wells nationwide.

The Class V Study is available from the public docket, or at the EPA Web site <http://www.epa.gov/safewater/uic/cl5study.html#volumes>.

7. 2001 Proposal and Final Determination

As required by the Decree, EPA issued a proposed determination concerning the Class V wells not already addressed by the 1999 rule (66 FR 22971, May 7, 2001). In this determination, EPA proposed that further regulatory action for these wells was not necessary under section 1421. Today's final determination, that no further rulemaking is necessary at this time, fulfills the last of the Agency's obligations under the Class V Consent Decree.

C. Requirements Applicable to Class V Wells

The UIC regulations establish five classes of injection wells. Class I wells are used to inject hazardous and non-hazardous waste beneath the lowermost formation containing a USDW within one-quarter mile of the well bore. Class II wells are used to inject fluids associated with oil and natural gas recovery and storage of liquid hydrocarbons. Class III wells are used in connection with the solution mining of minerals from ore bodies that have not been conventionally mined. Class IV wells are used to inject hazardous or radioactive wastes into or above a formation that is within one-quarter mile of a USDW. Class IV wells are generally prohibited by 40 CFR 144.13. Class V wells are defined, in the regulations, as any well not included in Classes I through IV.

The 1999 Class V Rule added new requirements for existing motor vehicle waste disposal wells located in ground water protection areas and in other sensitive ground water areas delineated by the States; and new and existing large-capacity cesspools and new motor vehicle waste disposal wells nationwide.

All remaining Class V wells that are in compliance with the inventory and non-endangerment requirements are currently authorized by rule or by permit (§§ 144.24(a) and 144.84(a)). Rule authorization expires upon the effective date of a permit issued pursuant to §§ 144.25, 144.31, 144.33, or 144.34; upon meeting one of the conditions specified in § 144.84(b); or upon proper closure of the well as described in § 144.82(b).

In addition to these provisions, Class V UIC Program Directors have many obligations and authorities under the SDWA to ensure the protection of USDWs. Specifically, the current regulations subject Class V wells to the general statutory and regulatory prohibition against endangerment of USDWs, as well as some specific requirements. The prohibition against endangerment of USDWs, found in §§ 144.12 and 144.82, applies to all Class V wells and provides that no injection-related activity may be conducted "in a manner that allows the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR Part 141 or may otherwise adversely affect the health of persons." Sections 144.12(c), (d), and (e) prescribe mandatory and discretionary actions to be taken by the Director if a well is not in compliance with § 144.12(a). These actions may include requiring the well operator to apply for a permit, ordering such action as closure of the well to prevent endangerment, taking an enforcement action, and/or taking an emergency action.

Also, owners or operators of Class V injection wells must submit basic inventory and assessment information under § 144.26 and § 144.83. In addition, Class V wells are subject to the general program requirements of § 144.25 and § 144.84 under which the Director may require an area, general or individual permit, if necessary, to protect USDWs. Moreover, under § 144.27 and § 144.83, EPA may require owners or operators of any Class V well, in EPA-administered programs, to submit additional information deemed necessary to protect USDWs. Owners or operators who fail to submit the information required under §§ 144.26, 144.27, or 144.83 are prohibited from using their injection wells. Lastly, §§ 144.12 and 144.82 give the UIC Program Director authority to close any Class V well that may endanger a USDW.

The above referenced sections represent the minimum Federal

requirements for all Class V wells except motor vehicle waste disposal wells and large-capacity cesspools. The Federal requirements do not preclude a State or local government from promulgating more stringent requirements above and beyond the existing UIC authorities, and many States have additional requirements for sub-classes of Class V wells to prevent endangerment.

II. Description of Today's Action

A. Final Determination

Today, EPA is issuing its final determination that additional Federal underground injection control regulations for all sub-classes of Class V injection wells not included in the final rulemaking on motor vehicle waste disposal wells and large-capacity cesspools are not needed at this time to prevent Class V wells from endangering USDWs. The Agency based the determination on the potential for Class V wells to endanger USDWs and the anticipated effectiveness of additional Federal UIC regulation. The Agency will address its continuing statutory obligations by implementing existing authorities under the SDWA to protect USDWs from any threatening underground injection activities.

The determination addresses all of the Class V well types not covered by the 1999 final rule, in response to the third action required under the modified consent decree with the Sierra Club. It is important to clarify that this notice satisfies the Agency's obligations under the modified consent decree with the Sierra Club, but it does not end EPA's obligations, requirements, and actions to prevent Class V wells from endangering USDWs. As described in section I.C. above, UIC Program Directors have many obligations and authorities under the SDWA to ensure the protection of USDWs from potential risks posed by Class V wells. The Agency will continue to fulfill these obligations using existing authorities. In addition, nothing in this notice precludes a State or local government from promulgating requirements more stringent than the minimum Federal requirements. Also, today's determination does not affect EPA's authority to impose any necessary regulations in the future on any of the well types addressed in today's notice. Today's determination is limited to the requirements of section 1421 of SDWA as applied to Class V injection activities and does not limit in any way the Agency's authorities or obligations under other statutes, such as the Clean Water Act.

B. Public Comment

The 2001 Proposed Determination (EPA 2001a) was open for public comment for 60 days. The Agency made the proposed determination widely available through direct mailing to stakeholders and posting the document on EPA's Web site. Twenty-eight commentors addressed the proposal. EPA has developed a response to comment document (EPA 2002b) addressing all public comments received on the well types addressed by the proposed determination.

1. Potential To Endanger

The potential to endanger USDWs was the main criterion used for making the determination. EPA evaluated this potential based in large part on the record of documented incidents of ground water and other environmental contamination caused by the operation of the different Class V well types covered by the determination. Particularly given the length of time this program has been in existence, EPA believes that the absence of frequent, widespread, or significant cases of actual contamination is good evidence of a low potential for these wells to endanger. Therefore, additional Federal UIC regulation is not warranted at this time.

The majority of the commentors agreed with the Agency's proposed determination that, based on the review of the Class V Study and additional information on industrial wells, Class V wells, as a class or sub-class, do not pose an endangerment to USDWs since documented cases of contamination attributable to these Class V wells are rare.

Some commentors disagreed with the Agency's determination and raised both the potential for Class V wells to endanger and some limited cases in which sub-classes of Class V wells may have caused contamination.

The Agency agrees with the commentors that there is the potential for any Class V well to cause contamination. However, the Class V Study, the most rigorous and comprehensive data collection of Class V wells ever undertaken, did not show any evidence that Class V wells, as a well class, or any Class V sub-class, are contaminating USDWs. On the contrary, the lack of recent contamination data that links these Class V wells to ground water contamination supports EPA's view that existing authorities are being used effectively to address any potential risk of these Class V wells endangering USDWs. While the data from the Class V Study did not support the need for

well-specific regulations, there were limited cases where Class V wells were found to be endangering. The Agency recognizes that some fluids may cause endangerment if injected directly into USDWs or into vadose zone materials which cannot adequately attenuate the injected fluids. The existing UIC regulations governing Class V injection wells provide UIC programs with sufficient authority to, on a case-by-case basis, prevent endangering injection practices and, where found to occur, stop them and compel the injection well owner/operator to take any restorative steps needed to prevent endangerment.

2. Adequacy of Existing Regulation

One commentator disagreed with the Agency's determination that no additional regulations are needed at this time and contends that the SDWA requires EPA to develop additional minimum Federal requirements. That commentator believes the precautionary endangerment provision of the Act requires EPA to promulgate regulations unless it can show that no underground source of drinking water will be endangered.

EPA agrees with the commentator that the statutory definition of "endangerment" does not require contamination prior to taking action of either a regulatory or enforcement nature. That Congress intended for EPA to act in a preventive fashion—to establish regulatory requirements to prevent contamination of USDWs from injection wells, rather than just addressing such contamination after it occurs—is clear from the statutory definition of endangerment, its legislative history, and the language of section 1421.

However, EPA does not agree that the statute requires EPA to promulgate Class V regulations "unless EPA can show no endangerment will occur." The requirement for establishing UIC regulations under SDWA section 1421 is that EPA must establish regulations to ensure that State programs "contain minimum requirements for effective programs to prevent underground injection which endangers drinking water sources * * *" Because no amount of regulatory control will prevent all cases of contamination, EPA believes that a State may have an effective, preventative Class V program even though there may be isolated cases of endangerment. As a result, EPA does not agree that the statute requires EPA to prove the complete absence of contamination in order to determine that additional Federal regulations for Class V wells are unnecessary. Rather, EPA must determine whether, based on

the existing information available to EPA, State programs are effective in regulating (i.e., preventing endangerment from) Class V wells, and if not, what Federal regulations, if any, could make such programs more effective. If the State programs are already effective, then additional Federal regulations are unnecessary.

If there is information showing that such wells, either a specific sub-class of Class V wells or Class V wells as a whole, are causing contamination or that there is some other specific, factual basis to determine that certain Class V well injection activities are likely to cause endangerments, then EPA may, in the future, determine that additional regulatory safeguards are necessary to prevent endangerment. EPA did establish additional requirements for Class V motor vehicle waste disposal wells and large-capacity cesspools in 1999 for this reason. EPA clearly does not need to wait for contamination to occur before determining that additional regulation of a sub-class or class of UIC wells is necessary.

3. Effectiveness of Additional Federal UIC Regulation

The second criterion EPA used to make this determination was the anticipated effectiveness of additional Federal UIC regulation. EPA used this criterion for only a few well sub-classes for which a sound determination could not be based on the potential to endanger alone, and includes agricultural drainage wells, industrial waste disposal wells, and sewage treatment effluent wells. In evaluating the anticipated effectiveness of additional regulation, EPA considered such factors as the degree to which additional Federal UIC regulations would simply duplicate existing State programs without increasing the "effectiveness" of these programs. While the Agency also considered the possibility of the UIC program joining forces with other existing or emerging programs to achieve greater results in an integrated fashion, it did not use the existence of other Federal programs that also address Class V wells as a basis for deciding against additional UIC regulation.

The majority of the commentators agreed that there was adequate authority to manage Class V wells and additional Federal regulation is unnecessary. A few commentators believed the SDWA would not allow for the use of anticipated effectiveness of additional Federal regulation. They contend that the SDWA provides neither an intent nor the authority to limit the protection afforded to all USDWs by restricting its

scope to regulations which are proven a priori to be effective. Rather, Congress' concern is with any activity which may endanger USDWs, and is not limited to those activities for which a regulatory program has been proven effective.

EPA agrees that Congress intended for all injection to be regulated, and notes that the UIC Program does regulate all injection wells. However, EPA disagrees with the commentator that the effectiveness of additional Federal regulations cannot be a criterion for determining whether to establish more prescriptive regulations for Class V wells. The statutory obligation is for EPA to determine whether State UIC programs are effective in addressing endangerments to USDWs, and to establish minimum requirements for such programs if they are not effective. As a result, the effectiveness of State programs, and additional Federal regulations, is very much a relevant criterion under section 1421. The statutory obligation to establish additional UIC requirements is not triggered solely by finding that some wells may be or have been an "endangerment" as defined by the statute. EPA agrees that the term "endangerment" is broadly defined and preventive. Section 1421 is also preventative. However, the issue is not whether there are, or might be, some instances of endangerment, but rather whether additional Federal requirements are necessary to ensure effective State programs to prevent these endangerments. If Federal regulations would not improve the effectiveness of State programs, then such regulations are not required under section 1421. The statutory obligation is to determine whether State programs are ineffective in addressing endangerment; EPA does not have information at this time that indicates that State programs are ineffective in addressing endangerments from Class V wells.

4. Data Used To Make the Determination

a. Completeness of the Information

The determination was based on information collected by the Class V Study and industrial waste disposal well information collected to support the Class V Proposed Rule. The Class V Study was designed and implemented to obtain all information that was currently available on Class V wells. The Class V Study represents the most comprehensive collection of information on Class V wells. The majority of the commentators referred to the Class V Study data to support their argument either for or against the determination. However, a few

commentors indicated that there was information that was not included in the Class V Study, but it was not submitted as part of the comments. As part of EPA's obligation to prevent Class V wells from endangerment, we will continue to evaluate whether additional Federal regulations or other actions are warranted as more information becomes available. We encourage anyone with information to submit it for consideration.

b. Areas Not Covered by the Class V Study

Some commentors encouraged the Agency to expand the scope of the Class V Study to include data collection on: ground water monitoring; the fate of viruses, chemicals and their metabolites in the subsurface; and, additional sub-classes of Class V wells such as horizontal drain fields and abandoned drinking water wells that were not addressed in the Study. While the Agency has no plan to expand upon the existing Class V Study, we will continue to collect information and evaluate the potential for Class V wells to endanger USDWs. The Class V Study is a firm starting point to assist the Agency, and our stakeholders, in prioritizing future efforts such as public outreach, guidance development, data collection, and, if needed, rule development.

A few commentors raised concerns about "emerging" issues such as pharmaceutical and personal care products (PPCPs). PPCPs were not considered as part of the Class V Study. EPA has no knowledge of any contamination linked to PPCP, nor did anyone comment on the need to address PPCPs when the Class V Study design was public noticed. This may be because, until recently, little information was available on PPCPs and analytical techniques lacked the sensitivity to identify PPCPs in water. The United States Geological Survey (USGS) recently released data on PPCPs in streams downstream from areas of intense urbanization and animal production. Additional data on ground water sampling will be released later this year followed by data on drinking water source water. EPA has been, and will continue to, work with the USGS as more information becomes available and will assess the relevance of the information to Class V activities.

5. Class V Sub-Class Specific Comments

As stated above, today's Notice of Final Determination for Class V Wells continues to use the two main criteria proposed in 2001—the potential to endanger USDWs and the anticipated effectiveness of additional Federal

regulation—to determine whether Class V wells warrant additional regulations at this time.

EPA continues to believe that the potential to endanger USDWs is the more important of the two criteria, given the SDWA mandate to prevent endangerment. EPA also believes that the scarcity of documented cases of soil or ground water contamination due to Class V wells demonstrates a low potential for these wells to endanger. EPA recognizes that there may be isolated instances of endangerment to USDWs which have not been documented. However, the Class V Study, which was a thorough and comprehensive review of all available data on these wells, did not document significant or widespread cases of contamination. EPA believes that most, if not all, cases of significant or widespread contamination due to Class V wells would have been reported in some manner and, as a result, would have been identified and documented as part of the Class V Study. As a result, the relative paucity of such documentation is viewed by EPA as a good indication that the existing regulations are adequate.

The degree to which additional Federal UIC regulations would simply duplicate existing State program efforts without increasing their "effectiveness" is a key factor in evaluating the usefulness of additional regulations. The scarcity of documented cases of contamination and the existence of effective State UIC programs signifies that additional Federal UIC regulations are not necessary, at this time, under the statute.

The Agency received specific comments on agricultural drainage wells, aquifer remediation wells, aquifer storage and recovery wells, geothermal wells, industrial wells, salt water intrusion wells, spent brine return flow wells, storm water drainage wells, and sewage treatment effluent wells. Many of the commentors agreed with the Agency's determination that additional regulations were not needed for any of the sub-classes covered by the determination. The remaining commentors disagreed with the Agency. However, these commentors did not submit evidence of any contamination cases that had not been effectively addressed by UIC Programs using existing authorities. EPA believes that additional Federal regulation is not necessary where the endangerment posed by particular well types appears to be rare. The fact that few documented cases of contamination were found, and that the endangerment was addressed using current authorities, supports

EPA's determination that existing Federal regulations and State programs are effective to prevent endangerment.

EPA does not believe that additional regulations for these wells should be promulgated based upon conjecture about endangerments that could occur or some kind of "presumption" that they do occur absent a showing otherwise. EPA does recognize that fluids injected into shallow injection wells can exceed human health-based thresholds. However, the information available to the Agency shows that existing Federal regulations provide EPA and primacy States with the authority needed to ensure that shallow injection wells are properly situated, constructed, operated, maintained and (if necessary) closed in a manner that protects underlying USDWs.

There is no information necessitating additional Federal UIC regulations for these wells, at this time. The current record demonstrates that existing regulations already effectively prevent most cases of endangerment and provide sufficient authority to address rare cases of endangerment that might occur.

Detailed responses to comments submitted on specific sub-classes of Class V wells are found in the response to comment document (EPA 2002b).

C. Amended Regulatory Language

Today's action fulfills the Agency's obligation in regard to Class V wells as stated in section 1421 of the Safe Drinking Water Act. Therefore, EPA is amending its UIC regulations at 40 CFR part 144.1, purpose and scope, to remove the sentence "Class V wells will be inventoried and assessed and regulatory action will be established at a later date." In addition, some minor changes were made to correct mistakes and omissions within the CFR. In two places within part 144 references to the location of primary drinking water standards within the CFR has been corrected to read 40 CFR part 141, instead of part 142. Section 144.1 also references § 146.04 as containing criteria for "aquifer exemptions." This reference has been corrected to read § 146.4. In correcting § 144.1, we've also removed an incorrect reference to "individual" permits. Also, as part of the 1999 Class V rule (EPA 1999c) States were allowed to authorize Class IV injection under certain conditions. Section 144.23 Prohibition of Class IV wells was amended at that time, but parallel language in § 144.13 was not. This rulemaking corrects the regulatory language at § 144.13 to be consistent with the language at § 144.23. The regulatory language at § 144.26 is

amended to remove introductory text that references paragraph (e) of the regulation that was removed as part of the 1999 Class V rule (EPA 1999c). Lastly, paragraph (g) at § 144.87 has been inserted and reserved. The original regulatory language that was added to the CFR as part of the 1999 Class V rule (EPA 1999c) omitted paragraph (g), so it is being added and reserved to avoid confusion and for consistency.

III. Class V Program Management Plan

As part of an ongoing obligation to prevent Class V wells from endangering USDWs, the Agency has developed a management plan for Class V wells. The purpose of the management plan is to prioritize resources and activities, as well as identify, for our stakeholders, how best to achieve our common goal of preventing Class V wells from endangering USDWs. The following areas have been prioritized for future activities.

A. Implementing Existing Regulations

1. Long Standing UIC Regulations

An important first step in the prevention of ground water contamination from injection wells is to ensure that Class V well owners and operators know they have a Class V well and what their obligations are under the UIC regulations. The UIC Program will continue to collect inventory information, conduct inspections, educate facility owners and operators on their obligations under the UIC regulations and assess the facilities injection practices. The outcome of any given assessment may be authorization by rule, a request for additional information, requiring the facility to apply for a general, area, or site specific permit, or requiring closure of the well. To enhance inventory and inspection information, the UIC program has begun a pilot project in some direct implementation States. The inventory/inspection initiative will initially focus on source water protection areas and then expand to other priority areas.

EPA, State and local inspectors will also be looking for facilities that may be operating Class IV wells which are banned under UIC regulations. These hazardous waste disposal wells would be subject to immediate closure that may include site characterization, cleanup and enforcement penalties.

The Agency also plans to develop technical assistance documents. In particular, guidance is being developed to help assist UIC Programs determine if, on a case-by-case basis, an industrial well should be rule authorized, permitted or closed. A Class V

industrial waste disposal well closure guidance will also be developed to give general, performance based guidance.

In addition to the technical guidance, EPA is considering the development of compliance guides to assist owners and operators in complying with existing regulations.

2. 1999 Class V Rule

Motor vehicle waste disposal wells and large-capacity cesspools were identified as having a high potential to endanger USDWs and required additional regulations to insure they do not endanger USDWs. As such, the Agency sees the implementation of the Class V Rule as a high priority. The Class V Rule requires owners and operators of existing motor vehicle waste disposal wells in regulated areas to close their well, or if applicable, obtain a permit. These requirements are being phased in through 2008. Owners and operators of large-capacity cesspools must close their cesspools by April 5, 2005. EPA will coordinate its efforts with primacy States and State and local health departments to implement the ban.

B. Educate Well Operators

Full compliance with Class V regulations requires that well operators understand their obligations. Owners and operators of Class V wells must meet certain regulatory requirements: large-capacity cesspools must close; motor vehicle waste disposal wells in regulated areas must close or obtain a permit; and, all other well owners must submit inventory information about their well to the UIC Program. Well owners and operators can not inject until they have submitted inventory. For the wells covered by this determination, the minimum Federal requirement is the well cannot endanger USDWs. As discussed in section I.C., UIC Program Directors have the authority to impose additional requirements as needed. In addition, States can, and in many cases do, choose to be more stringent.

The UIC Program has developed some outreach materials outlining what the various requirements are, and how owners and operators must comply. These include:

- Small Entity Compliance Guide for Owners of Motor Vehicle Waste Disposal Wells (EPA 2000).
- Class V Well Initiative Web site at: <http://www.epa.gov/safewater/uic/classv.html>.
- UIC Program poster—“Protecting Public Health and Drinking Water” (EPA 2001b).

—UIC Booklet—“Protecting Public Health through Underground Injection Control” (EPA 2002a)

—Videos—“The Problem with Shallow Disposal Systems” and “Shallow Disposal Systems Are Everyone’s Business”

Anyone interested in obtaining any of these materials should contact the Safe Drinking Water Hotline at (800) 426-4791. Additionally, most Regional and State UIC programs have the type of specific compliance information needed by injection well owners/operators, or the phone numbers of who to contact for such information, available on their Web sites. Hot-links to each of these Web sites can be accessed through the general EPA UIC program Web site listed above.

C. Explore Other Regulatory and Non-regulatory Approaches

The UIC Program will explore both new regulatory and innovative non-regulatory approaches to manage Class V wells. One new regulatory approach that EPA will consider is the use of general permits. General permitting is an existing authority that has not been widely utilized by the UIC Program, where like facilities within a defined area can be covered by one permit. A growing concern expressed by commentators, States, and EPA Regions, is that there will be a dramatic increase in the use of Class V wells to dispose of storm water rather than obtain NPDES permits for surface discharge. This is an example where general permits may be utilized. Additionally, in sensitive geologic areas, a general permit could be used to require specific best management practices as well as injectate monitoring.

The Agency is also exploring non-regulatory approaches to prevent contamination of USDWs, such as, the use of voluntary compliance standards. The Agency will work with well owners and operators, on a case-by-case basis to identify opportunities to implement voluntary waste minimization practices. These voluntary practices may ensure that facility injection practices do not contaminate USDWs. This would be an alternative to imposing permit conditions.

D. Coordinate Efforts With Other EPA Programs

The UIC Program is currently working with the Office of Wastewater Management (OWM) to coordinate efforts on large-capacity septic systems and storm water drainage. The Onsite Decentralized Wastewater Management voluntary guidelines (to be finalized in the summer of 2002) include

information about the UIC Program, as well as the standards Class V large-capacity septic systems must meet under the UIC program. The OWM Speakers Bureau includes UIC Personnel to assist in giving presentations and providing outreach documents to State and local health department personnel, communities, utilities and other stakeholders.

The UIC Program will continue to coordinate efforts with the National Pollutant Discharge Elimination System (NPDES) program to ensure that the regulated community understands their obligations under the UIC Program and that any storm water discharges to injection wells do not have the potential to endanger USDWs.

In addition, the UIC program is working closely with other programs such as the EPA's Engineering and Analysis Division in the Office of Water to collect additional information on industrial operations. The Metals Products and Machinery effluent limitations guideline, which was proposed last Fall, includes information on the UIC program. Lastly, the UIC Program will be working with other offices to develop industry specific voluntary consensus standards where appropriate.

E. Prepare for Future Actions

In the course of our ongoing activities, EPA will continue to work with States, regulated entities, environmental organizations, and other sources, to collect and evaluate data on Class V wells and their potential risks. We will use that information to reevaluate on a regular basis the need for additional regulation. If at any point new data indicates that a sub-class of Class V wells may pose an endangerment, the Agency will develop a plan to collect and analyze well sub-class specific information to determine what additional regulation may be required. Data collection and further analysis could take the form of ground water monitoring, injectate sampling or risk assessment modeling.

In addition, there are some "emerging" issues, such as pharmaceutical and personal care products (PPCPs), that were not identified for inclusion in the Class V Study, but warrant ongoing involvement by the UIC Program. The Agency will continue to coordinate efforts with the USGS and other researchers doing work related to ground water protection. The UIC Program will continue to assess any new information that relates to endangerments from Class V injection wells.

Today's determination does not preclude future action under EPA's UIC authority if the agency determines that additional regulatory action is needed.

IV. Administrative Requirements

A. Administrative Procedure Act

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing prior notice and an opportunity for public comment. EPA is publishing several rule changes related to today's final determination. First, EPA is removing regulatory text that states that EPA will establish regulatory requirements for Class V wells at a later date because EPA has now completed its determination of whether such regulatory requirements are necessary. As a result, such language is now outdated. Second, EPA is correcting minor errors in the existing Class V regulations. EPA has determined that there is "good cause" for making today's rule changes final without prior proposal and opportunity for comment because these rule changes have no substantive impact and merely correct or replace outdated CFR text. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes "good cause" under 5 U.S.C. 553(b)(B). For the same reasons, EPA is making these rule changes effective upon publication. 5 U.S.C. 553(d)(3).

B. Other Administrative Requirements

Today's rule merely removes outdated CFR text and corrects minor errors. Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. Because the Agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedures Act or any other statute in section IV.A., it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or to sections 202 or 205 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65

FR 67249, November 6, 2000). 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). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant. Neither is it subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. This technical correction does not include technical standards; 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. This action 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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that the notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of June 7, 2002. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

V. References

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List of Subjects 40 CFR Part 144

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Indians-lands, Reporting and recordkeeping requirements, Surety bonds, Water supply.

Dated: May 31, 2002.

G. Tracy Mehan III,
Assistant Administrator of Water.

For the reasons set out in the preamble, title 40 chapter I of the Code of Federal Regulations is amended to read as follows:

PART 144—UNDERGROUND INJECTION CONTROL PROGRAM

1. The authority citation for part 144 continues to read as follows:

Authority: Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*; Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

2. Section 144.1 is amended by revising paragraph (g) introductory text to read as follows:

§ 144.1 Purpose and scope of part 144.

* * * * *

(g) *Scope of the permit or rule requirement.* The UIC Permit Program regulates underground injections by five classes of wells (see definition of “well injection,” § 144.3). The five classes of wells are set forth in § 144.6. All owners or operators of these injection wells must be authorized either by permit or rule by the Director. In carrying out the mandate of the SDWA, this subpart provides that no injection shall be authorized by permit or rule if it results in the movement of fluid containing any contaminant into Underground Sources of Drinking Water (USDWs—see § 144.3 for definition), if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR part 141 or may adversely affect the health of persons (§ 144.12). Existing Class IV wells which inject hazardous waste directly into an underground source of drinking water are to be eliminated over a period of six months and new such Class IV wells are to be prohibited (§ 144.13). For Class V wells, if remedial action appears necessary, a permit may be required (§ 144.25) or the Director must require remedial action or closure by order (§ 144.12(c)). During UIC Program development, the Director may identify aquifers and portions of aquifers which are actual or potential sources of drinking water. This will provide an aid to the Director in carrying out his or her duty to protect all USDWs. An aquifer is a USDW if it fits the definition, even if it has not been “identified.” The Director may also designate “exempted aquifers” using the criteria in 40 CFR 146.4. Such aquifers are those which would otherwise qualify as “underground sources of drinking water” to be protected, but which have no real potential to be used as drinking water sources. Therefore, they are not USDWs. No aquifer is an “exempted aquifer” until it has been affirmatively designated under the procedures in § 144.7. Aquifers which do not fit the definition of “underground source of drinking water” are not “exempted

aquifers." They are simply not subject to the special protection afforded USDWs.
* * * * *

3. Section 144.13 is amended by revising paragraph (c) to read as follows:

§ 144.13 Prohibition of Class IV wells.
* * * * *

(c) Wells used to inject contaminated ground water that has been treated and is being reinjected into the same formation from which it was drawn are not prohibited by this section if such injection is approved by EPA, or a State, pursuant to provisions for cleanup of releases under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601-9657, or pursuant to requirements and provisions under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 through 6987.
* * * * *

4. Section 144.26 is amended by revising the introductory text and

removing the text after the heading in paragraph (d) introductory text to read as follows:

§ 144.26 Inventory requirements.

The owner or operator of an injection well which is authorized by rule under this subpart shall submit inventory information to the Director. Such an owner or operator is prohibited from injecting into the well upon failure to submit inventory information for the well within the time frame specified in paragraph (d) of this section.
* * * * *

(d) Deadlines. (1) * * *
* * * * *

5. Section 144.81 is amended by revising paragraph (16) to read as follows:

§ 144.81 Does this subpart apply to me?
* * * * *

(16) Motor vehicle waste disposal wells that receive or have received fluids from vehicular repair or

maintenance activities, such as an auto body repair shop, automotive repair shop, new and used car dealership, specialty repair shop (e.g., transmission and muffler repair shop), or any facility that does any vehicular repair work. Fluids disposed in these wells may contain organic and inorganic chemicals in concentrations that exceed the maximum contaminant levels (MCLs) established by the primary drinking water regulations (see 40 CFR part 141). These fluids also may include waste petroleum products and may contain contaminants, such as heavy metals and volatile organic compounds, which pose risks to human health.

§ 144.87 [Amended]

6. Section 144.87 is amended by adding and reserving paragraph (g).

[FR Doc. 02-14368 Filed 6-6-02; 8:45 am]

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Airworthiness directives: Bombardier; comments due by 6-12-02; published 5-13-02 [FR 02-11942]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-523-6641. This list is also available online at <http://www.nara.gov/fedreg/plawcurr.html>.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO Access at <http://www.access.gpo.gov/nara/nara005.html>. Some laws may not yet be available.

H.R. 1840/P.L. 107-185

To extend eligibility for refugee status of unmarried sons and daughters of certain Vietnamese refugees. (May 30, 2002; 116 Stat. 587)

H.R. 4782/P.L. 107-186

To extend the authority of the Export-Import Bank until June 14, 2002. (May 30, 2002; 116 Stat. 589)

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