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DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

7 CFR Part 1580

RIN 0551–AA66

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Technical amendments.

SUMMARY: This final rule makes technical corrections to the final rule published on August 20, 2003, implementing the Trade Adjustment Assistance for Farmers (TAA) program.

DATES: Effective on November 6, 2003.

FOR FURTHER INFORMATION CONTACT: Richard Blabey, Director, Import Policies and Programs Division, Foreign Agricultural Service, 1400 Independence Avenue, SW., STOP 1021, by e-mail at: *trade.adjustment@fas.usda.gov,* telephone (202) 720–2916, or fax at (202) 720–0876.

SUPPLEMENTARY INFORMATION: A final rule implementing the TAA program was published on August 20, 2003 (60 FR 50048). The rule, which is codified at 7 CFR part 1580, implements Chapter 6 of Title II of the Trade Act of 1974, as amended by subtitle C of Title I of the Trade Act of 2002 (Pub. Law 107–210) (19 U.S.C. 2551, *et seq.*) (the Trade Act).

As published, the final rule contained four technical errors or inadvertent omissions. The corrections being made are described as follows:

Section 1580.102 of the regulation defines certification date to mean ''the date on which the Administrator announces in the **Federal Register** or by Department news release, whichever comes first, a certification of eligibility to apply for adjustment assistance.'' Section 293(a) of the Trade Act states: ''Each certification shall specify the date on which eligibility under this chapter begins.'' The Trade Act authorizes the Department to announce for each certification the date on which eligibility begins not restricted to the date of the **Federal Register** notice. Therefore, this flexibility to announce an eligibility date other than the date of publication in the **Federal Register**, as currently provided for in the rule, will be made available to the Administrator.

Section 1580.203(a)(1) of the regulation states, as a condition for adjustment assistance: ''The national average price for the agricultural commodity for the marketing year under review is equal to or less than 80 percent of the average of the national average prices for the 5 marketing years preceding the most recent marketing year.'' Section 292(c)(1) of the Trade Act states, as a condition for adjustment assistance: ''that the national average price for the agricultural commodity * * * produced by the group for the most recent marketing year for which the national average price is available is less than 80 percent of the average of the national average price for such agricultural commodity * * * for the 5 marketing years preceding the most recent marketing year.'' To be consistent with the Trade Act, the Administrator shall certify initial petitions for TAA only when the national average price is less than 80 percent of the average price for the commodity for the 5 preceding marketing years.

Section 1580.302(e) of the regulation states: ''Producers shall be entitled to employment services and training benefits under trade adjustment assistance for workers managed by the U.S. Department of Labor.'' Section 296(d) of the Trade Act states: ''An agricultural commodity producer entitled to receive a cash benefit under this chapter * * * (2) shall be entitled to employment services and training benefits under part II of subchapter B of chapter 2.'' The Trade Act authorizes Department of Labor employment services and training benefits to producers entitled to receive a cash benefit. The final rule offers these services and benefits to all TAA applicants. To be consistent with the Trade Act, employment services and training benefits will be available only to those TAA applicants who are eligible for cash benefits.

Section 1580.303(d) of the regulation states: ''The total amount of payments made under this part to a person during any fiscal year when considered with the total amount of counter-cyclical payments made in accordance with part 1412 of this title for a corresponding crop year shall not exceed $65,000 per fiscal year, as determined by the Administrator.'' Section 296(a)(2)(B) of the Trade Act states: ''The total amount of payments made to an agricultural producer under this chapter during any crop year may not exceed the limitation on counter-cyclical payments set forth in section 1001(c) of the Food Security Act of 1985.'' The Trade Act applies the $65,000 counter-cyclical payment limitation on a crop year basis. The final rule applies the $65,000 limitation on a fiscal year basis. To be consistent with section 1001(c) of the Food Security Act of 1985, the $65,000 TAA counter-cyclical payment limitation will be imposed on a crop year basis.

Corrections to the Final Rule

■ Accordingly, FR Rule Doc. No. 03–21338, as published at 68 FR 50048, August 20, 2003, is corrected by revising sections 1580.102, 1580.203(a)(1), 1580.302(e) and 1580.303(d) to read as follows:

PART 1580—[CORRECTED]

■ 1. The authority citation for part 1580 continues to read as follows:

Authority: 19 U.S.C. 2401.

§ 1580.102 [Corrected]

■ 2. In § 1580.102, on page 50050, in the second column, the definition for ''Certification date'' is revised as follows:

* * * * *

Certification date means the effective date on which the Administrator announces in the **Federal Register** or by Department news release a certification of eligibility to apply for adjustment assistance.

* * * * *

■ 3. Section 1580.203(a)(1), on page 50051, in the second column, is revised as follows:

§ 1580.203 Determination of eligibility and certification by the Administrator.

* * * * *

(a) * * *

(1) The national average price for the agricultural commodity for the

marketing year under review is less than 80 percent of the average of the national average prices for the 5 marketing years preceding the most recent marketing year, and

* * * * *

■ 4. Section 1580.302(e), on page 50052, in the first column, is revised to read as follows:

§ 1580.302 Technical assistance and services.

* * * * *

(e) Producers that furnish all certifications required under § 1580.301(e) shall be entitled to employment services and training benefits under trade adjustment assistance for workers managed by the Department of Labor.

* * * * *

■ 5. Section § 1580.303(d), on page 50052, in the second column, is revised to read as follows:

§ 1580.303 Adjustment Assistance Payments.

* * * * *

(d) The total amount of payments made under this part to a person during any crop year when considered with the total amount of counter-cyclical payments made in accordance with part 1412 of this title for a corresponding crop year shall not exceed $65,000 per crop year, as determined by the Administrator.

* * * * *

Signed at Washington, DC on October 27, 2003.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 03–27962 Filed 11–5–03; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Admiration

14 CFR Part 71

[Docket No. FAA–2003–16058; Airspace Docket No. 03–AGL–06]

Establishment of Class E Airspace; Viroqua, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Viroqua, WI. Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPS) have been developed for Viroqua Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action establishes an area of controlled airspace for Viroqua Municipal Airport.

EFFECTIVE DATE: 0901 UTC, December 25, 2003.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, June 20, 2003, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Viroqua, WI (68 FR 36949). The proposal was to establish controlled airspace extending upward from 700 feet or more above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transmitting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are publish in paragraph 6005 of FAA Order 7400.9L dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Viroqua, WI, to accommodate aircraft executing instrument flight procedures into and out of Viroqua Municipal Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7300.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AGL WI E5 Viroqua, WI [New]

Viroqua Municipal Airport, WI
(Lat. 43°34′46″ N., long. 90°53′47″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Viroqua Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois on October 9, 2003.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 03–27749 Filed 11–5–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15846; Airspace Docket No. 03–ASO–12]

Amendment of Class E Airspace; Jacksonville, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E5 airspace at Jacksonville, NC. A Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Onslow Memorial Hospital, Jacksonville, NC. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

DATES: 0901 UTC, December 25, 2003.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 306–5627.

SUPPLEMENTARY INFORMATION:

History

On September 2, 2003, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E5 airspace at Jacksonville, NC (68 FR 52148). This action provides adequate Class E5 airspace for IFR operations at Onslow Memorial Hospital, Jacksonville, NC. Designations for Class E are published in FAA Order 7400.9L, dated September 16, 2003, and effective September 15, 2004, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 (CFR part 71) amends Class E5 airspace at Jacksonville, NC.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule''under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 16, 2003, and effective September 15, 2004, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ASO NC E5 Jacksonville, NC [Revised]

Jacksonville, New River MCAS, NC
(Lat. 34°42′31″ N, long. 77°26′23″ W)
Albert J. Ellis Airport
(Lat. 34°49′45″ N, long. 77°36′44″ W)
Onslow Memorial Hospital
Point In Space Coordinates
(Lat. 34°45′36″ N, long. 77°22′28″ W)

That airspace extending upward from 700 feet or more above the surface within a 7-mile radius of New River MCAS, within a 6.4-mile radius of Albert J. Ellis Airport and that airspace within a 6-mile radius of the point in space (Lat. 34°45′36″ N, long. 77°22′28″ W) serving Onslow Memorial Hospital.

* * * * *

Issued in College Park, Georgia on October 10, 2003.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 03–27904 Filed 11–5–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15847; Airspace Docket No. 03–ASO–13]

Amendment of Class E Airspace; Maxton, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E5 airspace at Maxton, NC. A Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Scotland Memorial Hospital, Laurinburg, NC. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

EFFECTIVE DATE: 0901 UTC, December 25, 2003.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On August 20, 2003, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E5 airspace at Maxton, NC, (68 FR 50081). This action provides adequate Class E5 airspace for IFR operations at Scotland Memorial Hospital, Laurinburg, NC. Designations for Class E are published in FAA Order 7400.9L, dated September 16, 2003, and effective September 15, 2004, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E5 airspace at Maxton, NC.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 16, 2003, and effective September 15, 2004, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ASO NC E5 Maxton, NC [Revised]

Maxton, Laurinburg—Maxton Airport, NC
(Lat. 34°47′31″ N, long. 79°21′57″ W)

Sandhills VORTAC
(Lat. 35°12′56″ N. long 79°35′17″ W)

Scotland Memorial Hospital
Point in Space Coordinates
(Lat. 34°45′49″ N, long. 79°28′10″ W)

That airspace extending upward from 700 feet or more above the surface within a 7-mile radius of the Laurinburg—Maxton Airport and within 2.5 miles each side of the Sandhills VORTAC 157° radial, extending from the 7-mile radius to 19 miles southeast of the airport, and that airspace within a 6-mile radius of the point in space (Lat. 34°45′49″ N, long. 79°28′10″ W) serving Scotland Memorial Hospital.

* * * * *

Issued in College Park, Georgia, on September 29, 2003.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 03–27903 Filed 11–5–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15845; Airspace Docket No. 03–ASO–11]

Amendment of Class E Airspace; Raleigh, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E5 airspace at Raleigh, NC. A Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Duke Medical Center, Durham, NC. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

EFFECTIVE DATE: 0901 UTC, December 25, 2003.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On August 20, 2003, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E5 airspace at Raleigh, NC, (68 FR 50084). This action provides adequate Class E5 airspace for IFR operations at Duke Medical Center, Durham, NC. Designations for Class E are published in FAA Order 7400.9L, dated September 16, 2003, and effective September 15, 2004, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E5 airspace at Raleigh, NC.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854. 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 16, 2003, and effective September 15, 2004, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ASO NC E5 Raleigh, NC [Revised]

Raleigh-Durham International Airport, NC
(Lat. 35°52′40″ N, long. 78°47′15″ W)
Leevy NDB
(Lat. 35°55′38″ N, long. 78°43′19″ W)
Horace Williams Airport
(Lat. 35°56′06″ N, long. 79°03′57″ W)
Duke Medical Center
Point In Space Coordinates
(Lat. 35°59′48″ N, long. 78°55′49″ W)

That airspace extending upward from 700 feet or more above the surface within a 10-mile radius of Raleigh-Durham International Airport and within 2.5 miles each side of the 045° bearing from Leevy NDB, extending from the 10-mile radius to 7 miles northeast of the NDB; within a 6.3-mile radius of Horace Williams Airport and that airspace within a 6-mile radius of the point in space (lat. 35°59′48″ N, long. 78°55′49″ W) serving Duke Medical Center.

* * * * *

Issued in College Park, Georgia on September 29, 2003.

Walter R. Cochran,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 03–27902 Filed 11–5–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15789; Airspace Docket No. 03–AEA–09]

Amendment to Class E Airspace; Charlottesville, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error and omission in the description of the Charlottesville, VA Class E–5 designated airspace that was published in a final rule on February 20, 2001 (66 FR 10812), Airspace Docket No. 00–AEA–11. The Final Rule amended the description of the Class E airspace for Charlottesville, VA.

DATES: Effective November 6, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Background

Airspace Docket No. 00–AEA–11, published in the **Federal Register** on February 20, 2001 (66 FR 10812), amended the description of the Class E airspace area at Charlottesville-Albemarle Airport, Charlottesville, VA. The final rule established Class E airspace for the University of Virginia Medical Center Heliport as the primary airport for the Class E description.

Need for Correction

The final rule for the Class E airspace at Charlottesville omitted the description for the Charlottesville-Albemarle Airport. This error was discovered in the description of the airspace as published. This action corrects that error.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ Accordingly, pursuant to the authority delegated to me, the legal description for the Class E–5 airspace area at Charlottesville, VA, as published in the **Federal Register** on February 20, 2001 (66 FR 10812) and incorporated by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002 and effective September 16, 2002, is corrected by making the following amendment:

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959—1963 Comp., p. 389.

§ 71.1 [Corrected]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 16, 2003, and effective September 15, 2004, is corrected as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AEA VA E5 Charlottesville, VA [Corrected]

Charlottesville-Albemarle Airport, VA
(Lat. 38°08′19″ N., long. 78°27′10″ W.)
University of Virginia Medical Center Heliport
(Lat. 38°01′18″ N., long. 78°30′30″ W.)
Azalea Park NDB
(Lat. 38°00′37″ N., long. 78°31′05″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Charlottesville-Albemarle airport and within 4 miles each side of the Charlottesville-Albemarle Airport ILS localizer southwest course extending from the 6.5-mile radius to 9.6 miles southwest of the Azalea Park NDB and within a 6-mile radius of the University of Virginia Medical Center Heliport.

* * * * *

Issued in Jamaica, New York, on September 16, 2003.

John G. McCartney,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–27899 Filed 11–5–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

[Docket No. DEA–176F]

RIN 1117–AA47

Sale by Federal Departments or Agencies of Chemicals Which Could Be Used in the Illicit Manufacture of Controlled Substances

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: The Drug Enforcement Administration is finalizing the Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on May 8, 2003 (68 FR 24689). That NPRM proposed to conform DEA regulations to provisions of the National Defense Authorization Act which provides that a Federal department or agency may not sell from its stocks any chemical which could be used in the manufacture of a controlled substance unless the Administrator of DEA certifies in writing that there is no reasonable cause to believe that such a sale would result in the illegal manufacture of a controlled substance. This final rule codifies current practice established pursuant to statutory authority by which Federal agencies provide DEA with the opportunity to ensure that the sale of chemicals by them will not result in the illegal manufacture of controlled substances.

EFFECTIVE DATE: December 8, 2003.

FOR FURTHER INFORMATION CONTACT: Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement

Administration, Washington, DC 20537, Telephone: (202) 307–7297.

SUPPLEMENTARY INFORMATION:

Background

Section 520 of the National Defense Authorization Act (Pub. L. 104–201) amended the Controlled Substances Act (CSA) to prohibit a Federal department or agency from selling from its stocks any chemical which, as determined by the Administrator of the Drug Enforcement Administration (DEA), could be used in the manufacture of a controlled substance. However, the CSA as amended permits sales of such chemicals if the Administrator of DEA certifies in writing to the head of the selling Federal department or agency that there is no reasonable cause to believe that the sale of the chemical would result in the illegal manufacture of a controlled substance (21 U.S.C. 890).

On May 8, 2003, DEA published a Notice in the **Federal Register** proposing to conform its regulations to the provisions of the National Defense Authorization Act (68 FR 24689). The rule proposed requiring Federal departments or agencies to notify DEA of the names of prospective bidders and end-users prior to the sale of chemicals which could be used in the manufacture of controlled substances. This notification will allow DEA to identify whether there is reasonable cause to believe that the sale of a specific chemical to a specific bidder or end-user would result in the illegal manufacture of a controlled substance. DEA will work with Federal departments and agencies to determine which chemicals could be used in the illicit manufacture of a controlled substance.

Comments Received Regarding the May 8, 2003 Notice of Proposed Rulemaking

DEA received no written comments regarding the Notice of Proposed Rulemaking published on May 8, 2003. Accordingly, this Notice of Proposed Rulemaking is being finalized here without change.

Chemicals Affected by These Implementing Regulations

As stated in the NPRM, these implementing regulations affect any chemical which DEA determines could be used in the illicit manufacture of a controlled substance. Chemicals that can be used in the manufacture of a controlled substance include, but are not limited to, all List I and List II chemicals as provided in 21 CFR 1310.02. Further, any chemicals mentioned in the DEA ''Special Surveillance List of Chemicals, Products, Materials and Equipment Used in the Clandestine Production of Controlled Substances or Listed Chemicals' published, and updated from time to time, in the **Federal Register** (64 FR 25910, May 13, 1999; corrected at 64 FR 50541, Sept. 17, 1999) are affected by these regulations. Finally, any chemical which is neither a listed chemical nor is listed in the special surveillance list but which could be used in the illicit manufacture of a controlled substance is affected by these implementing regulations. Such chemicals could include, but are not limited to, those chemicals used in the direct illegal manufacture of a controlled substance, those chemicals used as cutting agents, and those chemicals used to process the controlled substance into a dosage form. DEA STRONGLY recommends that ANY Federal department or agency considering the sale of any chemical from its stocks contact DEA to determine whether such chemical could be used in the illicit manufacture of a controlled substance as far in advance of the sale of such chemical as possible.

Requirements of This Final Rule

By this final rule, a Federal department or agency is required to notify the Administrator of DEA in writing at least fifteen calendar days in advance of a proposed sale of chemicals covered by the Act. (DEA strongly encourages Federal departments or agencies to notify it further in advance if possible.) Written notification must be submitted on official agency letterhead to the Drug Enforcement Administration, Office of Diversion Control, Domestic Chemical Control Unit (ODID) Washington, DC 20537 and include: (1) The name and amount of the chemical to be sold; (2) the name and address of the prospective bidder(s); (3) the name and address of the potential end-user(s), in cases where a sale is being brokered; (4) point(s) of contact for the prospective bidder and end-user; and (5) the end use of the chemical.

Within fifteen calendar days from the date the written notification is received, DEA will respond in writing to the Federal department or agency certifying that there is, or is not, reasonable cause to believe that the sale of the specific chemical to the specific bidder and end-user would result in the illegal manufacture of a controlled substance. The certification that there is no reasonable cause to believe that the sale of the specific chemical to the specific bidder and end-user would result in the illegal manufacture of a controlled substance will apply to future sales to the same prospective bidder and end-user for the same chemical for one calendar year unless DEA notifies the agency to the contrary in writing.

Factors Considered in Certifying a Bidder or End-User

In determining whether there is reasonable cause to believe that the sale of a specific chemical to a specific bidder or end-user would result in the illegal manufacture of a controlled substance, the Administrator will consider the following factors: (1) The prospective bidder's and end-user's past experience in the maintenance of effective controls against diversion of particular chemicals into other than legitimate medical, scientific, and industrial channels; (2) the prospective bidder's and end-user's compliance with applicable Federal, state and local law; (3) the prior conviction record of the prospective bidder and end-user relating to controlled substances or to chemicals controlled under Federal or state laws; and (4) such other factors as may be relevant to and consistent with the public health and safety.

Recourse Available to a Bidder or End-User if DEA Refuses To Certify a Prospective Bidder or End-User or Withdraws an Existing Certification

If the Administrator determines there is reasonable cause to believe the sale of a specific chemical to a specific bidder or end-user would result in the illegal manufacture of a controlled substance and refuses to certify a prospective bidder or end-user, DEA will notify both the Federal department or agency and the prospective bidder and end-user in writing. The written notice to the prospective bidder and end-user will contain a statement of the legal and factual basis for certifying that there is reasonable cause to believe the sale of the specific chemical to that specific person would result in the illegal manufacture of a controlled substance. The prospective bidder and end-user may, within thirty calendar days of notification, submit written comments or objections to the Administrator, providing reasons and supporting documentation to contest the decision. The Administrator will take the written comments or objections under consideration and will either (1) provide a written statement that affirms the original decision is final and that provides reasons why the written comments or objections are overruled or are not considered; or (2) confirm the written response and certify the transaction, thereby reversing the original decision.

If the Administrator determines that there is reasonable cause to believe that an existing certification must be withdrawn, DEA will notify both the Federal department or agency and the specific bidder and end-user in writing. The written notice to the specific bidder and end-user will contain a statement of the legal and factual basis for certifying that there is reasonable cause to believe the certification must be withdrawn. The bidder and end-user may, within thirty calendar days of notification, submit written comments or objections to the Administrator, providing reasons and supporting documentation to contest the decision. The Administrator will take the written comments or objections under consideration and will either (1) provide a written statement that affirms the original decision is final and that provides reasons why the written comments or objections are overruled or are not considered; or (2) confirm the written response and reinstate a certification, thereby reversing the original decision.

Regulatory Certifications

Regulatory Flexibility Act

The Acting Deputy Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation, and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This final rule only affects Federal departments or agencies which plan to sell from their stocks chemicals which could be used in the manufacture of a controlled substance. The rule provides DEA with advance notice of the sale and the opportunity to prevent sales of chemicals which could result in the illicit manufacture of controlled substances.

Executive Order 12866

The Acting Deputy Administrator further certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866, Section 1(b). DEA has determined that this is not a significant regulatory action. Therefore, this action has not been reviewed by the Office of Management and Budget.

Executive Order 12988

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

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

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 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.

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 Fairness 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.

List of Subjects in 21 CFR Part 1310

Drug traffic control, List I and List II chemicals, Reporting and recordkeeping requirements.

■ For the reasons set out above, 21 CFR part 1310 is amended as follows:

PART 1310—[AMENDED]

■ 1. The authority citation for part 1310 is amended to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b), 890.

■ 2. Part 1310 is amended by adding § 1310.21 to read as follows:

§ 1310.21 Sale by Federal departments or agencies of chemicals which could be used to manufacture controlled substances.

(a) A Federal department or agency may not sell from the stocks of the department or agency any chemical which, as determined by the Administrator of the Drug Enforcement Administration, could be used in the manufacture of a controlled substance, unless the Administrator certifies in writing to the head of the department or agency that there is no reasonable cause to believe that the sale of the specific chemical to a specific person would result in the illegal manufacture of a controlled substance. For purposes of this requirement, reasonable cause to believe means that the Administration has knowledge of facts which would cause a reasonable person to reasonably conclude that a chemical would be diverted to the illegal manufacture of a controlled substance.

(b) A Federal department or agency must request certification by submitting a written request to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: Domestic Chemical Control Unit (ODID). A request for certification may be transmitted directly to the Drug Enforcement Administration, Domestic Chemical Control Unit through electronic facsimile media. A request for certification must be submitted no later than fifteen calendar days before the proposed sale is to take place. In order to facilitate the sale of chemicals from Federal departments' or agencies' stocks, Federal departments or agencies may wish to submit requests as far in advance of the fifteen calendar days as possible. The written notification of the proposed sale must include:

(1) The name and amount of the chemical to be sold;

(2) The name and address of the prospective bidder;

(3) The name and address of the prospective end-user, in cases where a sale is being brokered;

(4) Point(s) of contact for the prospective bidder and, where appropriate, prospective end-user; and

(5) The end use of the chemical.

(c) Within fifteen calendar days of receipt of a request for certification, the Administrator will certify in writing to the head of the Federal department or agency that there is, or is not, reasonable cause to believe that the sale of the specific chemical to the specific bidder and end-user would result in the illegal manufacture of a controlled substance. In making this determination, the following factors must be considered:

(1) Past experience of the prospective bidder or end-user in the maintenance of effective controls against diversion of listed chemicals into other than legitimate medical, scientific, and industrial channels;

(2) Compliance of the prospective bidder or end-user with applicable Federal, state and local law;

(3) Prior conviction record of the prospective bidder or end-user relating to listed chemicals or controlled substances under Federal or state laws; and

(4) Such other factors as may be relevant to and consistent with the public health and safety.

(d) If the Administrator certifies to the head of a Federal department or agency that there is no reasonable cause to believe that the sale of a specific chemical to a prospective bidder and end-user will result in the illegal manufacture of a controlled substance, that certification will be effective for one year from the date of issuance with respect to further sales of the same chemical to the same prospective bidder and end-user, unless the Administrator notifies the head of the Federal department or agency in writing that the certification is withdrawn. If the certification is withdrawn, DEA will also provide written notice to the bidder and end-user, which will contain a statement of the legal and factual basis for this determination.

(e) If the Administrator determines there is reasonable cause to believe the sale of the specific chemical to a specific bidder and end-user would result in the illegal manufacture of a controlled substance, DEA will provide written notice to the head of a Federal department or agency refusing to certify the proposed sale under the authority of 21 U.S.C. 890. DEA also will provide, within fifteen calendar days of receiving a request for certification from a Federal department or agency, the same written notice to the prospective bidder and end-user, and this notice also will contain a statement of the legal and factual basis for the refusal of certification. The prospective bidder and end-user may, within thirty calendar days of receipt of notification of the refusal, submit written comments or written objections to the Administrator's refusal. At the same time, the prospective bidder and end-user also may provide supporting documentation to contest the Administrator's refusal. If such written comments or written objections raise issues regarding any finding of fact or conclusion of law upon which the refusal is based, the Administrator will reconsider the refusal of the proposed sale in light of the written comments or written objections filed. Thereafter, within a reasonable time, the Administrator will withdraw or affirm the original refusal of certification as he determines appropriate. The Administrator will provide written reasons for any affirmation of the original refusal. Such affirmation of the original refusal will constitute a final decision for purposes of judicial review under 21 U.S.C. 877.

(f) If the Administrator determines there is reasonable cause to believe that an existing certification should be withdrawn, DEA will provide written notice to the head of a Federal department or agency of such withdrawal under the authority of 21 U.S.C. 890. DEA also will provide, within fifteen calendar days of withdrawal of an existing certification, the same written notice to the bidder and end-user, and this notice also will contain a statement of the legal and factual basis for the withdrawal. The bidder and end-user may, within thirty calendar days of receipt of notification of the withdrawal of the existing certification, submit written comments or written objections to the Administrator's withdrawal. At the same time, the bidder and end-user also may provide supporting documentation to contest the Administrator's withdrawal. If such written comments or written objections raise issues regarding any finding of fact or conclusion of law upon which the withdrawal of the existing certification is based, the Administrator will reconsider the withdrawal of the existing certification in light of the written comments or written objections filed. Thereafter, within a reasonable time, the Administrator will withdraw or affirm the original withdrawal of the existing certification as he determines appropriate. The Administrator will provide written reasons for any affirmation of the original withdrawal of the existing certification. Such affirmation of the original withdrawal of the existing certification will constitute a final decision for purposes of judicial review under 21 U.S.C. 877.

Dated: October 28, 2003.

Michele M. Leonhart,

Acting Deputy Administrator.

[FR Doc. 03–27889 Filed 11–5–03; 8:45 am]

BILLING CODE 4410–09–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 140–0415; FRL–7583–5]

Disapproval of State Implementation Plan Revisions, Antelope Valley, Butte County, Mojave Desert, and Shasta County Air Quality Management Districts and Kern County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing disapproval of a revision to the Antelope Valley Air Quality Management District (AVAQMD), Butte County Air Quality Management District (BCAQMD), Kern County Air Pollution Control District (KCAPCD), Mojave Desert Air Quality Management District (MDAQMD), and Shasta County Air Quality Management District (SHCAQMD) portions of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on June 6, 2003 (68 FR 33899) and concerns excess emissions and breakdown provisions. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action directs California to correct rule deficiencies in AVAQMD Rule 430, BCAQMD Rule 275, KCAPCD Rule 111, MDAQMD Rule 430, and SHCAQMD Rule 3:10.

EFFECTIVE DATE: This rule is effective on December 8, 2003.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted SIP revision at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Antelope Valley Air Quality Management District, 43301 Division St., Ste. 206, Lancaster, CA 93535–4649

Butte County Air Quality Management District, 2525 Dominic Drive, Suite J, Chico, CA 95928–7184

Kern County Air Pollution Control District, 2700 ''M'' Street, Suite 302, Bakersfield, CA 93301–2370

Mojave Desert Air Quality Management District, 14306 Park Avenue, Victorville, CA 92392–2310

Shasta County Air Quality Management District, 1855 Placer Street, Ste. 101, Redding, CA 96001–1759

Copies of the rules may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Thomas C. Canaday, EPA Region IX, (415) 947–4121.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

I. Proposed Action

On June 6, 2003 (68 FR 33899), EPA proposed to disapprove the following rules that were submitted for incorporation into the California SIP.

Local agency	Rule	Rule title	Adopted	Submitted
AVAQMD	430	Breakdown Provisions	03/17/98	02/16/99
BCAQMD	275	Reporting Procedures for Excess Emissions	02/15/96	05/10/96
KCAPCD	111	Equipment Breakdown	05/02/96	07/23/96
MDAQMD	430	Breakdown Provisions	12/21/94	01/24/95
SHCAQMD	3:10	Excess Emissions	12/05/95	05/10/96

We proposed to disapprove these rules because some rule provisions conflict with section 110 and part D of the Act. In particular, we are disapproving AVAQMD Rule 430, KCAPCD Rule 111, and MDAQMD Rule 430 because the rules describe how the districts intend to apply their enforcement discretion in instances where facilities exceed emissions limits due to breakdown. We are disapproving BCAQMD Rule 275 and SHCAQMD Rule 3:10 because they fail to make clear that the excess emissions are violations of the applicable emissions limitations and that a determination by the APCO not to take an enforcement action (or finding by the APCD that an emergency exists) would not bar EPA or citizen action.

Our proposed action contains more information on the basis for this rulemaking and on our evaluation of the submittal.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

III. EPA Action

Therefore, as authorized in section 110(k)(3) of the Act, EPA is finalizing a disapproval of the submitted rules. These are not required SIP submittals, so this disapproval has no sanction or FIP implications under CAA sections 179 or 110(c). Note that the submitted rules have been adopted by the AVAQMD, BCAQMD, KCAPCD, MDAQMD, and SHCAQMD, and EPA's final disapproval does not prevent the local agency from enforcing them.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

These rules do not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

These rules will not have a significant impact on a substantial number of small entities because this SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act does not create any new requirements but simply disapproves requirements that the State is already imposing. Therefore, because the Federal SIP disapproval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

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

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

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

These rules 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, because it merely disapproves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 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.'' These final rules do not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

These rules are not subject to Executive Order 13045 because they do not involve decisions intended to mitigate environmental health or safety risks.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

These rules are not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing these rules 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. section 804(2). This rule will be effective December 8, 2003.

K. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 5, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: August 25, 2003.

Wayne Nastri,

Regional Administrator, Region IX.

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart F—California

■ 2. Section 52.271 is amended by adding paragraphs (b)(5) and (b)(6) and (d) to read as follows:

§ 52.271 Malfunction, startup, and shutdown regulations.

* * * * *

(a) * * *

(5) Butte County AQMD.

(i) Rule 275, Reporting Procedures for Excess Emissions, submitted on May 10, 1996.

(6) Shasta County AQMD.

(i) Rule 3:10, Excess Emissions, submitted on May 10, 1996.

* * * * *

(d) The following regulations are disapproved because they merely describe how state agencies intend to apply their enforcement discretion and thus, if approved, the regulations would have no effect on the State Implementation Plan.

(1) Antelope Valley AQMD.

(i) Rule 430, Breakdown Provisions, submitted on February 16, 1999.

(2) Kern County APCD.

(i) Rule 111, Equipment Breakdown, submitted on July 23, 1996.

(3) Mojave Desert AQMD.

(i) Rule 430, Breakdown Provisions, submitted on January 24, 1995.

[FR Doc. 03–27848 Filed 11–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL–7584–1]

Water Quality Standards; Withdrawal of Federal Nutrient Standards for the State of Arizona

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is taking final action to amend the Federal regulations to withdraw water quality criteria applicable to Arizona. In 1976, EPA

promulgated Federal criteria for nutrients in Arizona. The Federal criteria consisted of numeric ambient water quality criteria for nutrients for eleven river segments and narrative water quality criteria for nutrients applicable to all surface waters in Arizona. Arizona has now adopted its own numeric and narrative water quality criteria for nutrients, which EPA has approved. Arizona has also established and EPA has approved implementation procedures for its narrative nutrient water quality criteria. Therefore, EPA has determined that the Federally promulgated criteria for Arizona are no longer needed and is withdrawing the Federal criteria for nutrients in Arizona.

DATES: This rule is effective on December 8, 2003.

ADDRESSES: The supporting record for this decision may be inspected at EPA Region 9, 75 Hawthorne Street, Water Division, Clean Water Act Standards and Permits Office, San Francisco, CA 94105, Monday through Friday, excluding legal holidays, during normal business hours of 9 a.m. to 5:00 p.m. Please contact Gary Sheth, as listed in the **FOR FURTHER INFORMATION CONTACT** section, before arriving.

A copy of Arizona's water quality standards may be obtained electronically from EPA's Water Quality Standards Repository, at *http://www.epa.gov/waterscience/wqs/*.

FOR FURTHER INFORMATION CONTACT: Gary Sheth at EPA Region 9, Water Division, Clean Water Act Standards and Permits Office (WTR–5), 75 Hawthorne Street, San Francisco, CA 94105 (tel: 415–972–3516, fax: 415–947–3545) or e-mail to *sheth.gary@epa.gov*, or Kellie Kubena at EPA Headquarters, Office of Water (4305T), 1200 Pennsylvania Ave, NW., Washington, DC 20460 (tel: 202–566–0448, fax: 202–566–0409) or e-mail to *kubena.kellie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Potentially Regulated Entities

No one is regulated by this rule. This rule merely withdraws certain Federal water quality criteria for nutrients applicable in Arizona.

II. Background

A. What Are the Statutory and Regulatory Requirements Relevant to This Action?

Section 303(c) (33 U.S.C. 1313(c)) of the Clean Water Act (CWA or Act) directs States, with oversight from EPA, to adopt water quality standards to protect the public health and welfare, enhance the quality of water and serve the purposes of the Act. States are required to develop water quality standards for waters of the United States within the State. Section 303(c) and EPA's implementing regulations provide that a water quality standard shall include the designated use or uses to be made of the water, the water quality criteria necessary to protect those uses, and an antidegradation policy. 33 U.S.C. 1313(t)(2)(A); 40 CFR 131.10–.12. States may also include in their water quality standards policies generally affecting the standards' application and implementation. 40 CFR 131.6(f); 40 CFR 131.13. States are required to review their water quality standards at least once every three years and, if appropriate, revise or adopt new standards. 33 U.S.C. 1313(c)(2). States are required to submit the results of their reviews to EPA. EPA then reviews the State's standards for consistency with the CWA and EPA's implementing regulations at 40 CFR part 131 and approves or disapproves any new or revised standards. 33 U.S.C. 1313(c)(3). Section 303(c)(4) of the CWA authorizes EPA to promulgate water quality standards when necessary to supersede disapproved State water quality standards, or in any case where the Administrator determines that new or revised standards are necessary to meet the requirements of the CWA.

EPA may issue a rule to withdraw Federal water quality standards promulgated for a State when the State adopts, and EPA approves, State water quality standards that meet the requirements of the CWA and the implementing Federal regulations. That is the situation here.

B. What Actions Have EPA and Arizona Taken in the Past Relating to Water Quality Standards for Nutrients in the State?

In 1976, EPA determined that water quality standards for nutrients submitted by Arizona as of that time did not meet the CWA's requirements. On June 22, 1976, EPA promulgated Federal numeric nutrient criteria for total phosphates applicable to eleven river segments in Arizona, Federal numeric nutrient criteria for total nitrates applicable to four waterbodies, and Federal narrative nutrient criteria applicable to all surface waters of the United States in Arizona. *See* 40 CFR 131.31(a); 41 FR 25000 (June 22, 1976). Although EPA used the phrase *nutrient standards* to describe the water quality criteria for nutrients codified at 40 CFR 131.31(a), in today's action, EPA is using the more precise term *criteria* to refer to the Federal water quality criteria for nutrients in Arizona that EPA is withdrawing.

Since EPA's promulgation of nutrient water quality criteria in 1976, EPA has approved the numeric and narrative water quality criteria for nutrients adopted by Arizona. *See, e.g.*, EPA's **Federal Register** notices of approvals at 53 FR 4209 (Feb. 12, 1988); 58 FR 62124 (Nov. 24, 1993); 60 FR 51793 (Oct. 3, 1995). Specifically, in a series of actions, the Arizona Department of Environmental Quality (ADEQ) adopted, and EPA approved, numeric nutrient criteria for total nitrogen and total phosphorous applicable to specific water bodies in Arizona. See Arizona Administrative Code, R18–11–109, 11–110, and 11–112. Arizona has also adopted and EPA has approved narrative nutrient criteria applicable to all surface waters of the State. See Arizona Administrative Code, R18–11–108. Arizona's narrative nutrient criteria provide that ''navigable waters shall be free from pollutants in amounts or combinations that cause the growth of algae or aquatic plants that inhibit or prohibit the habitation, growth or propagation of other aquatic life or that impair recreational uses''. See Arizona Administrative Code, R18–11–108.A.5.

In January 1996, ADEQ established implementation procedures for its narrative nutrient water quality criteria (see Arizona's *Implementation Guidelines for the Narrative Nutrient Standard* (*http://www.sosaz.com/public_services/Title_18/18_table.htm*)). On April 26, 1996, EPA approved these implementation procedures. On May 7, 1996, EPA promulgated additional water quality standards for Arizona, noting that the State had identified its own implementation procedures to translate its narrative criteria. See 61 FR 20686 (May 7, 1996). Although EPA did not specifically address the continuing need for the 1976 Federal nutrient criteria, EPA observed in that notice that Arizona's numeric and narrative nutrient criteria, as supplemented by the State's newly established implementation procedures, were consistent with the CWA. See 61 FR 20692 (May 7, 1996). Consistent with this earlier finding, EPA has determined that the 1976 Federal criteria for nutrients for Arizona waters are redundant and no longer necessary. On July 30, 2001, EPA proposed to withdraw the Federal water quality criteria for nutrients applicable to Arizona surface waters at 40 CFR 131.31(a). (See Section III for a discussion of comments received). EPA is now finalizing its decision to withdraw federally promulgated nutrient criteria applicable to Arizona.

EPA notes that Arizona's adopted and approved numeric water quality criteria for nutrients are based on total phosphorous and total nitrogen whereas the numeric water quality criteria for nutrients promulgated by EPA in 1976 are based on total phosphates and total nitrates. Total phosphorous and total nitrogen are more encompassing measurements of the presence of these types of nutrients than total phosphates and total nitrates, for which EPA promulgated water quality criteria in 1976, because elemental phosphorous and nitrogen can be present in different forms under different conditions (including, but not limited to, phosphates and nitrates). For this reason, EPA currently recommends adopting criteria for total phosphorous and total nitrogen. *See Nutrient Criteria Technical Guidance Manual: Lakes and Reservoirs,* EPA–822–B–00–001; *Ambient Water Quality Criteria Recommendations: Lakes and Reservoirs in Nutrient Ecoregion II,* EPA–822–B–00–007; *Ambient Water Quality Criteria Recommendations: Rivers and Streams in Nutrient Ecoregion II,* EPA 822–B–00–015; *Ambient Water Quality Criteria Recommendations: Rivers and Streams in Nutrient Ecoregion III,* EPA 822–B–00–016. Although EPA is not able to directly compare Arizona's nutrient criteria based on total phosphorous and total nitrogen with the Federally promulgated criteria based on total phosphates and total nitrates, the CWA and EPA's regulations at 40 CFR 131.11 only require that States adopt criteria that are scientifically defensible and sufficiently detailed to protect the designated uses of the waterbodies. When EPA approved these criteria, EPA determined that they met this requirement and adequately protected Arizona waters from excess nutrients (the same objective of the 1976 Federal nutrients water quality criteria). For more detailed information on EPA's analysis, see EPA's approval decisions contained in the docket for this rulemaking

C. What Water Quality Standards Will Apply Now That EPA Is Withdrawing the Federal Nutrient Criteria in Arizona?

The goal of EPA's 1976 rulemaking in Arizona was to establish water quality criteria to protect the designated uses of Arizona surface waters. EPA withdraws federally promulgated water quality standards after the State adopts, and EPA approves, water quality standards that meet the requirements of the CWA and the implementing Federal regulations. As discussed earlier, in 1996, after approving Arizona's nutrient criteria and implementation procedures, EPA determined that Arizona's standards met the requirements of the CWA and EPA's implementing regulations and Federally promulgated nutrient criteria were no longer necessary. As a result of today's action, Arizona's numeric and narrative nutrient criteria, and the corresponding implementation procedures for the narrative criteria are the applicable nutrient criteria. Not affected by this proposal are Federal water quality standards codified at 40 CFR 131.31(b) and (c), which among other things designate fish consumption as a use for certain waters, and require implementation of a monitoring program regarding mercury's effects on wildlife. These provisions remain in effect.

Table 1 below displays the Federal numeric criteria for nutrients and the State's corresponding criteria. The waterbody segments listed in Table 1 are the waters for which the Federal numeric nutrient criteria being withdrawn today had applied. For convenience, the Federal nutrient criteria and the corresponding State nutrient criteria are listed for each water body. See 40 CFR 131.31(a). Because the Federal and State nutrient criteria are based on measurements of different parameters (*i.e.*, total phosphates and total nitrates versus total phosphorous and total nitrogen), this table does not provide a direct comparison of the Federal and State nutrient criteria but rather describes how individual waters that are currently covered by the Federal criteria for nutrients will be covered by Arizona's water quality standards. For waterbodies or waterbody segments listed in rows 4, 8, 9, and 11, Arizona has adopted numeric nutrient water quality criteria for either total nitrogen, total phosphorus, or both. In addition to the numeric nutrient criteria in Table 1 for the listed stream segments, Arizona has adopted numeric nutrient criteria for additional stream segments not covered by the Federal nutrient criteria. Between 1976 and 1996, EPA approved Arizona's numeric nutrient criteria because the criteria were derived using sound science and are protective of the designated uses of those waters. Readers interested in viewing Arizona's numeric nutrient criteria not listed in Table 1 should consult Arizona's water quality standards (R18–11–109, 11–110, and 11–112). Arizona's water quality standards can be viewed on the EPA Office of Water Standards Repository Web site at *http://www.epa.gov/waterscience/standards/wqslibrary/*.

For waterbodies or waterbody segments where Arizona has not adopted any numeric nutrient water quality criteria to replace the Federal numeric water quality criteria for nutrients (the waters listed in rows 1, 2, 3, 5, 6, 7, and 10), only the State's narrative nutrient criteria apply. In 1996, EPA determined that the narrative nutrient criteria, in conjunction with Arizona's *Implementation Guidelines for the Narrative Nutrient Standard,* would provide the same intended level of protection as the Federal criteria by fully protecting the designated uses of these waters because they allow for consideration of site-specific water quality information. Indeed, when necessary, narrative criteria with the appropriate implementation procedures can be used to obtain quantitative measures having a greater degree of precision and site specificity than a single numeric target. EPA reviewed and approved Arizona's narrative nutrient criteria and the *Implementation Guidelines for the Narrative Nutrient Standard* as being scientifically defensible and consistent with the CWA and EPA's implementing regulations at 40 CFR 131.11.

TABLE 1.—FEDERAL NUTRIENT CRITERIA IN CFR 131.31(A) AND ARIZONA NUTRIENT CRITERIA

Water body segment	Federal criteria at 40 CFR 131.31 (mg/L) (mean/90th percentile)		Arizona criteria (mg/L) (mean/90th percentile/max)	
	Total phosphates	Total nitrates	Total phosphorus	Total nitrogen
1. Colorado River from Utah border to Willow Beach (main stem)	0.04/0.06	4/7	nnc	nnc
2. Colorado River from Willow Beach to Parker Dam (main stem)	0.06/0.10	5/–	nnc	nnc
3. Colorado River from Parker Dam to Imperial Dam (main stem)	0.08/0.12	5/7	nnc	nnc

TABLE 1.—FEDERAL NUTRIENT CRITERIA IN CFR 131.31(A) AND ARIZONA NUTRIENT CRITERIA—Continued

Water body segment	Federal criteria at 40 CFR 131.31 (mg/L) (mean/90th percentile)		Arizona criteria (mg/L) (mean/90th percentile/max)	
	Total phosphates	Total nitrates	Total phosphorus	Total nitrogen
4. Colorado River from Imperial Dam to Morelos Dam (main stem)	0.10/0.10	5/7	nnc/0.33/nnc.	nnc/2.50/nnc
5. Gila River from New Mexico border to San Carlos Reservoir (excluding San Carlos Reservoir.	0.50/0.80	–/–	nnc	NA
6. Gila River from San Carlos Reservoir to Ashurst Hayden Dam (including San Carlos Reservoir.	0.30/.050	–/–	nnc	NA
7. San Pedro River	0.30/0.50	–/–	nnc	NA
8. Verde River (except Granite Creek)	0.20/0.30	–/–	0.10/0.30/1.00.	NA
9. Salt River above Roosevelt Lake	0.20/0.30	–/–	0.12/0.30/1.00.	NA
10. Santa Cruz River from international boundary near Nogales to Sahuarita	0.50/0.80	–/–	nnc	NA
11. Little Colorado River above Lyman Reservoir	0.30/0.50	–/–	0.20/0.30/0.75.	NA

– No Federal numeric nutrient criteria were promulgated.
nnc The State's narrative nutrient water quality criteria apply in conjunction with the State's implementation procedures.
NA EPA has not included the State's nutrient criteria for total nitrogen for these waters because these waters were not subject to the 1976 Federal numeric nutrient water quality criteria for total nitrates.

D. What Current Efforts Are Underway To Further Protect Waters From Excessive Nutrients?

In the time since EPA approved Arizona's nutrient criteria, EPA has developed waterbody specific technical guidance manuals for deriving numeric nutrient criteria as well as waterbody and ecoregion specific criteria recommendations. For freshwaters, the guidance recommends that States address total nitrogen, total phosphorous, chlorophyll-a, and turbidity when developing nutrient criteria to protect designated uses. EPA has also published recommended ecoregion-specific nutrient water quality criteria for States to use as starting points in adopting water quality standards (see 66 FR 1671, January 9, 2001). This information may be found at *http://www.epa.gov/ost/standards/nutrient.html*. EPA's criteria documents include nutrient water quality criteria recommendations for rivers and streams and for lakes and reservoirs within Arizona. When EPA determined that Arizona's nutrient criteria were consistent with the CWA and protective of designated uses, EPA did not have numeric nutrient criteria recommendations. EPA is currently withdrawing the Federal nutrient criteria applicable to eleven waters in the State of Arizona because EPA determined that Arizona's nutrient criteria are as protective as the federally promulgated nutrient criteria for those waters. Arizona is currently working on a nutrient criteria plan to develop and adopt numeric nutrient criteria for all of its waters based on EPA's most current guidance. EPA will work with Arizona to revise the State's water quality standards where recent information shows new or revised nutrient criteria are necessary to better protect its designated uses.

III. Response to Comments

EPA received comments from the Environmental Management Division of the International Boundary and Water Commission United States and Mexico, Office of the Commissioner (United States Section) and from the Water Quality Division, Arizona Department of Environmental Quality, both supporting EPA's action to withdraw Federal nutrient criteria. These comments have been included in the Administrative Record.

EPA also received a comment from Pima County Wastewater Management Department that supports the withdrawal of the Federal numeric criteria, but opposes EPA's proposal to also withdraw the Federal narrative criteria in Arizona until that time when the State completes its planned narrative nutrient implementation guideline stakeholder and rulemaking process. EPA appreciates the commenter's support for withdrawing the Federal numeric criteria, but disagrees that it should maintain the Federal narrative criteria as requested by the commenter. As noted earlier, EPA approved Arizona's Implementation Guidelines in 1996. This approval was based on EPA's determination that these guidelines satisfy the requirements of EPA's regulations that States provide information addressing the implementation of State narrative criteria. EPA recognizes that ADEQ is in the process of developing revised, eco-region specific implementation procedures for the narrative nutrients standard. This laudable effort, however, does not change the fact that Arizona presently has nutrient implementation procedures that meet the requirements of the Act. Therefore, EPA believes that there is no reason for it not to withdraw both numeric and narrative nutrient criteria at the present time.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866—Regulatory Planning and Review

This action withdraws Federal requirements applicable to Arizona and imposes no regulatory requirements or costs on any person or entity, does not interfere with the action or planned action of another agency, and does not have any budgetary impacts or raise novel legal or policy issues. Thus, it has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to the Office of Management and Budget (OMB) review.

B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 because it is administratively withdrawing Federal requirements that no longer need to apply to Arizona.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally requires an agency to prepare a regulatory flexibility analysis of a rule that is 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 significant economic impact on a substantial number of small entities. This rule imposes no regulatory requirements or costs on any small entity. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title III of the Unfunded Mandates Reform Act (UMRA) (Pub. L. 104–4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Tribal, and local governments and the private sector. Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, Tribal, or local governments or the private sector because it imposes no enforceable duty on any of these entities. Thus, today's rule is not subject to the requirements of UMRA sections 202 and 205 for a written statement and small government agency plan. Similarly, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments and is therefore not subject to UMRA section 203.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure State and local government officials have an opportunity to provide input in the development of regulatory policies 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 governments. This rule imposes no regulatory requirements or costs on any State or local governments; therefore, it does not have federalism implications under Executive Order 13132.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Again, this rule imposes no regulatory requirements or costs on any Tribal government. It does not have substantial direct effects on Tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000).

G. Executive Order 13045—Protection of Children From Environmental Health and Safety Risks

This rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant and EPA has no reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

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 because this rule does not involve technical standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2) and will be effective on December 8, 2003.

List of Subjects in 40 CFR Part 131

Environmental protection, Indians-lands, Intergovernmental Relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: October 30, 2003.

Marianne Lamont Horinko,

Acting Administrator.

■ For the reasons set out in the preamble, 40 CFR part 131 is amended as follows:

PART 131—WATER QUALITY STANDARDS

■ 1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

§ 131.31 [Amended]

■ 2. Section 131.31 is amended by removing and reserving paragraph (a).

[FR Doc. 03–27948 Filed 11–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL–7583–9]

Water Quality Standards; Withdrawal of Federal Aquatic Life Water Quality Criteria for Copper and Nickel Applicable to South San Francisco Bay, CA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule amends the Federal regulations to withdraw aquatic life water quality criteria for copper and nickel applicable to south San Francisco Bay, California. South San Francisco Bay is the area of San Francisco Bay that is located south of the Dumbarton Bridge. On May 18, 2000, EPA promulgated Federal regulations establishing water quality criteria for priority toxic pollutants for the State of California, since the State had not complied with the Clean Water Act. This regulation is known as the ''California Toxics Rule'' or ''CTR.'' On December 17, 2002, the State of California completed its adoption process to incorporate copper and nickel aquatic life water quality criteria for south San Francisco Bay. The State of California calls these criteria site-specific water quality objectives or site-specific objectives. On January 9, 2003,

the State submitted the site-specific objectives to EPA Region 9 for review and approval. On January 21, 2003, EPA Region 9 approved the copper and nickel aquatic life site-specific objectives for south San Francisco Bay.

Since the State of California now has aquatic life site-specific objectives, effective under the Clean Water Act (CWA), for copper and nickel for south San Francisco Bay, EPA has determined that the federally-promulgated copper and nickel aquatic life criteria are no longer needed for south San Francisco Bay. On June 25, 2003, EPA requested comment on its proposed action to withdraw copper and nickel criteria applicable to the south San Francisco Bay from the CTR. EPA did not receive any adverse comments concerning EPA's proposal to withdraw the copper and nickel aquatic life criteria applicable to south San Francisco Bay from the CTR and is therefore publishing this final rule.

EFFECTIVE DATE: This rule is effective November 6, 2003.

ADDRESSES: The public docket for today's final rule is available for public inspection at the U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105, between the hours of 8 a.m. and 4:30 p.m. For access to the public docket, call Diane E. Fleck at 415–972–3480 or Nancy Yoshikawa at 415–972–3535 for an appointment. A reasonable fee may be charged for photocopies. The public docket may also be viewed electronically by following the instructions as provided under ''How to Obtain Copies of This Document and Other Related Information.''

FOR FURTHER INFORMATION CONTACT: Diane E. Fleck, P.E., Esq. (WTR–2) or Nancy Yoshikawa (WTR–5) at U.S. EPA Region 9, Water Division, 75 Hawthorne Street, San Francisco, CA 94105 (tel: 415–972–3480 or 415–972–3535, respectively, fax: 415–947–3537 or 415–974–3545, respectively) or e-mail at *Fleck.Diane@EPA.gov* or *Yoshikawa.Nancy@EPA.gov.* For general or administrative questions, please contact Manjali Vlcan at U.S. EPA Headquarters, Office of Water, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (tel: 202–566–0373, fax: 202–566–0409) or e-mail at *Vlcan.Manjali@EPA.gov.*

SUPPLEMENTARY INFORMATION:

Effective Date

EPA is making this final rule effective upon publication. Under the Administrative Procedures Act, 5 U.S.C. 553(d)(3), agencies must generally publish a rule notless than 30 days prior to the effective date of the rule except as otherwise provided for by the Agency for good cause found and published with the rule. The purpose of the 30-day waiting period is to give affected parties a reasonable time to adjust their behavior before the final rule takes effect. See *Omnipoint Corp.* v. *F.C.C.*, 78 F.3d 620, 630–631 (D.C. Cir. 1996); *Riverbend Farms, Inc.* v. *Madigan*, 958 F.2d 1479, 1485 (9th Cir. 1992).

In this instance, EPA finds good cause to make the final rule effective upon publication. In order to find good cause, an Agency needs to find that the 30-day period would be: (1) Impracticable, (2) unnecessary, or (3) contrary to the public interest. Here EPA is relying on the third reason to support its finding of good cause.

EPA finds that, in this instance, waiting 30 days to make the rule effective is contrary to public interest. As explained in this preamble, both the California Toxics Rule copper and nickel criteria and California's copper and nickel site-specific objectives, approved by EPA on January 21, 2003, apply to the south San Francisco Bay. Therefore, it may be unclear which standards are the appropriate benchmarks when making permitting and CWA section 303(d) impaired waters listing decisions. Since a 30-day delay in effectiveness of this rule would unnecessarily extend this potential confusion when making water management decisions, EPA has determined that it would be in the public interest to make this rule effective immediately.

Potentially Regulated Entities

No one is regulated by this final rule. This final rule merely withdraws Federal copper and nickel aquatic life water quality criteria applicable to south San Francisco Bay, California.

How Can I Get Copies of This Document and Other Related Information?

1. Docket. EPA has established an official public docket for this action under Docket ID No. OW–2003–0015. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing under, ''Water Quality Standards; Withdrawal of Federal Aquatic Life Water Quality Criteria for Copper and Nickel Applicable to South San Francisco Bay, California,'' at U.S. EPA Region 9, Water Division, 75 Hawthorne Street, San Francisco, California 94105, phone: 415–972–3480. This Docket Facility is open from 8:30 a.m. Pacific time to 4:30 p.m. Pacific time, Monday through Friday, excluding legal holidays. A reasonable fee maybe charged for copies.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the ''Federal Register'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the California docket facility identified earlier. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Background

On May 18, 2000, EPA promulgated a final rule known as the ''California Toxics Rule'' or ''CTR'' to establish numeric water quality criteria for priority toxic pollutants for the State of California, since the State had not complied fully with section 303(c)(2)(B) of the Clean Water Act (CWA) (65 FR 31682). The criteria, codified at 40 CFR 131.38, became the applicable water quality criteria in California effective May 18, 2000, for all purposes and programs under the CWA.

EPA acknowledged in the preamble to the CTR that the State of California was working to satisfy the requirements of CWA section 303(c)(2)(B) and anticipated that the Agency, once the State submitted its water quality standards to EPA, would approve the State-adopted water quality criteria for pollutants included in the CTR (65 FR 31684, May 18, 2000). The State of California calls these criteria site-specific water quality objectives or site-specific objectives. The water quality standards program was developed with an emphasis on State primacy. Although in the CTR EPA promulgated toxic criteria for the State of California, EPA prefers that States maintain primacy, revise their own standards, and achieve full compliance (see 57 FR 60860, December 22, 1992).

Under the procedures set out in the National Toxics Rule, published December 22, 1992 (see 57 FR 60860, December 22, 1992), and referenced in the CTR, when a State adopts and EPA approves water quality criteria that meet the requirements of the CWA, EPA will issue a rule amending the Federal regulations to withdraw the Federally applicable criteria. If the State's criteria are no less stringent than the promulgated Federal criteria, EPA will withdraw its criteria without notice and comment rulemaking because additional comment is unnecessary. However, if a State adopts criteria that are less stringent than the Federally-promulgated criteria, but that in the Agency's judgement fully meet the requirements of the Act, EPA will provide an opportunity for public comment before withdrawing the Federally promulgated criteria. As described in detail below under ''Site-Specific Aquatic Life Objectives for Copper and Nickel,'' the State of California recently adopted copper and nickel aquatic life site-specific objectives for the south San Francisco Bay which EPA subsequently approved.

On June 25, 2003, EPA requested comment on its proposed action to withdraw copper and nickel criteria applicable to the south San Francisco Bay from the CTR and received no adverse comments on the proposal (68 FR 37926, June 25, 2003).

Site-Specific Aquatic Life Objectives for Copper and Nickel

On May 22, 2002, the California Regional Water Quality Control Board, San Francisco Bay Region, adopted site-specific water quality objectives for nickel and copper to protect aquatic life in the south San Francisco Bay. On October 17, 2002, the State Water Resources Control Board approved the site-specific objectives for copper and nickel in the lower south San Francisco Bay. On December 17, 2002, the State of California completed its adoption process to incorporate copper and nickel aquatic life water quality criteria for south San Francisco Bay. On January 9, 2003, the SWRCB submitted the site-specific objectives to EPA Region 9 for review and approval.

The saltwater aquatic life water quality criteria for dissolvedcopper contained in the CTR table at 40 CFR 131.38(b)(1) are: 4.8 ug/l acute (exposure for a short period of time) and 3.1 ug/l chronic (exposure for an extended [4 day] period of time). The saltwater aquatic life water quality criteria for dissolved nickel contained in the CTR table at 40 CFR 131.38(b)(1) are: 74 ug/l acute (exposure for a short period of time) and 8.2 ug/l chronic (exposure for an extended [4 day] period of time). Both the copper and nickel criteria are further expressed as a function of the water-effect ratio (WER). The WER in the CTR is assumed to be 1 for all applicable pollutants but may be otherwise defined by the State using appropriate procedures (see 65 FR 31718).

The aquatic life water quality objectives for dissolvedcopper adopted by the State of California and approved by EPA for south San Francisco Bay are: 10.8 ug/l acute (exposure for a 1 hour average period of time) and 6.9 ug/l chronic (exposure for a 4 day average period of time). The aquatic life water quality objectives for dissolvednickel adopted by the State of California and approved by EPA for south San Francisco Bay are: 62.4 ug/l acute (exposure for a 1 hour average period of time) and 11.9 ug/l chronic (exposure for a 4 day average period of time).

EPA recognizes that three out of the four California criteria for copper and nickel are less stringent than the Federally promulgated criteria in the CTR. However, the site-specific objectives were developed from the results of a number of detailed studies and technical reports that were the subject of technical peer review and were part of the collaborative stakeholder process known as the ''Santa Clara Basin Watershed Management Initiative.'' Based on this additional information, EPA determined that these adopted criteria are fully protective of the aquatic life designated uses of California's waters in the south San Francisco Bay and meet the requirements of the Clean Water Act. EPA approved California's water quality objectives on January 21, 2003. Therefore, EPA has determined that the Federal aquatic life water quality criteria for copper and nickel in these waters are no longer necessary.

Because three out of the four California criteria for copper and nickel are less stringent than the Federally promulgated criteria, on June 25, 2003, EPA requested comments on its proposed action to withdraw copper and nickel criteria from the CTR. On July 25, 2003, EPA received two letters in support of the proposed withdrawal action. No other comments were received regarding the proposed action. EPA is therefore publishing this final rule to withdraw the copper and nickel aquatic life criteria for south San Francisco Bay from the CTR.

Statutory and Executive Order Reviews

1. Executive Order 12866—Regulatory Planning and Review

This action withdraws specific Federal requirements applicable to south San Francisco Bay, California and imposes no regulatory requirements or costs on any person or entity, does not interfere with the action or planned action of another agency, and does not have any budgetary impacts or raise novel legal or policy issues. Thus, it has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to Office of Management and Budget (OMB) review.

2. Paperwork Reduction Act

This final rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it is administratively withdrawing Federal requirements that no longer need to apply to south San Francisco Bay, California.

3. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally requires an agency to prepare a regulatory flexibility analysis of a rule that is 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 significant economic impact on a substantial number of small entities. This final rule imposes no regulatory requirements or costs on any small entity. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

4. Unfunded Mandate Reform Act

Title III of the Unfunded Mandates Reform Act (UMRA) (Pub. L. 104–4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Tribal and local governments and the private sector. Today's final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, Tribal, or local governments or the private sector because it imposes no enforceable duty on any of these entities. Thus, today's final rule is not subject to the requirements of UMRA section 202 and 205 for a written statement and small government agency plan. Similarly, EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments and is therefore not subject to UMRA section 203.

5. Executive Order 13132—Federalism

Executive Order 13132, entitled, Federalism (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure State and local government officials have an opportunity to provide input in the development of regulatory policies 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 governments. This final rule imposes no regulatory requirements or costs on any State or local governments; therefore, it does not have Federalism implications under Executive Order 13132.

6. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Again, this final rule imposes no regulatory requirements or costs on any Tribal government. It does not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000).

7. Executive Order 13045—Protection of Children From Environmental Health and Safety Risks

This final rule is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant, and EPA has no reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

8. Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use

This final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

9. National Technology Transfer and Advancement Act

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 because this rule does not involve technical standards.

10. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective November 6, 2003.

List of Subjects in 40 CFR Part 131

Environmental protection, Indians-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: October 30, 2003.

Marianne Lamont Horinko,

Acting Administrator.

■ For the reasons set out in the preamble, 40 CFR part 131 is amended as follows:

PART 131—WATER QUALITY STANDARDS

■ 1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

Subpart D—[Amended]

■ 2. Section 131.38(b)(1) is amended by revising Footnote b. to read as follows:

§ 131.38 Establishment of numeric criteria for priority toxic pollutants for the State of California.

* * * * *

(b)(1) * * *

Footnotes to Table in Paragraph (b)(1):

* * * * *

b. Criteria apply to California waters except for those waters subject to objectives in Tables III–2A and III–2B of the San Francisco Regional Water Quality Control Board's (SFRWQCB) 1986 Basin Plan that were adopted by the SFRWQCB and the State Water Resources Control Board, approved by EPA, and which continue to apply. For copper and nickel, criteria apply to California waters except for waters south of Dumbarton Bridge in San Francisco Bay that are subject to the objectives in the SFRWQCB's Basin Plan as amended by SFRWQCB Resolution R2–2002–0061, dated May 22, 2002, and approved by the State Water Resources Control Board. EPA approved the aquatic life site-specific objectives on January 21, 2003. The copper and nickel aquatic life site-specific objectives contained in the amended Basin Plan apply instead.

* * * * *

[FR Doc. 03–27949 Filed 11–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7583–1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Gurley Pit Superfund Site from the National Priorities List.

SUMMARY: The U.S. Environmental Protection Agency (EPA) announces the deletion of the Gurley Pit Superfund Site (Site), located two miles north of Edmondson, Arkansas, from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. The EPA and the State of Arkansas, through the Arkansas Department of Environmental Quality, have determined that the Site poses no significant threat to public health or the environment and, therefore, no further remedial measures pursuant to CERCLA are appropriate.

EFFECTIVE DATE: November 6, 2003.

FOR FURTHER INFORMATION CONTACT: Ernest R. Franke, Remedial Project Manager (RPM), U.S. EPA Region 6 (6SF–AP), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–8521 or 1–800–533–3508 (*franke.ernest@epa.gov*).

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Gurley Pit Superfund Site, Edmondson, Arkansas.

A Notice of Intent to Delete for this Site was published in the **Federal Register** on July 28, 2003 (68 FR 44270). The closing date for comments on the Notice of Intent to Delete was August 27, 2003. No comments were received, and, therefore, EPA has not prepared a Responsiveness Summary.

The 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 those sites. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: September 30, 2003.

Lawrence Starfield,

Deputy Regional Administrator, Region 6.

■ For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to part 300 is amended by removing the entry for the Gurley Pit site in Edmondson, Arkansas.

[FR Doc. 03–27849 Filed 11–5–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–7819]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Mike Grimm, Mitigation Division, 500 C Street, SW., Room 412, Washington, DC 20472, (202) 646–2878.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region IV				
Mississippi: Puckett, Township of, Rankin County.	280147	May 22, 1987, Emerg.; Dec. 1, 1990, Reg.; Nov. 5, 2003, Susp.	11/5/03	11/5/03.
Region V				
Illinois:				
Alorton, Village of, St. Clair County	170617	Apr. 26, 1974, Emerg.; June 4, 1980, Reg.; Nov. 5, 2003, Susp.	......do	Do.
Belleville, City of, St. Clair County	170618	July 5, 1973, Emerg.; Nov. 19, 1980, Reg.; Nov. 5, 2003, Susp.	......do	Do.
Brooklyn, Village of, St. Clair County	170619	May 1, 1974, Emerg.; Mar. 28, 1980, Reg.; Nov. 5, 2003, Susp.	......do	Do.
Cahokia, Village of, St. Clair County	170620	Oct. 4, 1973, Emerg.; Oct. 17, 1978, Reg.; Nov. 5, 2003, Susp.	......do	Do.
Caseyville, Village of, St. Clair County	170621	Apr. 26, 1973, Emerg.; Mar. 16, 1981, Reg.; Nov. 5, 2003, Susp.	......do	Do.
Centreville, City of, St. Clair County	170622	May 16, 1973, Emerg.; Mar. 4, 1980, Reg.; Nov. 5, 2003, Susp.	......do	Do.
Dupo, Village of, St. Clair County	170624	May 29, 1973, Emerg.; Feb. 4, 1981, Reg.; Nov. 5, 2003, Susp.	......do	Do.
East Carondelet, Village of, St. Clair County.	170625	Feb. 15, 1974, Emerg.; Mar. 2, 1981, Reg.; Nov. 5, 2003, Susp.	......do	Do.
East St. Louis, City of, St. Clair County	170626	May 1, 1973, Emerg.; Nov. 1, 1979, Reg.; Nov. 5, 2003, Susp.	......do	Do.
Fairmont City, Village of, St. Clair County.	170627	July 29, 1975, Emerg.; Mar. 28, 1980, Reg.; Nov. 5, 2003, Susp.	......do	Do.
Fairview Hgts., City of, St. Clair County	170895	Jan. 14, 1975, Emerg.; July 3, 1978, Reg.; Nov. 5, 2003, Susp.	......do	Do.
Fayetteville, Village of, St. Clair County	170628	May 12, 1976, Emerg.; June 15, 1981, Reg.; Nov. 5, 2003, Susp.	......do	Do.
Freeburg, Village of, St. Clair County	170790	Mar. 24, 1976, Emerg.; Jan. 18, 1980, Reg.; Nov. 5, 2003, Susp.	......do	Do.
Mascoutah, City of, St. Clair County	170630	May 1, 1974, Emerg.; June 15, 1981, Reg.; Nov. 5, 2003, Susp.	......do	Do. .
Monmouth, City of, Warren County	170676	April 11, 1975, Emerg.; Sep. 30, 1988, Reg.; Nov. 5, 2003, Susp.	......do	Do.
New Athens, Village of, St. Clair County	170632	Sept. 3, 1975, Emerg.; Mar. 23, 1984, Reg.; Nov. 5, 2003, Susp.	......do	Do.
O'fallon, City of, St. Clair County	170633	July 3, 1974, Emerg.; Oct. 15, 1982, Reg.; Nov. 5, 2003, Susp.	......do	Do.
Sauget, Village of, St. Clair County	170635	July 6, 1976, Emerg.; Aug. 1, 1980, Reg.; Nov. 5, 2003, Susp.	......do	Do.
Shiloh, Village of, St. Clair County	171043	Feb. 29, 1996, Reg.; Nov. 5, 2003, Susp	......do	Do.
Smithton, Village of, St. Clair County	170892	Jan. 7, 1976, Emerg.; June 25, 1976, Reg.; Nov. 5, 2003, Susp.	......do	Do.
St. Clair County, Unincorporated Areas	170616	Mar. 30, 1973, Emerg.; Dec. 15, 1981, Reg.; Nov. 5, 2003, Susp.	......do	Do.
St. Libory, Village of, St. Clair County	170634	July 16, 1975, Emerg.; Feb. 25, 1983, Reg.; Nov. 5, 2003, Susp.	......do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Summerfield, Village of, St. Clair County.	170636	Aug. 11, 1976, Emerg.; Aug. 10, 1979, Reg.; Nov. 5, 2003, Susp.	......do	Do
Swansea, Village of, St. Clair County ...	170637	Jan. 13, 1975, Emerg.; Dec. 1, 1981, Reg.; Nov. 5, 2003, Susp.	......do	Do.
Indiana:				
Allen County, Unincorporated Areas	180302	Feb. 14, 1974, Emerg.; Sep. 28, 1990, Reg.; Nov. 5, 2003, Susp.	......do	Do.
Fort Wayne, City of, Allen County	180003	May 24, 1974, Emerg.; Apr. 3, 1985, Reg.; Nov. 5, 2003, Susp.	......do	Do.
Grabill, Town of, Allen County	180499	Oct. 17, 1990, Reg.; Nov. 5, 2003, Susp	......do	Do.
Huntertown, Town of, Allen County	180005	July 29, 1975, Emerg.; Nov. 2, 1983, Reg.; Nov. 5, 2003, Susp.	......do	Do.
Monroeville, Town of, Allen County	180498	Oct. 17, 1990, Reg.; Nov. 5, 2003, Susp	......do	Do.
New Haven, City of, Allen County	180004	Jan. 30, 1975, Emerg.; July 18, 1983, Reg.; Nov. 5, 2003, Susp.	......do	Do.
Minnesota: Isanti County, Unincorporated Areas.	270197	Apr. 4, 1972, Emerg.; May 19, 1981, Reg.; Nov. 5, 2003, Susp.	......do	Do.
Wisconsin:				
Darlington, City of, Lafayette County	550228	Aug. 18, 1972, Emerg.; Sep. 15, 1978, Reg.; Nov. 5, 2003, Susp.	......do	Do.
Lafayette County, Unincorporated Areas.	550223	Mar. 10, 1972, Emerg.; Sept. 15, 1978, Reg.; Nov. 5, 2003, Susp.	......do	Do.
Region IV				
South Carolina: Lancaster County, Unincorporated Areas.	450120	July 3, 1975, Emerg.; Jan. 6, 1983, Reg.; Nov. 19, 2003, Susp..	11/19/2003	11/19/2003
Region VIII				
South Dakota:				
Aurora County, Unincorporated Areas ..	460293	Nov. 19, 2003, Reg.; Nov. 19, 2003, Susp ..	......do	Do.
Plankinton, City of, Aurora County	460001	Sept. 29, 1975, Emerg.; Aug. 5, 1986, Reg.; Nov. 19, 2003, Susp.	......do	Do.

*do=Ditto.
Code for reading third column: Emerg.-Emergency; Reg.-Regular; Susp.-Suspension.

Dated: October 30, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–27976 Filed 11–5–03; 8:45 am]

BILLING CODE 6718–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR part 5b

Privacy Act; Implementation

AGENCY: Office of the Secretary, HHS.

ACTION: Final rule.

SUMMARY: The Office for Civil Rights (OCR) of the Department of Health and Human Services has implemented a new system of records (SOR) entitled the ''Program Information Management System (PTMS), HHS/OS/OCR (09–90–0052).'' This system has replaced OCR's two previous systems of records, the ''Case Information Management System (CIMS), HHS/OS/OCR (09–90–0050),'' and the ''Complaint File and Log, HHS/OS/OCR (09–90–0051).'' PIMS is a new integrated system with enhanced electronic storage, retrieval and tracking capacities. The final rule exempts the investigative records in PIMS from the notification, access, correction and amendment provisions of the Privacy Act, 5 U.S.C. 552a, pursuant to subsection (k)(2), which applies to investigative materials compiled for law enforcement purposes.

DATES: This is effective on November 6, 2003.

FOR FURTHER INFORMATION CONTACT: Norman Oslik, Chief Information Officer, Office for Civil Rights, Department of Health and Human Services, Room 509F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Telephone number: (202) 619–0553. (TTY No. 1–800–537–7697).

SUPPLEMENTARY INFORMATION: The Office for Civil Rights (OCR) is responsible for enforcing Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and other statutes that prohibit discrimination by programs or entities that receive Federal financial assistance. Additionally, OCR has jurisdiction over Federally conducted programs in cases involving disability based discrimination under section 504 of the Rehabilitation Act, over state and local public entities in cases involving disability based discrimination under Title II of the Americans with Disabilities Act of 1990 and certain health plans, health clearing houses, and health care providers with respect to enforcement of medical privacy obligations under the Heath Insurance Portability and Accountability Act (HIPAA).

Formerly, OCR maintained two systems of records: The ''Case Information Management System (CIMS) HHS/OS/OCR (09–90–0050),'' and the ''Complaint File and Log, HHS/OS/OCR (09–90–0051).'' CIMS included the Case Activity Tracking System (CATS) which was created to use newer technology (*i.e.*, moved CIMS off a mainframe computer onto a local network environment), but continued to collect and store the same information as in CIMS. Records maintained in the Complaint File and Log were exempted from the notification, access, correction and amendment provisions of the Privacy Act under subsection (k)(2) concerning records compiled for law enforcement purposes. 49 FR 14107 (April 10, 1984).

Pursuant to the notification of a new system of records (SOR), published in the **Federal Register** on September 6, 2002 (67 FR 57011), OCR implemented a new system of records, Program Information Management System (PIMS), HHS/OS/OCR (09–90–0052). PIMS is used by OCR staff and consists of an electronic repository of information and documents and supplementary paper document files. PIMS effectively combines and replaces OCR's two former systems of records (CIMS and Complaint File and Log) into a single integrated system with enhanced electronic storage, retrieval and tracking capacities. While the types of information collected and stored in PIMS are the same as those stored in CIMS and Complaint File and Log, PIMS allows OCR to more effectively manage the data it collects.

OCR investigative files maintained in PIIMS either as paper records or electronic documents are records compiled for law enforcement purposes. In the course of investigations, OCR often has a need to obtain confidential information involving individuals other than the complainant. In these cases, it is necessary for OCR to preserve the confidentiality of this information to avoid unwarranted invasions of personal privacy and to assure recipients of Federal financial assistance that such information provided to OCR will be kept confidential. This assurance is often central to resolving disputes concerning access by OCR to the recipient's records, and is necessary to facilitate prompt and effective completion of the investigations.

Unrestricted disclosure of confidential information in OCR files can impede ongoing investigations, invade personal privacy of individuals, reveal the identities of confidential sources, or otherwise impair the ability of OCR to conduct investigations. For these reasons, the Department published a notice of proposed rulemaking, 67 FR 56252 (September 3, 2002) to exempt all investigative records maintained in PIMS from the notification, access, correction and amendment provisions under subsection (k)(2) of the Privacy Act. The Department received no public comments.

List of Subjects in 45 CFR Part 5b

Privacy.

■ For reasons set out in the preamble, the Department's Privacy Act Regulation, part Sb of 45 CFR Subtitle A, is amended as follows:

PART 5b—PRIVACY ACT REGULATIONS

■ 1. The authority citation for part 5b continues to read as follows:

Authority: 5 U.S.C. 301; 5 U.S.C. 552a.

■ 2. Section 5b.11 is amended by adding paragraph (b)(2)(ii)(G) to read as follows:

§ 5b.11 Exempt systems.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(G) Investigative materials compiled for law enforcement purposes for the Program Information Management System, HHS/OS/OCR.

* * * * *

Dated: August 29, 2003.

Richard M. Campanelli,

Director, Office for Civil Rights.

Dated: October 28, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–27716 Filed 11–5–03; 8:45 am]

BILLING CODE 4153–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 96–128; FCC 03–235]

The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adopts new payphone compensation rules that place liability on the facilities-based long distance carrier to compensate payphone service providers (PSPs) for payphone-originated calls that are completed on that facilities-based long distance carrier's platform. The Commission also establishes a payment mechanism for switch-based resellers (SBRs) to compensate PSPs for this liability. In satisfying its liability obligation to a PSP, the SBR must establish its own call tracking system, have a third party attest that the system accurately tracks payphone calls to completion, and pay a PSP directly based on the SBR's own call tracking data. Other facilities-based long distance carriers in the call path, if any, must provide reports to the PSPs of payphone-originated calls switched to another facilities-based carrier's platform.

DATES: This Report and Order readopts, on an interim basis until the effective date of the final rules in this document, those rules initially adopted at 66 FR 21105, April 27, 2001 in the *Second Order on Reconsideration.* These rules, currently set forth at 47 CFR 64.1300(a), 64.1310(a), and 64.1310(b), are effective November 6, 2003. The final rules in this document contain information collection requirements that are contingent upon approval of the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of these final rules.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (R&O) in CC Docket No. 96–128, FCC 03–235, adopted September 30, 2003, and released October 3, 2003. Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

FOR FURTHER INFORMATION CONTACT: Henry L. Thaggert, Attorney-Advisor, Competition Policy Division, Wireline Competition Bureau, at (202) 418–7941, or via the Internet at *henry.thaggert@fcc.gov.*

Synopsis of the Report and Order

1. The Commission adopts these rules to ensure that PSPs are ''fairly compensated'' for all SBR completed calls made from their payphones under section 276 of the Communications Act of 1934, as amended. These rules satisfy section 276 by identifying the party liable for compensation and establishing a mechanism for PSPs to be paid. These rules are based on what the Commission has learned from input over the past seven years from the payphone and SBR industries, and from experience in implementing section 276 in various orders addressing problems raised by the parties over the years.

2. *Background.* This R&O is the result of a court remand of an earlier attempt by the Commission to remedy problems in the payphone compensation rules. In January 2003, on a petition for review, the United States Court of Appeals for the District of Columbia Circuit (DC Circuit) vacated and remanded this

proceeding's *Second Order on Reconsideration* (66 FR 21105, April 27, 2001) on the grounds that parties were not afforded proper notice and opportunity for comment. The DC Circuit held that the Commission violated the Administrative Procedure Act (APA) when it modified its rules without proper notice. The DC Circuit vacated the Commission's order, but stayed its mandate and its vacatur of the *Second Order on Reconsideration* through September 30, 2003. As a result, the rules promulgated in the *Second Order on Reconsideration* remain in effect through September 30, 2003, but are vacated after that date.

3. On May 28, 2003, in response to the DC Circuit's decision, the Commission issued a *Further Notice of Proposed Rulemaking (Further Notice)* (68 FR 32720, June 2, 2003) to seek comment on whether the rules adopted in the *Second Order on Reconsideration* satisfied section 276's requirements or whether other new rules would be necessary. In this R&O, the Commission adopts new final rules to address both the problems that PSPs have experienced in obtaining compensation from SBRs, and the problems that interexchange carriers have experienced prior to and after the adoption of the *Second Order on Reconsideration.* The Commission cannot, however, make these final rules effective before September 30, 2003, when the rules adopted in the *Second Order on Reconsideration* were vacated. Additional time is needed to obtain clearances from the OMB and to permit carriers sufficient time to take the steps necessary to come into compliance with the new rules. Thus, the Commission must adopt interim rules to ensure that PSPs continue to receive compensation during this transition period. For this purpose, for the limited period until the final rules become effective, the Commission adopts the rules originally adopted in the *Second Order on Reconsideration,* and currently set forth at 47 CFR. 64.1300(a), 64.1310(a), and 64.1310(b).

4. *Prior Compensation Regimes.* The Commission affirms the *Further Notice's* tentative conclusion that, prior to the regime adopted in the *Second Order on Reconsideration,* the PSPs suffered compensation shortfalls. The Commission finds that PSPs experienced these shortfalls because: (1) The PSPs had insufficient information about the identity of the SBRs and the number of calls they completed; and (2) the SBRs lacked an incentive to voluntarily identify themselves as the liable parties and to pay compensation for every completed call. These shortfalls are addressed in the new rules in a way that will more effectively result in ''fair compensation'' under section 276 than did the rules adopted in the *Second Order on Reconsideration.*

5–6. *Carrier Reporting Duties.* The Commission adopts new reporting obligations for all facilities-based long distance carriers in the call path that own or lease a switch and transfer payphone-originated calls to other facilities-based long distance carriers. The Commission refers to these carriers for purposes of these rules as the ''Intermediate Carriers'' to distinguish them from the last facilities-based long distance carrier that completes the call on a switch that it owns or leases. The reporting obligations adopted in this R&O apply to a larger class of carriers than those affected by the *Second Order on Reconsideration,* and require the submission of more detailed information. The Commission concludes that these newly adopted rules resolve two principle concerns: (1) The inability of PSPs to obtain information about the identity of the SBRs and the number of SBR completed calls; and (2) the incentive of the SBRs to avoid detection and compensating the PSPs.

7. *Interim Rules.* Due to information collection and exchange requirements pursuant to OMB procedures and the need to provide carriers time to transition to our new rules, the new rules will not take effect immediately. On average, OMB approval requires as few as 120 and up to 150 days from the release of an order. Moreover, as described above, carriers have indicated that they need at least one full quarter after notice of the new rules to make necessary changes to their networks, and that it would be disruptive if the new rules were to go into effect on a day other than the first day of a quarter. Accordingly, the Commission finds it reasonable to adopt, for an interim period, the rules initially adopted in the *Second Order on Reconsideration.* These interim rules will remain in effect until the effective date of the final rules. Following OMB approval of the information collections in the final rules, the Commission will publish a notice in the **Federal Register** announcing the effective date for these rules. This effective date will be the first day of the first full quarter after the final rules receive OMB approval.

Final Paperwork Reduction Act Analysis

8. This Report and Order contains conclusions that have been analyzed as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13, and contains collections of information subject to OMB review. The information collection requirements for the final rules adopted in this item are contingent upon approval by OMB.

Final Regulatory Flexibility Analysis

9. *Interim Rules.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). The Commission certifies that, under the Regulatory Flexibility Act, 5 U.S.C. 605(b), there will not be a significant economic impact on a substantial number of small business entities resulting from the interim rules established in this R&O. These rules, adopted in the *Second Order on Reconsideration,* will remain in place until the new rules become effective. The Commission finds that the interim rules, while not optimal, have, as a practical matter, worked reasonably well, and there is no reason to believe that small businesses would be burdened by a brief continuation of these rules during a transition period. Additionally, in the absence of interim rules, it is likely that the industry would nevertheless continue to follow the rules adopted in the *Second Order on Reconsideration* pursuant to their existing contracts. Moreover, it would be burdensome to adopt a third set of rules that would be effective for only a brief interim period. Thus, the Commission adopts interim rules to ensure that PSPs continue to receive compensation during the transition period.

10. The Commission will send a copy of this final certification, along with this R&O, in a report to Congress pursuant to the Congressional Review Act, and to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this certification will be published in the **Federal Register**.

11. *Final Rules.* As required by the RFA, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the **Federal Register** summary of the *Further Notice.* The Commission sought written public comments on the proposals in the *Further Notice* including comments on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Rules

12. *Final Rules.* This Order fulfills the commitment the Commission undertook in the *Further Notice* to examine the need to amend our payphone compensation rules, and responds to a court remand of an earlier attempt by the Commission to remedy problems with the rules.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

13. There were no comments raised that specifically addressed the IRFA. Nonetheless, the agency considered the potential impact of the rules proposed in the IRFA on small entities and reduced the compliance burden for all small entities in order to reduce the economic impact of the rules enacted herein on such entities.

Description and Estimate of the Number of Small Entities to Which the Actions Taken Will Apply

14. *Final Rules.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term ‘‘small entity’’ as having the same meaning as the terms ‘‘small business,’’ ‘‘small organization,’’ and ‘‘small governmental jurisdiction.’’ In addition, the term ‘‘small business’’ has the same meaning as the term ‘‘small business concern’’ under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

15. *Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a specific definition of small providers of incumbent local exchange services. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the most recent *Telephone Trends Report* data, 1,335 incumbent local exchange carriers reported that they were engaged in the provision of local exchange services. Of these 1,335 carriers, 1,037 reported that they have 1,500 or fewer employees and 298 reported that, alone or in combination with affiliates, they have more than 1,500 employees. The Commission does not have data specifying the number of these carriers that are either dominant in their field of operations or are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of incumbent local exchange carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that 1,037 or fewer providers of local exchange service are small entities that may be affected by the rules and policies adopted herein.

16. *Competitive Local Exchange Carriers.* Neither the Commission nor the SBA has developed a specific definition for small providers of competitive local exchange services. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the Commission's *Telephone Trends Report* data, 349 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 349 companies, 297 reported that they have 1,500 or fewer employees and 52 reported that, alone or in combination with affiliates, they have more than 1,500 employees. The Commission does not have data specifying the number of these carriers that are either dominant in their field of operations or are not independently owned and operated, and thus is unable at this time to estimate with greater precision the number of competitive local exchange carriers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that fewer than 297 providers of competitive local exchange service are small entities that may be affected by the rules.

17. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access providers (CAPS). The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the Commission's most recent *Telephone Trends Report* data, 349 CAPs or competitive local exchange carriers and 60 other local exchange carriers reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 349 competitive access providers and competitive local exchange carriers, 297 reported that they have 1,500 or fewer employees and 52 reported that, alone or in combination with affiliates, they have more than 1,500 employees. Of the 60 other local exchange carriers, 56 reported that they have 1,500 or fewer employees and 4 reported that, alone or in combination with affiliates, they have more than 1,500 employees. Consequently, the Commission estimates that there are 297 or fewer small entity CAPS and 56 or fewer other local exchange carriers that may be affected by the rules.

18. *Local Resellers.* SBA has developed a definition for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the Commission's most recent *Telephone Trends Report* data, 87 companies reported that they were engaged in the provision of local resale services. Of these 87 companies, 86 reported that they have 1,500 or fewer employees and one reported that, alone or in combination with affiliates, it had more than 1,500 employees. Consequently, the Commission estimates that there are 86 or fewer local resellers that may be affected by the rules.

19. *Toll Resellers.* The SBA has developed a definition for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the Commission's most recent *Telephone Trends Report* data, 454 companies reported that they were engaged in the provision of toll resale services. Of these 454 companies, 423 reported that they have 1,500 or fewer employees and 31 reported that, alone or in combination with affiliates, they have more than 1,500 employees. Consequently, the Commission estimates that there are 423 or fewer toll resellers that may be affected by the rules.

19. *Payphone Service Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to payphone service providers (PSPs). The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is

small if it has 1,500 or fewer employees. According to the Commission's most recent *Trends in Telephone Service* data, 758 PSPs reported that they were engaged in the provision of payphone services. Of these 758 payphone service providers, 755 reported that they have 1,500 or fewer employees and 3 reported that, alone or in combination with affiliates, they have more than 1,500 employees. Consequently, the Commission estimates that there are 755 or fewer PSPs that may be affected by the rules.

20. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the most recent *Telephone Trends Report* data, 204 carriers reported that their primary telecommunications service activity was the provision of interexchange services. Of these 204 carriers, 163 reported that they have 1,500 or fewer employees and 41 reported that, alone or in combination with affiliates, they have more than 1,500 employees. Consequently, we estimate that there are 163 or fewer small entity IXCs that may be affected by the rules.

21. *Operator Service Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to operator service providers. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the Commission's most recent *Telephone Trends Report* data, 21 companies reported that they were engaged in the provision of operator services. Of these 21 companies, 20 reported that they have 1,500 or fewer employees and one reported that, alone or in combination with affiliates, it had more than 1,500 employees. Consequently, the Commission estimates that there are 20 or fewer local resellers that may be affected by the rules.

22. *Prepaid Calling Card Providers.* The SBA has developed a definition for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the Commission's most recent *Telephone Trends Report* data, 21 companies reported that they were engaged in the provision of prepaid calling cards. Of these 21 companies, 20 reported that they have 1,500 or fewer employees and one reported that, alone or in combination with affiliates, it had more than 1,500 employees. Consequently, the Commission estimates that there are 20 or fewer local resellers that may be affected by the rules.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

23. *Final Rules.* The new rules the Commission adopts will enable a PSP to identify SBRs that are not compensating it and to challenge the payments in instances where the PSP may believe that the data provided by other facilities-based long distance carriers are out of proportion to the data provided by the final SBR in the call path. The new rules will have no adverse impact on small carriers. Specifically, the new rules contain reporting obligations for an ''Intermediate Carrier'' (defined as any facilities-based long distance carrier in the call path that switches coinless payphone calls to another facilities-based long distance carrier). The new rules require each ''Intermediate Carrier'' to maintain, and provide to the PSP, a quarterly report that includes, for each facilities-based long distance carrier to which the Intermediate Carrier switched a toll-free or access code call: (1) A list of all the facilities-based long distance carriers to which the Intermediate Carrier switched toll-free and access code calls dialed from each of that payphone service provider's payphones; (2) a list of all the toll-free and access code numbers dialed from each of that payphone service provider's payphones that all local exchange carriers have delivered to the Intermediate Carrier and that the Intermediate Carrier switched to the identified facilities-based long distance carriers; (3) the volume of calls for each toll-free and access code number, *e.g.*, ''800'' and ''888'' numbers, that the Intermediate Carrier has received from each of that PSP's payphones, identified by their ANIs, and switched to the facilities-based long distance carrier; and (4) the name, address, telephone number and other identifying information for the person or persons for each of the facilities-based long distance carriers that serve as the Intermediate Carrier's contact at each listed facilities-based long distance carrier.

24. Our rules also require a ''Completing Carrier'' (defined as a long distance carrier or switch-based long distance reseller that completes a coinless access code or subscriber toll-free payphone call) to establish a call-tracking system, subject to an auditing requirement to ensure accuracy, to track coinless access code or subscriber toll-free payphone calls to completion, and to compensate the PSP for these calls on a quarterly basis. With its payment, the Completing Carrier must include a sworn declaration from its Chief Financial Officer certifying that the payment amount is accurate and is based on 100 percent of actual calls completed. To support this certification, the Completing Carrier also must submit quarterly reports to the PSP, which must include the following information: (1) A list of the toll-free and access numbers dialed from each payphone and the ANI for each payphone; (2) the volume of calls for each listed number that the completing carrier completed; (3) the name, address, and phone number of the person or persons responsible for handling the completing carrier's payphone compensation; and (4) the carrier identification code of all facilities-based long distance carriers that routed calls to the SBR.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

25. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

26. The new rules impose a minimal burden on the facilities-based long distance carrier to compensate PSPs for all calls that are completed on that facilities-based carrier's platform. As the record indicates, facilities-based long distance carriers in the call path already collect the data necessary to comply with these reporting requirements as part of their own call tracking and billing systems. Thus, the Commission does not impose any new collecting responsibilities, and we find that the additional reporting obligations the new rules impose are minimal in nature. Furthermore, the facilities-based long distance carrier that does not wish to establish its own call tracking system may instead enter into private

contractual arrangements with other parties, outside of the established rules. Moreover, the rules established herein provide carriers with ample time in which to establish a verifiable call tracking system. To the extent that a PSP affirmatively declines the need for such information, the PSP is free to negotiate alternative arrangements with the relevant carriers. Lastly, the new rules will benefit PSPs, many of which may be small businesses, because they give PSPs greater means to pursue payment from carriers that switch their payphone calls.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

27. None.

28. *Report to Congress.* The Commission will send a copy of the R&O, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the R&O, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the R&O and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Ordering Clauses

29. Pursuant to authority contained in sections 1, 4, 201–205, 215, 218–220, 226, and 276 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201–205, 215, 218–220, 226, and 276, that the policies, rules, and requirements set forth herein are adopted.

30. Part 64 of the Commission's rules, 47 CFR Part 64, is amended by revising §§ 64.1300, 64.1310, and 64.1320, as set forth in the Final Rules of this document.

31. The final rules contained in this document are contingent upon approval of the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of these final rules.

32. Until the effective date of the Final Rules, the Commission readopts, on an interim basis, those rules initially adopted in the *Second Order on Reconsideration.*

These rules, currently set forth at 47 CFR 64.1300(a), 64.1310 (a), and 64.1310(b), are effective November 6, 2003.

List of Subjects in 47 CFR Part 64

Communications common carriers, Telecommunications, Telephones.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ Part 64 of the Code of Federal Regulations is amended to read as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Public Law 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, and 254(k) unless otherwise noted.

■ 2. Section 64.1300 is revised to read as follows:

§ 64.1300 Payphone compensation obligation.

(a) For purposes of this subpart, a Completing Carrier is a long distance carrier or switch-based long distance reseller that completes a coinless access code or subscriber toll-free payphone call or a local exchange carrier that completes a local, coinless access code or subscriber toll-free payphone call.

(b) Except as provided herein, a Completing Carrier that completes a coinless access code or subscriber toll-free payphone call from a switch that the Completing Carrier either owns or leases shall compensate the payphone service provider for that call at a rate agreed upon by the parties by contract.

(c) The compensation obligation set forth herein shall not apply to calls to emergency numbers, calls by hearing disabled persons to a telecommunications relay service or local calls for which the caller has made the required coin deposit.

(d) In the absence of an agreement as required by paragraph (b) of this section, the carrier is obligated to compensate the payphone service provider at a per-call rate of $.24.

3. Section 64.1310 is revised to read as follows:

§ 64.1310 Payphone compensation procedures.

(a) Unless the payphone service provider agrees to other compensation arrangements, each Completing Carrier identified in § 64.1300(a) shall compensate the payphone service provider as follows:

(1) Each Completing Carrier shall establish a call tracking system that accurately tracks coinless access code or subscriber toll-free payphone calls to completion.

(2) Each Completing Carrier shall pay compensation to payphone service providers on a quarterly basis for each completed payphone call identified in the Completing Carrier's quarterly report required by paragraph (a)(4) of this section.

(3) At the conclusion of each quarter, the chief financial officer of the Completing Carrier shall submit to each payphone service provider to which compensation is tendered a sworn statement that the payment amount for that quarter is accurate and is based on 100% of all completed calls that originated from that payphone service provider's payphones.

(4) At the conclusion of each quarter, the Completing Carrier shall submit to the payphone service provider, in computer readable format, a report on that quarter that includes:

(i) A list of the toll-free and access numbers dialed from each of that payphone service provider's payphones and the ANI for each payphone;

(ii) The volume of calls for each number identified in paragraph (a)(4)(i) of this section that were completed by the Completing Carrier;

(iii) The name, address, and phone number of the person or persons responsible for handling the Completing Carrier's payphone compensation; and

(iv) The carrier identification code (''CIC'') of all facilities-based long distance carriers that routed calls to the Completing Carrier, categorized according to the list of toll-free and access code numbers identified in paragraph (a)(4)(i) of this section.

(b) For purposes of this subpart, an Intermediate Carrier is a facilities-based long distance carrier that switches payphone calls to other facilities-based long distance carriers.

(c) Unless the payphone service provider agrees to other reporting arrangements, each Intermediate Carrier shall provide the payphone service provider with quarterly reports, in computer readable format, that include:

(1) A list of all the facilities-based long distance carriers to which the Intermediate Carrier switched toll-free and access code calls dialed from each of that payphone service provider's payphones;

(2) For each facilities-based long distance carrier identified in paragraph (c)(1) of this section, a list of the toll-free and access code numbers dialed from each of that payphone service provider's payphones that all local exchange carriers have delivered to the Intermediate Carrier and that the Intermediate Carrier switched to the identified facilities-based long distance carrier;

(3) The volume of calls for each number identified in paragraph (c)(2) of

this section that the Intermediate Carrier has received from each of that payphone service provider's payphones, identified by their ANIs, and switched to each facilities-based long distance carrier identified in paragraph (c)(1) of this section; and

(4) The name, address and telephone number and other identifying information of the person or persons for each facilities-based long distance carrier identified in paragraph (c)(1) of this section who serves as the Intermediate Carrier's contact at each identified facilities-based long distance carrier.

(d) Local Exchange Carriers must provide to carriers required to pay compensation pursuant to § 64.1300(a) a list of payphone numbers in their service areas. The list must be provided on a quarterly basis. Local Exchange Carriers must verify disputed numbers in a timely manner, and must maintain verification data for 18 months after close of the compensation period.

(e) Local Exchange Carriers must respond to all carrier requests for payphone number verification in connection with the compensation requirements herein, even if such verification is a negative response.

(f) A payphone service provider that seeks compensation for payphones that are not included on the Local Exchange Carrier's list satisfies its obligation to provide alternative reasonable verification to a payor carrier if it provides to that carrier:

(1) A notarized affidavit attesting that each of the payphones for which the payphone service provider seeks compensation is a payphone that was in working order as of the last day of the compensation period; and

(2) Corroborating evidence that each such payphone is owned by the payphone service provider seeking compensation and was in working order on the last day of the compensation period. Corroborating evidence shall include, at a minimum, the telephone bill for the last month of the billing quarter indicating use of a line screening service.

(g) Each Completing Carrier and each Intermediate Carrier must maintain verification data to support the quarterly reports submitted pursuant to paragraphs (a)(4) and (c) of this section for 18 months after the close of that quarter. This data must include the time and date that each call identified in paragraphs (a)(4) and (c) of this section was made. This data must be provided to the payphone service provider upon request.

4. Section 64.1320 is revised to read as follows:

§ 64.1320 Payphone call tracking system audits.

(a) As a precondition to tendering payment pursuant to § 64.1310(a), all Completing Carriers must undergo a system audit of their § 64.1310(a)(1) tracking system by an independent third party auditor whose responsibility shall be, using audit methods approved by the American Institute for Certified Public Accountants, to determine whether the call tracking system accurately tracks payphone calls to completion.

(b) By the effective date of these rules, each Completing Carrier in paragraph (a) of this section must file an audit report from the auditor (the ''System Audit Report'') regarding the Completing Carrier's compliance with § 64.1310(a)(1) as of the date of the audit with the Commission's Secretary in CC Docket No. 96–128 and with each payphone service provider for which it completes calls and with each facilities-based long distance carrier from which it receives payphone calls.

(c) The Completing Carrier must comply with, and the third-party auditor must verify, the Completing Carrier's compliance with the following factors in establishing a call tracking system pursuant to § 64.1310(a)(1):

(1) Whether the Completing Carrier's procedures accurately track calls to completion;

(2) Whether the Completing Carrier has a person or persons responsible for tracking, compensating, and resolving disputes concerning payphone completed calls;

(3) Whether the Completing Carrier has effective data monitoring procedures;

(4) Whether the Completing Carrier adheres to established protocols to ensure that any software, personnel or any other network changes do not adversely affect its payphone call tracking ability;

(5) Whether the Completing Carrier has created a compensable payphone call file by matching call detail records against payphone identifiers;

(6) Whether the Completing Carrier has procedures to incorporate call data into required reports;

(7) Whether the Completing Carrier has implemented procedures and controls needed to resolve payphone compensation disputes;

(8) Whether the independent third-party auditor can test all critical controls and procedures to verify that errors are insubstantial; and

(9) Whether the Completing Carriers has in place adequate and effective business rules for implementing and paying payphone compensation, including rules used to:

(i) Identify calls originated from payphones;

(ii) Identify compensable payphone calls;

(iii) Identify incomplete or otherwise noncompensable calls; and

(iv) Determine the identities of the payphone service providers to which the Completing Carrier owes compensation.

(d) Consistent with standards established by the American Institute of Certified Public Accountants for attestation engagements, the System Audit Report shall consist of:

(1) The Completing Carrier's representation concerning its compliance; and

(2) The independent auditor's opinion concerning the Completing Carrier's representation of compliance. The Completing Carrier's representation must disclose

(i) Its criteria for identifying calls originating from payphones;

(ii) Its criteria for identifying compensable payphone calls;

(iii) Its criteria for identifying incomplete or otherwise noncompensable calls;

(iv) Its criteria used to determine the identities of the payphone service providers to which the completing carrier owes compensation;

(v) The identity of any clearinghouses the Completing Carrier uses; and

(vi) The types of information that the Completing Carrier needs from the payphone service providers in order to compensate them.

(e) At the time of the filing of System Audit Report with the Commission, the Completing Carrier shall file with the Commission's Secretary, and the facilities-based long distance carriers and payphone service providers identified in paragraph (b) of this section, a statement that includes the name of the Completing Carrier, and the name, address and phone number for the person or persons responsible for handling the Completing Carrier's payphone compensation and for resolving disputes with payphone service providers over compensation, and this statement shall be updated within 60 days of any changes of such persons.

(f) One year after the filing of the System Audit Report, and annually thereafter, the Completing Carrier shall engage an independent third-party auditor to:

(1) Verify that no material changes have occurred concerning the Completing Carrier's compliance with the criteria of the prior year's System Audit Report; or

(2) If a material change has occurred concerning the Completing Carrier's compliance with the prior year's System Audit Report, verify that the material changes do not affect compliance with the audit criteria set forth in paragraph (c) of this section. The Completing Carrier must fully disclose any material changes concerning its call tracking system in its representation to the auditor. The Completing Carrier shall file and provide copies of all System Audit Reports pursuant to the procedures set forth in paragraph (b) of this section.

(g) Subject to protections safeguarding the auditor's and the Completing Carrier's confidential and proprietary information, the Completing Carrier shall provide, upon request, to the payphone service provider for inspection any documents, including working papers, underlying the System Audit Report.

[FR Doc. 03–27891 Filed 11–5–03; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register

Vol. 68, No. 215

Thursday, November 6, 2003

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16180; Airspace Docket No. 03–AEA–14]

Proposed Amendment to Class E Airspace; New York, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at New York, NY. The development of multiple area naviagion (RNAV) Copter Standard Instrument Approach Procedures (SIAP) and the proliferation of airports within the metropolitan New York area with approved Instrument Flight Rules (IFR) operations and the resulting overlap of designated Class E–5 airspace has made this proposal necessary. The proposal would consolidate the Class E–5 airspace designations for twelve airports and result in the recision of five separate Class E–5 descriptions through separate rulemaking action. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before December 8, 2003.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16180/ Airspace Docket No. 03–AEA–14 at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. FAA–2003–16180/Airspace Docket No. 03–AEA–14.'' The postcard will be date/ time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Documents Web page at *http://www.access.gpo.gov/nara.* Additionally, any person may obtain a copy of this notice by submitting a request to the Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both the docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677 to request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace area at New York, NY. The proposal would consolidate the following Class E–5 airspace designations into the New York, NY designation: John F. Kennedy International Airport, NY; LaGuardia Airport, NY; Republic Airport, Farmingdale, NY; Westchester County Airport, White Plains, NY; Ossining, NY; Newark Liberty International Airport, NJ; Teterboro Airport, NJ; Morristown Municipal Airport, NJ; Essex County Airport, Caldwell, NJ; Lincoln Park Airport, NJ; Linden Airport, NJ; Greenwood Lake Airport, West Milford, NJ; Somerset Airport, Somerville, NJ; Sussex Airport, NJ; Aeroflex-Andover Airport, Andover, NJ; Old Bridge Airport, NJ; Princeton Airport, NJ; Solberg-Hunterdon Airport, Readington, NJ; Central Jersey Regional Airport, Manville, NJ. This action would result in the recision of twelve Class E–5 designations under a separate docket. The affected airspace would subsequently be incorporated into the New York, NY description. The airspace will be defined to accommodate the approaches and contain IFR operations to and from those airports. This change would have no impact on aircraft operations since the type of airspace designation is not changing. Furthermore, the IFR approach procedures for the individual airports within the area would not be affected. Class E airspace designations for airspace areas extending upward from 700 ft. or more above the surface are published in Paragraph 6005 of FAA Order 7400.9L, dated September 16, 2003 and effective September 15, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, dated September 16, 2003, and effective September 15, 2004, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA NY E5 New York, NY (Revised)

That airspace extending upward from 700 feet above the surface within an area bounded by a line beginning at lat. 40°49′00″N., long. 73°17′02″W., to lat. 40°36′00″N., long. 73°12′27″W., to lat. 40°29′42″N., long. 73°30′53″W., to lat. 40°29′43″N., long. 73°52′12″W., to lat. 40°15′00″N., long. 40°00′00″W., to lat. 40°14′32″N., long. 74°29′47″W., to lat. 40°24′45″N., long. 74°51′22″W., to lat. 41°08′17″N., long. 75°00′00″W., to lat. 41°23′15″N., long. 74°43′13″W., to lat. 41°26′08″N., long. 73°52′54″W., to lat. 41°16′48″N., long. 73°34′53″W., to the point of beginnning excluding the airspace that coincides with the Wrightstown, NJ, Blairstown, NJ, Pittstown, NJ, Philadelphia, PA, Poughkeepsie, NY, Newburg, NY, and Danbury, CT Class E airspace areas.

* * * * *

Issued in Jamaica, New York, on September 25, 2003.

Richard J. Dueharme,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–27905 Filed 11–5–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16220; Airspace Docket No. 03–AEA–15]

Proposed Amendment to Class E Airspace; Honesdale, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Honesdale, PA. The development of a Standard Instrument Approach Procedure (SIAP) based on area navigation (RNAV) to serve flights into Spring Hill Airport, Sterling, PA under Instrument Flight Rules (IFR) has made this proposal necessary. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft executing the approach. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before December 8, 2003.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16220/ Airspace Docket No. 03–AEA–15 at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–16220/Airspace Docket No. 03–AEA–15.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can als be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Documents Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace area at Honesdale, Pa. The development of a

SIAP to serve flights operating IFR into Spring Hill Airport make this action necessary. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAPs. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9L dated September 16, 2003, and effective September 15, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, dated September 16, 2003, and effective September 15, 2004, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

AEA PA E5 Honesdale, PA (Revised)

Cherry Ridge Airport, Honesdale, PA (lat. 41°30′55″ N., long. 75°15′05″ W.)
Spring Hill Airport, Sterling, PA (lat. 41°20′50″ N., long. 75°24′57″ W.)
Wilkes-Barre VORTAC (lat. 41°16′22″ N., long. 75°41′22″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Cherry Ridge Airport and within 4.4 miles each side of the Wilkes-Barre VORTAC 054° radial extending from the 6.3-mile radius to 8.7 miles northeast of the VORTAC and within a 6-mile radius of Spring Hill Airport.

* * * * *

Issued in Jamaica, New York, on September 30, 2003.

John G. McCartney,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–27906 Filed 11–5–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 2003–16029; Airspace Docket No. 03–ANM–08]

Proposed Revision of Class E Airspace, La Junta, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise Class E airspace at La Junta Municipal Airport, La Junta, CO. The establishment of Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAP); RNAV (GPS) Runway (RWY) 26, and RNAV (GPS) RWY 8 SIAPs at La Junta Municipal Airport La Junta, CO, has made this proposal necessary. The intended effect on this proposal is to provide adequate controlled airspace for Instrument Flight Rule (IFR) operations at La Junta Municipal Airport, La Junta, CO.

DATES: Comments must be received by December 22, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA 2003–16029, Airspace Docket No. 03–ANM–08, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final dispositions in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone number 1 (800) 647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the Office of the Regional Air Traffic Division, Northwest Mountain Region, Federal Aviation Administration, Airspace Branch ANM–520, 1601 Lind Avenue, SW., Renton, WA 98055.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify Docket No. FAA 2003–16029; Airspace Docket No. 03–ANM–08, and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit, with those comments, self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA 2003–16029; Airspace Docket No. 03–ANM–08.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http:/www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA, 98055. Communications must identify both document numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

The Proposal

This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E airspace around La Junta Municipal Airport at La Junta, CO. The establishment of RNAV (GPS) RWY 26 and RNAV (GPS) RWY 8 SIAPs at La Junta Municipal Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing the RNAV (GPS) RWY 26 and the RNAV (GPS) RWY &SIAPs at La Junta Municipal Airport. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the RNAV (GPS) RWY 26 and RNAV (GPS) RWY 8 SIAPs at La Junta Municipal Airport, La Junta, CO.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9L dated September 16, 2003, and effective September 15, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11013; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 16, 2003, and effective September 15, 2004, is amended as follows:

Paragraph 6005. Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ANM CO E5 La Junta, CO [Revised]

La Junta Municipal Airport, La Junta, CO
[Lat. 37°15′36″N., long. 104°20′24″W.]

That airspace extending upward from 700 feet above the surface of the earth bound by a line beginning at lat. 38°12′24″N., long. 103°27′42″W.; to lat. 38°10′24″N., long. 103°22′24″W.; to lat. 37°54′12″N., long. 103°22′42″W.; to lat. 37°54′42″N., long. 103°58′00″W.; thence to the point of origin; excluding that airpsace within Federal airways.

* * * * *

Issued in Seattle, Washington, on September 22, 2003.

ViAnne Fowler,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 03–27909 Filed 11–5–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA 2003–15996; Airspace Docket No. 03–ANM–04]

Proposed Revision of Class E Airspace; Trinidad, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise Class E airspace area at Perry Stokes Airport, Trinidad, CO. The establishment of an Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP); RNAV (GPS) Runway (RWY) 3, and RNAV (GPS)–B SIAP at Perry Stokes Airport, Trinidad, CO, has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rule (IFR) operations at Perry Stokes Airport, Trinidad, CO.

DATES: Comments must be received by December 22, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number, FAA 2003–15996; Airspace Docket No. 03–ANM–04, at the beginning of your comments. You may also submit comments on the Internet at *http;//dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final dispositions in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone number 1 (800) 647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the Office of the Regional Air Traffic Division, Northwest Mountain Region, Federal Aviation Administration, Airspace Branch ANM–520, 1601 Lind Avenue, SW., Renton, WA 98055.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify Docket No. FAA 2003–15996, Airspace Docket 03–ANM–04, and be submitted in triplicate to the address listed above, Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA 2003–15996; Airspace Docket No. 03–ANM–04.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA, 98055. Communications must identify both document numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution system, which describes the application procedures.

The Proposal

This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E airspace area at Perry Stokes Airport, Trinidad, CO. The establishment of RNAV (GPS) RWY 3 and RNAV (GPS)–B SIAPs at Perry Stokes Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing the RNAV (GPS) RWY 3 and the RNAV (GPS)–B SIAPs at Perry Stokes Airport. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the RNAV (GPS) RWY 3 and the RNAV (GPS)–B SIAPs at Perry Stokes Airport, Trinidad, CO.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9L dated September 16, 2003, and effective September 15, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 16, 2003, and effective September 15, 2004, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ANM CO E5 Trinidad, CO (revised)

Perry Stokes Airport, Trinidad, UT
[Lat 37°15′36″N, long. 104°20′24″W]
Trinidad Non Directional Beacon (NDB)
[Lat 37°18′22″N, long. 104°20′00″W]

That airspace extending upward from 700 feet above the surface of the earth within an 8.0 mile radius of the Perry Stokes Airport within 4.0 miles each side of the 355° from the Trinidad NDB extending from the 8.0 mile radius to 11 miles north of the NBD and 4.0 miles each side of the 225° bearing from the Trinidad Airport extending from the 8.0 mile radius to 13 miles southwest of the airport; that airspace extending upward from 1,200 feet above the surface of the earth within 10.4 miles west and 16.8 miles east of the 355° and 175° bearings from the Trinidad NDB extending from 19.7 miles south to 28 miles north of the NDB; and bounded by a line beginning at the intersection of V–389 and Lat. 37°00′00″N, thence south along V–389, thence southwest along V–263/389, thence north along V–611 until Lat. 37°00′00″N, and thence to the point of beginning at the northwest corner of the parallelogram; excluding that airsapce within Federal airways.

* * * * *

Issued in Seattle, Washington, on September 22, 2003.

ViAnne Fowler,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 03–27908 Filed 11–5–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16070; Airspace Docket No. 03–ANM–05]

Proposed Establishment of Class E Airspace at Hamilton, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal would establish Class E airspace at Ravalli County Airport, Hamilton, MT. The establishment of two Area Navigation (RNAV) Global Position System (GPS) Standard Instrument Approach Procedures (SIAP); hereafter referred to as RNAV (GPS)—A, and RNAV (GPS)—B SIAPs at Ravalli County Airport, Hamilton, MT, makes this proposal necessary. Controlled airspace extending upward from 700 feet or more above the surface of the earth is necessary to contain aircraft executing the RNAV (GPS)—A and RNAV (GPS)—B SIAPs at Ravalli County Airport.

DATES: Comments must be received by December 22, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number, FAA 2003–16070; Airspace Docket No. 03–ANM–05, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final dispositions in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone number 1 800 647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the Office of the Regional Air Traffic Division, Northwest Mountain Region, Federal Aviation Administration, Airspace Branch ANM–520, 1601 Lind Avenue, SW., Renton, WA 98055.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify Docket No. FAA–2003–16070; Airspace Docket No. 03–ANM–05, and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–16070; Airspace Docket No. 03–ANM–05.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98055. Communications must identify both document numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

The Proposal

The FAA proposes to amend Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by establishing Class E airspace at Hamilton, MT. The establishment of two RNAV GPS SIAPs; RNAV (GPS)–A and RNAV (GPS)–B SIAPs at Ravalli County Airport makes this proposal necessary. Establishing Class E airspace is necessary to provide adequate controlled airspace for aircraft executing the RNAV (GPS)–A and RNAV (GPS)–B SIAPs at Ravalli County Airport, Hamilton, MT.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9L dated September 16, 2003, and effective September 15, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 16, 2003, and effective September 15, 2004, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700-feet or more above the surface of the earth

* * * * *

ANM UT E5 Hamilton, MT (New)

Ravalli County Airport, MT
[Lat 46°15′05″ N., long. 114°07′31″ W.]

That airspace extending upward from 700 feet above the surface of the earth within an 8-mile radius of Ravalli County Airport; that airspace extending upward from 1200 feet above the surface of the earth bounded by a line beginning at lat. 46°42′00″ N., long. 114°11′00″ W.; to lat. 46°42′00″ N., long. 113°52′00″ W.; to lat. 46°19′30″ N., long. 113°52′00″ W.; to lat. 45°51′30″ N., long. 114°01′00″ W.; to lat. 45°51′30″ N., long. 114°11′00″ W.; to lat. 46°03′00″ N., long. 114°19′00″ W.; thence to the beginning; excluding that airspace within Federal Airways.

* * * * *

Issued in Seattle, Washington, on September 25, 2003.

ViAnne Fowler,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 03–27907 Filed 11–5–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 102903C]

RIN 0648–AP42

Fisheries Off West Coast States and in the Western Pacific; Highly Migratory Species

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

ACTION: Notice of availability of a fishery management plan; request for comments.

SUMMARY: NMFS announces that the Pacific Fishery Management Council (Council) has submitted the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (FMP)for Secretarial review. The FMP is a response to increasing concern about the effect of fishing on highly migratory species (HMS) and on ocean resources caught incidentally to fishing HMS. Numerous species of tuna, billfish, oceanic sharks and other species range throughout the Pacific Ocean. A significant amount of information exists on some of the commercially important tunas, a moderate amount on other

commercially important tunas, lesser amounts of information on swordfish and other billfishes, and scant information on sharks and other highly migratory fishes. Comprehensive stock assessments are needed for many of these species, which are harvested by numerous coastal and distant-water fishing nations throughout the Pacific.

DATES: Comments on the FMP must be received on or before January 5, 2004.

ADDRESSES: Comments on the FMP should be sent to Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

Copies of the FMP, which includes an environmental impact statement/regulatory impact review/initial regulatory flexibility analysis are available from Donald O. McIssac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: James Morgan, Sustainable Fisheries Division, NMFS, at 562–980–4036 or Daniel Waldeck, Pacific Fishery Management Council, at 503–326–6352.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each Regional Fishery Management Council to submit a fishery management plan or plan amendment to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan or plan amendment, immediately publish notification in the **Federal Register** that the fishery management plan or plan amendment is available for public review and comment. NMFS will consider the public comments received during the comment period described above in determining whether to approve, disapprove, or partially approve the FMP. The FMP, if approved, would implement conservation and management measures necessary for management of highly migratory species fisheries off the States of California, Oregon, and Washington. The FMP would provide a foundation for future management actions that might be necessary as the international and U.S. fisheries change. In summary, the FMP would:

1. Include in the management unit striped marlin, swordfish, common thresher shark, pelagic thresher shark, bigeye thresher shark, shortfin mako or bonito shark, blue shark, north Pacific albacore, yellowfin tuna, bigeye tuna, skipjack tuna, northern bluefin tuna, and dorado or dolphinfish, commonly referred to as mahi mahi in Hawaii;
2. Adopt harvest guidelines for common thresher shark and shortfin mako shark to reduce the possibility of localized depletion;
3. Require all commercial fishing vessels to have a permit to fish for HMS with an authorization for specific fishing gear;
4. Require all recreational charter (including commercial passenger carrying fishing vessels or CPFV in California) vessels to have a permit to fish for HMS;
5. Require all commercial and recreational charter vessels to maintain and submit logbooks to NMFS;
6. Incorporate under Magnuson-Stevens Act authority regulations currently issued under the Endangered Species Act and state authorities to limit fishing by drift gillnet vessels, except for the State of California limited entry program and Federal regulations that limit fishing to protect marine mammals. California would maintain its limited entry program under state regulations, and Federal regulations governing marine mammals would remain in place under Marine Mammal Protection Act authority;
7. Prohibit longline fishing in the Exclusive Economic Zone (EEZ) off the West Coast;
8. Apply to West Coast-based longline fishing vessels, when fishing outside the EEZ and west of 150° W. long., most of the restrictions that are currently applied to longline vessels fishing under the authority of longline limited entry permits issued pursuant to the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region; and
9. Allow West Coast-based longline fishing vessels to make shallow sets targeting swordfish when fishing east of 150° W. long.

Public comments on the FMP must be received by January 5, 2004, to be considered by NMFS in the decision to approve, disapprove or partially approve the FMP. NMFS expects to publish and request public comment on the proposed regulations to implement the FMP in the near future.

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

Dated: October 31, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–27994 Filed 11–5–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 215

Thursday, November 6, 2003

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act, this notice announces the Foreign Agricultural Service's intention to request an extension for a currently approved information collection in support of the regulations governing the entry of raw cane sugar under the tariff-rate quota (TRQ) into the United States.

DATES: Comments on this notice must be received January 5, 2004 to be assured on consideration.

FOR FURTHER INFORMATION CONTACT: Richard J. Blabey, Director, Import Policies and Programs Division, Foreign Agricultural Service, AgStop 1021, South Building, U.S. Department of Agriculture, Washington, DC 20250–1021 or telephone (202) 720–2916, fax to (202) 720–0876, or e-mail *Richard.Blabey@fas.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Certificate for Quota Eligibility.

OMB Number: 0551–0014.

Expiration Date of Approval: February 29, 2004.

Abstract: The Harmonized Tariff Schedule of the United States (HTS) authorizes the Secretary of Agriculture to establish the quantity of raw cane sugar, which may be entered at the TRQ duty rates. The terms under which Certificates for Quota Eligibility (CQEs) will be issued to foreign countries that have been allocated a share of the TRQ are set forth in 15 CFR part 2011, Subpart A, Allocation of Tariff-rate Quota on Imported Sugars, Syrups, and Molasses. The authority for issuing CQEs is Additional U.S. Note 5(b)(iv) to chapter 17 of the HTS. The regulation, promulgated by the United States Trade Representative, provides for the issuance of CQEs by the Secretary of Agriculture, and in general prohibits sugar subject to the TRQ from being imported into the United States or withdrawn from a warehouse for consumption at the TRQ duty rates unless such sugar is accompanied by a CQE. CQEs are issued to foreign countries by the Director of the Import Policies and Programs Division, Foreign Agricultural Service, or his or her designee. The issuance of CQEs is in such amounts and at such times as the Director determines are appropriates to enable the foreign country to fill its quota allocation for such quota period in a reasonable manner, taking into account traditional shipping patterns, harvesting period, U.S. import requirements, and other relevant factors.

The information required to be collected on the CQE is used to monitor and control the imports of raw cane sugar. Proper completion of the CQE is mandatory for those foreign governments that are eligible and elect to export raw cane sugar to the United States under the TRQ.

Estimate of burden: The public reporting burden for the collection varies in direct relation to the number of CQEs issued.

Respondents: Foreign governments.

Estimated number of respondents: 40 (i.e., number of countries receiving a TRQ allocation).

Estimated number of responses per respondent: 30 per fiscal year.

Estimated total annual reporting burden: 200 hours.

Request for Comments: Send comments regarding: (a) Whether the information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information 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 through use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Copies of this information collection may be obtained from Kimberly Chisley, the Agency Information Collection Coordinator, at (202) 720–2568.

Comments may be sent to Richard Blabey, the Import Policies and Programs Division, Stop 1021, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Washington, DC 20250–1021, or *Richard.Blabey@fas.usda.gov,* or to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Persons with disabilities who require an alternative means of communication of information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD). All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

FAS is committed to complying with the Government Paperwork Elimination Act which requires Government agencies, to the maximum extent feasible, to provide the public with the option of electronically submitting an information collection. CQEs permit exporters to ship raw cane sugar to the United States at the U.S. price, which is significantly higher than the world price for raw cane sugar. Therefore, in contrast to most information collection documents, CQEs have a monetary value equivalent to the substantial profits to exporters who can fill their raw cane sugar allocations under the TRQ. CQEs have always been carefully handled as secure documents, and issued only to foreign government-approved certifying authorities. The Department does not plan to make CQEs available electronically in order to prevent a potential proliferation of invalid CQEs, which could undermine the integrity of the TRQ system.

Signed at Washington, DC on October 27, 2003.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 03–27961 Filed 11–5–03; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), certified petitions for trade adjustment assistance (TAA) that were filed on September 15, 2003, by the United Fishermen of Alaska, Juneau, Alaska, and the Puget Sound Salmon Commission, Seattle, Washington. Salmon fishermen holding permits and licenses in the states of Alaska and Washington are now eligible to apply for program benefits.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that increased imports of frozen salmon fillets contributed importantly to a decline in the landed prices of salmon in Alaska and Washington by 34.6 and 32.6 percent, respectively, during January 2002 through December 2002, when compared with the previous 5-year average.

Producers certified as eligible for TAA may apply to the Farm Service Agency for benefits anytime prior to the application deadline of January 20, 2004. After submitting completed applications, producers shall receive technical assistance provided by the Extension Service at no cost and an adjustment assistance payment, if certain program criteria are met.

Producers of raw agricultural commodities wishing to learn more about TAA and how they may apply should contact the Department of Agriculture at the addresses provided below for General Information.

Producers Certified as Eligible for TAA, Contact: Local Farm Service Agency service center.

For General Information About TAA, Contact: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916. email: *trade.adjustment@fas.usda.gov.*

Signed at Washington, DC, on October 28, 2003.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 03–27959 Filed11–5–03; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), has certified a petition for trade adjustment assistance (TAA) that was filed on September 15, 2003, by the Wild Blueberry Commission of Maine, Orono, Maine. Producers of wild blueberries in the state of Maine are now eligible to apply for program benefits.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that increasing imports of wild blueberries contributed importantly to a decline in domestic producer prices of 33 percent during July 2002 through June 2003, when compared with the previous 5-year average.

Producers certified as eligible for TAA may apply to the Farm Service Agency county office for benefits anytime prior to the application deadline of January 20, 2004. After submitting completed applications, producers shall receive technical assistance provided by the Extension Service at no cost and an adjustment assistance payment, if certain program criteria are met.

Producers of raw agricultural commodities wishing to learn more about TAA and how they may apply should contact the Department of Agriculture at the addresses provided below for General Information.

Producers Certified as Eligible for TAA Contact: Local Farm Service Agency service center.

For General Information About TAA Contact: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov.*

Dated: October 27, 2003.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 03–27960 Filed 11–5–03; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Klamath Provincial Advisory Committee (PAC); Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Klamath Provincial Advisory Committee will meet on November 13–14, 2003, at the Northern California Service Center, 6101 Airport Road, Redding, California. The meeting will start at 1 p.m. and adjourn at 5 p.m. on November 13, and start at 8 a.m. and adjourn at 12 noon on November 14. Agenda items for the meeting include: (1) Discussion on topics of general interest to the PAC (recruitment of new members, issue development process); (2) Vegetative Treatments in Late Successional Reserves; (3) Salvage Harvest After Wildfire Recommendations; and (4) Public Comment Periods. All Provincial Advisory Committee meetings are open to the public. Interested Citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Jan Ford, USDA, Klamath National Forest, 1312 Fairlane Road, Yreka, California 96097; telephone (530) 841—4483 (voice), TDD (530) 841–4573.

Dated: October 21, 2003.

Margaret J. Boland,

Designated Federal Official, Klamath PAC.

[FR Doc. 03–27918 Filed 11–5–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Sunshine Act Meeting

AGENCY: Rural Telephone Bank, USDA.

ACTION: Staff briefing for the Board of Directors.

TIME AND DATE: 2 p.m., Thursday, November 13, 2003.

PLACE: Conference Room 104–A, Jamie L. Whitten Federal Building, U.S. Department of Agriculture, 12th & Jefferson Drive, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED:

1. Year-end report on fiscal year 2003 lending activity.
2. Fiscal year 2004 Budget.
3. Update on fiscal year 2003 audit.
4. Privatization discussion.
5. Administrative and other issues.

ACTION: Stockholders' meeting.

TIME AND DATE: 9 a.m., Friday, November 14, 2003.

PLACE: Jefferson Auditorium, U.S. Department of Agriculture, South Building, 14th & Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED: The following matters have been placed on the agenda for the Stockholders' meeting:

1. Call to order.

2. Establishment of a quorum.
3. Action on Minutes of the August 17, 2001, Stockholders' meeting.
4. Secretary's report on loans approved, FY 2003.
5. Treasury's report.
6. Privatization update, discussion, and presentations.
7. Consideration of resolution to conduct a Market Assessment.
8. New business.
9. Adjournment.

ACTION: Board of Directors meeting.

TIME AND DATE: Immediately following Stockholders' meeting, Friday, November 14, 2003.

PLACE: Jefferson Auditorium, U.S. Department of Agriculture, South Building, 14th & Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting (items 3 through 6 are only necessary if a quorum is not established in the stockholders' meeting and these items are not addressed previously):
1. Call to order.
2. Action on Minutes of the August 19, 2003, board meeting.
3. Secretary's Report on loans approved, FY 2003.
4. Treasurer's Report.
5. Privatization update, discussion, and presentations.
6. Consideration of resolution to conduct a Market Assessment.
7. Governor's Remarks.
8. Establishment of meeting dates for 2004.
9. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Roberta D. Purcell, Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Dated: November 4, 2003.

Roberta D. Purcell,

Acting Governor, Rural Telephone Bank.

[FR Doc. 03–28080 Filed 11–4–03; 11:58 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 56–2003]

Foreign-Trade Zone 158—Jackson, MS, Application for Expansion of Manufacturing Authority, Subzone 158D—Nissan North America, Inc., Plant (Motor Vehicles); Canton, MS

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Vicksburg-Jackson Foreign-Trade Zone, Inc., grantee of FTZ 158, on behalf of Nissan North America, Inc. (NNA), operator of Subzone 158D at the NNA motor vehicle manufacturing plant in Canton, Mississippi, requesting an expansion of the scope of manufacturing authority to include new manufacturing capacity under FTZ procedures. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and section 400.32(b)(1) of the Board's regulations (15 CFR Part 400). It was formally filed on October 29, 2003.

Subzone 158D was approved in 2002 for the manufacture of up to 250,000 light-duty passenger vehicles annually at the NNA plant (up to 4,000 employees/1,350 acres/2.6 million sq.ft.) in Canton (Madison County), Mississippi (Board Order 1212, 67 FR 11091, 3–12–2002).

The applicant currently requests that the scope of FTZ manufacturing authority be extended to include an additional 1.1 million square feet of production area to accommodate additional passenger sedan production capacity (to a total of 400,000 vehicles annually), which will be added within the existing boundaries of Subzone 158D.

Parts and materials that are sourced from abroad (approximately 44% of material value, as published in the original **Federal Register** notice at 66 FR 35223, 7–3–2001) include: Gasoline and diesel engines and parts of such engines, labels, body parts and trim, fasteners, catalytic converters, parts of steering systems, brake fittings, half shafts, transmissions and parts of transmissions, differentials, bearings and bearing housings, flywheels/pulleys, wiring harnesses, handles/knobs, gaskets, fasteners, windshields and windows, springs, relays, and switches (duty rate range: free—8.6%). The foregoing list represents NNA's preexisting scope of sourcing authority.

Expanded zone procedures would continue to exempt NNA from Customs duty payments on the foreign components used in production for export. On its domestic sales and exports to NAFTA countries, the company can choose the lower duty rate that applies to finished passenger vehicles (2.5%) for the foreign inputs with higher duty rates noted above. Duties on foreign-origin production equipment would also be deferred until they become operational. The application indicates that the savings from FTZ procedures helps to improve the NNA plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building-Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or,
2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB–4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is January 5, 2004. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to January 20, 2004).

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address No. 1 listed above.

Dated: October 29, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–27966 Filed 11–5–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–852]

Creatine Monohydrate From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is currently conducting an administrative review of the antidumping duty order on creatine monohydrate from the People's Republic of China. The period of review is February 1, 2002, through January 31, 2003. This review covers imports of subject merchandise from one producer/exporter.

We preliminarily find that sales have not been made at less than normal value. If these preliminary results are adopted in our final results of review, we will instruct the U.S. Customs and Border Protection Service ("CBP") to liquidate entries of creatine

monohydrate produced and exported by Suzhou Sanjian Nutrient and Health Products Co., Ltd., without regard to antidumping duties.

We invite interested parties to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: November 6, 2003.

FOR FURTHER INFORMATION CONTACT: Blanche Ziv, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4207.

SUPPLEMENTARY INFORMATION:

Background

On February 4, 2000, the Department published an antidumping order on creatine monohydrate from the People's Republic of China (''PRC''). *See Notice of Antidumping Duty Order: Creatine Monohydrate from the People's Republic of China,* 65 FR 5583 (February 4, 2000). On February 3, 2003, the Department published in the **Federal Register** an *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 68 FR 5272 (February 3, 2003).

On February 28, 2003, in accordance with 19 CFR 351.213(b), a manufacturer/exporter of the subject merchandise, Suzhou Sanjian Nutrient & Health Products Co., Ltd. (''Sanjian''), requested that the Department conduct an administrative review of this order. On March 25, 2003, we published a notice of initiation of this review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part,* 68 FR 14394 (March 25, 2003). The period of this review (''POR'') is February 1, 2002, through January 31, 2003.

On April 14, 2003, we issued an antidumping questionnaire to Sanjian. We issued a supplemental questionnaire on July 18, 2003. We received responses to the original and supplemental questionnaires on May 21 and August 1, 2003, respectively.

Scope of the Review

Imports covered by this review are creatine monohydrate, which is commonly referred to as ''creatine.'' The chemical name for creatine monohydrate is N-(aminoiminomethyl)-N-methylgycine monohydrate. The Chemical Abstracts Service (''CAS'') registry number for this product is 6020–87–7. Creatine monohydrate in its pure form is a white, tasteless, odorless powder, that is a naturally occurring metabolite found in muscle tissue. Creatine monohydrate is provided for in subheading 2925.20.90 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheading and the CAS registry number are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

Separate Rates

The Department has treated the PRC as a nonmarket economy (''NME'') country in all previous antidumping cases. *See, e.g., Notice of Final Determination of Sales at Less than Fair Value: Refined Brown Aluminum Oxide (Otherwise known as Refined Brown Artificial Corundum or Brown Fused Alumina) from the People's Republic of China,* 68 FR 55589 (September 26, 2003). It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can demonstrate an absence of government control, both in law (de jure) and in fact (de facto), with respect to exports. To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). In this review, the sole respondent, Sanjian, is a PRC company; therefore, a separate rates analysis is necessary to determine whether its export activities are independent of government control.

Absence of De Jure Control

Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers,* 56 FR at 20589.

Absence of De Facto Control

A *de facto* analysis of absence of government control over exports is based on four factors—whether the respondent: (1) Sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management. *See Silicon Carbide,* 59 FR at 22587; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995) (''*Furfuryl Alcohol*'').

In the *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China,* 64 FR 71104, 71105 (December 20, 1999) (''*LTFV Investigation*''), we determined that there was *de jure* and *de facto* absence of government control of Suzhou Sanjian Fine Chemical Co. Ltd.''s (''Suzhou Chemical'') export activities and determined that Suzhou Chemical warranted a company-specific dumping margin. On April 18, 2003, we determined that Sanjian was the successor-in-interest to Suzhou Chemical. *See Creatine Monohydrate from the People's Republic of China: Final Results of Changed Circumstances Review,* 68 FR 19189 (April 18, 2003) (''*Changed Circumstances Review*''). For the POR, Sanjian responded to the Department's request for information regarding separate rates. We have found that the evidence on the record is consistent with the final determination in the *LTFV Investigation* and the *Changed Circumstances Review,* and Sanjian continues to demonstrate an absence of government control, both in law and in fact, with respect to its exports, in accordance with the criteria identified in *Sparklers, Silicon Carbide,* and *Furfuryl Alcohol.*

Export Price

For U.S. sales made by Sanjian, we calculated export price (''EP''), in accordance with section 772(a) of the Tariff Act of 1930, as amended (''the Act''), because the subject merchandise was sold to unaffiliated purchasers in the United States prior to importation into the United States and the facts did not otherwise warrant use of constructed export price.

We calculated EP based on the price to unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, as appropriate, we deducted from the starting price foreign inland freight, international freight, marine insurance, U.S. inland freight, U.S. customs duties, and other U.S. transportation expenses. We valued the deductions for foreign inland freight using surrogate data based on Indian freight costs. We selected India as the surrogate country for the reasons explained in the ''*Normal Value*'' section of this notice, below. Because the respondent used a market-economy shipper for more than an insignificant portion of its sales and paid for the shipping in a market-economy currency, we used the average price paid by that respondent to the market economy shipper to value international freight for all of its sales. *See* the ''Factors of Production Valuation Memorandum'' dated October 31, 2003 (''*FOP memo*''); *See also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Preliminary Results of 2000–2001 Administrative Review, Partial Rescission of Review, and Notice of Intent to Revoke Order, in Part,* 67 FR 45451, 45453 (July 9, 2002).

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the normal value (''NV'') using a factors-of-production methodology if: (1) The merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value (''CV'') under section 773(a) of the Act.

As discussed in the separate rates section, the Department considers the PRC to be an NME country. The Department has treated the PRC as an NME country in all previous antidumping proceedings. Furthermore, available information does not permit the calculation of NV using home-market prices, third-country prices, or CV under section 773(a) of the Act. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. We have no evidence suggesting that this determination should be changed. Therefore, we treated the PRC as an NME country for purposes of this review and calculated NV by valuing the factors of production in a surrogate country.

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) Are at a level of economic development comparable to that of the NME, and (2) are significant producers of comparable merchandise. The Department has determined that India, Pakistan, Indonesia, Sri Lanka, and the Philippines are countries comparable to the PRC in terms of overall economic development (*see* Memorandum from Jeff May, Director, Office of Policy, to Blanche Ziv, Import Compliance Specialist, Group 1, April 10, 2003). Although we have no information to indicate that India produces creatine, it does produce other products within the same customs heading, and it produces other fine chemicals with nutritional characteristics. We have therefore determined that India is a significant producer of comparable merchandise. Accordingly, we have calculated NV using Indian values for the PRC producer's factors of production.

We have obtained and relied upon publicly available information, wherever possible. In many instances, we used the *Monthly Statistics of the Foreign Trade of India; Volume II Imports* (''*MSFTI*'') to value factors of production, energy inputs and packing materials. Consistent with the *Final Determination of Sales at Less than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China,* 67 FR 6482 (February 12, 2002) and accompanying Issues and Decision Memorandum at Comment 1, we excluded import data reported in the *MSFTI* for Korea, Thailand and Indonesia in our surrogate value calculations. In addition to the *MSFTI* data, we used Indian domestic prices from *Indian Chemical Weekly* (''*ICW*'') to value certain chemical inputs. *See* the *FOP memo.*

Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by Sanjian during the POR. To calculate NV, the reported unit factor quantities were multiplied by publicly available Indian surrogate values.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices to make them delivered prices. For the distances reported, we added to Indian CIF surrogate values a surrogate freight cost using the reported distances from the PRC port to the PRC factory, or from the domestic supplier to the factory. This adjustment is in accordance with the United States Court of Appeals for the Federal Circuit's (''CAFC'') decision in *Sigma Corp.* v. *United States,* 117 F. 3d 1401, 1407–1408 (Fed.Cir. 1997). For those values not contemporaneous with the POR, we adjusted for inflation using the appropriate wholesale or producer price index published in the International Monetary Fund's *International Financial Statistics.*

Sanjian reported that it purchased a portion of one its inputs, cyanamide, from a market economy supplier. Because we found that the amount of cyanamide purchased was insignificant, we did not use the price paid by Sanjian for this input, and instead used import values from the *MSFTI.* For further information, *see* the *FOP memo.*

Labor: We valued labor using the method described in 19 CFR 351.408(c)(3).

Electricity and Coal: Consistent with our approach in *Manganese Metal from the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 66 FR 15076 (March 15, 2001) (''*Manganese Metal*''), we calculated the surrogate value for electricity based on electricity rate data reported by the International Energy Agency (''*IEA*''), 4th quarter 2001. For coal, we used import values from the *MSFTI.*

Factory Overhead, Selling, General and Administrative Expenses (''SG&A''), and Profit: We based our calculation of factory overhead, SG&A, and profit on the 2002 financial statements of a producer of comparable merchandise, Riddhi Siddhi Gluco Boils Ltd. (''RSGB''), an Indian starch and dextrine producer.

Inland Freight Rates: To value truck freight rates, we used an average of trucking rates quoted in *ICW.*

Packing Materials: For packing materials we used import values from the MSFTI. For a complete analysis of surrogate values, *see* the *FOP memo.*

Preliminary Results of the Review

We preliminarily find the weighted average dumping margin for Sanjian for the period February 1, 2002, through January 31, 2003, to be zero percent.

Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held approximately 44 days after the date of publication of this notice, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, which must be limited to issues raised in such briefs or comments, may be filed not later than 37 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. The Department will issue a notice of final results of this administrative review, including the results of its analysis of issues raised in any such written comments, within 120 days of publication of these preliminary results.

Assessment Rates and Cash Deposit Requirements

Pursuant to 19 CFR 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.,* at or above 0.5 percent), the Department will issue appraisement instructions directly to the CBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculate importer-specific assessment rates for the subject merchandise by aggregating the dumping duties due for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer.

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of creatine entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for Sanjian will be the rate established in the final results of this administrative review; (2) for a company previously found to be entitled to a separate rate and for which no review was requested, the cash deposit rate will be the rate established in the most recent review of that company; (3) the cash deposit rate for all other PRC exporters will be 153.70 percent, the PRC-wide rate established in the *LTFV investigation;* and (4) the cash deposit rate for a non-PRC exporter of subject merchandise from the PRC will be the rate applicable to the PRC exporter that supplied that exporter. These cash 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.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 31, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–27974 Filed 11–5–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–836]

Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests from U.S. producers of the subject merchandise, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain cut-to-length carbon-quality steel plate products (steel plate) from the Republic of Korea (Korea). The review covers one manufacturer/exporter of subject merchandise during the period of review (POR), February 1, 2002, through January 31, 2003. Based upon our analysis, the Department has preliminarily determined that a dumping margin exists for the manufacturer/exporter covered by this review. If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties as appropriate. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 6, 2003.

FOR FURTHER INFORMATION CONTACT: Jeff Pedersen or Drew Jackson, AD/CVD Enforcement, Office IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2769 or (202) 482–4406, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 10, 2000, the Department published in the **Federal Register** the antidumping duty order on steel plate from Korea. *See Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate Products From France, India, Indonesia, Italy, Japan and the Republic of Korea,* 65 FR 6585 (February 10, 2000) (*Amended Final Determination and Order*). On February 3, 2003, the Department published a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on steel plate from Korea. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 68 FR 5272 (February 3, 2003). On February 27, 2003, Nucor Corporation, a domestic producer, requested an administrative review of Dongkuk Steel Mill Co., Ltd. (DSM), Korea Iron & Steel Co., Ltd. (KISCO), Pohang Iron & Steel Co., Ltd. (Pohang) and Union Steel Manufacturing Co., Ltd. (Union) for the POR February 1, 2002, through January 31, 2003. Also, on February 27, 2003, IPSCO Steel, one of the petitioning firms in the steel plate investigations, requested an administrative review of DSM this review. On March 18, 2003, the Department initiated an administrative review of DSM, KISCO, and Union. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 68 FR 14394 (March 25, 2003). The Department did not initiate an administrative review of Pohang because Pohang is excluded from the antidumping order on steel plate from Korea. *See Amended Final Determination and Order.*

On April 10, 2003, the Department issued antidumping questionnaires to DSM, KISCO and Union. The Department received a letter from KISCO on June 6, 2003, in which it stated that it had shut down its steel plate mill in early 1998 and, thus, had no shipments of subject merchandise during the POR. In March and April 2003, Union reported that it did not produce the subject merchandise and had no shipments of subject merchandise during the POR. DSM responded to the Department's questionnaire responses in May and June 2003. The Department issued supplemental questionnaires to DSM in May, June, July, August, and September of 2003, and received responses from

DSM in June, July, August, and September of 2003.

Scope of the Review

The products covered by the antidumping duty order are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in the scope of the order are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular 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. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in the scope of the order are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of the order unless otherwise specifically excluded. The following products are specifically excluded from the order: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.,* USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel. The merchandise subject to the order is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000. Although the HTSUS subheadings are provided for convenience and CBP purposes, the written description of the merchandise covered by the order is dispositive.

Period of Review

The POR is February 1, 2002 through January 31, 2003.

Preliminary Partial Rescission of Review

We are preliminarily rescinding this review, in part, with respect to KISCO and Union because they reported that they made no shipments of subject merchandise during the POR. The Department reviewed CBP data, which supports the claims that these companies did not export subject merchandise during the POR.

Duty Absorption

Section 751(a)(4) of the Tariff Act of 1930, as amended (the Act), provides for the Department, if requested, to determine during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. Nucor Corporation requested that the Department make a duty absorption determination with respect to each respondent. Because the instant review was not initiated two or four years after publication of the order, the Department will not make a duty absorption determination in this review.

Affiliation

During the POR, DSM sold subject merchandise to Dongkuk Industries Co., Ltd. (DKI), a Korean trading company, which, in turn, resold the merchandise to Dongkuk International, Inc. (DKA), a U.S. importer that is affiliated with DSM. The Department has preliminarily determined that DSM and DKI are under the common control of a family grouping. According to section 771(33)(F) of the Act, ''{t}wo or more persons directly or indirectly controlling, controlled by, or under common control with, any person'' shall be considered to be affiliated. Thus we have preliminarily found DSM and DKI to be affiliated parties. For a complete discussion of this issue see the memorandum from the Team to Thomas F. Futtner, Acting Office Director, concerning Affiliation Analysis for Dongkuk Steel Mill Company, Ltd., dated concurrently with this notice.

Section 201 Duties

The Department notes that merchandise subject to this review is subject to duties imposed under section 201 of the Act (section 201 duties). Because the Department has not previously addressed the appropriateness of deducting section 201 duties from export price and constructed export price (CEP), on September 9, 2003, the Department published a request for public comments on this issue (68 FR 53104). All comments were due on October 9, 2003. Rebuttal comments are due by November 7, 2003. *See* 68 FR 60079 (October 21, 2003). Since the Department has not made a determination on this issue at this time, for purposes of these preliminary results, no adjustment has been made.

Normal Value Comparisons

To determine whether the respondent's sales of steel plate from Korea to the United States were made at less than normal value (NV), we compared the CEP to the NV, as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice, below. We first attempted to compare contemporaneous U.S. and comparison-market sales of products that are identical with respect to the following characteristics: paint, quality, grade, heat treatment, thickness, width, patterns in relief and descaling. Where we were unable to compare sales of identical merchandise, we compared U.S. sales to contemporaneous comparison-market sales of the most similar merchandise based on the above characteristics, which are listed in order of importance for matching purposes.

Constructed Export Price

In calculating U.S. price, the Department used CEP, as defined in section 772(b) of the Act, because the merchandise was sold, after importation, by DSM's U.S. affiliate, DKA, to unaffiliated purchasers in the United States. We calculated CEP based on delivered prices to unaffiliated customers in the United States. We made deductions from the starting price, where appropriate, for foreign and U.S. brokerage and handling, foreign and U.S. inland freight, international freight, marine insurance, U.S. duties, and direct and indirect selling expenses to the extent that they are associated with economic activity in the United States in accordance with sections 772(c)(2)(A) and 772(d)(1)(B) and (D) of the Act. The direct selling expenses included credit expenses. We added duty drawback received on imported materials pursuant to section 772(c)(1)(B) of the Act. In accordance with section 772(d)(3) of the Act, we made a deduction for CEP profit. Finally, pursuant to section 772(c)(1)(C) of the Act, we increased U.S. price by the amount of the export subsidy found in the countervailing duty investigation on steel plate from Korea. *See Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea,* 64 FR 73176 (December 29, 1999).

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determined NV based on sales in the comparison-market at the same level of trade (LOT) as the CEP sales. The NV LOT is that of the starting-price sales in the comparison-market. For CEP sales, the U.S. LOT is the level of the constructed sale from the exporter to the importer. The Department adjusts the CEP, pursuant to section 772(d) of the Act, prior to performing its LOT analysis, as articulated by the Department's regulations at section 351.412(c)(1)(ii). *See Micron Technology, Inc.* v. *United States,* 243 F.3rd 1301, 1315 (Fed. Cir. 2001).

To determine whether NV sales are at a different LOT than the CEP sales, we examined stages in the marketing process and selling activities along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT than that of the U.S. sale, and the difference affects 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 an LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV LOT is more remote from the factory than the CEP LOT 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 (November 19, 1997).

In determining whether separate LOTs exist, we obtained information from DSM about the marketing stages for the reported U.S. and comparison-market sales, including a description of the selling activities performed by DSM for each channel of distribution. In identifying LOTs for CEP sales, we considered the selling functions reflected in the starting price, as adjusted under section 772(d) of the Act. *See* section 351.412(c)(1)(ii) of the Department's regulations. We expect that, if claimed LOTs are the same, the selling functions and activities of the seller at each level should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the selling functions and activities of the seller for each group of sales should be dissimilar.

In its questionnaire responses, DSM reported that it sold the foreign like product through one channel of distribution in the comparison-market and subject merchandise through several channels of distribution in the United States. We found that DSM engaged in similar selling activities for almost all sales in the comparison-market, and thus, we have preliminarily determined that there is one LOT in the comparison-market. Moreover, we found that the sales activities performed in the U.S. channels of distribution are substantially similar and, thus there is one LOT in the U.S. market. Further, we compared the single LOT in the comparison-market to the single LOT in the U.S. market, and have preliminarily determined that they are substantially similar. Thus, we have determined that the LOTs in the comparison and U.S. markets are the same LOT. Because the LOT is the same in both markets, we have denied DSM's request for a CEP offset, and not considered an LOT adjustment. *See* memorandum to the File from the Team concerning Level of Trade Analysis: Dongkuk Steel Mill Co., Ltd., dated concurrently with this notice.

Normal Value

After testing home market viability and whether home market sales failed the cost test, we calculated NV as noted in subsection 5, ''Calculation of NV,'' below.

1. Home Market Viability

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 (*i.e.,* whether the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of subject merchandise, in accordance with section 773(a)(1) of the Act. Because the respondent's aggregate volume of home market sales of the foreign like product is greater than five percent of its aggregate volume of U.S. sales of subject merchandise, we determined that the home market is viable for the respondent, and have used the home market as the comparison-market.

2. Ordinary Course of Trade—Overrun Sales

DSM reported home market sales of ''overrun'' merchandise (*i.e.,* sales of a greater quantity of steel plate than the customer ordered due to overproduction). Section 773(a)(1)(B) of the Act provides that NV shall be based on the price at which the foreign like product is first sold, *inter alia,* in the ordinary course of trade. Section 771(15) of the Act defines ordinary course of trade as the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind. In past cases, the Department has examined a number of factors to determine whether ''overrun'' sales are in the ordinary course of trade. These factors include: (1) Whether the merchandise is ''off-quality'' or produced according to unusual specifications; (2) the comparative volume of sales and number of buyers in the home market; (3) the average quantity of an overrun sale compared to the average quantity of a commercial sale; and (4) price and profit differentials in the home market. Based on our analysis of these factors and the terms of sale, we found all overrun sales to be outside the ordinary course of trade. *See* memorandum to the File from the Team concerning Overrun Sales Analysis: Dongkuk Steel Mill Co., Ltd., dated concurrently with this notice.

3. Affiliated-Party Transactions and Arm's-Length Test

DSM reported no home market sales to affiliates.

4. Cost of Production Analysis

In the investigation of steel plate from Korea, the Department disregarded DSM's sales that were found to have failed the cost test. *See Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea,* 64 FR 41224 (July 29, 1999); *Amended Final Determination and Order* (no change from the preliminary results). Accordingly, the Department, pursuant to section 773(b) of the Act, initiated a cost of production (COP) investigation of the respondent for purposes of this administrative review. We conducted the COP analysis as described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, by model, for the POR, based on the sum of materials and fabrication costs, general and administrative (G&A) expenses, and packing costs.

B. Test of Home Market Sales Prices

As required under section 773(b) of the Act, we compared the weighted-average COPs to the home market sales of the foreign like product, in order to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of DSM's sales of a given product were made at prices below the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of DSM's sales of a given product were made at prices below the COP, we determined that such sales were made in substantial quantities within an extended period of time (*i.e.*, a period of one year). Further, because we compared prices to POR-average costs, we determined that the below-cost prices would not permit recovery of all costs within a reasonable time period, and thus, we disregarded the below-cost sales in accordance with sections 773(b)(1) and (2) of the Act.

We found that for certain products, DSM made home market sales at prices below the COP within an extended period of time in substantial quantities. Further, we found that these sales prices did not permit the recovery of costs within a reasonable period of time. We therefore excluded these sales from our analysis in accordance with section 773(b)(1) of the Act.

5. Calculation of NV

We determined price-based NVs for DSM as follows: We calculated NV based on packed, delivered and ex-factory prices to home market customers. Where appropriate, we increased the starting price for interest and duty drawback revenue received from customers. We made deductions from the starting price for foreign inland freight, where appropriate, pursuant to sections 773(a)(6)(B)(ii) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act and § 351.410(c) of the Department's regulations, we made circumstance-of-sale adjustments to the starting price, where appropriate, for differences in credit, warranty, and bank expenses.

We deducted home market packing costs from, and added U.S. packing costs to, the starting price, in accordance with section 773(a)(6)(A) and (B) of the Act. Where appropriate, we made adjustments to NV to account for differences in the physical characteristics of the merchandise sold in the U.S. and home market, in accordance with section 773(a)(6)(C)(ii) of the Act and § 351.411 of the Department's regulations.

Currency Conversion

Pursuant to section 773A(a) of the Act, 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.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted-average margin exists for the period February 1, 2002, through January 31, 2003:

Manufacturer/Exporter	Margin (percent)
Dongkuk Steel Mill Co., Ltd.	0.85

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* § 351.224(b) of the Department's regulations. Any interested party may request a hearing within 30 days of the publication date of this notice. *See* § 351.310(c) of the Department's regulations. If requested, a hearing will be held 44 days after the date of 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. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 7 days after the deadline for filing case briefs. Interested parties are invited to comment on the preliminary results. Parties who submit arguments are requested to submit with each argument: (1) A statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, we would appreciate it if parties submitting written comments would provide the Department with a copy of the public version of any such comments on a diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any written comments, within 120 days from the publication date of this notice.

Assessment Rate

Upon completion of this administrative review, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with § 351.212(b)(1) of the Department's regulations, we have calculated an importer-specific assessment rate for merchandise subject to this review. Where the importer-specific assessment rate is above *de minimis*, we will instruct the CBP to assess the importer-specific rate uniformly on all entries made during the POR. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct CBP to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the importers' entries during the review period.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate listed above (except that if the rate is *de minimis*, *i.e.*, less than 0.5 percent, a cash deposit rate of zero will be required); (2) for previously investigated or reviewed companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rate of 0.98 percent, which is the ''all others'' rate established in the LTFV investigation, adjusted for the export subsidy rate in the countervailing duty investigation. *See Amended Final Determination and Order.* These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under § 351.402(f)(2) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 31, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–27975 Filed 11–5–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has received timely requests from Siyang Foreign Trade Co., Ltd. (Siyang FTC) and its producer Anhui Golden Bird Agricultural & Side-Line Products Development Co., Ltd. (Golden Bird), Yancheng Fuda Foods Co., Ltd. (Fuda), and Qingdao Xiyuan Refrigerate Food Co., Ltd. (Xiyuan) to conduct new shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC). Fuda and Xiyuan each produced and exported the subject merchandise. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and section 351.214(d) of the Department's regulations, we are initiating these new shipper reviews.

EFFECTIVE DATE: November 6, 2003.

FOR FURTHER INFORMATION CONTACT: Douglas Kirby or Matthew Renkey, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3782 or (202) 482–2312, respectively.

Background

On July 28, 2003, the Department received a timely request from Siyang FTC, in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(c), for a new shipper review of this antidumping duty order on freshwater crawfish tail meat from the PRC, which has a September anniversary date. On September 29, 2003, the Department also received timely requests from Fuda and Xiyuan filed in accordance with the statute and regulations. Siyang FTC had made a previous request for a new shipper review which the Department initiated, but later rescinded based on Siyang's failure to provide the proper certifications pursuant to 19 CFR 351.214(b)(2). *See Freshwater Crawfish Tail Meat for the People's Republic of China: Rescission of Antidumping Duty New Shipper Review,* 68 FR 37115 (June 23, 2003). Siyang FTC has submitted the certifications required for the initiation of this current new shipper review.

As required by 19 CFR 351.214(b)(2)(i), (ii), and (iii)(A), Siyang FTC and its producer Golden Bird, along with Fuda, and Xiyuan have certified that they did not export freshwater crawfish tail meat to the United States during the period of investigation (POI), and that they have never been affiliated with any exporter or producer which exported freshwater crawfish tail meat to the United States during the POI. Siyang FTC, Fuda and Xiyuan have further certified that their export activities are not controlled by the central government of the PRC, pursuant to the requirements of 19 CFR 351.214(b)(2)(iii)(B). Pursuant to the Department's regulations at section 351.214(b)(2)(iv)(A), Siyang FTC, Fuda and Xiyuan each submitted documentation establishing both the date on which they first shipped the subject merchandise to the United States and the date of entry of that first shipment. Pursuant to the Department's regulations at sections 351.214(b)(2)(iv)(B) and (C), Siyang FTC, Fuda, and Xiyuan also provided documentation which established the volume of that shipment and the date of the first sale to an unaffiliated customer in the United States. Also pursuant to the Department's regulations at section 351.214(b)(2)(iv)(B), Siyang FTC reported the volume of subsequent shipments during the period of review (POR). Fuda and Xiyuan certified that they had no subsequent shipments. After reviewing the submissions with respect to the new shipper review requests filed on behalf of Siyang FTC, Fuda and Xiyuan, the Department found that they meet the threshhold for initiation in accordance with section 351.214(b) of the Department's regulations.

Initiation of Reviews

In accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating new shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the PRC.

In accordance with 19 CFR 351.214(g)(1)(i)(A) of the Department's regulations, the POR for a new shipper review, initiated in the month immediately following the anniversary month, will be the twelve-month period immediately preceding the anniversary month. Because of the timing of Siyang FTC's first shipment and the timing of the request, the Department has determined that it is appropriate in this review to extend the POR backwards for Siyang FTC to include its initial new shipper sale, which was made prior to the standard POR.

The PORs for these new shipper reviews are:

Antidumping duty new shipper reviews	Period to be reviewed
Siyang Foreign Trade Co., Ltd./Producer: Anhui Golden Bird Agricultural & Side-Line Products Development Co., Ltd.	7/1/02–8/31/03
Yancheng Fuda Foods Co., Ltd.	9/1/02–8/31/03
Qingdao Xiyuan Refrigerate Food Co., Ltd.	9/1/02–8/31/03

We will instruct the U.S. Customs and Border Protection (CBP) to allow, at the option of the importer, the posting, until the completion of the review, of a single entry bond or security in lieu of a cash deposit for subject merchandise exported by and produced by the above listed companies. *See* 19 CFR 351.214(e). Siyang FTC certified that it exported but did not produce the subject merchandise on which it based its new shipper review requests, and Golden Bird certified that it produced the subject merchandise exported by Siyang FTC. Therefore, we will instruct CBP to limit the bonding option to entries of subject merchandise exported by Siyang FTC and produced by Golden Bird. Fuda and Xiyuan certified that they both produced and exported the subject merchandise. Therefore, we will instruct CBP to limit the bonding option to entries of subject merchandise both produced and exported by Fuda and Xiyuan.

Interested parties may submit applications for disclosure of business proprietary information under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

These initiations and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214.

Dated: October 31, 2003.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–27967 Filed 11–5–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Notice of Completion of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review of the final remand determination made by the U.S. International Trade Administration, in the matter of Gray Portland Cement and Clinker from Mexico (5th Administrative Review), Secretariat File No. USA–97–1904–01.

SUMMARY: Pursuant to the Order of the Binational Panel dated February 10, 2000, affirming the final remand described above was completed on October 30, 2003. With the decision of the Extraordinary Challenge Committee dated October 30, 2003, the above panel review is completed.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: On February 10, 2000, the Binational Panel issued an order which affirmed the final remand determination of the United States International Trade Administration (''ITA'') concerning Gray Portland Cement and Clinker from Mexico. The Secretariat was instructed to issue a Notice of Completion of Panel Review on the 31st day following the issuance of the Notice of Final Panel Action, if no request for an Extraordinary Challenge was filed. A request for an Extraordinary Challenge Committee was filed on March 23, 2000. On October 30, 2003 the Extraordinary Challenge Committee rendered a decision to affirm the February 10, 2000 panel decision. Based on *Article 1904 Panel Rules*, the Panel Review was completed and the panelists discharged from their duties effective October 30, 2003.

Dated: October 31, 2003.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 03–27963 Filed 11–5–03; 8:45 am]

BILLING CODE 3410–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102703B]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Power Plant Operations

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

ACTION: Notice of issuance of a Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that NMFS has issued a Letter of Authorization (LOA) to take marine mammals by harassment, injury and mortality, incidental to power plant operations to Seabrook Station nuclear power plant, Seabrook, NH.

DATES: Effective from November 1, 2003, through June 30, 2004.

ADDRESSES: A copy of the October 3, 2003, application is available by writing to P. Michael Payne, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or by telephoning the contact listed here.

FOR FURTHER INFORMATION CONTACT: Kimberly Skrupky, Office of Protected Resources, NMFS, (301) 713–2322, ext 163.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking.

Regulations governing the taking of marine mammals incidental to the power plant operations were published on May 25, 1999 (64 FR 28114), and remain in effect until June 30, 2004. For detailed information on this action, please refer to that document. These regulations include mitigation, monitoring, and reporting requirements for the incidental taking of marine mammals by power plant operations.

Summary of Request

On October 3, 2003, NMFS received an application from FPL Energy Seabrook, LLC for an LOA under the regulations issued on May 25, 1999 (64 FR 28114), and effective on July 1, 1999. This application requested authorization to take, by harassment, under section 101(a)(5)(A) of the MMPA, small numbers of marine mammals incidental to routine operations of the Seabrook Station nuclear power plant in Seabrook, New Hampshire for a period not to exceed one year.

Authorization

Accordingly, NMFS issued an LOA to FPL Energy Seabrook, LLC on October 31, 2003, authorizing the taking of small numbers of marine mammals incidental to routine operations of the Seabrook Station nuclear power plant. Issuance of this LOA is based on findings, described in the preamble to the final rule (64 FR 28114, May 25, 1999), that the total takings by this activity will result in small numbers of marine mammals being taken, have no more than a negligible impact on marine mammal stocks, and will not have an unmitigable adverse impact on the availability of the affected marine mammal stocks for subsistence uses.

This LOA remains valid until June 30, 2004, provided that FPL Energy Seabrook, LLC is in conformance with the conditions of the regulations and the LOA, and the mitigation, monitoring, and reporting requirements described in 50 CFR 216.130–216.137 (64 FR 28114, May 25, 1999) and in the LOA is undertaken.

Dated: October 31, 2003.

Laurie K. Allen,

Acting Office Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–27995 Filed 11–5–03; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Technology Advisory Committee Second Renewal

The Commodity Futures Trading Commission has determined to renew for a period of two years its Technology Advisory Committee. The Commission has determined that the renewal of the advisory committee is in the public interest in connection with duties imposed on the Commission by the Commodity Exchange Act, 7 U.S.C. 1, *et seq.,* as amended.

The purpose of the Technology Advisory Committee is to advise the Commission on the impact and implications of technological innovation in the financial services and commodity markets. Meetings of the Technology Advisory Committee are public.

Interested presons may obtain information or make comments by writing to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

Issued in Washington, DC on October 31, 2003, by the Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 03–27910 Filed 11–5–03; 8:45 am]

BILLING CODE 6351–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Renewal of a Currently Approved Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

The Corporation for National and Community Service (hereinafter the ''Corporation''), has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13), (44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, William M. Ward, (202) 606–5000, ext. 375. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: Ms. Fumie Yokota, OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, DC, 20503, (202) 395–3147, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose 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, *e.g.*, permitting electronic submissions of responses.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Americorps*NCCC Service Project Application.

OMB Number: 3045–0010.

Frequency: Annually.

Affected Public: Various small community and faith-based organizations and non-profits/project sponsors.

Number of Respondents: 1200.

Estimated Time Per Respondent: 7.5 hours.

Total Burden Hours: 9000 hours.

Total Burden Cost (capital/startup): N/A.

Total Annual Cost (operating/maintaining systems or purchasing services): $183,000.

Description: The Corporation proposes to renew the AmeriCorps NCCC Service Project Application in a revised form, which incorporates lessons learned since the program inception. The Form is the means by which various organizations can request NCCC members to assist in community service projects, and by which the NCCC evaluates such proposals for approval and selection.

Dated: October 30, 2003.

Merlene Mazyck,

*National Director (Acting), AmeriCorps*NCCC.*

[FR Doc. 03–27888 Filed 11–5–03; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Finance and Accounting Service announces the proposed public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 5, 2004.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Financial Services and Disbursing Division, Defense Finance and Accounting Service Kansas City, DFAS–DAD/KC, ATTN: Ms. Maggie Stiffler, 1500 E 95th Street, Kansas City, MO 64197–0030.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call, Ms. Maggie Stiffler (816) 926–3604.

Title, Associated Form, and OMB Number: Personal Check Cashing Agreement, DD Form 2761; OMB Number 0730–0005.

Needs and Uses: The information collection requirement is necessary to meet the Department of Defense's (DoD) requirement for cashing personal checks overseas and afloat by DoD disbursing activities, as provided in 31 U.S.C. 3342. The DoD Financial Management Regulation, Volume 5, provides guidance to DoD Disbursing Officers in the performance of this information collection. This allows the DoD disbursing officer or authorized agent the authority to offset the pay without prior notification, in cases where this form has been signed subject to conditions specified within the approved procedures.

Affected Public: Individuals or households.

Annual Burden Hours: 193,000 hours.

Number of Respondents: 386,000.

Responses per Respondent: 1.

Average Burden per Response: 30 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Personal check Cashing Agreement Form is designed exclusively to help the DoD disbursing offices expedite the collection process of dishonored checks. The front of the form will be completed and signed by the authorized individual requesting check cashing privileges. By signing the form, the individual is freely and voluntarily consenting to the immediate collection from their current pay, without prior notice, for the face value of any check cased, plus any charges assessed against the government by a financial institution, in the event the check is dishonored. In the event the check is dishonored, the disbursing office will complete and certify the reverse side of the form and forward the form to the applicable payroll office for collection from the individual's current pay.

Dated: October 27, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–27936 Filed 11–5–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Advisory Panel To Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the next meeting of the Panel to Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction. Notice of this meeting is required under the Federal Advisory Committee Act. (Pub. L. 92–463).

DATES: November 17–18, 2003.

ADDRESSES: RAND, 1200 South Hayes Street, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: RAND provides information about this Panel on its Web site at *http://www.rand.org/organization/nsrd/terrpanel*; it can also be reached at (703) 413–1100 extension 5683.

SUPPLEMENTARY INFORMATION:

Proposed Schedule and Agenda

Panel to Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction will meet from 8:30 a.m. until 5 p.m. on November 17, 2003 and from 8:30 a.m. until 3 p.m. on November 18, 2003.

Time will be allocated for public comments by individuals or organizations at the end of the meeting on November 18. Public comment presentations will be limited to two minutes each and must be provided in writing prior to the meeting. Mail written presentations and requests to register to attend the open public session to: Hillary Peck, RAND, 1200 South Hayes Street, Arlington, VA 22202–5050. Public seating for this meeting is limited, and is available on a first-come, first-served basis.

Dated: October 27, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–27937 Filed 11–5–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Policy Board Advisory Committee

AGENCY: Defense Policy Board Advisory Committee, Department of Defense.

ACTION: Notice.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session at the Pentagon on November 20, 2003 from 10 a.m. to 9 p.m. abd November 21, 2003 from 9 a.m. to 3 p.m.

The purpose of the meeting is to provide the Secretary of Defense, Deputy Secretary of Defense and Under Secretary of Defense for Policy with independent, informed advice on major matters of defense policy. The Board will hold classified discussions on national security matters.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended [5 U.S.C. App II (1982)], it has been determined that this meeting concerns matters listed in 5 U.S.C. 552B(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: October 27, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–27940 Filed 11–5–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

U.S. Strategic Command Strategic Advisory Group

AGENCY: U.S. Strategic Command, Department of Defense.

ACTION: Notice.

SUMMARY: The Strategic Advisory Group (SAG) will meet in closed session on November 6 and 7, 2003.

The mission of the SAG is to provide timely advice on scientific, technical, intelligence, and policy-related issues to the Commander, U.S. Strategic Command, during the development of the Nation's strategic war plans. Full development of the topics will require discussion of information classified in accordance with Executive Order 12958, dated April 17, 1995. Access to this information must be strictly limited to personnel having requisite security clearances and specific need-to-know. Unauthorized disclosure of the information to be discussed at the SAG meeting could have exceptionally grave impact upon national defense.

In accordance with Section 10(d) of the Federal Advisory Committee Act (5 U.S.C., App. 2), it has been determined that this SAG meeting concerns matters listed in 5 U.S.C. 552b(c), and that, accordingly, this meeting will be closed to the public.

Dated: October 27, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–27939 Filed 11–5–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Defense Threat Reduction Agency Performance Review Board

AGENCY: Defense Threat Reduction Agency, Department of Defense.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the Defense Threat Reduction Agency's Performance Review Board (PRB) membership. The publication of the PRB membership is required by 5 U.S.C. 4314(c)(4). The PRB shall provide fair and impartial review of Senior Executive Service performance appraisals and make recommendations regarding performance ratings and performance awards to the Director, Defense Threat Reduction Agency.

EFFECTIVE DATES: The effective date of service for the appointees of the Defense Threat Reduction Agency (DTRA) PRB is on or about October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Tana Farrell, Operations Division, Business Directorate, (703) 767–5759, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Stop 6201, Ft. Belvoir, VA 22060–6201.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the officials appointed to serve as members of the DTRA PRB are set forth below:

PRB Chair: Mr. Robert L. Brittigan
Member: Maj Gen Trudy H. Clark, USAF
Member: Mr. Myron K. Kunka
Member: Dr. Charles R. Gallaway

The following DTRA officials will serve as alternate members of the DTRA PRB, as appropriate.

Mr. Douglas Bruder
Ms. Shari Durand
Mr. Douglas Englund
Mr. Michael Evenson
Dr. Joe Golden
Mr. Richard Gullickson
Dr. Arthur Hopkins
Dr. Don Linger
Mr. Vayl Oxford
Ms. Joan Ma Pierre

Dated: October 27, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03–27938 Filed 11–5–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare an Environmental Impact Statement for the Proposed Closure of the Al Black Recreation Area at the Cochiti Dam Outlet Works in Sandoval County, NM

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers, Albuquerque District (Corps) intends to prepare an Environmental Impact Statement (EIS) for the proposed closure of the Al Black Recreation area at the Cochiti Dam Outlet Works in Sandoval County, NM.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Jahnke, U.S., Army Corps of Engineers, 4101 Jefferson Plaza, NE., Albuquerque, NM 87109, (505) 342–3416.

SUPPLEMENTARY INFORMATION: The Corps, the Cochiti de Pueblo (Pueblo), and the Bureau of Indian Affairs (BIA) are investigating modifying the easement for the operation of the Cochiti Dam Outlet Works/Al Black Recreation Area. Specifically, the recreation easement would be rescinded but the Corps would retain the original dam operation and maintenance easement. Public access to the recreation area would no longer be allowed. All public-oriented facilities and other amenities that have no bearing on operation or maintenance of the Outlet Works would be removed and surplused or disposed of following Federal guidelines. The Corps would restore the site as prescribed by the Pueblo. The Cochiti Dam Outlet Works operation and maintenance easement granted to the Corps would remain in effect. Corps, Middle Rio Grande Conservancy District, and U.S. Bureau of Reclamation (BOR) personnel would have access to the area for operation and maintenance purposes. Members of the Pueblo would continue to access the area for religious and cultural ceremonies. This Federal action would satisfy a November 8, 2001, understanding between the Corps, Pueblo and BIA.

Construction of the Cochiti Dam and Lake (Project) was authorized for flood and sediment control in the Upper Rio Grande Basin by the Flood Control Act of 1960 (Pub. L. 86–645). Various Pueblo/Corps lease agreements defined the use and management of the Project land owned by the Pueblo including Corps construction of public use recreation facilities at various locations that the Pueblo would operate and maintain. In a lease amendment dated June 12, 1984, the Pueblo transferred the operation and maintenance of the Outlet Channel Area/Al Black Recreation Area to the Corps.

All private interests and Federal, State, local agencies, and tribes having an interest in the project are hereby notified of the proposed action and are invited to comment at this time. The scoping process will consist of public notification to explain and describe the proposed action, early identification of resources that should be considered during the study, and public review periods. Coordination with the public and with other agencies will be carried out through public announcements, letters, report review periods telephone conversations, and meetings.

The Corps prepared a Draft Environmental Assessment on the proposed action and held a public meeting on August 28, 2003 in Rio Rancho, NM. Additional information and evidence gathered during that meeting and expressed public resistance to establishing a recreation facility at Pena Blanca, NM resulted in the decision to prepare an EIS for the proposed action. All Federal, State and local agencies, affected Indian tribes, and other interested private organizations and parties will be notified of the meeting and will be provided copies of the Draft EIS (DEIS) for comment.

Significant issues to be discussed in the DEIS include the alternatives analysis for the possible relocation of the Al Black Recreation Area and other avenues for replacing lost recreation opportunities incurred as a result of the proposed action.

The lead agency for this project is the U.S. Army Corps of Engineers, Albuquerque District. Cooperating agency status has not been assigned, nor requested, by any other agency.

The EIS is being prepared in accordance with the requirements of the National Environmental Policy Act of 1969, as amended, and will address the project's relationship to all other applicable Federal and State laws and Executive Orders.

Scoping meetings will be held in Peña Blanca, Albuquerque and other locations as deemed necessary. Specific information regarding location and time of the meetings will be published in local newspapers. It is anticipated that the DEIS will be available for public review and comment by February 1, 2004.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–27977 Filed 11–9–03; 8:45 am]

BILLING CODE 3710–KK–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 5, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

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 the respondents, including through the use of information technology.

Dated: November 3, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.

Title: Survey for the Study of the Ronald E. McNair Postbaccalaureate Achievement Program Participants.

Frequency: One time.

Affected Public: Individuals or households.

Reporting and Recordkeeping Hour Burden:

Responses: 2,313. Burden Hours: 3,000.

Abstract: Follow-up survey data from current and former McNair program participants to determine program completion, employment status.

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 2368. 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 *vivian_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 should be directed to Sheila Carey at her e-mail address *Sheila.Carey@omb.eop.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. 03–27965 Filed 11–5–03; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7584–2]

Office of Solid Waste and Emergency Response (OSWER) Internship Assistance Agreement Competition: Solicitation Notice

SUMMARY: This document solicits cooperative agreement proposals from educational institutions and non-profit organizations that are interested in obtaining EPA financial assistance to provide educational and training opportunities, in the form of internships, for students in the hazardous waste management field. These cooperative agreements will be awarded under Section 311(b)3 and (9) of the Comprehensive Environmental Response, Compensation and Liability Act and Section 8001 of the Solid Waste Disposal Act. This cooperative agreement would enable students to (1) gain knowledge of alternative or innovative treatment technologies and real work experience in the hazardous waste management field, and (2) earn academic credit.

Depending on the availability of funds, it is anticipated that a total of approximately $250,000 over five years, including direct and indirect costs, will be awarded in FY04. Proposals may request funding with a total project cost of up to $50,000 per year with a duration of up to five years. It is anticipated that OSWER would provide funding for up to five (5) interns per summer, for a twelve-week summer internship, at a stipend of approximately $10,000 per intern. The project period, however, would run April to April of each year. Funding will only cover stipends and student round-trip travel costs. Stipends may be used to cover housing costs.

Eligibility Information: Only accredited four (4)–year educational institutions subject to OMB Circular A–21 and non-profit organizations, as defined in OMB Circular A–122, are eligible to apply. However, non-profit organizations described in Section 501(c)(4) of the Internal Revenue code that engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act of 1995 are not eligible to apply. For profit training schools are not eligible.

Deadline to Submit Proposals: Proposals must be submitted no later than February 4, 2004. Please do not e-mail proposals.

Proposal Format Requirements: Proposal length is limited to fifteen (15) pages, with 1-inch margins, and no attachments.

Address

Proposals must be mailed to:

1. Official Mailing Address

U.S. Environmental Protection Agency (EPA), Office of Solid Waste and Emergency Response (OSWER), Mail Code 5103T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, Attention: Nancy Allinson. Telephone Number: 202–566–1915. Fax Number: 202–566–1943.

Agency Points of Contact:

Nancy Allinson, Project Officer, 202–566–1915 (tel), 202–566–1943 (fax), *Nancy.Allinson@EPA.Gov*, (Eligibility/process issues).

Loren Danforth, Alternate Contact, 202–566–1921, *Loren.Danforth@EPA.gov.*

Please submit all content-related questions to *http://clu-in.org/proposals/oswerintern.*

Environmental Protection Agency

Office of Solid Waste and Emergency Response (OSWER) Internship Assistance Agreement Competition: Solicitation Notice

I. Funding Opportunity Description

This document solicits cooperative agreement proposals from educational institutions and non-profit organizations that are interested in obtaining EPA financial assistance to provide educational and training opportunities for students in the hazardous waste management field. This cooperative agreement will be awarded under Section 311(b)3 and (9) of the Comprehensive Environmental Response, Compensation and Liability Act and Section 8001 of the Solid Waste Disposal Act. The cooperative agreement would enable students to (1) gain knowledge of alternative or innovative treatment technologies and real work experience in the hazardous waste management field, and (2) earn academic credit.

Since the inception of the summer internship program in the 1990's, OSWER has placed an average of approximately 5–10 students in internships at Headquarters and some Regional offices each year. Students who participate as interns come from culturally diverse backgrounds and have majors including engineering (*e.g.*, civil, industrial, chemical and environmental) physics, information systems, general science, public policy, environmental science, economics, and international studies. Examples of projects are: Preparing an assessment of the successes and failures of different remediation technologies; scanning five year reviews on Superfund and Landfill sites to obtain data on the components and condition of installed cap cover systems for analysis; developing protocols to aid first responders in suspicious powder releases (counter terrorism); and, researching nationwide innovative treatment technologies for input to a database.

II. Award Information

1. Depending on the availability of funds, it is anticipated that a total of approximately $250,000 over five years, including direct and indirect costs, will be awarded in FY04. Proposals may request funding with a total project cost of up to $50,000 per year with a duration of up to five years. It is anticipated that OSWER would provide funding for up to (5) interns per summer, for a twelve-week summer internship, at a stipend of approximately $10,000 per intern, of which some portion may be used for round trip travel costs. The project period, however, would run April to April of each year. Funding will only cover stipends and student round-trip travel costs. Stipends may be used to cover housing costs.

Based on CERCLA statute 311(b)(3), EPA requires cost sharing at a minimum of 5%. The Catalogue of Federal Domestic Assistance (CFDA) is 66.607.

2. The resulting award will be a Cooperative Agreement. Cooperative Agreements involve substantial involvement between EPA Project Officer and the selected applicant. Anticipated substantial Federal involvement for this project will include:

a. The Project Officer will be part of the final evaluation of the interns for placement. The final decision rests with the recipient.

b. EPA's project officer will closely monitor the recipient's performance to ensure that Agency funding for stipends is used solely for that purpose.

III. Eligibility Information

1. *Eligible Applicants:* Only accredited four (4)-year educational institutions subject to OMB Circular A–21 and non-profit organizations, as defined in OMB Circular A–122, are eligible to apply. However, non-profit organizations described in Section 501(c)(4) of the Internal Revenue code that engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act of 1995 are not eligible to apply. For profit training schools are not eligible.

2. *Cost-Sharing or Matching:* Based on CERCLA statute 311(b)(3), EPA requires cost sharing at a minimum of 5%.

3. *Other:* Only one proposal per applicant is permitted under this announcement.

IV. Application and Submission Information

1. Official Mailing Address

U.S. Environmental Protection Agency (EPA), Office of Solid Waste and Emergency Response (OSWER), Mail Code 5103T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention: Nancy Allinson, Telephone Number: 202–566–1915. Fax Number: 202–566–1943.

2. Proposal Format

The proposal should conform to the following outline:

1. Title of Proposal.
2. Applicant (Organization) and contact name, phone number, fax and e-mail address.
3. Summary of funds requested by EPA.
4. Project period: Beginning and ending dates (for planning purposes, applicants should assume funds will be available in April 2004).
5. Project work plan (including a description of all tasks, dates of completion, products and deliverables, and proposed budget).
6. Evaluation plan.
7. Student application processing and evaluation plan.
8. Process plan for management/ training of students.
9. Tracking plan.
10. Report schedule: Acknowledgement of quarterly report requirement (schedule established by EPA) and planned final report submission date.
11. Budget (Please provide with a narrative explanation for the following categories):

—Personnel
—Fringe Benefits
—Contractual Costs
—Travel
—Equipment
—Supplies
—Other
—Shared or matched costs
—Total Direct Costs
—Total Indirect Costs (must include documentation of accepted indirect rate)
—Total Cost

Costs proposed in the budget must be linked directly to the proposal. **Note:** Proposal length is limited to fifteen (15) pages, with 1-inch margins, and no attachments.

3. Program Design

EPA anticipates student stipends to be approximately $10,000 per student for a twelve (12) week internship per summer from May—August with approximately five (5) interns per internship. Applicants should describe the following in detail:

• Cultural Diversity: Mechanisms in place to enhance cultural diversity within student population, and a strong network of student organizations geared to providing career and employment information and academic advice.

• U.S. Citizenship: According to EPA's training grant regulations cited in 40 CFR 45.135(a), interns, who are grant funded trainees, must be citizens of the U.S. or of its territories or possessions, or must be lawfully admitted to the U.S. for permanent residence. Applicants must specify the percentage of their student population that meets that requirement.

• Stipends: Ability to process student stipends.

• Reporting and record keeping: Ability to maintain records of students according to major, project summary, dates of internship, and any other pertinent information to be used in final reports.

• Student Application Processing and Evaluation: Recipients must have a system to process and evaluate applications. At a minimum, the application process must evaluate potential interns on the basis of their computer skills, academic record, awards and writing skills. Students must have a grade point average of 2.5 or higher to meet eligibility requirements at EPA.

• Eligibility requirements for internships: Students must be enrolled in a four year accredited college or university. Students enrolled in a four year college or university must have achieved at least second semester sophomore standing, or have completed 45 credit hours of academic study.

• Student Application Process: Applicants should describe development of a tracking system for students, internship management, and how they foresee interaction with EPA.

• Formal program in place or experience in administering a student internship program, especially with a Federal agency or department, and experience with Federally funded grants programs.

• Applicants should describe training for students (*i.e.*, environmental, math, science courses).

4. Proposal Submission Deadline

Proposals must be submitted no later than February 4, 2004. *Please do not e-mail proposals.*

V. Application Review Information

1. Criteria/Scope

Criteria: Points:

—Effectiveness of overall work plan, including evaluation plan and time-frame, that is detailed and reasonable. Additionally, a clearly-stated detailed and appropriate budget should be included. 32
—Formal program in place or experience in administering a student internship program, especially with a Federal agency or department, and experience with Federally funded grants programs. Successful applicant should have an overall familiarity with Federal government operations as well as have the ability to process stipends, a system for reporting and recordkeeping, and the capacity for processing and evaluating student applications. Applicants must identify and explain any adverse Federal audit findings or terminations of grants, or special terms and conditions imposed on grants within the last five (5) years. 24
—Cost effectiveness for Federal monitoring and mentoring to/from Reagan National Airport or Dulles International Airport (*e.g.*, travel costs per trip). In order to qualify for the full 12 points, the round-trip costs must be $500 or less. Please note that EPA travels on the Federal government contract program which can be found on *http://www.fedtravel.com/gsa/*. 12
—Formal curricula in civil, chemical, electrical engineering and industrial engineering as well as the natural and physical sciences, computer science, business and public administration. Academic departments that are developing new curricula with an emphasis in environmental engineering with courses focusing on hazardous waste management, hydrology and water resources, remediation, and renewable natural resources. 32

Total points possible: 100

Note: points assigned to each criterion are the maximum number of points applicant can receive).

2. Review and Selection Process

Proposals submitted to EPA headquarters will be evaluated using the defined criteria. Proposals will be reviewed in two phases—the screening phase and the evaluation phase. During the screening phase, proposals will be reviewed for applicant eligibility and cost-sharing. Only those proposals that meet all these basic requirements will enter the full evaluation phase of the review process. During the evaluation phase, proposals will be evaluated on the quality of their work plans. EPA officials, who will serve as reviewers, will conduct the screening and evaluation phases of the review process. At the conclusion of the evaluation phase, the reviewers will score work plans, on a one hundred point scale. EPA senior Agency management will consider the reviewers' recommended rankings, along with other special considerations, such as the number of eligible students in the school's population. EPA will ask the applicant selected by senior management to select a complete application package by March 1, 2004. We reserve the right to make no awards.

VI. Award Administration Information

Award Notices

The recipient of a selected proposal will be notified by a separate letter saying that the proposal has been selected and that a completed application must be submitted by the due date of March 1, 2004. After the application is received, it must be reviewed and approved by EPA. The grant award signed by EPA's Award Official is the legal document, which will be provided through postal mail or by electronic means. Unsuccessful applicants will be notified by letter.

VII. Agency Contacts

Pre-application assistance: EPA will provide pre-application assistance by responding to all content-related questions (for example, technical questions pertaining to the EPA statutes (CERCLA and Solid Waste Disposal Act), grants management issues, or information to the Agency's approach to evaluating or ranking applications) which are submitted to the Web site *http://clu-in.org/proposals/oswerintern.*

Note: Applicants are responsible for the content of their applications and pre-application assistance must not in any way provide applicants with a competitive advantage. It is for this reason that *all questions and answers can be viewed by the public on this Web site.*

EPA points of contact, listed on next page, may provide pre-application assistance on process-related questions, via e-mail, (for example, eligibility requirements, deadlines, proposal format, etc.).

Note: If applicants do not have e-mail capacity, it is permissible to call points of contact. Please note that EPA points of contact may not prepare applications, share ideas with an applicant that are contained in a competing application, review and comment on draft applications, or provide any information that is not already provided in the proposal solicitation.

Note: Receiving information and assistance from EPA does not guarantee funding.

Agency Contacts: Nancy Allinson, Project Officer, 202–566–1915 (tel), 202–566–1943 (fax), nancy.allinson@epa.gov, (Eligibility/process issues).

Loren Danforth, Alternate Contact, 202–566–1921, *loren.danforth@epa.gov.*

Dated: October 24, 2003.

Laurie J. May,

Director, Organizational Management and Integrity Staff (OMIS).

[FR Doc. 03–27950 Filed 11–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7584–3]

Office of Solid Waste and Emergency Response (OSWER) Internship Assistance Agreement Competition: Solicitation Notice

SUMMARY: This document solicits cooperative agreement proposals from educational institutions and non-profit organizations that are interested in obtaining EPA financial assistance to provide educational and training opportunities, in the form of internships, for students in the hazardous waste management field. These cooperative agreements will be awarded under Section 311(b)3 and (9) of the Comprehensive Environmental Response, Compensation and Liability Act and Section 8001 of the Solid Waste Disposal Act. This cooperative agreement would enable students to (1) gain knowledge of alternative or innovative treatment technologies and real work experience in the hazardous waste management field, and (2) earn academic credit.

Depending on the availability of funds, it is anticipated that a total of approximately $750,000 over five years, including direct and indirect costs, will be awarded in FY04. Proposals may request funding with a total project cost of up to $150,000 per year with a duration of up to five years. It is anticipated that OSWER would provide funding for up to fifteen (15) interns per summer, for a twelve-week summer internship, at a stipend of approximately $10,000 per intern. The project period, however, would run April to April of each year. Funding will only cover stipends and cannot be used to cover housing or student round-trip travel costs. Based on CERCLA statute 311(b)(3), EPA requires cost sharing at a minimum of 5%. The Catalogue of Federal Domestic Assistance (CFDA) is 66.607.

ELIGIBILITY INFORMATION: Only accredited four (4)-year educational institutions subject to OMB Circular A–21 and non-profit organizations, as defined in OMB Circular A–122, are eligible to apply. However, non-profit organizations described in Section 501(c)(4) of the Internal Revenue code that engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act of 1995 are not eligible to apply. For profit training schools are not eligible.

DEADLINE TO SUBMIT PROPOSALS: Proposals must be submitted no later than February 4, 2004. *Please do not e-mail proposals.*

PROPOSAL FORMAT REQUIREMENTS: Proposal length is limited to fifteen (15) pages, with 1-inch margins, and no attachments.

ADDRESSES: Proposals must be mailed to:

1. Official Mailing Address: U.S. Environmental Protection Agency (EPA), Office of Solid Waste and Emergency Response (OSWER), Mail Code 5103T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention: Nancy Allinson, Telephone Number: 202–566–1915. Fax Number: 202–566–1943.

AGENCY POINTS OF CONTACT:

Nancy Allinson, Project Officer, 202–566–1915 (tel), 202–566–1943 (fax), *Nancy.Allinson@EPA.Gov* (Eligibility/process issues)

Loren Danforth, Alternate Contact, 202–566–1921, *Loren.Danforth@EPA.Gov.*

Please submit all content-related questions to *http://clu-in.org/proposals/oswerintern*

I. Funding Opportunity Description

This document solicits cooperative agreement proposals from educational institutions and non-profit organizations that are interested in obtaining EPA financial assistance to provide educational and training opportunities for students in the hazardous waste management field. These cooperative agreements will be awarded under Section 311(b)3 and (9) of the Comprehensive Environmental Response, Compensation and Liability Act and Section 8001 of the Solid Waste Disposal Act. This cooperative agreement would enable students to (1) gain knowledge of alternative or innovative treatment technologies and real work experience in the hazardous waste management field, and (2) earn academic credit.

Since the inception of the summer internship program in 2000, OSWER has placed an average of approximately 10–15 students in internships at Headquarters and some Regional offices each year. Students who participate as interns come from culturally diverse backgrounds and have majors including engineering (*e.g.,* civil, industrial, chemical and environmental) physics, information systems, general science, public policy, environmental science, economics, and international studies. Examples of projects are: preparing a technology assessment report about the current state of permeable reactive barriers (PRB's); collecting biennial report data and setting up a data base to store incoming queries; and, collecting information on successful Environmental Justice projects.

II. Award Information

1. Depending on the availability of funds, it is anticipated that a total of approximately $750,000 over five years, including direct and indirect costs, will be awarded in FY04. Proposals may request funding with a total project cost of up to $150,000 per year with a duration of up to five years. It is anticipated that OSWER would provide funding for up to fifteen (15) interns per summer, for a twelve-week summer internship, at a stipend of approximately $10,000 per intern. The project period, however, would run from April to April of each year. Funding will only cover stipends and cannot be used to cover housing or student round-trip travel costs. Based on CERCLA statute 311 (b) (3), EPA requires cost sharing at a minimum of 5%. The Catalogue of Federal Domestic Assistance (CFDA) is 66.607.

2. The resulting award will be a Cooperative Agreement. Cooperative Agreements involve substantial involvement between EPA Project Officer and the selected applicant. Anticipated substantial Federal involvement for this project will include:

a. The Project Officer will be part of the final evaluation of the interns for placement. The final decision rests with the recipient.

b. EPA's project officer will closely monitor the recipient's performance to ensure that Agency funding for stipends is used solely for that purpose.

III. Eligibility Information

1. *Eligible Applicants:*

Only accredited four (4)-year educational institutions subject to OMB Circular A–21 and non-profit organizations, as defined in OMB Circular A–122, are eligible to apply. However, non-profit organizations described in Section 501 (c)(4) of the Internal Revenue code that engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act of 1995 are not eligible to apply. For profit training schools are not eligible.

2. *Cost-Sharing or Matching:* Based on CERCLA statute 311 (b) (3), EPA requires cost sharing at a minimum of 5%.

3. *Other:* Only one proposal per applicant is permitted under this announcement.

IV. Proposal Submission Information

1. *Official Mailing Address:*

U.S. Environmental Protection Agency (EPA), Office of Solid Waste and Emergency Response (OSWER), Mail Code 5103T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention: Nancy Allinson. *Telephone Number:* 202–566–1915, *Fax Number:* 202–566–1943.

2. *Proposal Format:*

The proposal must conform to the following outline:

1. Title of Proposal
2. Applicant (Organization) and contact name, phone number, fax and e-mail address
3. Summary of funds requested by EPA
4. Project period: beginning and ending dates (for planning purposes, applicants should assume funds will be available in April 2004)
5. Project work plan (including a description of all tasks, dates of completion, products and deliverables, and proposed budget)
6. Evaluation plan
7. Student application processing and evaluation plan
8. Process plan for management/training of students
9. Tracking plan
10. Report schedule: Acknowledgment of quarterly report requirement (schedule established by EPA) and planned final report submission date
11. Budget (Please provide with a narrative explanation for the following categories):

—Personnel
—Fringe Benefits
—Contractual Costs
—Travel
—Equipment
—Supplies
—Other
—Shared or Matched Costs
—Total Direct Costs
—Total Indirect Costs (must include documentation of accepted indirect rate)
—Total Cost

Costs proposed in the budget must be linked directly to the proposal. **Note:** Proposal length is limited to fifteen (15) pages, with 1-inch margins, and no attachments.

3. *Program Design:*

EPA anticipates student stipends to be approximately $10,000 per intern for a twelve (12) week internship per summer from June to August with approximately fifteen (15) interns per internship. Applicants should describe the following in detail in proposals:

• *Cultural Diversity:* Mechanisms in place to enhance cultural diversity within student population, and a strong network of student organizations geared to providing career and employment information and academic advice.

• *U.S. Citizenship:* According to EPA's training grant regulations cited in 40 CFR 45.135(a), interns, who are grant funded trainees, must be citizens of the U.S. or of its territories or possessions, or must be lawfully admitted to the U.S. for permanent residence. Applicants must specify the percentage of their student population that meets that requirement.

• *Stipends:* Ability to process student stipends.

• *Reporting and Recordkeeping:* Ability to maintain records of students according to major, project summary, dates of internship, and any other pertinent information to be used in final reports.

• *Student Application Processing and Evaluation:* Recipients must have a system to process and evaluate applications. At a minimum, the application process must evaluate potential interns on the basis of their computer skills, academic record, awards and writing skills. Students must have a grade point average of 2.5 or higher to meet eligibility requirements at EPA.

• *Eligibility Requirements for Internships:* Students must be enrolled in a four year accredited college or university. Students enrolled in a four year college or university must have achieved at least second semester sophomore standing, or have completed 45 credit hours of academic study.

• *Student Application Process:* Applicants should describe development of a tracking system for students, internship management, and how they foresee interaction with EPA.

• Formal program in place or experience in administering a student internship program, especially with a Federal agency or department, and experience with Federally funded grants programs.

• Applicants should describe training for students (*i.e.,* environmental, math, science courses).

4. *Proposal Submission Deadline:* Proposals must be submitted no later than February 4, 2004. *Please do not e-mail proposals.*

V. Proposal Review Information

1. *Criteria/Scope:*

Criteria	Points
—Effectiveness of overall work plan, including evaluation plan and time-frame, that is detailed and reasonable. Additionally, a clearly-stated detailed and appropriate budget should be included	32
—Formal program in place or experience in administering a student internship program, especially with a Federal agency or department, and experience with Federally funded grants programs. Successful applicant should have an overall familiarity with Federal government operations as well as have the ability to process stipends, a system for reporting and record keeping, and the capacity for processing and evaluating student applications. Applicants must identify and explain any adverse Federal audit findings or terminations of grants, or special terms and conditions imposed on grants within the last five (5) years	24
—Proximity of 50–100 mile radius to the Washington-Metropolitan area	12
—Formal curricula in civil, chemical, electrical engineering and industrial engineering as well as the natural and physical sciences, computer science, business and public administration. Academic departments that are developing new curricula with an emphasis in environmental engineering with courses focusing on hazardous waste management, hydrology and water resources, remediation, and renewable natural resources	32
Total points possible	100

(**Note:** points assigned to each criterion are the maximum number of points applicant can receive).

2. *Review and Selection Process:*

Proposals submitted to EPA headquarters will be evaluated using the defined criteria. Proposals will be reviewed in two phases—the screening phase and the evaluation phase. During the screening phase, proposals will be reviewed to be determined whether they meet the basic requirements of this document. Only those proposals that meet all of these basic requirements will enter the full evaluation phase of the review process. During the evaluation phase, proposals will be evaluated on the quality of their work plans. EPA officials, who will serve as reviewers, will conduct the screening and evaluation phases of the review process. At the conclusion of the evaluation phase, the reviewers will score work plans, on a one hundred point scale. EPA senior Agency management will consider the reviewers' recommended rankings, along with other special considerations, such as the number of eligible students in the school's population. EPA will ask the applicant selected by senior management to select a complete application package by March 1, 2004. We reserve the right to make no awards.

VI. Award Administration Information

Award Notices:

The recipient of a selected proposal will be notified by a separate letter saying that the proposal has been selected and that a completed application must be submitted by the due date of March 1, 2004. After the application is received, it must be reviewed and approved by EPA. The grant award signed by EPA's Award Official is the legal document, which will be provided through postal mail or by electronic means.

Unsuccessful applicants will be notified by letter.

VII. Agency Contacts

Pre-application Assistance:

EPA will provide pre-application assistance by responding to all content-related questions (for example, technical questions pertaining to the EPA statutes (CERCLA and Solid Waste Disposal Act), grants management issues, or information to the Agency's approach to evaluating or ranking applications) which are submitted to the website *http://clu-in.org/proposals/oswerintern.*

Note: Applicants are responsible for the content of their applications and pre-application assistance must not in any way provide applicants with a competitive advantage. It is for this reason that *all questions and answers can be viewed by the public on this website.*

EPA points of contact, listed on next page, may provide pre-application assistance on process-related questions, via e-mail, (for example, eligibility requirements, deadlines, proposal format, etc.). **Note:** if applicants do not have e-mail capacity, it is permissible to call points of contact. Please note that EPA points of contact may not prepare applications, share ideas with an applicant that are contained in a competing application, review and comment on draft applications, or provide any information that is not already provided in the proposal solicitation.

Note: Receiving information and assistance from EPA does not guarantee funding.

Agency Contacts:

Nancy Allinson, Project Officer, 202–566–1915 (tel), 202–566–1943 (fax), *Nancy.Allinson@EPA.Gov* (Eligibility/process issues).

Loren Danforth, Alternate Contact, 202–566–1921, *Loren.Danforth@EPA.Gov.*

Dated: October 24, 2003.

Laurie J. May,

Director, Organizational Management and Integrity Staff (OMIS).

[FR Doc. 03–27951 Filed 11–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7584–4]

Border 2012 National Coordinators Open Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of Border 2012 National Coordinators Meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) and the Secretaría del Medio Ambiente y Recursos Naturales (Mexico's Secretariat of Environment and Natural Resources), in conjunction with the U.S. Department of Health and Human Services, Secretaría de Salud (Mexico's Secretariat of Health), the U.S. border tribes, and the environmental agencies from each of the ten U.S.-Mexico border states, will convene the Border 2012 National Coordinator's Meeting (NCM). This National Coordinators Meeting will take place at the Holiday Inn Hotel, Av. Pedro Cardenas 5001 Carretera a Cd. Victoria, Matamoros, 87396, Mexico. Public meetings will be held on the afternoon of Wednesday, December 3rd and all day on Thursday, December 4th.

The mission of Border 2012 is to protect public health and the environment in the U.S.-Mexico border region, consistent with the principles of sustainable development. The Border 2012 Program is the latest multi-year, binational planning effort to be implemented under the 1983 U.S.-Mexico Agreement on Cooperation for

the Protection and Improvement of the Environment in the Border Area (the La Paz Agreement). Border 2012 succeeds Border XXI, a five-year program that ended in 2000.

The National Coordinators Meeting is an important aspect of the Border 2012 Program. Federal-level National Coordinators from the United States and Mexico manage overall Border 2012 Program implementation and ensure cooperation and communication among all coordinating bodies. This meeting will provide an opportunity for program partners to report on their activities to each other and to the public. The 3 Policy Forums focus on Air, Water and Hazardous Waste and Solid Waste, respectively. The 3 Border-wide Workgroups focus on Environmental Health, Emergency Preparedness and Response (Joint Response Team), and Cooperative Enforcement and Compliance.

For further information on Border 2012 or the National Coordinators Meeting, please contact: EPA El Paso Border Office at 915–533–7273 or 800–334–0741 or EPA San Diego Border Office at 619–235–4765 or 800–334–0741.

Joan Fidler,

Director, Office of Western Hemisphere and Bilateral Affairs, Office of International Affairs.

[FR Doc. 03–27953 Filed 11–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0339: FRL– 7331–3]

Cancellation of Pesticides for Non-payment Of Year 2003 Registration Maintenance Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Since the amendments of October, 1988, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) has required payment of an annual maintenance fee to keep pesticide registrations in effect. The fee due last January 15 has gone unpaid for 864 registrations. Section 4(i)(5)(G) of FIFRA provides that the Administrator may cancel these registrations by order and without a hearing; orders to cancel all 864 of these registrations have been issued within the past few days.

FOR FURTHER INFORMATION CONTACT: For further information on the maintenance fee program in general, contact by mail: John Jamula, Office of Pesticide Programs (7504C), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (703) 305–6426; e-mail address: *jamula.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Important Information

A. Does this Apply to Me?

You may be potentially affected by this notice if you are an EPA registrant with any approved product registration(s). Although this action may be of particular interest to persons who produce or use pesticides, 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 information in this notice, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Additional Information or Copies of Support Documents?

1. *Electronically*. You may obtain electronic copies of this document and various other related documents that might be available from the EPA Internet Home Page at *http://www.epa.gov/fedrgstr/*.

The Agency has established an official record record for this Action under docket control number OPP–2003–0339. 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). The 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 that is claimed as CBI. The public version of the official record, which includes printed paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Room 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Introduction

Section 4(i)(5) of FIFRA as amended in October, 1988 (Public Law 100–532), December, 1991 (Public Law 102–237), and again in August, 1996 (Public Law 104–170), requires that all pesticide registrants pay an annual registration maintenance fee, due by January 15 of each year, to keep their registrations in effect. This requirement applies to all registrations granted under section 3 as well as those granted under section 24(c) to meet special local needs. Registrations for which the fee is not paid are subject to cancellation by order and without a hearing.

The Food, Agriculture, Conservation, and Trade Act Amendments of 1991, Public Law 102–237, amended FIFRA to allow the Administrator to reduce or waive maintenance fees for minor agricultural use pesticides when she determines that the fee would be likely to cause significant impact on the availability of the pesticide for use. The Agency has waived the fee for 141 minor agricultural use registrations at the request of the registrants.

In fiscal year 2003, maintenance fees were collected in two billing cycles. During the first cycle, the Agency was operating under a continuing resolution which authorized the Agency to collect $17 million. In late December 2002, all holders of either section 3 registrations or section 24(c) registrations were sent lists of their active registrations, along with forms and instructions for responding. They were asked to identify which of their registrations they wished to maintain in effect, and to calculate and remit the appropriate maintenance fees. Recipients of these initial bills were also notified that a second final bill would also be issued if the Agency's Appropriations Bill authorized collection of more than $17 million. Most responses were received by the statutory deadline of January 15. A notice of intent to cancel was sent in mid-February to companies who did not respond and to companies who responded, but paid for less than all of their registrations.

The Agency's Appropriations Bill was passed by Congress in March, 2003. This Appropriations Bill authorized the Agency to collect $21.5 million in maintenance fees. To collect the additional $4.5 million, the Agency initiated a second billing in early May. Final payments were due on June 15, 2003.

Since mailing the notices, EPA has maintained a toll-free inquiry number through which the questions of affected registrants have been answered.

Maintenance fees have been paid for about 15,120 section 3 registrations, or about 93 percent of the registrations on file in December. Fees have been paid for about 2,258 section 24(c) registrations, or about 86 percent of the total on file in December. Cancellations for non-payment of the maintenance fee affect about 599 section 3 registrations and about 265 section 24(c) registrations.

The cancellation orders generally permit registrants to continue to sell and distribute existing stocks of the canceled products until January 15, 2004, 1 year after the date on which the fee was due. Existing stocks already in the hands of dealers or users, however, can generally be distributed, sold, or used legally until they are exhausted. Existing stocks are defined as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled and released for shipment prior to the effective date of the action.

The exceptions to these general rules are cases where more stringent restrictions on sale, distribution, or use of the products have already been imposed, through Special Reviews or other Agency actions. These general provisions for disposition of stocks should serve in most cases to cushion the impact of these cancellations while the market adjusts.

III. Listing of Registrations Canceled for Non-payment

Table 1 lists all of the Section 24(c)registrations, and Table 2 Lists all of the Section 3 registrations which were canceled for non-payment of the 2003 maintenance fee. These registrations have been canceled by order and without hearing. Cancellation orders were sent to affected registrants via certified mail in the past several days. The Agency is unlikely to rescind cancellation of any particular registration unless the cancellation resulted from Agency error.

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE

SLN no.	Product Name
001812 AL–00–0002	Griffin Linuron 4L Flowable Weed Killer
010182 AL–83–0013	Ambush Insecticide
010182 AL–94–0005	Gramoxone Extra Herbicide
000279 AL–98–0002	Command 3ME Microencapsulated Herbicide
050534 AL–99–0003	Bravo 720
050534 AR–00–0001	Bravo 720
001812 AR–00–0007	Griffin Linuron 4L Flowable Weed Killer
000241 AR–01–0003	Pursuit Herbicide
010163 AR–01–0006	Sandea Herbicide
000279 AR–02–0002	Command 3ME Microencapsulated Herbicide
010182 AR–95–0002	Gramoxone Extra Herbicide
000279 AR–97–0003	Command 3ME
073049 AZ–00–0002	Pro-Gibb 4% Liquid Concentrate
047332 AZ–01–0005	Bug Juice
010163 AZ–02–0001	Sandea Herbicide
067379 AZ–90–0014	Vinco Formaldehyde Solution
010182 AZ–93–0007	Prelude Termiticide/insecticide
010182 AZ–93–0008	Demon Tc Insecticide
000279 AZ–93–0009	Ammo 2.5 EC Insecticide
019713 AZ–94–0005	Drexel Dimethoate 4EC
019713 AZ–96–0004	Drexel Dimethoate 2.67
000264 AZ–98–0007	Carzol SP In Water Soluble Packaging
010707 AZ–98–0008	Magnacide H Herbicide
010163 AZ–99–0007	Supracide 25W
074064 CA–01–0006	Pro-Gibb 4% Liquid Concentrate
059623 CA–76–0165	Kelthane 35 Agricultural Miticide Wettable Powder
000264 CA–81–0016	Temik(r) Aldicarb Pesticide 15% Granular
005905 CA–82–0013	Supreme Spray Insecticide-Miticide Liquid
056984 CA–85–0041	Dimilin W-25 for Mushrooms
011028 CA–85–0051	Goal 1.6E Herbicide
063184 CA–86–0016	Kocide 101
002935 CA–87–0021	K M Harvest Aid
002935 CA–87–0022	K M Harvest Aid
002935 CA–87–0023	K M Harvest Aid
059623 CA–89–0025	Rodent Bait Block Chlorophacinone Treated Grain/paraffin
065361 CA–89–0059	Plantfume 103 Smoke Generator
063805 CA–90–0017	Pro-Gibb Plus 20% Soluble Powder
010182 CA–91–0021	Gramoxone Extra Herbicide
010182 CA–91–0023	Gramoxone Extra Herbicide
010182 CA–91–0031	Gramoxone Extra Herbicide
005905 CA–92–0003	Helena Brand Cythion 8 Lb Emulsion
066233 CA–92–0009	Eptam 7-E
003404 CA–92–0010	Sunny Sol SDS
066276 CA–92–0011	Comite Agricultural Miticide
064864 CA–92–0024	Deadline Bullets
010182 CA–94–0012	Reward Herbicide
066233 CA–94–0032	Treflan TR-10
010182 CA–96–0007	Gramoxone Extra Herbicide
072051 CA–98–0024	Gibgro 4LS
005813 CA–98–0026	Clorox__bleach
073049 CA–99–0012	Pro-Gibb 4% Liquid Concentrate
073049 CA–99–0029	Pro-Gibb 4% Liquid Concentrate
000264 CO–00–0002	Balance Herbicide
000264 CO–00–0007	Sevin Xlr Plus Carbaryl Insecticide

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
000264 CO–01–0001	Balance Herbicide
000264 CO–01–0002	Balance 4SC Herbicide
007501 CO–99–0004	MZ-Curzate
000241 CO–99–0007	Raptor Herbicide
002393 CT–96–0002	Ramik Brown
074529 DE–01–0003	Tolcide PS200
010182 DE–94–0002	Gramoxone Extra Herbicide
073049 FL–00–0001	Pro-Gibb 4% Liquid Concentrate
010182 FL–01–0003	Cyclone Concentrate/gramoxone Max
010163 FL–01–0007	Sandea Herbicide
000148 FL–88–0023	Sodium Hypochlorite Solution
010182 FL–90–0009	Gramoxone Extra Herbicide
010182 FL–91–0004	Gramoxone Extra Herbicide
010182 FL–91–0006	Gramoxone Extra Herbicide
010182 FL–92–0011	Gramoxone Extra Herbicide
010182 FL–96–0009	Gramoxone Extra Herbicide
000400 GA–00–0004	Terrazole 35% Wettable Powder
073342 GA–01–0005	Amdro Fire Ant Bait Yard Treatment
010163 GA–02–0001	Sandea Herbicide
010182 GA–83–0007	Ambush Insecticide
010182 GA–94–0006	Gramoxone Extra Herbicide
010182 GA–95–0008	Gramoxone Extra Herbicide
000279 GA–98–0002	Command 3me Microencapsulated Herbicide
045631 HI–90–0003	Alcide Ld 10:1:1 - Base
010182 HI–91–0001	Gramoxone Extra Herbicide
066459 HI–96–0002	Mon-65005 Herbicide
010182 HI–96–0003	Gramoxone Extra Herbicide
010182 HI–97–0004	Ambush Insecticide
000264 ID–00–0014	Sevin XLR Plus Carbaryl Insecticide
010182 ID–00–0015	Gramoxone Extra Herbicide
000241 ID–01–0013	Acrobat 50WP Fungicide
071711 ID–02–0005	Moncut 70-DF
000352 ID–80–0009	Du Pont Sinbar Terbacil Weed Killer
034704 ID–88–0009	Clean Crop Cheat Stop 90 WDG
005905 ID–92–0004	Setre Dimethoate 4ec Systemic Insecticide
010182 ID–92–0011	Gramoxone Extra Herbicide
000352 ID–97–0001	Dupont Oust Herbicide
000264 ID–98–0011	Phaser 3ec Insecticide
000264 ID–98–0012	Phaser 3ec Insecticide
010163 ID–99–0003	Savey Ovicide/miticide 50-WP
000241 ID–99–0006	Raptor Herbicide
000279 IL–00–0002	Command 3ME Microencapsulated Herbicide
010163 IL–02–0001	Sandea Herbicide
000400 IN–00–0001	Terrazole 35% Wettable Powder
010163 IN–02–0002	Sandea Herbicide
002393 IN–83–0003	Hopkins Zinc Phosphide Mouse Bait for Control of Mice
000400 IN–99–0002	Comite Agricultural Miticide
000400 KY–00–0001	Terrazole 35% Wettable Powder
010182 LA–00–0003	Gramoxone Extra Herbicide
001812 LA–01–0014	Griffin Boa Herbicide
050534 LA–90–0008	Bravo 720
010182 LA–95–0003	Gramoxone Extra Herbicide
000279 LA–97–0001	Command 4EC Herbicide
010182 LA–98–0009	Gramoxone Extra Herbicide
010163 MA–02–0001	Sandea Herbicide
010182 MD–94–0007	Gramoxone Extra Herbicide
007501 ME–00–0001	Tops - MZ - Gaucho
071711 ME–02–0001	Moncut 70-DF
071711 ME–02–0002	Moncut 70-DF
071711 ME–02–0003	Moncut 70-DF
000352 ME–98–0002	Velpar L Herbicide
000352 ME–98–0003	Velpar DF Herbicide
007501 ME–99–0002	MZ - Curzate
001278 MI–01–0002	Triangle Brand Copper Sulfate Crystal
010163 MI–01–0003	Sandea Herbicide
000100 MN–00–0005	Discover Herbicide
001278 MN–01–0002	Triangle Brand Copper Sulfate Crystal
004581 MN–02–0001	Aquathol K Aquatic Herbicide
004581 MN–02–0002	Aquathol Super K Granular Aquatic Herbicide
004581 MN–02–0003	Hydrothol 191
004581 MN–02–0004	Hydrothol 191 Granular Aquatic Algicide and Herbicide
010182 MN–94–0006	Gramoxone Extra Herbicide

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
007501 MN–99–0004	MZ - Curzate
007501 MN–99–0007	Tops - MZ - Gaucho
000279 MN–99–0008	Command 3ME Microencapsulated Herbicide
000400 MO–01–0001	Terrazole 35% Wettable Powder
000241 MO–01–0002	Pursuit Herbicide
010163 MO–01–0004	Sandea Herbicide
001812 MS–01–0026	Glyphosate Original Herbicide
001812 MS–01–0027	Dupont Glyphosate Herbicide
001812 MS–01–0028	Griffin Boa Herbicide
000241 MS–01–0033	Pursuit Herbicide
010182 MS–83–0016	Ambush Insecticide
050534 MS–90–0001	Bravo 720
009779 MS–90–0030	Riverside 120 Herbicide
010182 MS–95–0005	Gramoxone Extra Herbicide
067760 MS–97–0005	Cyren TC
000279 MS–97–0012	Command 4EC Herbicide
007501 MT–00–0001	Admire 2 Flowable
000100 MT–00–0011	Discover Herbicide
000264 MT–00–0012	Sevin XLR Plus Carbaryl Insecticide
034704 MT–95–0005	Vine - DER Herbicide
000241 MT–99–0002	Raptor Herbicide
007501 MT–99–0003	Gaucho 75 ST Insecticide
007501 MT–99–0004	Tops - MZ - CZ
000100 MT–99–0010	Maxim MZ Potato Seed Protectant
000400 NC–00–0001	Terrazole 35% Wettable Powder
010182 NC–01–0001	Cyclone Concentrate/gramoxone Max
010163 NC–01–0004	Sandea Herbicide
003510 NC–01–0005	Pounce 3.2 EC Insecticide
010182 NC–83–0020	Ambush Insecticide
010182 NC–95–0003	Gramoxone Extra Herbicide
000279 NC–97–0005	Command 3ME Microencapsulated Herbicide
050534 NC–99–0005	Bravo 720
000100 ND–00–0005	Discover Herbicide
000524 ND–01–0009	Mon-65005 Herbicide
000524 ND–97–0001	Mon-65005 Herbicide
000264 NE–00–0003	Sevin XLR Plus Carbaryl Insecticide
000400 NE–02–0005	Dimilin 2l
007501 NJ–00–0001	Tops - MZ - Gaucho Potato Seed - Piece Treatment
007501 NJ–00–0002	Admire 2 Flowable
010163 NJ–01–0003	Sandea Herbicide
050534 NJ–96–0007	Bravo 720
050534 NJ–96–0008	Bravo 825
000279 NJ–99–0002	Command 4EC Herbicide
000100 NJ–99–0011	Dual Magnum Herbicide
010182 NM–84–0005	Ambush Insecticide
000264 NV–00–0003	Sevin XLR Plus Carbaryl Insecticide
071711 NV–02–0001	Moncut 70-DF
010182 NV–91–0002	Gramoxone Extra Herbicide
000241 NV–99–0004	Raptor Herbicide
000264 NY–01–0004	Previcur
000400 OH–00–0004	Terrazole 35% Wettable Powder
073425 OH–00–0005	Dupont Matrix Herbicide
010163 OH–02–0002	Sandea Herbicide
010163 OK–01–0001	Sandea Herbicide
010182 OK–83–0021	Ambush Insecticide
000279 OK–95–0003	Command 4EC Herbicide
045639 OR–00–0003	Ignite 1SC Herbicide
010163 OR–01–0008	Sandea Herbicide
071711 OR–01–0015	Moncut 50WP
055260 OR–02–0005	Syllit 65w Fruit Fungicide
071711 OR–02–0007	Moncut 70-DF
000241 OR–02–0021	Acrobat 50WP Fungicide
000352 OR–80–0021	Du Pont Sinbar Terbacil Weed Killer
010182 OR–91–0023	Gramoxone Extra Herbicide
034704 OR–94–0015	Vine-DER Herbicide
000264 OR–96–0011	Rovral Fungicide
000264 OR–96–0012	Rovral 4 Flowable
000264 OR–96–0028	Aliette WDG Fungicide
000264 OR–96–0032	Rovral 4 Flowable
007501 OR–99–0002	Tops - MZ - Gaucho
010163 OR–99–0003	Savey Ovicide/miticide 50-WP
007501 OR–99–0012	Tops-MZ-CZ

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
000352 OR–99–0044	Dupont Oust Herbicide
059639 OR–99–0045	Select 2EC Herbicide
073219 PA–00–0001	Dupont Matrix Herbicide
007501 PA–01–0001	Tops-MZ-Gaucho
010163 PA–02–0001	Sandea Herbicide
000400 SC–00–0003	Terrazole 35% Wettable Powder
001812 SC–01–0002	Griffin Boa Herbicide
010182 SC–83–0010	Ambush Insecticide
010182 SC–95–0007	Gramoxone Extra Herbicide
000279 SC–97–0009	Command 3ME Microencapsulated Herbicide
010182 SC–99–0003	Bravo 720
000264 SD–00–0007	Sevin XLR Plus Carbaryl Insecticide
000100 SD–00–0009	Discover Herbicide
000352 SD–01–0001	DPX-Mx670 MT
010182 SD–94–0005	Gramoxone Extra Herbicide
000524 SD–97–0002	Mon-65005 Herbicide
000400 TN–00–0002	Terrazole 35% Wettable Powder
001812 TN–00–0005	Griffin Linuron 4L Flowable Weed Killer
010182 TN–94–0003	Gramoxone Extra Herbicide
010182 TN–94–0008	Gramoxone Extra Herbicide
010182 TN–95–0002	Gramoxone Extra Herbicide
000279 TN–98–0002	Command 4EC Herbicide
005481 TN–98–0007	Dibrom 8 Emulsive
001812 TX–00–0012	Griffin Linuron 4L Flowable Weed Killer
007501 TX–01–0001	Admire 2 Flowable
000241 TX–01–0003	Pursuit Herbicide
010163 TX–01–0010	Sandea Herbicide
010182 TX–83–0027	Ambush Insecticide
000279 TX–97–0005	Command 3ME Microencapsulated Herbicide
010182 TX–99–0007	Bravo 720
010182 TX–99–0016	Gramoxone Extra Herbicide
000264 UT–00–0007	Sevin XLR Plus Carbaryl Insecticide
000352 UT–98–0004	Dupont Oust Herbicide
000241 UT–99–0001	Raptor Herbicide
000400 VA–00–0002	Terrazole 35% Wettable Powder
010163 VA–01–0003	Sandea Herbicide
050534 VA–93–0007	Bravo 720
000100 VT–80–0008	Aatrex Nine-O
010163 WA–01–0017	Sandea Herbicide
071711 WA–02–0004	Moncut 70-DF
000400 WA–02–0006	Dimilin 2L
000352 WA–80–0010	Du Pont Sinbar Terbacil Weed Killer
064428 WA–90–0024	Vinco Formaldehyde Solution
010182 WA–91–0044	Gramoxone Extra Herbicide
010182 WA–91–0048	Gramoxone Extra Herbicide
010182 WA–91–0049	Gramoxone Extra Herbicide
034704 WA–94–0027	Vine-DER Herbicide
010163 WA–95–0002	Metasystox-R Spray Concentrate
010163 WA–95–0003	Metasystox-R Spray Concentrate
010163 WA–96–0008	Metasystox-R Spray Concentrate
010163 WA–99–0010	Savey Ovicide/miticide 50-WP
000241 WA–99–0017	Raptor Herbicide
010163 WA–99–0018	Savey Ovicide/miticide 50-WP
007501 WI–00–0002	Admire 2 Flowable
004581 WI–02–0003	Aquathol K Aquatic Herbicide
004581 WI–02–0004	Aquathol Super K Granular Aquatic Herbicide
004581 WI–02–0005	Hydrothol 191
004581 WI–02–0006	Hydrothol 191 Granular Aquatic Algicide and Herbicide
007501 WI–99–0005	Tops - MZ - CZ
007501 WI–99–0011	Tops - MZ -Gaucho
000400 WI–99–0016	Comite Agricultural Miticide
000264 WY–00–0005	Sevin XLR Plus Carbaryl Insecticide
000400 WY–96–0001	Comite Agricultural Miticide
000352 WY–98–0005	Dupont Asana XL Insecticide
061282 WY–98–0008	Zinc Phosphide Oat Bait
000241 WY–99–0001	Raptor Herbicide
007501 WY–99–0002	Tops - MZ - CZ

Table 2 Lists all of the Section 3 registrations which were canceled for non-payment of the 2003 maintenance fee.

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE

Registration no.	Product Name
000003–20201	Harris Roach Powder
000030–00027	Kill Gophers Sweeney's Gopher Bait
000052–00009	Comax
000052–00040	Showersan
000052–00161	Westosan
000052–00235	Prepodyne Whirlpool Additive
000056–00023	Eaton's ''Semi-Permanent'' Bait Blocks Rodenticide
000056–00071	Jt Eaton A-C Formula 90 Bulk Rodenticide
000070–00236	Rigo Insyst-D
000100–00972	Expert NT Herbicide
000279–02875	Niagara Furadan 75 Wettable Powder Insecticide
000335–00229	Sodium Chlorate
000335–00230	Sodium Chlorate Solution
000335–00231	Sodium Chlorate Solution - 39.5%
000335–00232	Sodium Chlorate Crystal
000358–00174	Termite and Carpenter Ants Killer
000400–00473	Dimilin - 2F
000464–00669	Bronopol Preservative
000464–00677	Myacide S-1
000464–00681	Myacide Bt
000464–00695	Ucarcide 145 LT Antimicrobial
000464–00710	Ucarsan 4256 Sanitizer
000499–00220	Whitmire Perma-Dust PT 240
000499–00223	Whitmire Pt 230 Tri-Die
000499–00251	Whitmire Fabric Insectproofer #1
000499–00252	Whitmire Fabric Insectproofer #2
000499–00259	Whitmire General Purpose Insect Killer with Sumithrin
000499–00289	Whitmire PT 259 Baygon Residual Injection System
000499–00305	Whitmire PT 576
000499–00354	P/p Mothproofer Spray No. 2
000499–00403	Whitmire TC 103
000499–00433	Whitmire Avert TC 141 Insecticide
000499–00438	Whitmire TC 168
000499–00451	Uld 550 D Dairy and Livestock Flying Insect Concentrate
000499–00461	Micro Gen Pro Control Fogger III
000499–00463	Pro-Control Fogger V
000499–00464	Pro-Control Inspector II
000499–00487	TC-221
000507–00005	Liquid Improved Timsen 40% Concentrate
000507–00009	U-Chem-Co 3-D Detergent Disinfectant Deodorant
000507–00014	Kleen-Quat
000507–00023	Econo-San
000524–00453	Hybrex 2lc Chemical Hybridizing Agent
000527–00095	Germ-O-Solv ''2''
000527–00117	Bytech Ten-Fifty
000572–00251	Crabgrass Preventer with Balan
000572–00292	5% Diazinon Granular Lawn Insecticide
000572–00324	Turf Food 15-3-5 Plus Team
000572–00329	Urban Insect Spray
000644–00103	Orchex 796B
000655–00318	Prentox Warfarin Technical
000655–00441	Prentox Residual Concentrate Dv-One
000655–00557	Prentox Diazinon 14G
000655–00644	Prentox Pyronyl Oil Concentrate #1233-A
000655–00788	Carbaryl 5D
000655–00789	Prentox Carbaryl 10d
000773–00090	Mnda Sch-51551
000779–00013	F & B Tobacco Dust
000806–00010	Skin So Soft Bug Guard
000806–00011	Skin-So-Soft Bug Guard Towelettes
000829–00257	Sa-50 Home & Garden Oftanol 1.5% Granular
000829–00290	Sa-50 Dursban 1-E Insecticide
000869–00076	Green Light Double Duty Rose Care 6-10-4 with Systemic
000869–00203	Green Light Grubworm Killer
000869–00223	Green Light Systemic Insecticide
000869–00226	Green Light Grass & Weed Killer
001043–00116	T.B.Q. RTU
001203–00014	Foremost 1690 Quad-Dis
001203–00066	Foremost 4519 Pine-Aire

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
001203–00067	Foremost 4806 Hi-Power Food Plant Insecticide
001386–00352	Methoxychlor Emulsifiable Concentrate
001440–00001	Tomic Micro-Cide Dust
001440–00007	Tomic Propoxur Residual Spray
001448–00033	Bl Busan 77
001448–00129	W-15-13
001448–00130	W-15-7
001448–00131	W-15-14
001448–00154	T-5-3
001448–00209	W-15-11
001448–00210	W-15-12
001448–00213	W-15-8
001448–00214	W-15-9
001448–00215	W-15-10
001448–00219	B-7-4
001448–00220	B-7-5
001448–00221	B-7-6
001448–00222	B-7-7
001448–00223	B-7-8
001448–00224	B-7-9
001448–00225	B-7-10
001448–00226	B-7-11
001448–00227	B-7-12
001448–00228	B-7-13
001448–00229	B-7-14
001448–00230	B-7-15
001448–00238	W-30-7
001448–00239	W-30-8
001448–00240	W-30-9
001448–00241	W-30-10
001448–00242	W-30-11
001448–00251	W-15-17
001448–00253	W-15-18
001448–00254	W-15-15
001448–00273	W-30-17
001448–00294	T-30-3
001448–00304	W-60-11
001448–00306	B-7-25
001448–00307	B-7-24
001448–00308	B-7-23
001448–00309	B-7-22
001448–00310	B-7-21
001448–00311	B-7-20
001448–00312	B-7-19
001448–00313	B-7-18
001448–00314	B-7-17
001459–00018	Bullen Activated Pine Type Disinfectant
001459–00023	Bullen Pine Odor Disinfectant Coef. 3
001459–00080	Pine Quat
001459–00094	Hi-Sept 400
001469–00026	Citron Detergent Disinfectant
001475–00130	Enoz Para Moth Balls Cedar Scented
001475–00135	Excell Moth Balls
001624–00127	Borax WP
001674–00016	Stetco Maintainer - D.I.S.
001677–00063	Bevro Klene
001677–00167	Boot Wash #10
001677–00188	CD-612
001706–00146	Nalco 7328
001706–00184	TX-10861
001706–00232	Iocide
001706–00233	Sanit C-16 Bactericide-Deodorizer
001706–00234	Chemprocide
001757–00041	Amerstat 233
001757–00043	Biosperse 212
001757–00074	Biosperse 4505
001759–00007	Para-Dichlorobenzene
001760–00024	Ampicide 5
001760–00027	Ampicide-9
001839–00026	B T C 100 Concentrate
001839–00031	BTC-8358ALC
001839–00043	So/San 66 Concentrated Softener Sanitizer for Manufactu

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
001839–00061	BTC 927.
001839–00069	BTC-E 2125m-80%
001839–00070	BTC-E 2125-80% Concentrated Germicide
001839–00071	BTC-E-8248 80%
001839–00074	BTC 1326
001839–00075	Lispar Algaecide 10%
001839–00076	Soft-A-Cide #537
001839–00116	Onyxide 200-Methanol Preservative
001839–00117	Onyxide 450
001839–00125	NP 9.0 (H.W.) Detergent/disinfectant
001839–00126	NP 4.5 (H.W.) Detergent/disinfectant
001839–00127	NP 12.5 (H.W.) Detergent/disinfectant
001839–00149	DC-7550 Disinfectant
001839–00150	DC-7128 Disinfectant Cleaner
001903–00021	8 In 1 14 Day Flea & Tick Spray
001903–00022	8 In 1 Non Residual Flea & Tick Spray
001903–00023	8 In 1 14 Day Flea & Tick Dip
001903–00024	8 In 1 Flea & Tick Dip
001903–00025	8 in 1 Lawn Spray
001903–00026	8 in 1 Carpet Spray
001903–00027	8 in 1 Flea & Tick Indoor Fogger
002011–00005	Vigortone Bovotone FC ''007''__with Rabon Oral Larvicide
002011–00010	Vigortone Rabon 7.76 Oral Larvicide Premix
002205–00007	Menthol
002290–00035	Terre Dry Granular Ready To Use D-Crab with 2, 4-D
002296–00110	Saniquat Disinfectant Sanitizer Deodorizer
002311–00011	Qat 1000
002393–00385	Hopkins 'diolice' Animal Insecticide
002553–00037	Hi-Kil
002568–00094	Seamate HB 33 Anti-Fouling 65a2000 Red
002568–00095	Seamate HB 33 Anti-Fouling 65a2002 Blue
002568–00096	Sovaklor Coastal Super Service Anti-Fouling V59R27 Red
002630–00005	Ocean Spray Pine Oil Disinfectant Deodorant Cleanser
002693–00123	Interswift Copolymer Antifouling Red BKA 007
002724–00429	Zoecon RF-348 Apistan Queen Tab
002724–00430	Zoecon RF-349 Apistan Strip
002724–00477	Altosid 5E-FZ-515 (diacon)
002792–00071	FPZ
002792–00072	FPP
002800–00006	Humco Moth Balls
002935–00062	Red-Top Py-Rin 505 Concentrate
002935–00208	Terraclor 2 Spray
002935–00357	PCNB 10 Granular
002935–00364	Red-Top Py-Rin 40 Jet
002935–00404	Chlorate Concentrate
002935–00436	Tumbleaf Cotton Defoliant
002935–00437	Tumbleleaf Cotton Defoliant Liquid Concentrate 4
002935–00438	Harvest Aid
002935–00439	Harvest Aid Liquid Concentrate 4
002935–00462	Tide Chlorate Defoliant
002935–00463	Tide Solo 6
002935–00505	Alfa Brand Wettable Sulfur
002935–00510	Crop Rider LV-4d Weed Killer
003181–00007	Aero-Master Fogging Insecticide Mill Fogging Formula
003181–00014	Aero-Master Super Fogging Insecticide W/.50% SBP 1382
003468–00047	Bantrol
003546–00027	Shoofly Hornet Jet-Bomb
003837–00005	Krystal
003838–00053	Nutra-Cide 256
003862–00137	L-Tox Spray
003862–00138	Combine
003862–00139	Fogging Spray Concentrate
003862–00141	P.D.Q. Non Selective Weed Killer
003862–00144	Pine Oil Disinfectant (phenol Coefficient 5)
003862–00146	Aqua-Clear
003862–00147	Clean-Up
003862–00149	Lemon Tree 6 (lemon Press)
003862–00150	Dual-27
003862–00151	Algaecide 1250
003862–00152	W.T.C. Algaecide and Algal Slimicide
003862–00154	Towercide 10
003862–00155	Microbiocide LD-10

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
003862–00160	Slo-Mowshun Concentrate
003862–00161	Y.B.C.
003862–00163	LF-20
003862–00165	R.T.G. Herbicide
003862–00166	L.W.K. 2.5%
003862–00167	L.W.K. 3.75%
003862–00170	Space Spray 2500
003862–00171	TAM-24
003862–00172	Cog-1
003862–00173	General Purpose Liquid Insect Killer
003876–00074	Betz Slimicide 364
003876–00090	Slimicide C-38
003876–00127	Betz Slimicide C-41
003876–00152	Dearcide 717
003876–00153	Dearcide 722
003876–00154	Dearcide 723
003876–00155	Dearcide 716
004170–00076	Ph7Q
004313–00037	Self-Sanitizing Flow Flex Floor Finish
004313–00074	Carroll Non-Acid Ready-To-Use Restroom Disinfectant
004482–00017	Rid A Hospital Cleaner-Disinfectant-Sanitizer
004582–00065	Ajax Disinfecting Cleanser
004704–00002	Magic Circle Rabbit Repellent
004822–00084	Bolt Ant and Roach Killer
004822–00148	Johnson Yard Master Foam Crabgrass Preventer
004822–00153	Johnson Buggy Whip Dual Action Roach Bait
004822–00318	Raid Ant & Roach Killer
004822–00335	Raid Ant Controller
004822–00411	Raid Roach Bait III
004875–00012	Indco LG-11 Sanitizer
005036–00002	Patty-O-Candle Insect Repellent
005136–00014	Panther 607 NF Cooling Tower Algaecide-Slimicide
005602–00199	A-50 20% DDVP Insecticide
005768–00010	804 - Lemon Disinfectant
006109–00010	Fiberfresh-MBI
006218–00040	Summit Dibrom ULV Insecticide
006658–00038	Cleaner/Disinfectant
006658–00039	Disinfectant Deodorant
006658–00040	Double Action Insect Killer with Double Action Spray
006658–00046	Room Service Total Release Fogger
006658–00047	Pro-Magic Long Shot Wasp-A-Way
006658–00050	MPC Waterbased Aerosol Flying/crawling Insect Killer
007056–00164	Pet Spray Formula No. Three
007056–00169	CSA Insect Spray Formula Number Six
007056–00181	CSA 2% D-Phenothrin General Purpose Insect Killer
007124–00099	NUCLO 4 Ounce Slow Dissolve Chlorinating Tablets
007152–00019	Sea/Cure-Shock Treatment
007173–00072	Rozol Rodenticide Mineral Oil Concentrate
007173–00216	Maki Paraffin Blocks with Bitrex
007675–00004	Lithium Hypochlorite
007675–00007	Formula 2 Shock Treatment
007675–00008	Formula 2 Spa Sanitizer
007675–00009	Formula 2 Spa Shock
008020–00001	Best Odorless Roach Killer
008033–00008	Hi-Chlon 70 EU Tablet
008033–00009	Hi Chlon 70 EU Granular
008177–00007	Valspar Marine Bottom Anti-Fouling Paint 3589
008177–00011	Valspar Marine Bottom Antifouling Paint 3594 Escolux
008254–00001	‘‘4 the Birds’’ Transparent Bird Repellent
008325–00020	Concentrated Disinfectant - Detergent 128
008325–00021	Hi Concentrated Disinfectant - Detergent 256
008325–00022	Sani-512 Sanitizer-Disinfectant-Deodorant
008325–00025	Hi-Con 64 Disinfectant and Detergent
008378–00027	Dursban 114 + Fertilizer
008378–00028	Dursban 50 Granular Insecticide
008378–00033	Dursban 1.14 Granules
008378–00042	Dursban 70 with Plant Food
008378–00043	Shaw’s Dursban 50 with Plant Food
008378–00044	Shaw’s Dursban 60 with Plant Food
008378–00046	Shaw’s Dursban 100 Granules
008428–00002	SC-745 Sanitizer
008576–20001	Sodium Hypochlorite - 12.5%

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
008622–00051	Super Bromide/Brom 5118
008637–00003	Mitco CC-10-L Algicide
008637–00005	Mitco CC-11-L Algicide
008668–00003	North Insect Repellent Towelettes
008959–00006	Swimtrine-50
009198–00039	Turfcare Dursban 2.5G
009198–00068	The Andersons 1% Dursban Brand Insecticide
009198–00076	Andersons Tee Time 32-3-5 with Oftanol
009198–00082	Tee Time Fertilizer with 0.52% Dursban 30-3-5
009198–00085	Andersons Tee Time 30-3-5 with 0.71% Dursban
009198–00088	Anderson's Tee-Time with 1.5% Oftanol
009198–00098	Anderson's Tee Time with Team/dursban I
009198–00099	Andersons Tee Time 19-5-9 with Team/dursban
009198–00137	The Anderson 0.5% Dursban Brand Insecticide
009198–00166	Proturf 30-5-3 Fertilizer Plus Insecticide III
009198–00168	Proturf Fertilizer Plus Insecticide III
009198–00188	Proturf Insecticide 4/insecticide IV
009198–00192	Proturf Weedgrass Control 60 WDG
009404–00003	Sunniland Flower Power
009601–00005	Conquest
009861–00009	TSC-911 Liquid Chlorinating Compound
010079–00003	Nat-Chlor
010079–00004	Top-Chlor
010147–00038	Birkodyne
010163–00167	Imidan 50-WP Garden & Home Insecticide
010250–00053	Hempel's Antifouling Combic 76990-51110 Red
010350–00024	Sectrol Concentrate No. 1490-B
010350–00025	Gossyplure 20 MEC
010350–00026	Sectrol Plus Flea Foam
010350–00027	Sectrol Plus Pet Spray
010350–00028	Sectrol Pet and Premise Flea Spray
010404–00045	Lesco 24-4-12 Fertilizer with 1.5% Oftanol
010404–00047	Lesco Oftanol 1.5% Granular
010679–00011	Sodium Hypochlorite 10%
010691–00002	Wonder-Aire Cooler Aid
010693–00010	Flo-Kem Triple-2 Germicidal Cleaner
010772–00014	Victory Formula Flea & Tick Pump Spray for Dogs
010772–00015	Shield Creme Rinse for Dogs
010772–00017	Victory Formula Flea and Tick Pump Spray for Cats
010807–00029	Misty Insect Repellent Spray
010810–00002	Dacar Dacarcide L 2
010810–00007	Dacarcide L-35
010867–00002	BAF-TROL
010867–00012	BAF-90
011345–00003	Supergreen Weed and Feed
011515–00029	No. 401 Water Plant Killer
011525–00075	P/P Disinfectant, Degreaser & Cleaner #2
011529–00001	BAF-15
011541–00007	O'b-Alge-670
011623–00053	Apollo Flying & Crawling Insect Killer
011659–00012	A-261
011659–00013	A-265
012192–00002	Sani-Fluff
012477–00002	CP-50
013648–00001	Glidclean 80/150 80% Pine Oil Disinfectant
013648–00002	Glidclean 60/150 60% Pine Oil Disinfectant
013648–00003	Glidco Pine Oil 150
013648–00004	Glidco Pine Oil-140
013648–00007	Glidco Pine Oil-60
013648–00008	Glidco Pine Oil-80
013648–00010	Glidclean 30/60
013648–00011	Glidclean 25/150 25% Pine Type Disinfectant
013648–00013	Glidclean 20% Pine-Type Disinfectant W/P.O. 150
013648–00019	Glidclean 20/60 20% Pine Type Disinfectant
015297–00003	Bio-Groom Cattle Shampoo with Pyrethrins Concentrate
015297–00008	Biogroom Flea & Tick II Residual Permethrin Dip Concent
017545–00011	Pyroxide Home and Garden Spray
018031–00001	Nat-Chlor
018533–00015	Pine Oil
018533–20001	Sodium Hypochlorite Solution (12.5%)
018533–20002	Sodium Hypochlorite Solution (10%)
023566–00017	673 Black Co-Poly Crab Pot Paint

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
026883–00005	Red Copp 97N
026883–00006	Lolo Tint 97
026883–00018	Chem Copp HP II
026883–00019	Chem Copp HP III
028293–00015	Unicorn Phosmet Insecticidal Dust for Dogs
028293–00186	Unicorn (Vegetable and Ornamental) Spray #2
033006–00004	Sodium Hypochlorite Solution
033458–00001	Compressed Chlorine Gas
033593–00001	Chlorine
033593–20001	Sodium Hypochlorite Solution
033753–00006	Myacide S1
033981–00001	Sodium Hypochlorite Solution
033981–00002	Compressed Chlorine Gas
034052–00001	Bear-Cat Fly Spray
034052–00012	Bear-Cat Plus
034571–00013	Betz Entec 349
034891–00002	CWB- 4150
034892–00018	Al-Pine Pine Odor Disinfectant
035138–00082	Aero House and Garden Insect Control
035900–00020	General Ionics Model G.i.2 Bacteriostatic Post Filter
036866–00004	Super Veta Flea & Tick Killer for Cats & Dogs
036866–00007	Super Veta Dermatological Flea & Tick Killer for Cats
036866–00009	Veta D-Flea
037327–00001	Ak 100 Water Treatment Microbiocide
037429–00001	Bold Flowable Sulfur
037435–20002	C.f. 10 Pool Chlorinating Solution
037910–00004	Hi-Lite 90 G Granular
037910–00005	Hi-Lite 60g
037982–00017	All Pure Sodium Hypochlorite 11%
037982–00034	All Pure Chlorine Gas 99.5
038422–00001	Destain Sanitizer
039183–00012	Bio-Syn 170-10
039702–00002	Muralo Marine Copper Antifouling Bottom Paint 1331 Blue
040810–00017	Irgaguard B 8000
041014–00002	Marlate 50 Methoxychlor Insecticide
041014–00005	Marlate Methoxychlor Technical
041134–00001	Oniachlor 60
041134–00002	Oniachlor 90
041134–00003	Oniachlor EC
041200–00002	Rabon 350 Mineral
041211–00003	Chlorine
041211–00004	DX Sodium Hypochlorite 12.5%
041211–00005	DX Sodium Hypochlorite 5.25%
041211–00006	DX Sodium Hypochlorite 10%
041451–00004	Natra Flea Shampoo
041451–00008	Natra Pet Mite Mist
041835–00011	Synerkyl Pet Dip
041835–00012	Dvm Shampoo Concentrate
041835–00013	AG Synerkyl Water-Based Pet Spray
043917–00003	Spira Punks B Mosquito Repellent Coils
043917–00004	Spira Open Air Mosquito Repellent
043922–00002	Hercules Sanitizer (sta Bright)
044632–20205	Roach Kill Powder
044919–00002	Model S-3 Bacteriostatic Water Filter Cartridge
045631–00018	Sd-3 Disinfectant
045631–00021	Sanova 335
045983–00001	Jet Chlor
046075–00001	American Trail Insect Repellant
046193–00013	Trifluralin Df
046379–00005	Fine Spring Bacteriostatic Water Filter Over Sink Unit,
046763–00001	MB-25
046781–00011	Premidyne
046813–00049	CCL House & Garden Insect Killer II
046813–00062	CCL Flying Insect Killer Xi
047332–00004	CPF-2D Insecticide
047893–00004	Ban-Gas
048302–00010	AF Seaflo Z-100 LE-HS
049620–00001	EKA Nobel Sodium Chlorate Weed Killer
049620–00003	SVP-Pure Sodium Chlorate Precursor
050600–00002	Shepard Brothers Sano Rinse
050600–00003	Iodafect
050654–00005	Bio-Hautschutz Repellent

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
051708–00013	Proteam Polyquat Algaecide 50
053219–00004	Demoss Moss & Algicide
053219–00011	Thinex Blossom Thinner
053219–00014	M/C Bioinsecticide
053219–00015	Mattch II Bioinsecticide
053575–00022	Isomate-OBLR/PLR
053871–00006	Larvo-Bt
053883–00048	Martin's Dursban Insecticide Granules
053883–00052	Martin's Dursban 2 1/2% Insecticide Granules
054679–00001	Custom Chlor
054734–00001	Protecto-Copp
054734–00002	Protecto - Zin
055363–00006	Classic Yacht: Clear Choice Aerosol Antifoulant Coating
055460–00007	R. Carlson Co. Spud Bark
055467–00004	Tenkoz Atrazine 90df Herbicide
055467–00005	Tenkoz Atrazine 4L Herbicide
055638–00044	M-Trak Bioinsecticide
055638–00045	MVP Bioinsecticide
055638–00046	M-Peril Bioinsecticide
056077–00080	Cedar Chemical Corporation Fluometuron Technical
056175–00001	Protack Mosquito Mats
056437–00001	Yea! Poly-D-Glucosamine Solution
056630–00004	Variquat 50 MC
056630–00005	Variquat 50 ME
056630–00006	Variquat 80 MC Germicidal Concentrate
056630–00007	Variquat 80 ME
056984–00001	Lagenidium Giganteum Mycelium & Oospores
056984–00003	Lagenidium Giganteum Oospores
057227–00002	Britewood Q Sapstain Control
057227–00004	Britewood BQ, Sapstain Control
057227–00005	Britewood BQ-80 Sapstain Control
057787–00026	Blast It
058199–00009	Cyto-Booster
058300–00010	Sanicide AG-5
058300–00011	Sanicide CD-2
058300–00012	Sanicide AG-2
058300–00013	Sanicide AH-5
058369–00002	Fuzzie Buddie Spray for Pets with Pure Eucalyptus Oil
058639–00004	Car Mac Insecticidal Ear Tag #3
059144–00023	Rose and Flower Systemic Granules
059578–00001	Get Off My Garden
059578–00002	Get Off My Garden
059638–00001	Formula 4635
059905–00007	Guardian
062190–00015	Hickson Tubor
062366–00002	Bug Stuff
062550–00001	Calcium Hypochlorite Idroklorel
062635–00001	Bugmat
062637–00004	Bmp 123 (32 LC)
062638–00001	Citronella Candle Bucket
062719–00042	Reldan F Insecticidal Chemical
062719–00043	Reldan 4E
062719–00102	Balan E.C. 19.4%
062719–00103	Balan Milled Concentrate 50%
062719–00243	Recruit
062719–00245	Lorsban 4E-SG
063660–00001	Egis Iris Borer Deterrent
063809–00001	Pinetec Pine Oil
064864–00042	Deadline Force Liquid
064898–00006	Sewerout II
065020–00001	Bio-Guard S-3
065020–00010	Bioguard HTD-128
065233–00004	Treo Spf 8
065233–00009	Treo Mosquito Repellant Moisturizing Lotion
065233–00013	Primavera Botanical Bug-Repelling Wipes
065584–00001	Top Chlor
065584–00003	Sani-Clor Low Temperature Liquid Sanitizer
065656–00002	Rice-Nil DF 80
065743–00002	Chempak 10% Sodium Hypochloride Solution
066196–00001	Oxycop Dust No. 3
066222–00012	Cotnion-Methyl Azinphos Methyl 2EC
066397–00003	Fortnight Brominating Tablets

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
066544–00002	Promac 2000PY
066544–00003	Promac 2000PN
066674–00002	Terminator Plus
066680–00001	Care-Flea Home Treatment
066733–00009	Tiempo 4 EC
066733–00010	Tiempo 1% Granules
066733–00011	Tiempo 2% Granular
067003–00001	S. D. I. C. 62 Granular
067003–00004	Granular S.D.I.C
067003–00015	T.I.C.A. Skimmer Sticks
067003–00018	S.D.I.C. Chlorinating Granules
067003–00019	Granular S.D.I.C. 56
067003–00023	T.I.C.A. Granular
067209–00001	Liquid Chlorine
067262–00021	Granular Stabilized Chlorinator
067262–00032	3''Tablets
067360–00004	Intercide 340-A
067360–00005	Intercide FC
067471–00002	Pacific Sailor Copper Bottom Antifouling Red Paint
067471–00004	Pacific Sailor Triple A Antifouling Red Paint
067543–00008	XL 48
067760–00006	Cyren 2E
067760–00007	Cyren 4E Insecticide
067760–00031	Cyren 2 TC
067813–00001	Dow Liquid Disinfectant Formulation 2A
068182–00008	Bio-Save 100 Biological Fungicide
068186–00003	E-Rase Refill
068338–00005	Sodium Hypochlorite 12.5%
068340–00001	Flea.B.Gone
068401–00001	D & D Carpet Powder for Fleas
068438–00001	Roach Caulk
068467–00001	BAC. Thuringiensis (ssp. Kurstaki) European Corn Borer
068687–00005	3807 Hs Red Oxide Vinyl Anti-Fouling Paint
068825–00001	Vasco Pool Protector
069251–00001	Viodine
069261–00001	Harper Valley Diatomaceous Earth
069431–00001	No More Moles
069741–00001	Golden Solution Humidifier Bacteria Water Treatment
070060–00010	Aseptrol WTS-F7 Sachet
070060–00017	Aseptrol Gtab-14
070060–00021	Aseptrol CSR-7.02
070160–00001	Insect Control
070160–00004	Insect Control Concentrate
070261–00001	Medipure
070271–20002	Lass0 10% Sodium Hypochlorite Solution
070413–00001	Germ-Stat 1
070571–00001	Collego Selective Postemergent Herbicide
070591–00001	Noseeum
070614–00001	GHG Carbon Dioxide
070627–00017	Primafresh 20 with Dowicide A
070627–00018	Primafresh 21 Citrus Wax with "dowicide A"
070810–00003	Auxigro Mfg Plant Metabolic Primer
070870–00002	Agricure RTU
070907–00008	Pilot 50W Chlorpyrifos Agriculturalinsecticide
070907–00013	Navigator 4WT Chlorpyrifos Wood Treatment Concentrate
070907–00017	Chlorpyrifos 6 Manufacturing Concentrate
070907–00018	Chlorpyrifos 4 Manufacturing Concentrate
071581–00007	X-Lance 2
071624–00001	Sulfuric Acid/Potato Vine Desiccant
071645–00002	Santochlor 20
071655–00002	PVP-Iodine 30/60
071704–00001	Bromine 40
071977–00003	Sunbelt Flowable Sulfur
072140–00001	Unicorn Thermal Marine Coating Anti-Fouling Plastic
072262–00001	Oxylit
072304–00004	Clortram F-54 Flowable Fungicide
072322–00001	Plant Nog
072593–00002	Termite Blocker
072638–00001	Blue Frog Pine Oil 60
072643–00001	Disorb Tube
072992–00004	T535
072992–00005	T345

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
072992–00006	T430 Vase Solution
072992–00009	T426 Hydrating Solution
073049–00021	Gibberellic Acid, 10%
073049–00022	Release Plus
073049–00044	Gibrel 4%
073049–00053	Gibrel Plus 2x Plant Growth Regulator Soluble Powder
073062–00001	VP Paraformaldehyde
073134–00001	Bugaway! TSP Formula 1
073368–00002	LRS Gas Liquid Chlorine #140
073368–20007	LRS Liquid Sodium Hypochlorite #10
073465–00001	Shellshock Insecticide
073637–00001	Tillam 6-E Selective Herbicide
073637–00002	Tillam Technical Selective Herbicide
073727–00013	Verox -7.5
073727–00017	Verox-37
073727–00018	Verox-15
073727–00020	Verox-2
074210–00004	Sanital II
074246–00001	Zydox 25
074292–00001	Southwest Select Diatomaceous Earth
074424–00001	Zenkill 1 Flying Insect
074530–00002	Pendimethalin Tech.
074655–00017	Daracide 2302
074812–00001	The Graden Guy Diatomaceous Earth
074812–00002	Garden-Ville Diatomaceous Earth
075341–00007	Osmoplastic SD Wood Preserving Compound

IV. Public Docket

Complete lists of registrations canceled for non-payment of the maintenance fee will also be available for reference during normal business hours in the OPP Public Docket, Room 119, Crystal Mall #2, 1921 Jefferson Davis Highway South, Arlington VA, and at each EPA Regional Office. Product-specific status inquiries may be made by telephone by calling toll-free 1–800–444–7255.

List of Subjects

Environmental protection, pesticides and pest.

Dated: October 23, 2003.

James Jones,

Director, Office of Pesticide Programs.

[FR Doc. 03–27954 Filed 11–5–03; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0208; FRL–7321–1]

Boscalid; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0208, must be received on or before December 8, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Cynthia Giles-Parker, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7740; e-mail address: *giles-parker.cynthia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop Production (NAICS Code 111)
- Animal Production (NAICS Code 112)
- Food Manufacturing (NAICS Code 311)
- Pesticide Manufacturing (NAICS Code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. 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 Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0208. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis

Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0208. The system is an''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0208. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0208.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0208. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is 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 docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket 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. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket 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. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated:October 23, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

BASF Corporation

PP 2F6434 and 3F6580

EPA has received pesticide petitions (PP 2F6434 and 3F6580) from BASF Corporation, Research Triangle Park, NC, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of Boscalid (3-pyridinecarboxamide, 2-chloro-*N*-(4′-chloro(1,1′-biphenyl)-2-yl) in or on the following raw agricultural and processed commodities: pome fruit at 3.0 ppm; apple pomace at 20.0 ppm and hops at 35.0 ppm, and soybean aspirated grain fraction at 2.5 ppm. EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

These individual summaries are printed below as they were received from the petitioner.

PP 2F6434

A. Residue Chemistry

1. *Plant metabolism*. Nature of the residue studies (OPPTS Harmonized Guidline 860.1300) were conducted in grapes, lettuce and beans as representative crops in order to characterize the fate of BAS 510 F in all crop matrices. In all three crops the BAS 510 F Residues of Concern (ROC) were characterized as parent (BAS 510 F). A confined rotational crop study also determined that parent was the residue of concern in the representative crops of radish, lettuce and wheat.

2. *Analytical method.* In plants the parent residue is extracted using an aqueous organic solvent mixture followed by liquid/liquid partitioning and a column clean up. Quantitation is by gas chromatography using mass spectrometry (GC/MS). In livestock the residues are extracted with methanol. The extract is treated with enzymes in order to release the conjugated glucuronic acid metabolite. The residues are then isolated by liquid/liquid partition followed by column chromatography. The hydroxylated metabolite is acetylated followed by a column clean-up. The parent and acetylated metabolite are quantitated by gas chromatography with electron capture detection.

3. *Magnitude of the residues*. Field trials were carried out in order to determine the magnitude of the residue in the apples, pears and hops. Field trials were conducted in the United States in the required regions. Field trials were carried out using the maximum label rate, the maximum number of applications, and the minimum preharvest interval for each crop or crop group. In addition, a processing study was conducted on apples to determine concentration factors during normal processing of the raw agricultural commodity into the processed commodities.

B. Toxicological Profile

1. *Acute toxicity*. Based on available acute toxicity data BAS 510 F and its formulated products do not pose acute toxicity risks. The acute toxicity studies place technical BAS 510 F in toxicity category IV for acute oral; category III for acute dermal and category IV for acute inhalation. BAS 510 F is category IV for both eye and skin irritation, and it is not a dermal sensitizer. Two formulated end use products are proposed, a wettable granule (WG) termed BAS 510 02 F containing 70% BAS 510 F and a wettable granule (WG) termed BAS 516 02 F containing a 2:1 mixture of BAS 510 F and BAS 500 F. BAS 510 02 F has an acute oral toxicity category of III, acute dermal of category III, acute inhalation of category IV, eye irritation of category III, skin irritation of category IV, and is not a dermal sensitizer. BAS 516 02 F has an acute oral toxicity category of III, acute dermal of category III, acute inhalation of category IV, eye irritation of category III, skin irritation of category IV, and is not a dermal sensitizer.

2. *Genotoxicity*. Ames Test (1 Study; point mutation): Negative; *In Vitro* CHO/HGPRT Locus Mammalian Cell Mutation Assay (1 Study; point mutation): Negative; *In Vitro* V79 Cell Cytogenetic Assay (1 Study; Chromosome Damage): Negative; *In Vivo* Mouse Micronucleus (1 Study; Chromosome Damage): Negative; *In Vitro* Rat Hepatocyte (1 Study; DNA damage and repair): Negative. BAS 510 F has been tested in a total of 5 genetic toxicology assays consisting of *in vitro* and *in vivo* studies. It can be stated that BAS 510 F did not show any mutagenic, clastogenic or other genotoxic activity when tested under the conditions of the studies mentioned above. Therefore, BAS 510 F does not pose a genotoxic hazard to humans.

3. *Reproductive and developmental toxicity*. The reproductive and developmental toxicity of BAS 510 F was investigated in a two-generation rat reproduction study as well as in rat and rabbit teratology studies.

There were no adverse effects on reproduction in the two-generation study at any dose tested. Pup effects were observed, with parental toxicity, at the highest dose tested only. In both parental generations, reduced food consumption and reduced bodyweight gain were observed at 10,000 ppm. Both absolute and relative liver weights were increased 21% in F_1 generation parental females at the high dose of 10,000 ppm only. Hepatocellular centrilobular hypertrophy (usually slight) was observed in many animals of both sexes in both the F_0 and F_1 generations at 1,000 ppm, and in all animals of both sexes at 10,000 ppm. Additionally, some of the parental male rats at 10,000 ppm, in both generations, displayed centrilobular liver cell degeneration. Developmental toxicity was seen at 1,000 ppm in the form of decreased pup weights in the F_2 males, and at 10,000 ppm in the form of decreased pup weight for both males and females of both the F_1 and F_2 generations. The parental systemic and developmental toxicity NOAEL's are both 100 ppm (12 mg/kg/day).

No teratogenic effects were noted in either the rat or rabbit developmental studies. In the rat study, evidence of maternal or developmental toxicity were not observed at any dose (highest dose tested of 1,000 mg/kg/day). Neither a maternal nor developmental LOAEL were found since the highest dose tested was the NOAEL in both studies. In the rabbit teratology study, maternal toxicity observed at the mid dose of 300 milligrams/kilogram of body weight (mg/kg bw) consisted of discolored/reduced feces in one dam and an abortion in one dam. This finding is not necessarily indicative of a definitive test substance related adverse effect. The dam which displayed the fecal alterations and abortion also displayed decreased body weight and body weight gain - compared to the group mean - during gestation. These decreases occurred even prior to compound administration. Food consumption was also dramatically decreased in this dam compared to the other animals in the group. Every day from gestation day (GD) 1–12, this dam had food consumption values which were less than half the mean for the group (compound administration began on GD 7). From GD 13 to 26 (when the animal aborted and was sacrificed) this dam ate essentially nothing (food consumption during this time period was less than or equal to 1.5 grams/day). These decreases in body weight, body weight gain, and food consumption, prior to compound administration, all indicate an animal in poor health and this poor state of health, rather than compound exposure, was likely the reason for the fecal alterations and abortion.

At the high dose of 1,000 mg/kg bw a maternal body weight gain decrease compared to controls of 81% was observed during the treatment period. Reduced food consumption, reduced body weight and abortions in three dams, were also seen at 1,000 mg/kg/day. Evidence of developmental toxicity was not seen at any dose tested.

Developmental neurotoxicity was not observed at any dose in the developmental neurotoxicity study. No maternal toxic effects were noted at any dose in this study. No developmental toxicity was seen at the low dose of 12 mg/kg/day (100 ppm). Reduced body weights and body weight gains were seen at 118 mg/kg/day (1,000 ppm) during post natal day (PND) 1–4. Reduced body weights and body weight gains were seen at 1,183 mg/kg/day (10,000 ppm) as well as decreased absolute pup brain weight at day 11 post partum (p.p.) (both sexes) and decreased brain length (males only) at day 11 p.p. The reduced pup brain weights and decreased brain length go hand-in-hand and both are due to the decreased pup weights seen at this dose. In this respect, it should be noted that pup brain weights relative to body weight at p.p. 11 were not significantly different from controls at this dose. Though no maternal toxicity was seen in this study, other studies using similar doses of BAS 510 resulted in maternal toxicity. A dose of 118 mg/kg/day in female rats of the same strain in the multigeneration study, resulted in an increased incidence of hepatic centrilobular hypertrophy - a parameter which could not have been detected in the developmental neurotoxicity (DNT) study as liver histopathology on parental animals was not performed in the DNT study.

4. *Subchronic toxicity*. The subchronic toxicity of BAS 510 F was investigated in 90–day feeding studies with rats, mice and dogs, and in a 28–day dermal administration study in rats. A 90–day neurotoxicity study in rats was also performed. Generally, mild toxicity was observed. At high dose levels (doses above the LOAELs) in feeding studies, all three species displayed alterations in various clinical chemistry parameters. These clinical chemistry alterations were likely secondary to general toxicity. Statistically significant increased absolute and relative thyroid weights were observed in male rats only at doses at and above the LOAEL. Increased absolute and relative liver weights were observed in both sexes at doses above the LOAEL in rats and dogs. Increased absolute and relative liver weights were seen in both sexes of the mouse at lower doses. However, the increases in liver weights at these lower doses in the mouse were not deemed to be compound related due to the unusually low concurrent control liver weight values. At doses above the LOAELs, liver weight increases were supported by histopathology alterations in the rat and mouse, but not in the dog. Overall, only mild toxicity was observed in oral subchronic testing.

In the 28–day repeat dose dermal study, no systemic effects were noted up to the highest dose tested of 1,000 mg/kg/day.

In a 90–day rat neurotoxicity study, there was no mortality, signs of clinical toxicity, or adverse effects on food consumption or body weight at any dose level in either sex. No signs of neurotoxicity were observed during clinical observations, functional observation batteries, motor activity measurements of neuropathology. Therefore, there were no selective neurotoxic effects. Adverse effects were not seen even at the highest dose level tested. A LOAEL was not found and the NOAEL is the highest tested of 15,000 ppm (1,050 mg/kg/day in males; 1,272 mg/kg/day in females).

5. *Chronic toxicity*. Based on review of the available data, the Reference Dose (RfD) for BAS 510 F will be based on a 24–month feeding study in rats with a threshold no observed effect level (NOEL) of 5 mg/kg/day. Using an uncertainty factor of 100, the RfD is calculated to be 0.05 mg/kg/day. The

following are summaries of chronic toxicity studies submitted to EPA.

The chronic toxicity/oncogenicity studies with BAS 510 F include a 12–month feeding study with Beagle dogs, an 18–month B63CF1 mouse feeding study, a 24–month Wistar rat chronic feeding study and a 24–month Wistar rat oncogenicity study.

At the highest dose tested in dogs, effects observed consisted primarily of increased liver and thyroid weights and some serum clinical chemistry changes. The NOAEL was 800 ppm (21.8 mg/kg bw males; 22.1 mg/kg bw females).

Decreased body weights were seen in males in the mouse chronic study at doses of 400 ppm and above. Decreased female body weight was seen at doses of 2,000 ppm and above. The target organ in this study was the liver. In both the rat chronic and oncogenicity studies, the highest dose tested of 15,000 ppm exceeded a maximum tolerated dose (MTD) and was discontinued after 17 months. Effects observed at the next highest dose of 2,500 ppm primarily centered around the thyroid and liver.

Overall, mild toxicity was observed with chronic exposure to BAS 510 F. No evidence of treatment-induced oncogenicity was observed in the mouse or dog studies. A slight increase in thyroid follicular cell adenomas was seen in both sexes at the high dose when the data from both rat bioassays are combined.

A mode of action (MOA) for the thyroid follicular cell adenomas has been proposed. This MOA is based on the EPA publication ''Assessment of Thyroid Follicular Cell Tumors,'' March 1998, EPA/630/R–97/002. This document describes the criteria which must be met in order for a compound to be considered under the MOA described in that publication. BASF Corporation believes that BAS 510 F has met the cited criteria.

6. *Threshold effects*. Based on a review of the available chronic toxicity data, BASF believes EPA will establish the RfD for BAS 510 F at 0.05 mg/kg/day. This RfD for BAS 510 F is based on the 2–year chronic and 2–year oncogenicity studies in rats with a threshold average NOEL of 5 mg/kg/day for males and females. Using an uncertainty factor of 100, the RfD is calculated to be 0.05 mg/kg/day. Based on the acute toxicity data, BASF believes that 510 F does not pose any acute dietary risks.

BAS 510 F was shown to be non-carcinogenic in mice and dogs. There was a slight increase in thyroid follicular cell ademonas at the high dose in both sexes in the rat. A threshold-based MOA for these tumors based on the EPA publication ''Assessment of Thyroid Follicular Cell Tumors'' (EPA/630/R–97/002, March, 1998), has been proposed. BASF believes the data to support this proposed mode of action are strong, and that the thyroid tumors seen in the rat following BAS 510 exposure have a threshold. In addition, a battery of genotoxicity studies demonstrated that BAS 510 F has no genotoxic or clastogenic potential. Therefore, BASF believes that the threshold approach to regulating BAS 510 F is appropriate. Also, it should be noted that, while the Agency has in the past considered tumors of this type to be potential human carcinogens, the European Union has published a policy which considers these tumor types, when they occur at low incidence rates in the rat, to not be relevant to man. (The publication: European Commission, European Chemicals Bureau, ECBI/49/99 – Add. 1 Rev. 2; ''Draft Summary Record, Commission Group of Specialized Experts in the fields of Carcinogenicity, Mutagenicity and Reprotoxicity'' Meeting at Arona, 1 – 2 September 1999), Therefore, BASF believes that these tumors are not likely relevant to humans and, if these tumors are to be considered relevant to humans, the threshold approach to cancer risk assessment is appropriate.

7. *Animal metabolism*. In the rat, the predominat route of excretion of BAS 510 F is fecal with urinary excretion being minor. The half life of BAS 510 F is less than 24 hours. Saturation of absorption appears to be occurring at the high dose level. BAS 510 F is rapidly and intensively metabolized to a large number of biotransformation products. The hydroxylation of the diphenyl moiety was the quantitatively most important pathway. Second most important was the substitution of the Cl of the 2-chloropyridine part against SH by conjugation with glutathione. No major differences were observed. In hens and goats the residues of concern were determined to be parent, the hydroxylated metabolite M510 F01 (2-chloro-*N*-(4′chloro-5-hydroxy-biphenyl-2-yl)nicotinamide), and the glucuronic acid of the metabolite M510 F02.

8. *Metabolite toxicology*. No additional studies were required for metabolite toxicology.

Endocrine disruption. No specific tests have been conducted with BAS 510 F to determine whether the chemical may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects. However, there were no significant findings in other relevant toxicity studies (i.e., subchronic and chronic toxicity, teratology and multi-generation reproductive studies) which would suggest that BAS 510 F produces endocrine related effects.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. A chronic dietary exposure analysis was conducted for BAS 510 F to include the proposed uses of apples and hops. The dietary exposure included prior tolerances for beet root, root vegetables, tuberous and corm vegetables, bulb vegetables, leafy vegetables, head and stem brassica, leafy brassica greens, legume vegetables, fruiting vegetables, cucurbit vegetables, stonefruit, berries, tree nuts, pistachios, cereal grains, mint, grapes, raisins, strawberries, peanut, peanut meal, peanut oil, cotton seed, soybean seed, canola, flax seed and sunflower seed in addition to the new tolerances for apples and hops. The analysis assumed 100% of the crops were treated, default processing factors (even though much lower experimentally-derived processing factors are available), and used the tolerance value for residues. The one exception to the use of defaults was for the apple processing, where an average calculated processing factor of 0.09 was used for apple juice. For apple juice concentrate, the juice factor of 0.09 was adjusted by the ratio of the default concentrate (3.9) and default juice (1.3) processing factors, which led to an estimated processing factor of 0.27 for apple juice concentrate. Even with these worst-case assumptions, it was determined that the Theoretical Maximum Residue Contribution (TMRC) was only 34.0% of the reference dose for the U.S. population and 77.1% for children 1–6 years (the highest exposed age-related subpopulation).

Based on the toxicology results, an acute dietary risk assessment for BAS 510 F is most likely not required, but if so, only for non-nursing infants <1 year old. For dietary exposure estimation, 100% crop treated and tolerance values for residues were used. The resulting acute exposure prediction for non-nursing infants (the highest exposed age-related subpopulation) resulted in an acceptable 10.6% of the acute reference dose at the 95th percentile. If a more realistic scenario were used assuming percent crop treated and the range of residues, a much lower exposure would be obtained.

ii. *Drinking water*. Estimates of ground and surface water levels were determined using SCIGROW and FIRST models, respectively. The drinking water level of concerns (DWLOCs) for chronic exposure are obtained by subtracting the chronic dietary food. This is outlined in the following table.

PERCENTAGES OF REFERENCE DOSE FOR CHRONIC EXPOSURE TO BAS 510 F

	U.S. Population (% of RfD)	Children 1–6 (% of RfD)
Chronic dietary exposure	34.0	77.1
Remainder of RfD available for water (%) (Drinking Water Level of Concern)	66.0	22.9
SCIGROW ground water estimation[1]	0.015	0.044
FIRST surface water estimation1	0.08	0.24
Total of RfD used by diet and water	34.1	77.4

[1] Used highest values predicted from the model for all agricultural uses; assumes 2L/day and 60 kg for adult; 1L/day and 10 kg for child

Overall, using worst-case parameters the predicted aggregate exposure by all potential routes for both adults and children is less than the chronic reference dose.

2. *Non-dietary exposure*. BAS 510 F is not currently planned for residential uses. Thus, residential exposure is not aggregated into the risk assessment.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' BAS 510 F is a foliar fungicide chemically belonging to the carboxin class of fungicides. BAS 510 F acts in the fungal cell by inhibiting mitochondrial respiration through inhibition of the succinate-ubiquinone oxidase reductase system in Complex II of the mitochondrial electron transport chain. BAS 510 F shares this mode of action with only one other currently registered U.S. pesticide - carboxin.

The EPA is currently developing methodology to perform cumulative risk assessments. At this time, there is no available data to determine whether BAS 510 F has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, BAS 510 F does not appear to produce a toxic metabolite produced by other substances.

E. Safety Determination

1.*U.S. population*. Using the conservative exposure assumptions described above and based on the completeness and the reliability of the toxicity data, BASF has estimated that aggregate exposure to BAS 510 F will utilize 34.1% of the RfD for the U.S. population. For the highest exposed age-related subpopulation (children 1–6 years), the maximum aggregate exposure is predicted to be 77.4% of the reference dose. BASF concludes that there is a reasonable certainty that no harm will result from the aggregate exposure to residues of BAS 510 F, including anticipated dietary and drinking water exposures and non-occupational exposures.

2. *Infants and children*—i. *Developmental toxicity in the Rat*. A developmental study was conducted via oral gavage in rats with dosages of 0, 100, 300 and 1,000 mg/kg bw/day with a maternal and developmental No-Adverse-Effect Level (NOAEL) of 1,000 mg/kg. No evidence of developmental toxicity was observed up to the highest dose tested.

ii. *Developmental toxicity in the rabbit*. A developmental study was conducted via oral gavage in rabbits with dosages of 0, 100, 300 and 1,000 mg/kg bw/day. The NOAEL for maternal toxicity was 100 mg/kg bw/day and was 1,000 mg/kg/day for developmental toxicity. As noted above in section B.3. (Reproductive and developmental toxicity), this NOAEL is based on fecal alterations and an abortion in a single dam at the next highest dose of 300 mg/kg/day. The dam which displayed the fecal alterations and abortion also displayed decreased body weight, body weight gain and food consumption, compared to the group mean, during gestation. These decreases occurred even prior to compound administration. These decreases in body weight, body weight gain, and food consumption, prior to compound administration, all indicate an animal in poor health and this poor state of health, rather than compound exposure, was likely the reason for the fecal alterations and abortion. No teratogenic effects were observed at any dose level.

iii. *Reproductive toxicity*. A two-generation reproduction study in rats was conducted with dosages of 0, 12, 118, and 1,183 mg/kg bw/day. No impairment of reproductive function was noted at any dose. The parental and developmental NOAEL are both 12 mg/kg/day. Mild effects in both the parents and pups were noted at 118 mg/kg/day and consisted of an increased incidence of hepatic centrilobular hypertrophy in parents and, in the pups, slightly decreased body weight and body weight gain (7%) in F_2 generation only, and only in males. At 1,183 mg/kg/day paternal effects included decreased body weights and food consumption, increased liver weights and increased incidence of hepatic centrilobular hypertrophy and degeneration. Pup effects at this dose were an increase in pup mortality in the F_2 only and a decreased body weight in F_1 and F_2.

iv. *Reference dose*. In all reproductive studies, the NOAEL's for developmental effects were either equal to or higher than those for the parents. Therefore, BAS 510 F shows no selective toxicity for the young. In addition, there were no direct neurotoxicity effects noted in either the acute or subchronic neurotoxicity studies.

Based on these results, no additional safety factors to protect children are warranted. Since the reproductive studies NOAEL's are higher than the RfD calculated from the chronic rat study, BASF believes the Reference Dose of 0.05 mg/kg/day is also appropriate to measure safety for infants and children. Therefore, the chronic Population Adjusted Dose (cPAD) is also 0.05 mg/kg bw/day.

F. International Tolerances

A maximum residue level (MRL) has not been established for BAS 510 F in any crop by the Codex Alimentarius Commission.

PP 3F6580

A. Residue Chemistry

1. *Plant metabolism*. Nature of the residue studies (OPPTS Harmonized

Guideline 860.1300) were conducted in grapes, lettuce and beans as representative crops in order to characterize the fate of Boscalid (BAS 510 F) in all crop matrices. In all three crops the BAS 510 F Residues of Concern (ROC) were characterized as parent BAS 510 F. A confined rotational crop study also determined that parent was the residue of concern in the representative crops of radish, lettuce and wheat.

2. *Analytical method*. In plants the parent residue is extracted using an aqueous organic solvent mixture followed by liquid/liquid partitioning and a column clean up. Quantitation is by GC/MS. The extract is treated with enzymes in order to release the conjugated glucuronic acid metabolite. The residues are then isolated by liquid/liquid partition followed by column chromatography. The hydroxylated metabolite is acetylated followed by a column clean-up. The parent and acetylated metabolite are quantitated by GC/ECD.

3. *Magnitude of the residues*. Field trials were carried out in order to determine the magnitude of the residue in soybean and soybean aspirated grain fraction. Field trials were conducted in the United States and Canada in the required regions. Field trials were carried out using the maximum label rate, the maximum number of applications, and the minimum preharvest interval. In addition, a processing study was conducted on the soybean to determine concentration factors. Tier III field rotational crop studies were conducted to support rotational crop tolerances for soybean.

B. Toxicological Profile

1. *Acute toxicity*. Based on available acute toxicity data BAS 510 F and its formulated products do not pose acute toxicity risks. The acute toxicity studies place technical BAS 510 F in toxicity category IV for acute oral; category III for acute dermal and category IV for acute inhalation. BAS 510 F is category IV for both eye and skin irritation, and it is not a dermal sensitizer. Two formulated end use products are proposed, a Water Dispersible Granule (WG) termed BAS 510 02F containing 70% BAS 510 F and a Water Dispersible Granule (WG) termed BAS 516 02F containing a 2:1 mixture of BAS 510 F and BAS 500F. BAS 510 02F has an acute oral toxicity category of III, acute dermal of III, acute inhalation of IV, eye irritation of III, skin irritation of IV, and is not a dermal sensitizer. BAS 516 02F has an acute oral toxicity category of III, acute dermal of III, acute inhalation of IV, eye irritation of III, skin irritation of IV, and is not a dermal sensitizer.

2. *Genotoxicity*. Ames Test (1 Study; point mutation): Negative; *In Vitro* CHO/HGPRT Locus Mammalian Cell Mutation Assay (1 Study; point mutation): Negative; *In Vitro* V79 Cell Cytogenetic Assay (1 Study; Chromosome Damage): Negative; *In Vivo* Mouse Micronucleus (1 Study; Chromosome Damage): Negative; *In Vitro* Rat Hepatocyte (1 Study; DNA damage and repair): Negative. BAS 510 F has been tested in a total of 5 genetic toxicology assays consisting of *in vitro* and *in vivo* studies. It can be stated that BAS 510 F did not show any mutagenic, clastogenic or other genotoxic activity when tested under the conditions of the studies mentioned above. Therefore, BAS 510 F does not pose a genotoxic hazard to humans.

3. *Reproductive and developmental toxicity*. The reproductive and developmental toxicity of BAS 510 F was investigated in a two-generation rat reproduction study as well as in rat and rabbit teratology studies.

There were no adverse effects on reproduction in the two-generation study at any dose tested. Pup effects were observed, with parental toxicity, at the highest dose tested only. In both parental generations, reduced food consumption and reduced bodyweight gain were observed at 10,000 ppm. Both absolute and relative liver weights were increased 21% in F_1 generation parental females at the high dose of 10,000 ppm only. Hepatocellular centrilobular hypertrophy (usually slight) was observed in many animals of both sexes in both the F_0 and F_1 generations at 1,000 ppm, and in all animals of both sexes at 10,000 ppm. Additionally, some of the parental male rats at 10,000 ppm, in both generations, displayed centrilobular liver cell degeneration. Developmental toxicity was seen at 1,000 ppm in the form of decreased pup weights in the F_2 males, and at 10,000 ppm in the form of decreased pup weight for both males and females of both the F_1 and F_2 generations. The parental systemic and developmental toxicity NOAEL's are both 100 ppm (12 mg/kg/day).

No teratogenic effects were noted in either the rat or rabbit developmental studies. In the rat study, evidence of maternal or developmental toxicity was not observed at any dose (highest dose tested of 1,000 mg/kg/day). Neither a maternal nor developmental LOAEL were found since the highest dose tested was the NOAEL in both studies.

In the rabbit teratology study, maternal toxicity observed at the mid dose of 300 mg/kg bw consisted of discolored/reduced feces in one dam and an abortion in one dam. This finding is not necessarily indicative of a definitive test substance related adverse effect. The dam which displayed the fecal alterations and abortion also displayed decreased body weight and body weight gain - compared to the group mean - during gestation. These decreases occurred even prior to compound administration. Food consumption was also dramatically decreased in this dam compared to the other animals in the group. Every day from gestation day 1 to 12, this dam had food consumption values, which were less than half the mean for the group (compound administration began on day GD 7) From gestation day 13 to 26 (when the animal aborted and was sacrificed) this dam ate essentially nothing (food consumption during this time period was less than or equal to 1.5 grams/day). These decreases in body weight, body weight gain, and food consumption, prior to compound administration, all indicate an animal in poor health and this poor state of health, rather than compound exposure, was likely the reason for the fecal alterations and abortion.

At the high dose of 1,000 mg/kg bw a maternal body weight gain decrease compared to controls of 81% was observed during the treatment period. Reduced food consumption, reduced body weight and abortions in three dams, were also seen at 1,000 mg/kg/day. Evidence of developmental toxicity was not seen at any dose tested.

Developmental neurotoxicity was not observed at any dose in the developmental neurotoxicity study. No maternal toxic effects were noted at any dose in this study. No developmental toxicity was seen at the low dose of 12 mg/kg/day (100 ppm). Reduced body weights and body weight gains were seen at 118 mg/kg/day (1,000 ppm) during PND 1–4. Reduced body weights and body weight gains were seen at 1,183 mg/kg/day (10,000 ppm) as well as decreased absolute pup brain weight at day 11 p.p. (both sexes) and decreased brain length (males only) at day 11 p.p. The reduced pup brain weights and decreased brain length go hand-in-hand and both are due to the decreased pup weights seen at this dose. In this respect, it should be noted that pup brain weights relative to body weight at p.p. 11 were not significantly different from controls at this dose.

Though no maternal toxicity was seen in this study, other studies using similar doses of BAS 510 F resulted in maternal toxicity. A dose of 118 mg/kg/day in female rats of the same strain in the multigeneration study, resulted in an increased incidence of hepatic centrilobular hypertrophy — a parameter which could not have been detected in the DNT study as liver histopathology on parental animals was not performed in the DNT study.

4. *Subchronic toxicity*. The subchronic toxicity of BAS 510 F was investigated in 90–day feeding studies with rats, mice and dogs, and in a 28–day dermal administration study in rats. A 90–day neurotoxicity study in rats was also performed. Generally, mild toxicity was observed. At high dose levels (doses above the LOAELs) in feeding studies, all three species displayed alterations in various clinical chemistry parameters. These clinical chemistry alterations were likely secondary to general toxicity. Statistically significant increased absolute and relative thyroid weights were observed in male rats only at doses at and above the LOAEL. Increased absolute and relative liver weights were observed in both sexes at doses above the LOAEL in rats and dogs. Increased absolute and relative liver weights were seen in both sexes of the mouse at lower doses. However, the increases in liver weights at these lower doses in the mouse were not deemed to be compound related due to the unusually low concurrent control liver weight values. At doses above the LOAELs, liver weight increases were supported by histopathology alterations in the rat and mouse, but not in the dog. Overall, only mild toxicity was observed in oral subchronic testing.

In the 28–day repeat dose dermal study, no systemic effects were noted up to the highest dose tested of 1,000 mg/kg/day.

In a 90–day rat neurotoxicity study, there was no mortality, signs of clinical toxicity, or adverse effects on food consumption or body weight at any dose level in either sex. No signs of neurotoxicity were observed during clinical observations, functional observation batteries, or motor activity measurements of neuropathology. Therefore, there were no selective neurotoxic effects. Adverse effects were not seen even at the highest dose level tested. A LOAEL was not found and the NOAEL is the highest tested of 15,000 ppm (1,050 mg/kg/day in males; 1,272 mg/kg/day in females).

5. *Chronic toxicity*. Based on review of the available data, the Reference Dose (RfD) for BAS 510 F will be based on a 24–month feeding study in rats with a threshold No-Effect Level (NOEL) of 5 mg/kg/day. Using an uncertainty factor of 100, the RfD is calculated to be 0.05 mg/kg/day. The following are summaries of chronic toxicity studies submitted to EPA.

The chronic toxicity/oncogenicity studies with BAS 510 F include a 12–month feeding study with Beagle dogs, an 18–month B63CF1 mouse feeding study, a 24–month Wistar rat chronic feeding study and a 24–month Wistar rat oncogenicity study.

At the highest dose tested in dogs, effects observed consisted primarily of increased liver and thyroid weights and some serum clinical chemistry changes. The NOAEL was 800 ppm (21.8 mg/kg bw males; 22.1 mg/kg bw females).

Decreased body weights were seen in males in the mouse chronic study at doses of 400 ppm and above. Decreased female body weight was seen at doses of 2000 ppm and above. The target organ in this study was the liver. In both the rat chronic and oncogenicity studies, the highest dose tested of 15,000 ppm exceeded a maximum tolerated dose (MTD) and was discontinued after 17 months. Effects observed at the next highest dose of 2,500 ppm primarily centered around the thyroid and liver.

Overall, mild toxicity was observed with chronic exposure to BAS 510 F. No evidence of treatment-induced oncogenicity was observed in the mouse or dog studies. A slight increase in thyroid follicular cell adenomas was seen in both sexes at the high dose when the data from both rat bioassays are combined.

A mode of action (MOA) for the thyroid follicular cell adenomas has been proposed. This MOA is based on the EPA publication ''Assessment of Thyroid Follicular Cell Tumors,'' March 1998, EPA/630/R–97/002. This document describes the criteria, which must be met in order for a compound to be considered under the MOA described in that publication. BASF Corporation believes that BAS 510 F has met the cited criteria.

6. *Threshold effects*. Based on a review of the available chronic toxicity data, BASF believes EPA will establish the Reference Dose (RfD) for BAS 510 F at 0.05 mg/kg/day. This RfD for BAS 510 F is based on the 2–year chronic and 2–year oncogenicity studies in rats with a threshold average NOEL of 5 mg/kg/day for males and females. Using an uncertainty factor of 100, the RfD is calculated to be 0.05 mg/kg/day. Based on the acute toxicity data, BASF believes that 510 F does not pose any acute dietary risks.

BAS 510 F was shown to be non-carcinogenic in mice and dogs. There was a slight increase in thyroid follicular cell adenomas at the high dose in both sexes in the rat. A threshold-based mode of action for these tumors based on the EPA publication ''Assessment of Thyroid Follicular Cell Tumors'' (EPA/630/R–97/002, March, 1998) has been proposed. BASF believes the data to support this proposed mode of action are strong, and that the thyroid tumors seen in the rat following BAS 510 exposure have a threshold. In addition, a battery of genotoxicity studies demonstrated that BAS 510 F has no genotoxic or clastogenic potential. Therefore, BASF believes that the threshold approach to regulating BAS 510 F is appropriate. Also, it should be noted that, while the Agency has in the past considered tumors of this type to be potential human carcinogens, the European Union has published a policy which considers these tumor types, when they occur at low incidence rates in the rat, to not be relevant to man. (The publication: ''European Commission, European Chemicals Bureau, ECBI/49/99 — Add. 1 Rev. 2; Draft Summary Record, Commission Group of Specialized Experts in the fields of Carcinogenicity, Mutagenicity and Reprotoxicity, Meeting at Arona, 1 – 2 September 1999).'' Therefore, BASF believes that these tumors are not likely relevant to humans and, if these tumors are to be considered relevant to humans, the threshold approach to cancer risk assessment is appropriate.

7. *Animal metabolism*. In the rat, the predominant route of excretion of BAS 510 F is fecal with urinary excretion being minor. The half-life of BAS 510 F is less than 24 hours. Saturation of absorption appears to be occurring at the high dose level. BAS 510 F is rapidly and intensively metabolized to a large number of biotransformation products. The hydroxylation of the diphenyl moiety was the quantitatively most important pathway. Second most important was the substitution of the Cl of the 2-chloropyridine part against SH by conjugation with glutathione. No major differences were observed with regard to label, sex, and dose level.

In hens and goats the residues of concern were determined to be parent, the hydroxylated metabolite M510 F01 (2-chloro-*N*-(4′chloro-5-hydroxy-biphenyl-2-yl)nicotinamide), and the glucuronic acid of the metabolite M510 F02.

8. *Metabolite toxicology*. No additional studies were required for metabolite toxicology.

9. *Endocrine disruption*. No specific tests have been conducted with BAS 510 F to determine whether the chemical may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects. However, there were no significant findings in other relevant

toxicity studies (i.e., subchronic and chronic toxicity, teratology and multi-generation reproductive studies) which would suggest that BAS 510 F produces endocrine related effects.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. A chronic dietary exposure analysis was conducted for BAS 510 F including crops which are target uses as well as inadvertent residues in rotational crops. The analysis assumed 100% of the crops were treated, default processing factors (even though much lower experimentally-derived processing factors are available), and used the tolerance value for residues. Even with these worst-case assumptions, it was determined that the Theoretical Maximum Residue Contribution (TMRC) was only 30.1% of the reference dose for the U.S. population and 62.5% for children 1–6 years (the highest exposed age-related subpopulation).

Based on the toxicology results, an acute dietary risk assessment for BAS 510 F is most likely not required, but if so only for children 1–6 years. For dietary exposure estimation, 100% crop treated and tolerance values for residues were used. The resulting acute exposure prediction for children 1–6 years (the highest exposed age-related subpopulation) resulted in an acceptable 8.8% of the acute reference dose at the 95th percentile. If a more realistic scenario were used assuming percent crop treated and the range of residues, a much lower exposure would be obtained.

ii. *Drinking water*. Estimates of ground and surface water levels were determined using SCIGROW and FIRST models, respectively. The drinking water level of concerns (DWLOCs) for chronic exposure is obtained by subtracting the chronic dietary food. This is outlined in the following table.

PERCENTAGES OF REFERENCE DOSE FOR CHRONIC EXPOSURE TO BAS 510 F

K	U.S. Population (% of RfD)	Children 1–6 (% of RfD)
Chronic dietary exposure	30.1	62.5
Remainder of RfD available for water (%) (Drinking Water Level of Concern)	69.9	37.5
SCIGROW ground water estimation[1]	0.015%	0.044%
FIRST surface water estimation[1]	0.08%	0.24%
Total of RfD used by diet and water	30.2%	62.8%

[1] Used highest values predicted from the model for all agricultural uses; assumes 2L/day and 60 kg for adult; 1L/day and 10 kg for child

Overall, using worst-case parameters the predicted aggregate exposure by all potential routes for both adults and children is less than the chronic reference dose.

2. *Non-dietary exposure*. BAS 510 F is not currently planned for residential uses. Thus, residential exposure is not aggregated into the risk assessment.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' BAS 510 F is a foliar fungicide chemically belonging to the carboxin class of fungicides. BAS 510 F acts in the fungal cell by inhibiting mitochondrial respiration through inhibition of the succinate-ubiquinone oxidase reductase system in Complex II of the mitochondrial electron transport chain. BAS 510 F shares this mode of action with only one other currently registered U.S. pesticide — carboxin.

The EPA is currently developing methodology to perform cumulative risk assessments. At this time, there is no available data to determine whether BAS 510 F has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, BAS 510 F does not appear to produce a toxic metabolite produced by other substances.

E. Safety Determination.

1. *U.S. population*. Using the conservative exposure assumptions described above and based on the completeness and the reliability of the toxicity data, BASF has estimated that aggregate exposure to BAS 510 F will utilize 30.2% of the RfD for the U.S. population. For the highest exposed age-related subpopulation (children 1–6 years), the maximum aggregate exposure is predicted to be 62.8% of the reference dose. BASF concludes that there is a reasonable certainty that no harm will result from the aggregate exposure to residues of BAS 510 F, including anticipated dietary and drinking water exposures and non-occupational exposures.

2. *Infants and children*—i. *developmental toxicity in the Rat*. A developmental study was conducted via oral gavage in rats with dosages of 0, 100, 300 and 1,000 mg/kg bw/day with a maternal and developmental No-Adverse-Effect Level (NOAEL) of 1,000 mg/kg. No evidence of developmental toxicity was observed up to the highest dose tested.

3. *Developmental toxicity in the rabbit*. A developmental study was conducted via oral gavage in rabbits with dosages of 0, 100, 300 and 1,000 mg/kg bw/day. The NOAEL for maternal toxicity was 100 mg/kg bw/day and was 1,000 mg/kg/day for developmental toxicity. As noted above in section 3.0, this NOAEL is based on fecal alterations and an abortion in a single dam at the next highest dose of 300 mg/kg/day. The dam which displayed the fecal alterations and abortion also displayed decreased body weight, body weight gain and food consumption, compared to the group mean, during gestation. These decreases occurred even prior to compound administration. These decreases in body weight, body weight gain, and food consumption, prior to compound administration, all indicate an animal in poor health and this poor state of health, rather than compound exposure, was likely the reason for the fecal alterations and abortion. No teratogenic effects were observed at any dose level.

i. *Reproductive toxicity*. A two-generation reproduction study in rats was conducted with dosages of 0, 12, 118, and 1,183 mg/kg bw/day. No impairment of reproductive function was noted at any dose. The parental and developmental NOAEL are both 12 mg/kg/day. Mild effects in both the parents and pups were noted at 118 mg/kg/day and consisted of an increased incidence of hepatic centrilobular hypertrophy in parents and, in the pups, slightly decreased body weight and body weight gain (7%) in F_2 generation only, and only in males. At 1,183 mg/kg/day paternal effects included decreased body weights and food consumption, increased liver weights and increased incidence of hepatic centrilobular hypertrophy and degeneration. Pup effects at this dose were an increase in pup mortality in the F_2 only and decreased body weight in F_1 and F_2.

ii. *Reference dose*. In all reproductive studies, the NOAEL's for developmental effects were either equal to or higher than those for the parents. Therefore, BAS 510 F shows no selective toxicity for the young. In addition, there were no direct neurotoxicity effects noted in either the acute or subchronic neurotoxicity studies.

Based on these results, no additional safety factors to protect children are warranted. Since the reproductive studies NOAEL's are higher than the RfD calculated from the chronic rat study, BASF believes the Reference Dose of 0.05 mg/kg/day is also appropriate to measure safety for infants and children. Therefore, the chronic Population Adjusted Dose (cPAD) is also 0.05 mg/kg bw/day.

F. International Tolerances

A maximum residue level (MRL) has not been established for BAS 510 F in any crop by the Codex Alimentarius Commission.

[FR Doc. 03–27955 Filed 11–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7583–8]

Regulatory Innovation Pilot Projects (Project XL)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of the final project agreement modifications to Buncombe County Leachate Recirculation/Gas Recovery (Bioreactor) Project XL pilot.

SUMMARY: EPA is requesting comments on modifications to the Project XL Final Project Agreement (FPA) for Buncombe County. The FPA is a voluntary agreement that was developed collaboratively by Buncombe County, the North Carolina Department of Environment and Natural Resources (NCDENR), and EPA. The original FPA was agreed upon and signed by each participant on September 18, 2001. Since that time, Buncombe County has utilized the expertise of a couple of widely-recognized experts in the bioreactor field—Dr. Morton Barlaz (North Carolina State University), and Dr. Debra Reinhart (University of Central Florida). These technical experts have made a few professional recommendations to Buncombe County regarding the Buncombe County bioreactor landfill project. These recommendations have been documented in a Preliminary Design Report (PDR) submitted to EPA and the State in September 2002. The Preliminary Design Report contains a table that lays out seven specific proposed FPA modifications. For each of the proposed modifications, the table identifies: the FPA agreed-upon original criteria, proposed modification to FPA language, and reason for the modification. The recommendations are based upon the best professional judgement of the technical experts being utilized by Buncombe County. The FPA modifications will help to further clarify the existing FPA. The FPA modifications also identify what parameters the recognized experts perceive to be necessary (*e.g.*, where the original FPA language may have been silent), or unnecessary and not very useful. The proposed FPA modifications contain suggestions for specific parameters that are directly applicable to the decomposition of wastes, thereby steering the State of North Carolina, EPA, and Buncombe County towards more useful and consistent measuring of critical data. EPA has determined that these FPA modifications would not warrant a change to the rule; however, EPA is providing notice to the public and stakeholders regarding these modifications to the FPA for Buncombe County.

The Project XL program, announced in the **Federal Register** on May 23, 1995 (60 FR 27282), gives regulated entities the flexibility to develop alternative strategies that will replace or modify specific regulatory or procedural requirements on the condition that they produce greater environmental benefits. In 1995, EPA had set a goal of implementing fifty XL projects undertaken in full partnership with the States. The Agency had achieved the goal of implementing 50 innovative pilot projects, and as of January, 2003 EPA is no longer accepting proposals for new Project XL pilot projects. The implementation of several of these innovative pilots is on-going. Buncombe County is one of the many innovative pilots that is currently in the implementation phase.

In the Final Project Agreement, Buncombe County proposes to use certain bioreactor techniques (*e.g.*, leachate recirculation) at its municipal solid waste landfill (MSWLF), to accelerate the biodegradation of landfill waste and decrease the time it takes for the waste to stabilize in the landfill. The principal objectives of this bioreactor XL project are to evaluate performance of an alternative landfill liner and to assess waste decomposition when recirculated leachate is added to the landfill. To achieve the objectives of the project, Buncombe County proposes to recirculate leachate in MSWLF cells to be constructed with a liner that differs in certain respects from the liner design specified in the Subtitle D regulations. In order to carry out this project, Buncombe County sought relief from current Resource Conservation and Recovery Act (RCRA) Subtitle D regulations (40 CFR part 258), which set forth design and operating criteria. Buncombe County desires to construct the remainder of its landfill cells with an approved alternative liner while implementing this leachate recirculation/gas recovery project. Buncombe County also sought regulatory flexibility from the prohibition in 40 CFR 258.28, Liquid Restrictions, which precludes the addition of useful bulk or non-containerized liquid amendments. During periods of low leachate generation, Buncombe County wanted to be able to supplement the leachate flow with water from the adjoining French Broad River to maintain moisture levels in the landfill. Some of the superior environmental benefits that Buncombe County expects to achieve with this project include: Improved leachate quality; reduction in the potential for uncontrolled releases of leachate to contaminate the groundwater, or gas to contaminate the air during the post-closure phase (should a containment system failure occur); increased gas yield and capture; rapid waste biodegradation and stabilization; increased lifespan of the landfill resulting in less need for construction of additional landfills; reduced post-closure costs; and faster reclamation of land for future use. The Buncombe County proposal is one of several bioreactor XL project proposals that are currently being implemented through the Project XL program. This

project to allow recirculation of leachate using an alternative landfill liner design will apply only to the Buncombe County Landfill in Asheville, North Carolina and the specific landfill cells at that landfill. Modifications to the terms and conditions pertaining to this XL pilot project are contained in the Final Project Agreement (FPA), on which EPA is requesting comment today. The FPA sets forth the intentions of EPA, Buncombe County, and the State of North Carolina with regard to the implementation of the project and the expected benefits. After review of the comments received during the public comment period and revision of the FPA, as appropriate, the FPA modification will be signed by representatives from the EPA, the State of North Carolina, and Buncombe County.

The legal implementing mechanism for this project is a site-specific rule. The proposed rule was made available for public comment on April 16, 2001 (66 FR 19403). The final rule was promulgated on August 22, 2001 (66 FR 44061). Through the final rule, the design of the bioreactor landfill is enforceable in the same way that current RCRA standards for landfills are enforceable to ensure that management of nonhazardous solid waste is performed in a manner that is protective of human health and the environment. The Final Project Agreement and the site-specific rule do not in any way affect the provisions or applicability of any other existing or future regulations.

DATES: The period for submission of comments ends on December 8, 2003.

ADDRESSEES: All comments on the modification to the Final Project Agreement should be sent to: Sherri Walker, U.S. EPA, Ariel Rios Building, Mail Code 1807, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Comments may also be received via electronic mail sent to: *walker.sherri@epa.gov.*

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the Project Fact Sheet or the Final Project Agreement, contact: Sherri Walker, U.S. Environmental Protection Agency, Mail Code 1807, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The FPA and related documents are also available via the Internet at the following location: *http://www.epa.gov/projectxl/buncombe/index.htm.* In addition, the original FPA and modified FPA are available at the Buncombe County General Services Department, 30 Valley Street, Asheville, NC. Questions to EPA regarding the documents can be directed to Sherri Walker at (202) 566–2186. To be included on the Buncombe County Project XL mailing list about future public meetings, XL progress reports and other mailings from Buncombe County on the XL project, contact Bob Hunter, Director, Buncombe County General Services Department, (828) 250–5466. For information on all other aspects of the XL Program, contact Donna Perla at the following address: Office of Policy and Environmental Innovation, U.S. EPA, Mail Code 1807, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Additional information on Project XL, including documents referenced in this notice, other EPA policy documents related to Project XL, regional XL contacts, application information, and descriptions of existing XL projects and proposals, is available via the Internet at *http://www.epa.gov/projectxl.*

Dated: October 31, 2003.

Donna Perla,

Acting Director, Office of Environmental Policy Innovation.

[FR Doc. 03–27952 Filed 11–5–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:49 a.m. on Tuesday, November 4, 2003, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director James E. Gilleran (Director, Office of Thrift Supervision), seconded by Vice Chairman John M. Reich, concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsection (c)(2) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: November 4, 2003.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 03–28147 Filed 11–4–03; 3:57 pm]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 1, 2003.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. New Century Bancorp, Inc., Dunn, North Carolina; to acquire 100 percent of the voting shares of New Century Bank of Fayetteville, Fayetteville, North Carolina.

Board of Governors of the Federal Reserve System, October 31, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–27915 Filed 11–5–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 20, 2003.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. United Overseas Bank Limited, Singapore; to engage *de novo* through UOB Kay Hian Inc., New York, New York, in private placement and securities brokerage services, pursuant to section 225.28(b)(7)(i) and (iii) of Regulation Y.

Board of Governors of the Federal Reserve System, October 31, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc.03–27916 Filed 11–5–03; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Office of Governmentwide Policy; Cancellation of an Optional Form by the Department of State

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Notice.

SUMMARY: The Department of State is cancelling the following Optional Form:

OF 253, Diplomatic Pouch Certification and Receipt.

DATES: Effective November 6, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Cunningham, Department of State, 202–312–9605.

Dated: October 27, 2003.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer, General Services Administration.

[FR Doc. 03–27887 Filed 11–5–03; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Diseases Transmitted Through the Food Supply

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of annual update of list of infectious and communicable diseases that are transmitted through handling the food supply and the methods by which such diseases are transmitted.

SUMMARY: Section 103(d) of the Americans with Disabilities Act of 1990, Pub. L. 101–336, requires the Secretary to publish a list of infectious and communicable diseases that are transmitted through handling the food supply and to review and update the list annually. The Centers for Disease Control and Prevention (CDC) published a final list on August 16, 1991 (56 FR 40897) and updates on September 8, 1992 (57 FR 40917); January 13, 1994 (59 FR 1949); August 15, 1996 (61 FR 42426); September 22, 1997 (62 FR 49518–9); September 15, 1998 (63 FR 49359), September 21, 1999 (64 FR 51127); September 27, 2000 (65 FR 58088), September 10, 2001 (66 FR 47030), and September 27, 2002 (67 FR 61109). The final list has been reviewed in light of new information and has been revised as set forth below.

EFFECTIVE DATE: November 6, 2003.

FOR FURTHER INFORMATION CONTACT: Dr. Art Liang, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop G–24, Atlanta, Georgia 30333, telephone (404) 639–2213

SUPPLEMENTARY INFORMATION: Section 103(d) of the Americans with Disabilities Act of 1990, 42 U.S.C. 12113(d), requires the Secretary of Health and Human Services to:

1. Review all infectious and communicable diseases which may be transmitted through handling the food supply;
2. Publish a list of infectious and communicable diseases which are transmitted through handling the food supply;
3. Publish the methods by which such diseases are transmitted; and
4. Widely disseminate such information regarding the list of diseases and their modes of transmissibility to the general public.

Additionally, the list is to be updated annually.

Since the last publication of the list on September 27, 2002 (67 FR 61109), new information has been reviewed and added. Norwalk and Norwalk-like viruses, previously listed in Part l, are now identified as Noroviruses so as to conform with current scientific nomenclature.

I. Pathogens Often Transmitted by Food Contaminated by Infected Persons Who Handle Food, and Modes of Transmission of Such Pathogens

The contamination of raw ingredients from infected food-producing animals and cross-contamination during processing are more prevalent causes of foodborne disease than is contamination of foods by persons with infectious or contagious diseases. However, some pathogens are frequently transmitted by food contaminated by infected persons. The presence of any one of the following signs or symptoms in persons who handle food may indicate infection by a pathogen that could be transmitted to others through handling the food supply: Diarrhea, vomiting, open skin sores, boils, fever, dark urine, or jaundice. The failure of food-handlers to wash hands (in situations such as after using the toilet, handling raw meat, cleaning spills, or carrying garbage, for example), wear clean gloves, or use clean utensils is responsible for the foodborne transmission of these pathogens. Non-foodborne routes of transmission, such as from one person to another, are also major contributors in the spread of these pathogens. Pathogens that can cause diseases after an infected person handles food are the following:

Noroviruses
Hepatitis A virus
Salmonella Typhi*
Shigella species
Staphylococcus aureus
Streptococcus pyogenes

II. Pathogens Occasionally Transmitted by Food Contaminated by Infected Persons Who Handle Food, But Usually Transmitted by Contamination at the Source or in Food Processing or by Non-foodborne Routes

Other pathogens are occasionally transmitted by infected persons who handle food, but usually cause disease when food is intrinsically contaminated or cross-contaminated during processing or preparation. Bacterial pathogens in this category often require a period of temperature abuse to permit their multiplication to an infectious dose before they will cause disease in consumers. Preventing food contact by persons who have an acute diarrheal illness will decrease the risk of transmitting the following pathogens:

Campylobacter jejuni
Cryptosporidium parvum
Entamoeba histolytica
Enterohemorrhagic Escherichia coli
Enterotoxigenic Escherichia coli
Giardia lamblia
Nontyphoidal Salmonella
Taenia solium
Vibrio cholerae 01
Yersinia enterocolitica

References

1. World Health Organization. Health surveillance and management procedures for food-handling personnel: report of a WHO consultation. World Health Organization technical report series; 785. Geneva: World Health Organization, 1989.

2. Frank JF, Barnhart HM. Food and dairy sanitation. In: Last JM, ed. Maxcy-Rosenau public health and preventive medicine, 12th edition. New York Appleton-Century-Crofts, 1986: 765–806.

3. Bennett JV, Holmberg SD, Rogers MF, Solomon SL. Infectious and parasitic diseases. In: Amler RW, Dull HB, eds. Closing the gap: the burden of unnecessary illness. New York: Oxford University Press, 1987: 102–114.

4. Centers for Disease Control and Prevention. Locally acquired neurocysticercosis—North Carolina, Massachusetts, and South Carolina, 1989–1991. MMWR 1992; 41: 1–4.

5. Centers for Disease Control and Prevention. Foodborne Outbreak of Cryptosporidiosis-Spokane, Washington, 1997. MMWR 1998; 47:27.

* 1. Kauffmann-White scheme for designation of Salmonella serotypes

Dated: October 31, 2003.

Joseph R. Carter,

Deputy Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–27923 Filed 11–5–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0017]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Impact of Risk Management Programs on the Practice of Pharmacy

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Impact of Risk Management Programs on the Practice of Pharmacy ''has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 11, 2003, (68 FR 41384), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0516. The approval expires on October 31, 2006. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: October 29, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–27881 Filed 11–5–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 2002P–0506 and 2003P–0021]

Determination That Hyaluronidase For Injection Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its determination that hyaluronidase for injection (Wydase) was not withdrawn from sale for reasons of safety or effectiveness. While this determination will allow FDA to approve abbreviated new drug applications (ANDAs) for hyaluronidase for injection, in considering whether to file an ANDA for this product, future applicants are advised that such an application raises complex issues regarding the characterization of the active ingredient.

FOR FURTHER INFORMATION CONTACT: Carol E. Drew, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162). Regulations also provide that the agency must make a determination as to whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved (§ 314.161(a)(1) (21 CFR 314.161(a)(1))). FDA may not approve an ANDA that does not refer to a listed drug.

Lachman Consultant Services, Inc., submitted a citizen petition dated December 5, 2002 (Docket No. 02P–0506/CP1), under 21 CFR 10.30 to FDA requesting that the agency determine whether hyaluronidase for injection was withdrawn from sale for reasons of safety or effectiveness. On January 8, 2003, Amphastar Pharmaceuticals, Inc., submitted a citizen petition (Docket No. 03P–0021/CP1) requesting the same action. On July 15, 2003, Merchant-Taylor International, Inc. (MTI), on behalf of Hyalozyme Therapeutics, Inc., filed a comment to both citizen petitions requesting that FDA determine that hyaluronidase for injection was withdrawn from sale for reasons of safety and effectiveness. Hyaluronidase for injection is the subject of approved NDA 6–343, formerly held by Wyeth Pharmaceuticals, Inc. (Wyeth), now held by Baxter Healthcare Corp. Hyaluronidase for injection is a protein enzyme and is a preparation of highly purified bovine testicular hyaluronidase used to increase the absorption and dispersion of other injected drugs. Wyeth ceased manufacture of hyaluronidase for injection in December 2001, and it was moved from the prescription drug product list to the ''Discontinued Drug Product List'' section of the Orange Book.

FDA has reviewed its records and the comment filed by MTI and, under § 314.161, has determined that hyaluronidase for injection was not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list hyaluronidase for injection in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to hyaluronidase for injection may be approved by the agency; however, FDA recommends that in considering whether to file an ANDA for this drug product, future applicants be advised that such an application is likely to raise complex issues regarding the characterization of the active ingredient under section 505(j) of the act (see docket on conjugated estrogen drug products, Docket No. 98P–0311).

Dated: October 24, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–27880 Filed 11–5–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

List of Accredited Persons; Inspection by Accredited Persons Program Under the Medical Device User Fee and Modernization Act of 2002

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the list of persons who are accredited under certain circumstances to inspect eligible manufacturers of class II and class III devices in lieu of an FDA inspection. This list provides the identity of each accredited person and the particular activities for which the person is accredited. FDA is taking this action to implement provisions of the Medical Device User Fee and Modernization Act of 2002 (MDUFMA).

ADDRESSES: This list is available on the Internet at *http://www.fda.gov/cdrh/ap-inspection/.* Submit a written request for copies of the List of Accredited Persons to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the list of accredited persons.

FOR FURTHER INFORMATION CONTACT: John F. Stigi, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–6597, ext. 124.

SUPPLEMENTARY INFORMATION:

I. Background

MDUFMA (Public Law 107–250) was signed into law on October 26, 2002. Section 201 of MDUFMA adds a paragraph ''g'' to section 704 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 374), directing FDA to accredit third parties (accredited persons or APs) to conduct inspections of eligible manufacturers of class II or class III devices. Participation in the program is voluntary. Manufacturers may continue to have FDA perform inspections or, if eligible, they may utilize an accredited person. The new law requires FDA, within 180 days from the date MDUFMA was signed into law, to publish in the **Federal Register**, criteria to accredit or deny accreditation to persons who request to perform these inspections (section 704(g)(2) of the act). FDA published the criteria it used to accredit persons for the purpose of conducting inspections of eligible manufacturers of class II and class III devices in the **Federal Register** of April 28, 2003 (68 FR 22400).

The new law also directed FDA to accredit up to 15 third parties to conduct inspections by no later than 1 year after MDUFMA was enacted and to publish on the FDA Internet site a list of persons who are accredited (21 U.S.C. 374(g) (4)). Under the new provision, FDA must update this list to ensure that the identity of each accredited person, and the particular activities for which the person is accredited, is known to the public. Under this new provision, FDA must also update the list no later than 1 month after the accreditation of a person, or the suspension or withdrawal of accreditation, or the modification of the particular activities for which the person is accredited.

FDA is currently developing guidance to help establishments determine whether they are qualified to participate in the third party inspection program. Because all accredited persons will have to complete training before conducting independent inspections under the new program, these APs will not be available to companies for several months. FDA plans to make the guidance available before the APs have completed the training. In the meantime, any company that is interested in participating in the third party inspection program may contact the contact person (see **FOR FURTHER INFORMATION CONTACT**) to get more information about eligibility.

II. Electronic Access

Persons interested in obtaining a copy of the list of accredited persons may also do so by using the Internet. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. The list of accredited persons is available at *http://www.fda.gov/cdrh/ap-inspection/*.

To receive the list of accredited persons by fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1500) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Dated: October 29, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–27879 Filed 11–5–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 2003M–0287, 2003M–0271, 2003M–0272, 2003M–0262, 2003M–0175, 2003M–0240, 2003M–0189, 2003M–0241, 2003M–0332, 2003M–0337, 2003M–0174, 2003M–0173, 2003M–0190, 2003M–0343, 2003M–0242, 2003M–0333, 2003M–0339, 2003M–0320, 2003M–0352, 2003M-0157]

Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMAs) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and the agency's Division of Dockets Management.

ADDRESSES: Submit written requests for copies of summaries of safety and effectiveness to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in table 1 of this document when submitting a written request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries of safety and effectiveness.

FOR FURTHER INFORMATION CONTACT: Thinh Nguyen, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** January 30, 1998 (63 FR 4571), FDA revised 21 CFR 814.44(d) and 814.45(d) to discontinue individual publication of PMA approvals and denials in the **Federal Register**. Instead, the agency now posts this information to FDA's home page at *http://www.fda.gov* on the Internet. FDA believes that this procedure expedites public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The regulations provide that FDA publish a quarterly list of available safety and effectiveness summaries of PMA approvals and denials that were announced during that quarter. The following is a list of approved PMAs for which summaries of safety and effectiveness were placed on the Internet from April 1, 2003, through June 30, 2003. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1.—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE APRIL 1, 2003, THROUGH JUNE 30, 2003

PMA No./Docket No.	Applicant	Trade Name	Approval Date
P010052/2003M–0287	Diagnostic Products Corp.	Immulite/Immulite 2000 Anti-HBS	July 22, 2002
P010051/2003M–0271	Diagnostic Products Corp.	Immulite/Immulite 2000 Anti-HBC	July 24, 2002
P010053/2003M–0272	Diagnostic Products Corp.	Immulite/Immulite 2000 Anti-HBC IGM	July 26, 2002
P010050/2003M–0262	Diagnostic Products Corp.	Immulite/Immulite 2000 HBSAF and Immulite HBSAF Confirmatory Kit	July 26, 2002
P020014/2003M–0175	Conceptus, Inc.	Essure System	November 4, 2002
P990069/2003M–0240	EpMed Systems, Inc.	Alert System (Alert Catheter, Alert Interface Cable, and Alert Companion With Software Version 1.08)	November 27, 2002
P010055/2003M–0189	Prostalund Operations AB	Prostalund Coretherm System Microwave Thermotherapy for BPH	December 23, 2002
P020028/2003M–0241	Philips Medical System	Series 50 XMO (Model M1350C) Fetal/Maternal Monitor System With Integrated Fetal Oxygen Saturation Monitoring	January 3, 2003

TABLE 1.—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE APRIL 1, 2003, THROUGH JUNE 30, 2003—Continued

PMA No./Docket No.	Applicant	Trade Name	Approval Date
P990027(S004)/2003M–0174	Bausch & Lomb Surgical, Inc.	Technolas 217A Excimer Laser System	February 25, 2003
P990086(S003)/2003M–0173	Health Tronics Surgical Services, Inc.	Healthtronics Ossatron	March 14, 2003
P980035(S013)/2003M–0190	Medtronic, Inc.	Medtronic AT500 DDDRP Pacing System (Model A1501) and Model 9968 Software	March 27, 2003
H020007/2003M–0157	Medtronic Neurological	Medtronic Activa Dystonia Therapy	April 15, 2003

II. Electronic Access

Persons with access to the Internet may obtain the documents at *http://www.fda.gov/cdrh/pmapage.html*.

Dated: October 20, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–27882 Filed 11–5–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (''the Program''), as required by section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact the Clerk, United States Court of Federal Claims, 717 Madison Place, NW., Washington, DC 20005, (202) 219–9657. For information on HRSA's role in the Program, contact the Director, National VaccineInjury Compensation Program, 5600 Fishers Lane, Room 16C–17, Rockville, MD 20857; (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.,* provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at section 2114 of the PHS Act or as set forth at 42 CFR 100.3, as applicable. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by HRSA on April 1, 2003, through June 30, 2003.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

(a) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Table but which was caused by'' one of the vaccines referred to in the Table, or

(b) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading ''For Further Information Contact''), with a copy to HRSA addressed to Director, Division of Vaccine Injury Compensation Program, Office of Special Programs, 5600 Fishers Lane, Room 16C–17, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. Mary Bell and John Intrater on behalf of Dillon Intrater, Lake Success, New York, Court of Federal Claims Number 03–0668V
2. Claudette and James Bardwil, on behalf of Brianna Bardwil, Lake Success, New York, Court of Federal Claims Number 03–0669V
3. Patricia Munoz on behalf of Ronald Sosa, Boston, Massachusetts, Court of Federal Claims Number 03–0687V
4. Patricia Munoz on behalf of Arturo Sosa, Boston, Massachusetts, Court of Federal Claims Number 03–0688V
5. Michelle Tussey on behalf of Austin Tussey, Boston, Massachusetts, Court of Federal Claims Number 03–0689V
6. Brian Halladay on behalf of Mason Halladay, Boston, Massachusetts, Court of Federal Claims Number 03–0690V
7. Lynn Howard on behalf of Garrett Howard, Boston, Massachusetts, Court of Federal Claims Number 03–0691V
8. Van Arrington on behalf of Sophia Arrington, Boston, Massachusetts, Court of Federal Claims Number 03–0692V
9. Dalene Hart on behalf of Kaylie Hart, Boston, Massachusetts, Court of Federal Claims Number 03–0693V
10. Lynette Klingman on behalf of Chloe Klingman, Boston, Massachusetts, Court of Federal Claims Number 03–0694V
11. Chiquita Clark on behalf of Azjanae Fields, Boston, Massachusetts, Court of Federal Claims Number 03–0695V
12. Theresa Dimicco on behalf of Michael Dimicco, Boston, Massachusetts, Court of Federal Claims Number 03–0699V
13. Scott Moran on behalf of Brendan Moran, Boston, Massachusetts, Court of Federal Claims Number 03–0700V
14. Jody Wolf on behalf of Patrick Wolf, Miami, Florida, Court of Federal Claims Number 03–0701V
15. Amber and Raul Rodriguez on behalf of Alexander Kiely Rodriguez, Dallas, Texas, Court of Federal Claims Number 03–0702V
16. Tammy and George Eliseo on behalf of Nicholas Eliseo, Temecula, California, Court of Federal Claims Number 03–0703V
17. Linda Bertch on behalf of Andrew C. Bertch, Temecula, California, Court of Federal Claims Number 03–0704V
18. Laura and Bart Schley on behalf of Jack Schley, Temecula, California, Court of Federal Claims Number 03–0705V
19. Virginia and Michael Downs on behalf of Jessie M. Downs, Jacksonville, Florida, Court of Federal Claims Number 03–0707V
20. Sarah and Gary Levine on behalf of Trisha Levine, Vienna, Virginia, Court of Federal Claims Number 03–0710V
21. Mary Jane and Gerard Primamore on behalf of Joseph Primamore, Vienna, Virginia, Court of Federal Claims Number 03–0711V
22. Gabriella Pierson on behalf of Aaron E. Pierson, Jr., Phoenix, Arizona, Court of Federal Claims Number 03–0712V
23. Beverly Walker on behalf of Marcus Lee, Brunswick, Georgia, Court of Federal Claims Number 03–0715V
24. Jacqueline Chin on behalf of Michael Chin, Boston, Massachusetts, Court of Federal Claims Number 03–0716V
25. Khara Vance on behalf of James Vance, Vienna, Virginia, Court of Federal Claims Number 03–0717V
26. Michelle Bodine on behalf of Sonora Poulton, Vienna, Virginia, Court of Federal Claims Number 03–0718V
27. Melinda Anderson on behalf of Zacary Anderson, Vienna, Virginia, Court of Federal Claims Number 03–0719V
28. Beverly Pina on behalf of Deryl Pina, Lake Success, New York, Court of Federal Claims Number 03–0720V
29. Veronica and Joseph Greenaway on behalf of Samantha Greenaway, Lake Success, New York, Court of Federal Claims Number 03–0721V
30. Candance A. Passino on behalf of Justine Carl Lasalle, New York, New York, Court of Federal Claims Number 03–0723V
31. Tonya and Jonathon Mitchell on behalf of Quinten Tyler Mitchell, Houston, Texas, Court of Federal Claims Number 03–0729V
32. Martina Schlacter and Hector Reyes on behalf of Nicholas Reyes, Houston, Texas, Court of Federal Claims Number 03–0730V
33. Joe-Ann and Ronald Marler on behalf of Ronnie Marler, Houston, Texas, Court of Federal Claims Number 03–0731V
34. Carol and Howard Cushnie on behalf of Ashley Cushnie, Houston, Texas, Court of Federal Claims Number 03–0732V
35. Holly and J. L. Masclans on behalf of Claudia Masclans, Houston, Texas, Court of Federal Claims Number 03–0733V
36. Holly and J. L. Masclans on behalf of Benjamin Masclans, Houston, Texas, Court of Federal Claims Number 03–0734V
37. Susan and Raul Solanet on behalf of Hailey Solanet, Houston, Texas, Court of Federal Claims Number 03–0735V
38. Paula and Dennis Houghton on behalf of Matthew Houghton, Houston, Texas, Court of Federal Claims Number 03–0736V
39. Tamara and Evan Fusco on behalf of Brendan Fusco, Houston, Texas, Court of Federal Claims Number 03–0737V
40. Keey and James Gillard on behalf of Gerrett R. Gillard, Houston, Texas, Court of Federal Claims Number 03–0738V
41. Jolene Hallam on behalf of Jensen Hallam, Houston, Texas, Court of Federal Claims Number 03–0739V
42. Harriet Gibbons and Charles Hoover on behalf of Lenny Hoover, Houston, Texas, Court of Federal Claims Number 03–0740V
43. Janet and Burt Laws on behalf of Austin Laws, Houston, Texas, Court of Federal Claims Number 03–0741V
44. Stephanie and Kit Cessna on behalf of Hunter T. Cessna, Houston, Texas, Court of Federal Claims Number 03–0742V
45. Tammy and Douglas Shortridge on behalf of Clint Shortridge, Houston, Texas, Court of Federal Claims Number 03–0743V
46. Joanne Pike on behalf of Hunter Pike, Houston, Texas, Court of Federal Claims Number 03–0744V
47. Christina and Dominick Ciardiello on behalf of Christian Ciardiello, Houston, Texas, Court of Federal Claims Number 03–0745V
48. Lisa and Alan Mayberry on behalf of Reed Alan Mayberry, Houston, Texas, Court of Federal Claims Number 03–0746V
49. Myrna and David McLane on behalf of Kathryn McLane, Houston, Texas, Court of Federal Claims Number 03–0747V
50. Teresa Hodge on behalf of Bobby D. Hodge, II, Houston, Texas, Court of Federal Claims Number 03–0748V
51. Julie and Philip Holcomb on behalf of Philip A. Holcomb, Houston, Texas, Court of Federal Claims Number 03–0749V
52. Crystal and Michael Williams on behalf of Colin Williams, Houston, Texas, Court of Federal Claims Number 03–0750V
53. Theresa and Robert Winter on behalf of Alexis Winter, Houston, Texas, Court of Federal Claims Number 03–0751V
54. Susan Finley on behalf of Ryan Finley, Houston, Texas, Court of Federal Claims Number 03–0752V
55. Cheryl and Kevin Dass on behalf of Kyle Dass, Houston, Texas, Court of Federal Claims Number 03–0753V
56. Cheryl and Kevin Dass on behalf of Dillon Dass, Houston, Texas, Court of Federal Claims Number 03–0754V
57. Carla and John Pham on behalf of Jordan Pham, Houston, Texas, Court of Federal Claims Number 03–0755V
58. Katharine Sweet and Paul Steffen on behalf of Luke Anton Steffen, Houston, Texas, Court of Federal Claims Number 03–0756V
59. Rhonda and Billy Ray King, Jr. on behalf of Billy Ray King III, New Orleans, Louisiana, Court of Federal Claims Number 03–0757V
60. Elizabeth and Alfred Fargione on behalf of Ryan A. Fargione, Selkirk, New York, Court of Federal Claims Number 03–0758V
61. Jennifer and Scott Smith on behalf of Cameron S. Smith, Melbourne, Florida, Court of Federal Claims Number 03–0759V
62. Tanya and Ronald Schneider on behalf of Savannah Schneider, Deceased, Beaumont, Texas, Court of Federal Claims Number 03–0760V
63. Chris Craig on behalf of Spencer Craig, Houston, Texas, Court of Federal Claims Number 03–0762V
64. Samantha Uwainat on behalf of Mohammad Uwainat, Houston, Texas, Court of Federal Claims Number 03–0763V
65. Samantha Uwainat on behalf of Hasan Uwainat, Houston, Texas, Court of Federal Claims Number 03–0764V
66. Anna Press on behalf of Michael Press, Lake Success, New York, Court of Federal Claims Number 03–0765V
67. Lara and Nate Kitts on behalf of Taylor M. Kitts, Grand Rapids, Michigan, Court of Federal Claims Number 03–0769V
68. Andrea and Jim Cline on behalf of Samantha Marie Cline, Tampa, Florida, Court of Federal Claims Number 03–0770V
69. Lauren and Greg Sills on behalf of Daniel Sills, Los Angeles, California, Court of Federal Claims Number 03–0771V
70. Sharon Mondry on behalf of Zev Mondry, Great Neck, New York, Court of Federal Claims Number 03–0772V
71. Daphne and Sam Russell, Jr. on behalf of Sam Russell, III, Baton Rouge, Louisiana, Court of Federal Claims Number 03–0773V
72. Carol and Rodney Portier on behalf of Alayna Claire Portier, Baton Rouge, Louisiana, Court of Federal Claims Number 03–0774V

73. Angel and Dale Guillot on behalf of Jacob Guillot, Baton Rouge, Louisiana, Court of Federal Claims Number 03–0775V
74. Diane and William Green on behalf of William Arthur Green, Baton Rouge, Louisiana, Court of Federal Claims Number 03–0776V
75. Janice and James Square on behalf of Joseph Alexander Square, Baton Rouge, Louisiana, Court of Federal Claims Number 03–0777V
76. Joleen and Frank Smoorenburg on behalf of Nicole F. Smoorenburg, Baton Rouge, Louisiana, Court of Federal Claims Number 03–0778V
77. Tammy and Rory Coan on behalf of Harley Free Coan, Dadeville, Alabama, Court of Federal Claims Number 03–0779V
78. Rhonda and J. Bryant Moss on behalf of Jonathan Ryan Moss, Athens, Alabama, Court of Federal Claims Number 03–0780V
79. Debra and Donald Barnard, Jr. on behalf of Donald Alan Barnard, III, Dallas, Texas, Court of Federal Claims Number 03–0781V
80. Elizabeth Chatagnier on behalf of Michael Ragan, Boston, Massachusetts, Court of Federal Claims Number 03–0782V
81. Karen Fountaine on behalf of James Fountaine, Boston, Massachusetts, Court of Federal Claims Number 03–0783V
82. Gwendolyn and George Staab on behalf of Elijah Henry Staab, Peoria, Illinois, Court of Federal Claims Number 03–0784V
83. Jennifer and Ben Maglish on behalf of Brendan Maglish, Valparaiso, Indiana, Court of Federal Claims Number 03–0787V
84. Laura and Herbert Rose on behalf of Jason Michael Rose, Richmond, Virginia, Court of Federal Claims Number 03–0788V
85. Thomas K. Russo, Winchester, Virginia, Court of Federal Claims Number 03–0790V
86. Sara and Michael Difucci on behalf of Amanda Difucci, Bala Cynwyd, Pennsylvania, Court of Federal Claims Number 03–0791V
87. Rosenila and Russell Hlavac on behalf of Hannah Hlavac, Jacksonville, Florida, Court of Federal Claims Number 03–0792V
88. Susan and Joel Kabala on behalf of Camille Kabala, Omaha, Nebraska, Court of Federal Claims Number 03–0797V
89. Ernest Fischer, Washington, District of Columbia, Court of Federal Claims Number 03–0798V
90. Janet and Thomas Baker on behalf of Debra Jean Baker, Pittsburgh, Pennsylvania, Court of Federal Claims Number 03–0799V
91. Kim and Cory Tenbrook on behalf of Tyler Tenbrook, Decatur, Texas, Court of Federal Claims Number 03–0803V
92. Regina and Steve Davis on behalf of Tyler Davis, Decatur, Texas, Court of Federal Claims Number 03–0804V
93. Srena Petitt on behalf of Brennan Petitt, Miami, Florida, Court of Federal Claims Number 03–0806V
94. Kathy and Phil Boriskie on behalf of Matthew Boriskie, Miami, Florida, Court of Federal Claims Number 03–0807V
95. Sharon Jackson on behalf of Isaiah Jackson, Miami, Florida, Court of Federal Claims Number 03–0808V
96. Laura C. O'Brien on behalf of Tyler O'Brien Miami, Florida, Court of Federal Claims Number 03–0809V
97. Wendy Harnisher on behalf of Frank Harnisher, Miami, Florida, Court of Federal Claims Number 03–0810V
98. Cara and Todd James on behalf of Donte Ferencz, Miami, Florida, Court of Federal Claims Number 03–0811V
99. Tamara and Dennis Redman on behalf of Nicholas Redman, Miami, Florida, Court of Federal Claims Number 03–0812V
100. Rebecca and William Grove on behalf of Noah Grove, Miami, Florida, Court of Federal Claims Number 03–0813V
101. Luvenia L. Robertson on behalf of Mark J. Blakes-Robertson, Miami, Florida, Court of Federal Claims Number 03–0814V
102. Hailey E. Smith on behalf of Kenny Leon Dwyer, Jr., Miami, Florida, Court of Federal Claims Number 03–0815V
103. Sharnia Holyfield on behalf of Kahyll Holyfield, Miami, Florida, Court of Federal Claims Number 03–0816V
104. Cynthia and Ronald Hartman on behalf of Trent Hartman, Jacksonville, Florida, Court of Federal Claims Number 03–0817V
105. Leyda and John Cooksey on behalf of Kate Cooksey, Jacksonville, Florida, Court of Federal Claims Number 03–0818V
106. Janel and Kevin Lamb on behalf of Henry Lamb, Jacksonville, Florida, Court of Federal Claims Number 03–0819V
107. Robin and Roderick Pearson on behalf of Avery Pearson, Jacksonville, Florida, Court of Federal Claims Number 03–0820V
108. Robin and Roderick Pearson on behalf of Marshall Pearson, Jacksonville, Florida, Court of Federal Claims Number 03–0821V
109. Jill Miranda on behalf of Isaac Luis Miranda, Great Neck, New York, Court of Federal Claims Number 03–0822V
110. Margaret and Andrew Fahey on behalf of Zachary Thomas Fahey, Tampa, Florida, Court of Federal Claims Number 03–0824V
111. Margaret and Andrew Fahey on behalf of Joshua Patrick Fahey, Tampa, Florida, Court of Federal Claims Number 03–0825V
112. Tianna Scott on behalf of Marcus Scott, Boston, Massachusetts, Court of Federal Claims Number 03–0826V
113. Barbara Fritz on behalf of Logan Fritz, Boston, Massachusetts, Court of Federal Claims Number 03–0827V
114. Karen Foster on behalf of David Foster, Boston, Massachusetts, Court of Federal Claims Number 03–0828V
115. Kimberly Towa on behalf of Felix Towa, Jr., Boston, Massachusetts, Court of Federal Claims Number 03–0829V
116. Oliver Thaxter Harvey on behalf of Marcus Oliver Harvey, Miami, Florida, Court of Federal Claims Number 03–0830V
117. Angela Sexton on behalf of Jacob Sexton, Miami, Florida, Court of Federal Claims Number 03–0831V
118. Rosemary Madison on behalf of Nizeal Madison, Miami, Florida, Court of Federal Claims Number 03–0832V
119. Kerri L. Meyer on behalf of Samuel D. Meyer, Jr., Miami, Florida, Court of Federal Claims Number 03–0833V
120. Latonya Hargrave on behalf of Aaron Hargrave, Miami, Florida, Court of Federal Claims Number 03–0834V
121. Sally and John Marino on behalf of Benjamin J. Marino, New York, New York, Court of Federal Claims Number 03–0835V
122. Diane Puzio, Tucson, Arizona, Court of Federal Claims Number 03–0836V
123. Brenda Morehead on behalf of Chance Morehead, Cockeysville, Maryland, Court of Federal Claims Number 03–0837V
124. Eileen and Mark Kassner on behalf of Mitchell D. Kassner, Niskayuna, New York, Court of Federal Claims Number 03–0838V
125. Kimberly Bolt on behalf of Gerlad R. Reader, Springfield, Illinois, Court of Federal Claims Number 03–0840V
126. Gregory Seibt on behalf of Michael Seibt, Boston, Massachusetts, Court of Federal Claims Number 03–0841V
127. Claudia and Thomas Quintana on behalf of Cody Quintana, Greenfield Center, New York, Court of Federal Claims Number 03–0843V
128. Kimberly Wente on behalf of Adam Wente, Boston, Massachusetts, Court of Federal Claims Number 03–0844V
129. Philomena Roche on behalf of John Roche, Boston, Massachusetts, Court of Federal Claims Number 03–0845V
130. John Betz on behalf of Daniel Betz, Boston, Massachusetts, Court of Federal Claims Number 03–0846V
131. Anna Giuffrida on behalf of Giovanna Giuffrida, Boston, Massachusetts, Court of Federal Claims Number 03–0847V
132. Nancy Lleras on behalf of Felix Caraballo, Boston, Massachusetts, Court of Federal Claims Number 03–0848V
133. William W. Short, III on behalf of William W. Short, IV, Boston, Massachusetts, Court of Federal Claims Number 03–0849V
134. Kathleen Burke on behalf of Emma Burke, Boston, Massachusetts, Court of Federal Claims Number 03–0850V
135. Thomas Dzomba on behalf of Helena Dzomba, Boston, Massachusetts, Court of Federal Claims Number 03–0851V
136. Catherine Starr on behalf of Julianne Starr, Boston, Massachusetts, Court of Federal Claims Number 03–0852V
137. Julie Sullivan on behalf of Darren Sullivan, Boston, Massachusetts, Court of Federal Claims Number 03–0853V
138. Michelle and Edward Miller on behalf of Jackson Calhoun Miller, Dacula, Georgia, Court of Federal Claims Number 03–0854V
139. Aslinur and Ozcan Sirin on behalf of Efecan Sirin, Bala Cynwyd, Pennsylvania, Court of Federal Claims Number 03–0857V
140. Amanda Lee on behalf of Jacob Lee, Bala Cynwyd, Pennsylvania, Court of Federal Claims Number 03–0858V
141. Carolina and Marc Blouin on behalf of Eric Blouin, Bala Cynwyd, Pennsylvania, Court of Federal Claims Number 03–0859V
142. Corinda Crowther on behalf of Max Crowther, Bala Cynwyd, Pennsylvania, Court of Federal Claims Number 03–0860V
143. Terre and Kevin Kroeger on behalf of Christian Kroeger, Temecula, California, Court of Federal Claims Number 03–0863V
144. Jean Petani on behalf of Jonathan Tyler Petani, Dover, New Hampshire, Court of Federal Claims Number 03–0864V
145. Matthew Neyens, Vienna, Virginia, Court of Federal Claims Number 03–0868V
146. Amy Becker on behalf of Samuel Becker, Dallas, Texas, Court of Federal Claims Number 03–0869V
147. Lori and David Gilmour on behalf of Audrey Gilmour, Dallas, Texas, Court of Federal Claims Number 03–0870V

148. Teresa and Dennis Stuart on behalf of Denise Stuart, Griffin, Georgia, Court of Federal Claims Number 03–0872V
149. Michele Soto and Jesus Rodriguez on behalf of Alizaia Rodriguez, Deceased, Bethlehem, Pennsylvania, Court of Federal Claims Number 03–0873V
150. Michael Kamaka on behalf of Michael Caleb Kamaka, Boston, Massachusetts, Court of Federal Claims Number 03–0875V
151. Jackie Phillips on behalf of William Phillips, Boston, Massachusetts, Court of Federal Claims Number 03–0876V
152. Sherry and Craig Benke on behalf of Abigail Benke, Deceased, Boston, Massachusetts, Court of Federal Claims Number 03–0877V
153. Kimberly and Bernardo Amenabar on behalf of Alexander Amenabar, Vienna, Virginia, Court of Federal Claims Number 03–0879V
154. Dawn and Bill Taylor on behalf of Brandon Taylor, Vienna, Virginia, Court of Federal Claims Number 03–0880V
155. Charity Teitsma, Grand Rapids, Michigan, Court of Federal Claims Number 03–0881V
156. Joyce and Darrin Ninness on behalf of Emma Ninness, Concord, New Hampshire, Court of Federal Claims Number 03–0882V
157. Gordon Hester on behalf of Phillip Hester, Houston, Texas, Court of Federal Claims Number 03–0883V
158. Tracy Hill on behalf of Shaquella Hill, Houston, Texas, Court of Federal Claims Number 03–0884V
159. Oralee Hollington on behalf of Cedric Hollington, Houston, Texas, Court of Federal Claims Number 03–0885V
160. Evelyn Hollis on behalf of Cordaro Hollis, Houston, Texas, Court of Federal Claims Number 03–0886V
161. Stephanie Hooper on behalf of Monique Hooper, Houston, Texas, Court of Federal Claims Number 03–0887V
162. Dana Henderson on behalf of Jonas Henderson, Houston, Texas, Court of Federal Claims Number 03–0888V
163. Cynthia Howie on behalf of Stephen Howie, Houston, Texas, Court of Federal Claims Number 03–0889V
164. Ada Hudson on behalf of Timothy Hudson, Houston, Texas, Court of Federal Claims Number 03–0890V
165. Angela Huggins on behalf of John Huggins, Houston, Texas, Court of Federal Claims Number 03–0891V
166. Cynthia Jackson on behalf of Dale Jawauin Jackson, Houston, Texas, Court of Federal Claims Number 03–0892V
167. Tanger Harris on behalf of Ivan Harris, Houston, Texas, Court of Federal Claims Number 03–0893V
168. Sharon Hartwell on behalf of Darius Hartwell, Houston, Texas, Court of Federal Claims Number 03–0894V
169. Lawanda Teague on behalf of Marquies Teague, Houston, Texas, Court of Federal Claims Number 03–0895
170. Angela Street on behalf of Christopher Street, Houston, Texas, Court of Federal Claims Number 03–0896V
171. Janet Strasser-King on behalf of Vontrey Strasser-King, Houston, Texas, Court of Federal Claims Number 03–0897V
172. Latonya Taylor on behalf of Kiara Taylor, Houston, Texas, Court of Federal Claims Number 03–0898V
173. Tammy Stewart on behalf of Derron Stewart, Houston, Texas, Court of Federal Claims Number 03–0899V
174. Blondie Stewart on behalf of Joshua Stewart, Houston, Texas, Court of Federal Claims Number 03–0900V
175. Dayna Stender on behalf of Cheyenne Stender, Houston, Texas, Court of Federal Claims Number 03–0901V
176. Joyce Stamp-Garner on behalf of Matthew Stamp-Garner, Houston, Texas, Court of Federal Claims Number 03–0902V
177. Letria Spencer on behalf of Trevor Spencer, Houston, Texas, Court of Federal Claims Number 03–0903V
178. Debra Sowell on behalf of Jeremy Sowell, Houston, Texas, Court of Federal Claims Number 03–0904V
179. Stephanie Smith on behalf of Michael Jarrod Smith, Houston, Texas, Court of Federal Claims Number 03–0905V
180. Paul Smith on behalf of Sean Smith, Houston, Texas, Court of Federal Claims Number 03–0906V
181. Irma Slater on behalf of Shern Slater, Houston, Texas, Court of Federal Claims Number 03–0907V
182. Michelle Simmons on behalf of Aaron Simmons, Houston, Texas, Court of Federal Claims Number 03–0908V
183. Vonda Sifford on behalf of K'Wamane Sifford, Houston, Texas, Court of Federal Claims Number 03–0909V
184. Katrina Sherrod on behalf of Travon Sherrod, Houston, Texas, Court of Federal Claims Number 03–0910V
185. Linda Young on behalf of Trayvon Young, Houston, Texas, Court of Federal Claims Number 03–0911V
186. Glaster Russell on behalf of Shaheem Russell, Houston, Texas, Court of Federal Claims Number 03–0912V
187. Glaster Russell on behalf of Demarcus Russell, Houston, Texas, Court of Federal Claims Number 03–0913V
188. Belinda Russell on behalf of Aikerra Russell, Houston, Texas, Court of Federal Claims Number 03–0914V
189. Georgette Rush on behalf of Tyrone Rush, Houston, Texas, Court of Federal Claims Number 03–0915V
190. Tommie Rosier on behalf of Tommie Rosier, Houston, Texas, Court of Federal Claims Number 03–0916V
191. Katherine Robinson on behalf of Joshua Robinson, Houston, Texas, Court of Federal Claims Number 03–0917V
192. Suzette and Anthony Robinson on behalf of Jonathan Collin Robinson, Houston, Texas, Court of Federal Claims Number 03–0918V
193. Latanya Robertson on behalf of Christopher Robertson, Houston, Texas, Court of Federal Claims Number 03–0919V
194. Lyla Roberson on behalf of Arthur Roberson, Houston, Texas, Court of Federal Claims Number 03–0920V
195. Nicole Richardson on behalf of Michael A. Richardson, Houston, Texas, Court of Federal Claims Number 03–0921V
196. Rivia Rhodes on behalf of Nelson Rhodes, Houston, Texas, Court of Federal Claims Number 03–0922V
197. Tracey Renfro on behalf of Antony Renfro, Houston, Texas, Court of Federal Claims Number 03–0923V
198. Vicki Walsh on behalf of Riley Walsh, Houston, Texas, Court of Federal Claims Number 03–0924V
199. Pamela Walker on behalf of Joshua Walker, Houston, Texas, Court of Federal Claims Number 03–0925V
200. Heather Vaughn on behalf of Zachary Vaughn, Houston, Texas, Court of Federal Claims Number 03–0926V
201. Vicki Vanlandingham on behalf of Anderson Vanlandingham, Houston, Texas, Court of Federal Claims Number 03–0927V
202. Darlene Upson on behalf of Terreance Upson, Houston, Texas, Court of Federal Claims Number 03–0928V
203. Teresa Tucker on behalf of Cameron Tucker, Houston, Texas, Court of Federal Claims Number 03–0929V
204. Amber Trimpe on behalf of Gabriel Trimpe, Houston, Texas, Court of Federal Claims Number 03–0930V
205. Renee Treadaway on behalf of Brandon Treadaway, Houston, Texas, Court of Federal Claims Number 03–0931V
206. Dana Treadaway on behalf of Richard Treadaway, Houston, Texas, Court of Federal Claims Number 03–0932V
207. Kim Tizzard on behalf of Trevor Tizzard, Houston, Texas, Court of Federal Claims Number 03–0933V
208. Tina Thompson on behalf of Ramisha Natay Thompson, Houston, Texas, Court of Federal Claims Number 03–0934V
209. Tina Thompson on behalf of Natisha Thompson, Houston, Texas, Court of Federal Claims Number 03–0935V
210. Tina Thompson on behalf of Edward Thompson, Houston, Texas, Court of Federal Claims Number 03–0936V
211. Karen Thomas on behalf of Anthony Thomas, Houston, Texas, Court of Federal Claims Number 03–0937V
212. Diane Teasdell on behalf of Kalin Teasdell, Houston, Texas, Court of Federal Claims Number 03–0938V
213. Rick Sexton on behalf of Christopher Sexton, Houston, Texas, Court of Federal Claims Number 03–0939V
214. Donna Sawyer on behalf of Christopher Sawyer, Houston, Texas, Court of Federal Claims Number 03–0940V
215. Ranthai Sanders on behalf of Devin Sanders, Houston, Texas, Court of Federal Claims Number 03–0941V
216. Katherine Sanchez on behalf of Johnathan Sanchez, Houston, Texas, Court of Federal Claims Number 03–0942V
217. Aileen Sampson on behalf of Beandescent Sampson, Houston, Texas, Court of Federal Claims Number 03–0943V
218. Carroll Bumgarner on behalf of Lacey Bumgarner, Houston, Texas, Court of Federal Claims Number 03–0944V
219. Tamiqua Bryson on behalf of Eric Bryson, Houston, Texas, Court of Federal Claims Number 03–0945V
220. Tammy Brown on behalf of Cedric Brown, Houston, Texas, Court of Federal Claims Number 03–0946V
221. Sharmaine Brown on behalf of Raymond Brown, Houston, Texas, Court of Federal Claims Number 03–0947V

222. Pamela Brown on behalf of Dennis Brown, Houston, Texas, Court of Federal Claims Number 03–0948V
223. Felicia Brown on behalf of Terrell Brown, Houston, Texas, Court of Federal Claims Number 03–0949V
224. Bernestine Brown on behalf of Charles Brown, Jr., Houston, Texas, Court of Federal Claims Number 03–0950V
225. Donald Brooks on behalf of Chastity Brooks, Houston, Texas, Court of Federal Claims Number 03–0951V
226. Latricia Brisco on behalf of Jammie Brisco, Houston, Texas, Court of Federal Claims Number 03–0952V
227. Latricia Brisco on behalf of Atia Brisco, Houston, Texas, Court of Federal Claims Number 03–0953V
228. Rimma Brandin on behalf of Ariel Brandin, Houston, Texas, Court of Federal Claims Number 03–0954V
229. Cindy Bramblett on behalf of Tristan Bramblett, Houston, Texas, Court of Federal Claims Number 03–0955V
230. Patricia Boyette on behalf of Wade Boyette, Houston, Texas, Court of Federal Claims Number 03–0956V
231. Deborah Bowman on behalf of Antwan Bowman, Houston, Texas, Court of Federal Claims Number 03–0957V
232. Mary Bowes on behalf of John Henry Bowes, Houston, Texas, Court of Federal Claims Number 03–0958V
233. Rhonda Boucher on behalf of Jason Boucher, Houston, Texas, Court of Federal Claims Number 03–0959V
234. Subrene Blow on behalf of Jordan Blow, Houston, Texas, Court of Federal Claims Number 03–0960V
235. Tonya Blackman on behalf of Michael Blackman, Houston, Texas, Court of Federal Claims Number 03–0961V
236. Charlotte Bess on behalf of Octravious Bess, Houston, Texas, Court of Federal Claims Number 03–0962V
237. Tonya Atchison on behalf of Kenneth Atchison, Houston, Texas, Court of Federal Claims Number 03–0963V
238. Tara Anderson on behalf of Stephen Anderson, Houston, Texas, Court of Federal Claims Number 03–0964V
239. Linda Allen on behalf of Charles Allen, Houston, Texas, Court of Federal Claims Number 03–0965V
240. Susan Abruzzino on behalf of Conner Abruzzino, Houston, Texas, Court of Federal Claims Number 03–0966V
241. Margaret Autry on behalf of Jonathan Autry, Houston, Texas, Court of Federal Claims Number 03–0967V
242. Jessica Batts on behalf of Cody Batts, Houston, Texas, Court of Federal Claims Number 03–0968V
243. Carolyn Bautista on behalf of Juan Bautista, Houston, Texas, Court of Federal Claims Number 03–0969V
244. Amber Bennett on behalf of Brenden Bennett, Houston, Texas, Court of Federal Claims Number 03–0970V
245. Arleatrice Burroughs on behalf of Richards Burroughs, Houston, Texas, Court of Federal Claims Number 03–0971V
246. Tonya Burnett on behalf of Taeyon Burnett, Houston, Texas, Court of Federal Claims Number 03–0972V
247. Kristy Butler on behalf of Christopher Butler, Houston, Texas, Court of Federal Claims Number 03–0973V
248. Dana Butts on behalf of Christopher Butts, Houston, Texas, Court of Federal Claims Number 03–0974V
249. Leona Calkins on behalf of Cindy Calkins, Houston, Texas, Court of Federal Claims Number 03–0975V
250. Sarah Canipe on behalf of Timothy Canipe, Houston, Texas, Court of Federal Claims Number 03–0976V
251. Candace Capo on behalf of Ryan Capo, Houston, Texas, Court of Federal Claims Number 03–0977V
252. Laura Carpenter on behalf of Tyler Carpenter, Houston, Texas, Court of Federal Claims Number 03–0978V
253. Michelle Carr on behalf of Jacob Carr, Houston, Texas, Court of Federal Claims Number 03–0979V
254. Jeanne Carter on behalf of William Carter, Houston, Texas, Court of Federal Claims Number 03–0980V
255. Christie Barnes on behalf of Montay Barnes, Houston, Texas, Court of Federal Claims Number 03–0981V
256. Kim Barnes on behalf of Joseph Barnes, Houston, Texas, Court of Federal Claims Number 03–0982V
257. Joe Cash, Jr. on behalf of Joshua Cash, Jr., Houston, Texas, Court of Federal Claims Number 03–0983V
258. Rosalyn Catchings on behalf of Christopher Catchings, Houston, Texas, Court of Federal Claims Number 03–0984V
259. Norma Cates on behalf of Joshua Cates, Houston, Texas, Court of Federal Claims Number 03–0985V
260. Jane Chapman on behalf of Allan Chapman, Houston, Texas, Court of Federal Claims Number 03–0986V
261. Barbara Chastain on behalf of William A. Chastain, Houston, Texas, Court of Federal Claims Number 03–0987V
262. Rosalind Cleveland on behalf of Tiara Cleveland, Houston, Texas, Court of Federal Claims Number 03–0988V
263. Mary Collier on behalf of Jalarryic Collier, Houston, Texas, Court of Federal Claims Number 03–0989V
264. Phillie Moye on behalf of Trevor Moye, Houston, Texas, Court of Federal Claims Number 03–0990V
265. Courtney Morrison on behalf of Hunter Morrison, Houston, Texas, Court of Federal Claims Number 03–0991V
266. Nakta Morgan on behalf of Markeise Morgan, Houston, Texas, Court of Federal Claims Number 03–0992V
267. Shannon Moore on behalf of Tevin Moore, Houston, Texas, Court of Federal Claims Number 03–0993V
268. Kimberly Moore on behalf of Aaron Moore, Houston, Texas, Court of Federal Claims Number 03–0994V
269. Gloria Moore on behalf of Devin Moore, Houston, Texas, Court of Federal Claims Number 03–0995V
270. Christina Moore on behalf of Wayne A. Moore, Houston, Texas, Court of Federal Claims Number 03–0996V
271. Steve Miller on behalf of Ryan Miller, Houston, Texas, Court of Federal Claims Number 03–0997V
272. Cindy Miller on behalf of Alexander Miller, Houston, Texas, Court of Federal Claims Number 03–0998V
273. Robin Middleton on behalf of Carl Middleton, Houston, Texas, Court of Federal Claims Number 03–0999V
274. Julia Michael on behalf of Tyrese Michael, Houston, Texas, Court of Federal Claims Number 03–1000V
275. Tradisha Reid on behalf of Tanisha Reid, Houston, Texas, Court of Federal Claims Number 03–1001V
276. Carolina Nogal on behalf of Jose Nogal, Houston, Texas, Court of Federal Claims Number 03–1002V
277. Brenda Myers on behalf of Elijah Myers, Houston, Texas, Court of Federal Claims Number 03–1003V
278. George Mullen on behalf of Morgan Mullen, Houston, Texas, Court of Federal Claims Number 03–1004V
279. Gina Mull on behalf of Jovanny Mull, Houston, Texas, Court of Federal Claims Number 03–1005V
280. Emily Comer on behalf of Nicholas Comer, Houston, Texas, Court of Federal Claims Number 03–1006V
281. Virginia Covington on behalf of Christopher Covington, Houston, Texas, Court of Federal Claims Number 03–1007V
282. Beth Coward on behalf of Tyler K. Coward, Houston, Texas, Court of Federal Claims Number 03–1008V
283. Paula Craig on behalf of Keisha Craig, Houston, Texas, Court of Federal Claims Number 03–1009V
284. Jill Czysz on behalf of McKenzie Czysz, Houston, Texas, Court of Federal Claims Number 03–1010V
285. Veronica Daniel on behalf of Devon Daniel, Houston, Texas, Court of Federal Claims Number 03–1011V
286. Veronica Daniel on behalf of Jamone Daniel, Houston, Texas, Court of Federal Claims Number 03–1012V
287. Catina Davis on behalf of Jamar Davis, Houston, Texas, Court of Federal Claims Number 03–1013V
288. Moniques Davis on behalf of Corey Davis, Houston, Texas, Court of Federal Claims Number 03–1014V
289. Shannel Davis on behalf of Gerald Davis, Houston, Texas, Court of Federal Claims Number 03–1015V
290. Teresa Delaughter on behalf of Michael Delaughter, Houston, Texas, Court of Federal Claims Number 03–1016V
291. Beverly Dexter on behalf of Janay Dexter, Houston, Texas, Court of Federal Claims Number 03–1017V
292. Denica Dickens on behalf of Devonte Dickens, Houston, Texas, Court of Federal Claims Number 03–1018V
293. Angela Douglas on behalf of Ralesha Douglas, Houston, Texas, Court of Federal Claims Number 03–1019V
294. Iona Drake on behalf of Sterling Drake, Houston, Texas, Court of Federal Claims Number 03–1020V
295. Julie Drayton on behalf of Janarvis Drayton, Houston, Texas, Court of Federal Claims Number 03–1021V
296. Elaine Duke on behalf of Charleigh Duke, Houston, Texas, Court of Federal Claims Number 03–1022V

297. Alexis Dunbar on behalf of Christian Dunbar, Houston, Texas, Court of Federal Claims Number 03–1023V
298. Desiree Dupree on behalf of Dante Dupree, Houston, Texas, Court of Federal Claims Number 03–1024V
299. Shelley Dwyer on behalf of Gary Dean Dwyer, Houston, Texas, Court of Federal Claims Number 03–1025V
300. Mary Eakes on behalf of Michael Eakes, Houston, Texas, Court of Federal Claims Number 03–1026V
301. Robert Eddington on behalf of Robert Eddington, Houston, Texas, Court of Federal Claims Number 03–1027V
302. Sherronda Edge on behalf of Victor Edge, Houston, Texas, Court of Federal Claims Number 03–1028V
303. Mary Edwards on behalf of Annette Edwards, Houston, Texas, Court of Federal Claims Number 03–1029V
304. Jessica Evans on behalf of Wesley Evans, Houston, Texas, Court of Federal Claims Number 03–1030V
305. Lori Ellis on behalf of Jeremy Ellis, Houston, Texas, Court of Federal Claims Number 03–1031V
306. Mildred Flora on behalf of Ashley Flora, Houston, Texas, Court of Federal Claims Number 03–1032V
307. Debra Fisher on behalf of Bo Fisher, Houston, Texas, Court of Federal Claims Number 03–1033V
308. Judy Findlay on behalf of Shaquan Findlay, Houston, Texas, Court of Federal Claims Number 03–1034V
309. Francis Flynn on behalf of Casey Flynn, Houston, Texas, Court of Federal Claims Number 03–1035V
310. Christy Michael on behalf of Conner Michael, Houston, Texas, Court of Federal Claims Number 03–1036V
311. Jeni Merritt on behalf of Coleman Merritt, Houston, Texas, Court of Federal Claims Number 03–1037V
312. Sharon Melvin on behalf of Ashlyn Melvin, Houston, Texas, Court of Federal Claims Number 03–1038V
313. Queen Melvin on behalf of Braella Melvin, Houston, Texas, Court of Federal Claims Number 03–1039V
314. Fannie Means on behalf of Kenneth C. Means, Houston, Texas, Court of Federal Claims Number 03–1040V
315. Dennis McMahan on behalf of Miles McMahan, Houston, Texas, Court of Federal Claims Number 03–1041V
316. Tracy McLeod on behalf of Jacqueline McLeod, Houston, Texas, Court of Federal Claims Number 03–1042V
317. Angela McKinstry on behalf of Christpoher McKinstry, Houston, Texas, Court of Federal Claims Number 03–1043V
318. Sylvia Pope on behalf of Jonathan Pope, Houston, Texas, Court of Federal Claims Number 03–1044V
319. Susan Pineda on behalf of Austin Pineda, Houston, Texas, Court of Federal Claims Number 03–1045V
320. Karen Pierwola on behalf of Korie Pierwola, Houston, Texas, Court of Federal Claims Number 03–1046V
321. Rachelle Phillips on behalf of Terrica Phillips Houston, Texas, Court of Federal Claims Number 03–1047V
322. Joe Phillips on behalf of Tori Phillips, Houston, Texas, Court of Federal Claims Number 03–1048V
323. Sheila Perrigan on behalf of Jamel Perrigan, Houston, Texas, Court of Federal Claims Number 03–1049V
324. Sheila Perrigan on behalf of James Perrigan, Houston, Texas, Court of Federal Claims Number 03–1050V
325. Brenda Payne on behalf of Kenneth Brandon Payne, Houston, Texas, Court of Federal Claims Number 03–1051V
326. Lolita Parker on behalf of Mychael Parker, Houston, Texas, Court of Federal Claims Number 03–1052V
327. Terry Owenby on behalf of Alicia Owenby, Houston, Texas, Court of Federal Claims Number 03–1053V
328. Michelle Okafor on behalf of Kareem Okafor, Houston, Texas, Court of Federal Claims Number 03–1054V
329. Benita Odom on behalf of Jamie Odom, Houston, Texas, Court of Federal Claims Number 03–1055V
330. Stephanie Norwood on behalf of Cecily Norwood, Houston, Texas, Court of Federal Claims Number 03–1056V
331. Jeffrey Foster on behalf of Victoria Foster, Houston, Texas, Court of Federal Claims Number 03–1057V
332. Jennifer Fox on behalf of Elizabeth Fox, Houston, Texas, Court of Federal Claims Number 03–1058V
333. Jennifer Fox on behalf of Morgan Fox, Houston, Texas, Court of Federal Claims Number 03–1059V
334. Teresa Frix on behalf of Megan Frix, Houston, Texas, Court of Federal Claims Number 03–1060V
335. June and Ron Garnett on behalf of Pavi'elle Garnett, Houston, Texas, Court of Federal Claims Number 03–1061V
336. Kima Garten on behalf of Aaron Garten, Houston, Texas, Court of Federal Claims Number 03–1062V
337. Catherine Glenn on behalf of Marvetta Glenn, Houston, Texas, Court of Federal Claims Number 03–1063V
338. Willie Glenn on behalf of Joshua Glenn, Houston, Texas, Court of Federal Claims Number 03–1064V
339. Sylvia Golden on behalf of Garfield Golden, Houston, Texas, Court of Federal Claims Number 03–1065V
340. Dwayne Gore on behalf of Joshua Gore, Houston, Texas, Court of Federal Claims Number 03–1066V
341. James Gossett on behalf of Ryan Gossett, Houston, Texas, Court of Federal Claims Number 03–1067V
342. Rebecca Graham on behalf of Christopher Graham, Houston, Texas, Court of Federal Claims Number 03–1068V
343. Goldie Green on behalf of Rodney Green, Houston, Texas, Court of Federal Claims Number 03–1069V
344. Anastasia Greene on behalf of Tevin Greene, Houston, Texas, Court of Federal Claims Number 03–1070V
345. Crystal and Douglas Greer on behalf of Douglass Adam Greer, Houston, Texas, Court of Federal Claims Number 03–1071V
346. Carol Griffin on behalf of Dia-Jah Griffin, Houston, Texas, Court of Federal Claims Number 03–1072V
347. Melinda Harn on behalf of Lloyd Harn, Houston, Texas, Court of Federal Claims Number 03–1073V
348. Tanger Harris on behalf of Ethan Harris, Houston, Texas, Court of Federal Claims Number 03–1074V
349. Juanetha Young on behalf of Nicholas Young, Houston, Texas, Court of Federal Claims Number 03–1075V
350. Terry Yates on behalf of Lamar Yates, Houston, Texas, Court of Federal Claims Number 03–1076V
351. Joyce Reed on behalf of Matthew Reed, Houston, Texas, Court of Federal Claims Number 03–1077V
352. Meredith Redmon on behalf of Gavin Redmon, Houston, Texas, Court of Federal Claims Number 03–1078V
353. Clarinda Raysor on behalf of Justin Raysor, Houston, Texas, Court of Federal Claims Number 02–1079V
354. Nicole Rainey on behalf of Elinta Rainey, Houston, Texas, Court of Federal Claims Number 03–1080V
355. Jacqueline Purcell on behalf of Zacheriah Purcell, Houston, Texas, Court of Federal Claims Number 03–1081V
356. Teresa Pringle on behalf of Tyler Pringle, Houston, Texas, Court of Federal Claims Number 03–1082V
357. Sharron Pridgen on behalf of Kevin Pridgen, Houston, Texas, Court of Federal Claims Number 03–1083V
358. Contressa Porter on behalf of Dedrick Porter, Houston, Texas, Court of Federal Claims Number 03–1084V
359. Elouise Jackson-Montgomery on behalf of Jeremy Jackson-Montgomery, Houston, Texas, Court of Federal Claims Number 03–1085V
360. Christy Jameson on behalf of Isaiah Jameson, Houston, Texas, Court of Federal Claims Number 03–1086V
361. Tanya Jefferson on behalf of Elle Jefferson, Houston, Texas, Court of Federal Claims Number 03–1087V
362. Harry Johnson on behalf of Terence A. Johnson, Houston, Texas, Court of Federal Claims Number 03–1088V
363. Cynthia Johnson on behalf of Kerrie Ann Lee Johnson, Houston, Texas, Court of Federal Claims Number 03–1089V
364. Cynthia Johnson on behalf of Katelyn Joy Johnson, Houston, Texas, Court of Federal Claims Number 03–1090V
365. Lula Joe on behalf of Shanita Joe, Houston, Texas, Court of Federal Claims Number 03–1091V
366. Janet Martin on behalf of Justin Martin, Houston, Texas, Court of Federal Claims Number 03–1092V
367. James Martin on behalf of James Martin, Houston, Texas, Court of Federal Claims Number 03–1093V
368. Porsha Mason on behalf of Tre'von Mason, Houston, Texas, Court of Federal Claims Number 03–1094V
369. Latoya Mason on behalf of Henry Thomas Mason, Jr., Houston, Texas, Court of Federal Claims Number 03–1095V
370. Kimberly Martin on behalf of Yahtavion N. Martin, Houston, Texas, Court of Federal Claims Number 03–1096V
371. Paula Maye on behalf of Claudius Maye, Houston, Texas, Court of Federal Claims Number 03–1097V

372. Lisae Matutina on behalf of Rebecca Matutina, Houston, Texas, Court of Federal Claims Number 03–1098V
373. Alaine Mathis on behalf of Bibbie Mathis, Houston, Texas, Court of Federal Claims Number 03–1099V
374. Monica McCracken on behalf of Austin McCracken, Houston, Texas, Court of Federal Claims Number 03–1100V
375. Eva McCoy on behalf of Corwin McCoy, Houston, Texas, Court of Federal Claims Number 03–1101V
376. Russell McCollin on behalf of Kevin Ruddell McCollin, Houston, Texas, Court of Federal Claims Number 03–1102V
377. Janice McClendon on behalf of Curtis McClendon, Houston, Texas, Court of Federal Claims Number 03–1103V
378. Kathleen McKay on behalf of Ryan McKay, Houston, Texas, Court of Federal Claims Number 03–1104V
379. Coretta McKenzie on behalf of Khalid McKenzie, Houston, Texas, Court of Federal Claims Number 03–1105V
380. James McKenzie on behalf of Jahmezz McKenzie, Houston, Texas, Court of Federal Claims Number 03–1106V
381. James McKenzie on behalf of Jahrell McKenzie, Houston, Texas, Court of Federal Claims Number 03–1107V
382. James McKenzie on behalf of Jahnia McKenzie, Houston, Texas, Court of Federal Claims Number 03–1108V
383. James McKenzie on behalf of Tavaijah McKenzie, Houston, Texas, Court of Federal Claims Number 03–1109V
384. Karen Light on behalf of Derek Light, Houston, Texas, Court of Federal Claims Number 03–1110V
385. Louise Lettellier on behalf of Jacob Lettellier, Houston, Texas, Court of Federal Claims Number 03–1111V
386. Virginia Leake on behalf of Luciano Leake, Houston, Texas, Court of Federal Claims Number 03–1112V
387. Geraldine Lawrence on behalf of Randy Lawrence, Houston, Texas, Court of Federal Claims Number 03–1113V
388. Janice Lowry on behalf of Tevin Lowry, Houston, Texas, Court of Federal Claims Number 03–1114V
389. Margaret Lovick on behalf of Timothy Lovick, Houston, Texas, Court of Federal Claims Number 03–1115V
390. Bernadette Love on behalf of Scott Brandon Love, Houston, Texas, Court of Federal Claims Number 03–1116V
391. Bernadette Love on behalf of Galvin Brian Love, Houston, Texas, Court of Federal Claims Number 03–1117V
392. Dorothy Lott on behalf of Kimberly Lott, Houston, Texas, Court of Federal Claims Number 03–1118V
393. Carmen Lovsey on behalf of Erica Lovsey, Houston, Texas, Court of Federal Claims Number 03–1119V
394. Rebecca Johnson on behalf of Mitchell Johnson, Houston, Texas, Court of Federal Claims Number 03–1120V
395. Malaika Johnson on behalf of Brandon Johnson, Houston, Texas, Court of Federal Claims Number 03–1121V
396. Gwen Kirkpatrick on behalf of Cassidy Kirkpatrick, Houston, Texas, Court of Federal Claims Number 03–1122V
397. Orlene Knotts on behalf of Wesley S. Knotts, Houston, Texas, Court of Federal Claims Number 03–1123V
398. Charlene Kiser on behalf of Brandon Kiser, Houston, Texas, Court of Federal Claims Number 03–1124V
399. Melissa Littlejohn on behalf of Joshua Littlejohn, Houston, Texas, Court of Federal Claims Number 03–1125V
400. Donna Jones on behalf of Chipper Jones, Houston, Texas, Court of Federal Claims Number 03–1126V
401. Chastity Jones on behalf of Chestun Jones, Houston, Texas, Court of Federal Claims Number 03–1127V
402. Wanda Johnson on behalf of Jakeima Johnson, Houston, Texas, Court of Federal Claims Number 03–1128V
403. Stephanie King on behalf of Damesha King, Houston, Texas, Court of Federal Claims Number 03–1129V
404. Jacquelina Jones on behalf of Jhamichael Jones, Houston, Texas, Court of Federal Claims Number 03–1130V
405. Florence Jones on behalf of Devron Jones, Houston, Texas, Court of Federal Claims Number 03–1131V
406. Maher Yasin on behalf of Ibrahim Yasin, Houston, Texas, Court of Federal Claims Number 03–1132V
407. Maher Yasin on behalf of Anas Yasin, Houston, Texas, Court of Federal Claims Number 03–1133V
408. Jackie Wood on behalf of Ja'Kennen Wood, Houston, Texas, Court of Federal Claims Number 03–1134V
409. Kelly Wingate on behalf of David Wingate, Houston, Texas, Court of Federal Claims Number 03–1135V
410. Veronica Wilson on behalf of Jamique Wilson, Houston, Texas, Court of Federal Claims Number 03–1136V
411. Shirelyn Williams on behalf of Tyler Williams, Houston, Texas, Court of Federal Claims Number 03–1137V
412. Deborah Williams on behalf of Elizabeth Williams, Houston, Texas, Court of Federal Claims Number 03–1138V
413. Cynthia Williams on behalf of Quindon Williams, Houston, Texas, Court of Federal Claims Number 03–1139V
414. Cordell Williams on behalf of Rajuan Williams, Houston, Texas, Court of Federal Claims Number 03–1140V
415. Martha White on behalf of Thomas White, Houston, Texas, Court of Federal Claims Number 03–1141V
416. Dorine West on behalf of Alishaq West, Houston, Texas, Court of Federal Claims Number 03–1142V
417. Cosellars Weeks on behalf of Elizabeth Weeks, Houston, Texas, Court of Federal Claims Number 03–1143V
418. Jacqueline Weathersby on behalf of Quinton Weathersby, Houston, Texas, Court of Federal Claims Number 03–1144V
419. Tonya Washington on behalf of Demetrius Washington, Houston, Texas, Court of Federal Claims Number 03–1145V
420. Dawn Warncok on behalf of Grant Warncok, Houston, Texas Court of Federal Claims Number 03–1146V
421. Miranda Walton on behalf of Reginald Walton, Houston, Texas Court of Federal Claims Number 03–1147V
422. Andrea and Robert Clark on behalf of Jathan Clark, Houston, Texas, Court of Federal Claims Number 03–1148V
423. Angela Londy on behalf of Jarel Londy, Great Neck, New York, Court of Federal Claims Number 03–1149V
424. Michelle and Richard Steinweg on behalf of Mason Steinweg, Sarasota, Florida, Court of Federal Claims Number 03–1150V
425. Alice and Matthew King on behalf of Matthew King, Melbourne, Florida, Court of Federal Claims Number 03–1151V
426. Joanne and Dale Wood on behalf of Richard Wood, Dallas, Texas, Court of Federal Claims Number 03–1152V
427. Mary Ferguson on behalf of David Patrick Bradford, Tyler, Texas, Court of Federal Claims Number 03–1153V
428. Janice and Scott Moss on behalf of Amber Moss, New Orleans, Lousiana, Court of Federal Claims Number 03–1154V
429. Jessica Hernandez-King and Henry King on behalf of Jesse Jeremiah King, Brooklyn, New York, Court of Federal Claims Number 03–1156V
430. Dora Lucas on behalf of Amanda Lucas, Jackson, Mississippi, Court of Federal Claims Number 03–1159V
431. Debra and Steve Brow on behalf of Savannah Rose Brow, Worcester, Massachusetts, Court of Federal Claims Number 03–1160V
432. Lisa and James Watt on behalf of Nicholas James Watt, Boston, Massachusetts, Court of Federal Claims Number 03–1161V
433. Sandy and Ben Rippetoe on behalf of Wade Rippetoe, Vienna, Virginia, Court of Federal Claims Number 03–1162V
434. Alan Moses on behalf of Darryl Moses, Vienna, Virginia, Court of Federal Claims Number 03–1163V
435. Christina Cline on behalf of Kyle D. Cline, Deceased, Vienna, Virginia, Court of Federal Claims Number 03–1164V
436. William Slusher on behalf of Cody Slusher, Montgomery, Alabama, Court of Federal Claims Number 03–1165V
437. Laura Hewiston and Dan Hollenbeck on behalf of Joshua Hollenbeck, Dallas, Texas, Court of Federal Claims Number 03–1166V
438. Thelma Reyes-Richard on behalf of Collin Richard, Dallas, Texas, Court of Federal Claims Number 03–1167V
439. Pnina and Steve Batogower on behalf of David Paul Batogower, Houston, Texas, Court of Federal Claims Number 03–1168V
440. Stephanie Christian on behalf of Dylan Christian, Green Valley, Nevada, Court of Federal Claims Number 03–1169V
441. Robin and Glen Clark on behalf of George Marshall Clark, Alexandria, Virginia, Court of Federal Claims Number 03–1173V
442. Natalie Murphy on behalf of Connor D. Murphy, North Augusta, South Carolina, Court of Federal Claims Number 03–1174V
443. Kathy and Greg Musik on behalf of Gregory Cade Musik, Dallas, Texas, Court of Federal Claims Number 03–1175V
444. John Steven Richey on behalf of Nicholas Richey, Boston, Massachusetts, Court of Federal Claims Number 03–1176V
445. Lauralee O'Brien on behalf of Christian O'Brien, Boston, Massachusetts, Court of Federal Claims Number 03–1177V

446. Amy Springer on behalf of Chase Young, Boston, Massachusetts, Court of Federal Claims Number 03–1178V
447. Kerry Kiloski on behalf of Evan Bacon, Boston, Massachusetts, Court of Federal Claims Number 03–1179V
448. Marcus McCoy on behalf of Matthew McCoy, Boston, Massachusetts, Court of Federal Claims Number 03–1180V
449. Dawn Gibson on behalf of Carissa Gibson, Boston, Massachusetts, Court of Federal Claims Number 03–1181V
450. Laura Nealey on behalf of Phillip Nealey, Boston, Massachusetts, Court of Federal Claims Number 03–1182V
451. Nancy D'Erasmo on behalf of Alexander D'Erasmo, Boston, Massachusetts, Court of Federal Claims Number 03–1183V
452. Roxanne Barnett on behalf of Brandon Barnett, Boston, Massachusetts, Court of Federal Claims Number 03–1184V
453. Wayne Rogers on behalf of Rylan Rogers, Boston, Massachusetts, Court of Federal Claims Number 03–1185V
454. Scott Wiles on behalf of Rutger Wiles, Boston, Massachusetts, Court of Federal Claims Number 03–1186V
455. Jennifer Damian on behalf of Liam Kai Viruleg, Boston, Massachusetts, Court of Federal Claims Number 03–1187V
456. Brenda Steele on behalf of Mason Steele, Boston, Massachusetts, Court of Federal Claims Number 03–1188V
457. Eunice Aguwa on behalf of Chineyeze Aguwa, Boston, Massachusetts, Court of Federal Claims Number 03–1189V
458. Evelyn Ain on behalf of Matthew Ain, Great Neck, New York,Court of Federal Claims Number 03–1190V
459. April and Bill Parcells on behalf of MacKenzie Parcells, Wichita Falls, Texas Court of Federal Claims Number 03–1192V
460. Leah and Andrew McCormack on behalf of Ian Z. McCormack, Houston, Texas, Court of Federal Claims Number 03–1193V
461. Heather and Robert Hanson on behalf of Brendan Hanson, Houston, Texas, Court of Federal Claims Number 03–1194V
462. Gayle McDaniel on behalf of Matthew M. McDaniel, Houston, Texas, Court of Federal Claims Number 03–1195V
463. Charlita McPheeters and James McCartney on behalf of Hugh J. McCartney, Houston, Texas, Court of Federal Claims Number 03–1196V
464. Sonya and Matt Maini on behalf of Alisha Maini, Houston, Texas, Court of Federal Claims Number 03–1197V
465. Michelle Rice on behalf of Tyler Kinser, Houston, Texas, Court of Federal Claims Number 03–1198V
466. Julie and Philip Foster on behalf of Luke W. Foster, Houston, Texas, Court of Federal Claims Number 03–1199V
467. Kimberly and Theodore Stapinski behalf of Matthew S. Stapinski, Houston, Texas, Court of Federal Claims Number 03–1200V
468. Darwin Shaw on behalf of Gena Shaw, Houston, Texas, Court of Federal Claims Number 03–1201V
469. Maria and Timothy Dwyer on behalf of Colin R. Dwyer, Houston, Texas, Court of Federal Claims Number 03–1202V
470. Lourdes and Eric Cravello on behalf of Tristan Cravello, Houston, Texas, Court of Federal Claims Number 03–1203V
471. Diane and Richard Brown on behalf of Roman Brown, Houston, Texas, Court of Federal Claims Number 03–1204V
472. Mika Bradford on behalf of Jeffrey T. Williams, Houston, Texas, Court of Federal Claims Number 03–1205V
473. Mika Bradford on behalf of Jacob R. Williams, Houston, Texas, Court of Federal Claims Number 03–1206V
474. Cynthia and Mitchell Kelley on behalf of Phillip M. Kelley, Houston, Texas, Court of Federal Claims Number 03–1207V
475. Jennifer and Paul Greening on behalf of Courtney S. Greening, Houston, Texas, Court of Federal Claims Number 03–1208V
476. Lisa and Gary Sostack on behalf of Scott Sostack, Houston, Texas, Court of Federal Claims Number 03–1209V
477. Gerri and John McGaha on behalf of Zachary McGaha, Houston, Texas,Court of Federal Claims Number 03–1210V
478. Joey Baker on behalf of David Baker, Houston, Texas, Court of Federal Claims Number 03–1211V
479. Lisa and Gary Sostack on behalf of Scott Sostack, Houston, Texas, Court of Federal Claims Number 03–1212V
480. Lyhn Tran on behalf of Zachary Hoang, Chicago, Illinois, Court of Federal Claims Number 03–1213V
481. Suzette and Christopher Parish on behalf of Stefan Christopher Parish, Edmonds, Washington, Court of Federal Claims Number 03–1217V
482. Dana and Ryan Keen on behalf of, Austin Lee Miletich, Porter County, Indiana, Court of Federal Claims Number 03–1218V
483. Leslie and Donald Trone on behalf of Abigail Marie Trone, Saint Paul, Minnesota, Court of Federal Claims Number 03–1219V
484. Tammy and Charles Willard on behalf of Logan Michael Willard, Houston, Texas, Court of Federal Claims Number 03–1220V
485. Linda Cox on behalf of Brett Cox, Boston, Massachusetts, Court of Federal Claims Number 03–1221V
486. Tonya Skuse on behalf of Joseph Skuse, Boston, Massachusetts, Court of Federal Claims Number 03–1222V
487. Leeann Whiffen on behalf of Clay Whiffen, Boston, Massachusetts Court of Federal Claims Number 03–1223V
488. Theresa Black on behalf of Angelica Black, Vienna, Virginia Court of Federal Claims Number 03–1224V
489. Robert Romines on behalf of Ethan Taylor Romines, Tyler, Texas Court of Federal Claims Number 03–1225V
490. Barry Grimes on behalf of Isaac Mitchell Grimes, Tyler, Texas Court of Federal Claims Number 03–1226V
491. Donna and John Gushue on behalf of John Gushue, Abington, Pennsylvania Court of Federal Claims Number 03–1228V
492. Donna and Aaron Arndt on behalf of, Austin Arndt, Buford, Georgia Court of Federal Claims Number 03–1230V
493. Kristen Ah Yek on behalf of Priscilla Ah Yek, Portland, Oregon Court of Federal Claims Number 03–1231V
494. Devang Vyas on behalf of Aditya Vyas Portland, Oregon, Court of Federal Claims Number 03–1232V
495. Sarah Michelle Livingston-Adams on behalf of Julia Lyons Livingston-Adams Portland, Oregon, Court of Federal Claims Number 03–1233V
496. Tina and Daron Swafford on behalf of Joey Swafford, Austin, Texas, Court of Federal Claims Number 03–1234V
497. Mache and Kevin Liu on behalf of Nicholas Liu, Austin, Texas, Court of Federal Claims Number 03–1235V
498. Heidi and Peter Carabine on behalf of Collin Carabine, Austin, Texas, Court of Federal Claims Number 03–1236V
499. Laurie and Leslie Young on behalf of Leslie Martin Young, Austin, Texas, Court of Federal Claims Number 03–1237V
500. Darla and Ron Russak on behalf of Jordan Russak, Austin, Texas, Court of Federal Claims Number 03–1238V
501. Barbara Revis on behalf of Jerry D. Revis, Alexandria, Virginia, Court of Federal Claims Number 03–1241V
502. Jodi and Joseph Mercado on behalf of Anthony Mercado, Turnersville, New Jersey, Court of Federal Claims Number 03–1243V
503. Mary and Salim Hreish on behalf of Yousef Hreish, Macon, Georgia, Court of Federal Claims Number 03–1244V
504. Kelly and Richard Kerns on behalf of Kaylee A. Kerns, Lake Success, New York, Court of Federal Claims Number 03–1248V
505. Sue and Joe Elia on behalf of Rita Emanuel Elia, Dallas, Texas, Court of Federal Claims Number 03–1249V
506. Ellen and Steven Brandel on behalf of Michelle Brandel, Lake Success, New York, Court of Federal Claims Number 03–1250V
507. Maribel Ramos and Nelson Almanzar on behalf of Justin Almanzar, Lake Success, New York, Court of Federal Claims Number 03–1251V
508. Stacy Miller on behalf of Argie Miller, Boston, Massachusetts, Court of Federal Claims Number 03–1252V
509. Elizabeth Carper on behalf of Samantha Carper, Boston, Massachusetts, Court of Federal Claims Number 03–1253V
510. Sharon Berlin on behalf of Benjamin Berlin, Boston, Massachusetts, Court of Federal Claims Number 03–1254V
511. Darla Anderson on behalf of Micaiah Anderson, Boston, Massachusetts, Court of Federal Claims Number 03–1256V
512. Lisa Berrier on behalf of Nicholas Berrier, Boston, Massachusetts, Court of Federal Claims Number 03–1257V
513. Aurora Smith on behalf of Jeffrey Palmieri, Boston, Massachusetts, Court of Federal Claims Number 03–1258V
514. Jennifer Long on behalf of Colin Long, Boston, Massachusetts, Court of Federal Claims Number 03–1259V
515. Minerva Reyes on behalf of Taylor Reyes, Boston, Massachusetts, Court of Federal Claims Number 03–1260V
516. Wendy Parker on behalf of Ryen Hagen, Boston, Massachusetts, Court of Federal Claims Number 03–1261V
517. Carolyn Smith on behalf of Richard Smith, Boston, Massachusetts, Court of Federal Claims Number 03–1262V
518. Kim Osbourne on behalf of Clinton Leon Garrison, III, Houston, Texas, Court of Federal Claims Number 03–1263V
519. Angelee and Patrick Murphy on behalf of Justin Ray Murphy, Houston, Texas, Court of Federal Claims Number 03–1264V

520. Nelly and Edgar Munoz on behalf of Krista Munoz, Oceanside, New York, Court of Federal Claims Number 03–1265V
521. Patricia and Gregory desGroseilliers, on behalf of Robert Gregory desGroseilliers, Christiana, Delaware, Court of Federal Claims Number 03–1266V
522. Diana and Thomas Jacobs on behalf of Steven Christopher Jacobs, Williamstown, New Jersey, Court of Federal Claims Number 03–1267V
523. Darlene and Gardy Theodore on behalf of Patrick Theodore, Middletown, Connecticut, Court of Federal Claims Number 03–1268V
524. Dawn and Michael Nardi on behalf of Gia Stella Nardi, Haddonfield, New Jersey, Court of Federal Claims Number 03–1269V
525. Bertha Boswell on behalf of Shekirra Elousia Boswell, Selma, Alabama, Court of Federal Claims Number 03–1270V
526. Michelle Moore on behalf of Norfleet Caudle, Arlington, Virginia, Court of Federal Claims Number 03–1271V
527. Sheila and Herbert Smith on behalf of Tyrese M. Johns, New York, New York, Court of Federal Claims Number 03–1272V
528. Lisa Zehl on behalf of Matthew Zehl, Cliffwood Beach, New Jersey, Court of Federal Claims Number 03–1273V
529. Shauna and Robert Gurley on behalf of Jeremiah Gurley, Alexandria, Virginia, Court of Federal Claims Number 03–1275V
530. Rena Harris on behalf of Hakima Davis, New York, New York, Court of Federal Claims Number 03–1276V
531. Amanda and Michael Schwander, on behalf of Sabastian Tyler Schwander, Hamburg, New Jersey, Court of Federal Claims Number 03–1277V
532. Jo-Ann and Walter Perez on behalf of Mary Kathleen Perez, Newburgh, New York, Court of Federal Claims Number 03–1278V
533. Denise and James Varney on behalf of James Tyler Varney, Pleasonton, California, Court of Federal Claims Number 03–1279V
534. Laura Armstrong on behalf of Kelley Armstrong, Feasley, South Carolina, Court of Federal Claims Number 03–1280V
535. Mary and Albert Pavucek on behalf of Jenna Pavucek, Philadelphia, Pennsylvania, Court of Federal Claims Number 03–1285V
536. Eric Bernstein, Teaneck, New Jersey, Court of Federal Claims Number 03–1286V
537. Linda Sipes-Ryland, Ambridge, Pennsylvania, Court of Federal Claims Number 03–1288V
538. Julie Kimsala on behalf of Clover Yala, Charlotte, North Carolina, Court of Federal Claims Number 03–1289V
539. Regina and John Roach on behalf of Matthew-Isaac Ashanh Roach, Miami, Florida, Court of Federal Claims Number 03–1290V
540. Angela Johnson on behalf of Jeffrey W. Johnson, Jr., Miami, Florida, Court of Federal Claims Number 03–1291V
541. Suzanne Buerkett on behalf of Michael Buerkett, Miami, Florida, Court of Federal Claims Number 03–1292V
542. Ashley Poyner on behalf of Colin Reed Poyner, Murray, Kentucky, Court of Federal Claims Number 03–1293V
543. Valerie and Martin Grosso on behalf of Derrick Grosso, Huntington Beach, California, Court of Federal Claims Number 03–1294V
544. Carrie Hendricks on behalf of Adam Hendricks, Portland, Oregon, Court of Federal Claims Number 03–1295V
545. Vicki Gale on behalf of Courtney Gale, Portland, Oregon, Court of Federal Claims Number 03–1296V
546. Leslee Child on behalf of Grace Child, Portland, Oregon, Court of Federal Claims Number 03–1297V
547. Tammy Silbaugh and Charles Jacovetty on behalf of Jordan Jacovetty, Dallas, Texas, Court of Federal Claims Number 03–1298V
548. Lisa and Grant Garrett on behalf of Ethan Garrett, New York, New York, Court of Federal Claims Number 03–1299V
549. Amy Vitorino and Steven Bolte on behalf of Jeremiah Bolte, New York, New York, Court of Federal Claims Number 03–1300V
550. Arkadivsz Zarzycki and Bozena Zarzycka on behalf of Alan Zarzycki Garrett, New York, New York, Court of Federal Claims Number 03–1301V
551. Victoria and Nicholas Peetros on behalf of Alexander Peetros, New York, New York, Court of Federal Claims Number 03–1302V
552. Angela De La Fe and Wayne Joseph Drake, Sr. on behalf of Wayne Joseph Drake, Jr., Deceased, Crystal River, Florida, Court of Federal Claims Number 03–1303V
553. Teressa Adkins on behalf of Adaizhia Imani Gorham, Houston, Texas, Court of Federal Claims Number 03–1304V
554. Brandi Brown on behalf of Dugan Scott Brown, Houston, Texas, Court of Federal Claims Number 03–1305V
555. Neyla and Carlos Barajas on behalf of Victor Ivan Barajas, Houston, Texas, Court of Federal Claims Number 03–1306V
556. Melissa Basham on behalf of Andrew Todd Basham, Houston, Texas, Court of Federal Claims Number 03–1307V
557. Kristine and Christopher Naffziger on behalf of Zachary Robert Naffziger, Houston, Texas, Court of Federal Claims Number 03–1308V
558. Martha and Jaime Briceno on behalf of Christopher Briceno, Houston, Texas, Court of Federal Claims Number 03–1309V
559. Sonia and Edwin Asencio on behalf of Matthew J. Lucas Asencio, Houston, Texas, Court of Federal Claims Number 03–1310V
560. Deanna Armstrong on behalf of Christian Thomas Armstrong, Houston, Texas, Court of Federal Claims Number 03–1311V
561. Marsha Bach on behalf of Kyle Alan Merkich, Houston, Texas, Court of Federal Claims Number 03–1312V
562. Carol and Michael Barnes on behalf of David Michael Barnes, Houston, Texas, Court of Federal Claims Number 03–1313V
563. Carol Bittner on behalf of Matthew Aaron Bittner, Houston, Texas, Court of Federal Claims Number 03–1314V
564. Lori Long on behalf of Preston Long, Houston, Texas, Court of Federal Claims Number 03–1315V
565. Andrew Weis and Karen Kramer on behalf of Grant Kramer-Weis, Chevy Chase, Maryland, Court of Federal Claims Number 03–1318V
566. Amy and Mark Case on behalf of Zachary Scott Case, Richmond, Virginia, Court of Federal Claims Number 03–1319V
567. Debra and Dean Hoffman on behalf of Justin Michael Hoffman, Richmond, Virginia, Court of Federal Claims Number 03–1320V
568. Cheryl Parker on behalf of Dexter James Fitzpatrick, Jr., Houston, Texas, Court of Federal Claims Number 03–1321V
569. Robert Delair on behalf of Cody Delair, Houston, Texas, Court of Federal Claims, Number 03–1322V
570. Lilia and Luis Salazar on behalf of Miguel Aljandro Salazar, Houston, Texas, Court of Federal Claims Number 03–1323V
571. Sheila and Don Perry on behalf of Cody Ryan Hultquist, Houston, Texas, Court of Federal Claims Number 03–1324V
572. Linda and Paul Carter on behalf of Lacey Makayla Carter, Houston, Texas, Court of Federal Claims Number 03–1325V
573. Layla Blackburn and Tim Schoolcraft on behalf of Michael David Schoolcraft, Houston, Texas, Court of Federal Claims Number 03–1326V
574. Linda and Kevin Merritt on behalf of Hasani Dontay Merritt, Houston, Texas, Court of Federal Claims Number 03–1327V
575. Cherie Gouveia on behalf of Crystal Christina Saul, Houston, Texas, Court of Federal Claims Number 03–1328V
576. Gina Koester on behalf of Markie Koester, Houston, Texas, Court of Federal Claims Number 03–1329V
577. Irelsa Oliveras on behalf of Israel Adrian Morla Oliveras, Houston, Texas, Court of Federal Claims Number 03–1330V
578. Shirley Nelson on behalf of Jennifer Ashley Ray, Houston, Texas, Court of Federal Claims Number 03–1331V
579. Raquel and James Hallm on behalf of Joshua Lorezo Hallm Houston, Texas, Court of Federal Claims Number 03–1332V
580. Kimberly Ashwell on behalf of Nicholas Ashwell, Boston, Massachusetts, Court of Federal Claims Number 03–1333V
581. Nichole Laub on behalf of Joshua Laub, Boston, Massachusetts, Court of Federal Claims Number 03–1334V
582. Alcinda Walters on behalf of Tyler Walters, Boston, Massachusetts, Court of Federal Claims Number 03–1335V
583. Reinaldo Zavala and Velez Carazo on behalf of Karina Nahomi Zavala Velez, Hato Rey, Puerto Rico, Court of Federal Claims Number 03–1337V
584. Myrtle Little on behalf of Keisha Little, Boston, Massachusetts, Court of Federal Claims Number 03–1338V
585. Idania Torres on behalf of Isaiah Torres, Boston, Massachusetts, Court of Federal Claims Number 03–1339V
586. Steven Schwartz on behalf of Steven Schwartz, II, Boston, Massachusetts, Court of Federal Claims Number 03–1340V
587. Angeles Leal on behalf of Andres Leal, Boston, Massachusetts, Court of Federal Claims Number 03–1341V
588. Jessika Andrews on behalf of Wyatt Andrews, Boston, Massachusetts, Court of Federal Claims Number 03–1342V
589. Bethanne and Scott Schrecengost on behalf of Anthony Schrecengost, Melbourne, Florida, Court of Federal Claims Number 03–1343V

590. Sue and David Miller on behalf of Alexander Miller, New Orleans, Louisiana, Court of Federal Claims Number 03–1344V
591. Dawna and Eric Knight on behalf of Eric Daniel Knight, II, Houston, Texas, Court of Federal Claims Number 03–1349V
592. Oswalda Pubill on behalf of Herminio Anthony Correa, Houston, Texas, Court of Federal Claims Number 03–1350V
593. Roxanne Myers on behalf of Dylan Maughton McDuffee, Houston, Texas, Court of Federal Claims Number 03–1351V
594. Maricruz and Michael Levine on behalf of Alec Keith Levine, Houston, Texas, Court of Federal Claims Number 03–1352V
595. Barbara McKenzie on behalf of Ethan Lee McKenzie, Houston, Texas, Court of Federal Claims Number 03–1353V
596. Michele and Byron King on behalf of Kyndel Helen Rose King, Houston, Texas, Court of Federal Claims Number 03–1354V
597. Kelly and Ricky Goins on behalf of Dalton Bryce Goins, Houston, Texas, Court of Federal Claims Number 03–1355V
598. Alejandra and Miguel Orozco on behalf of Miguel Alegjandro Orozco, Houston, Texas, Court of Federal Claims Number 03–1356V
599. Bettina and Thomas Pickering on behalf of Thomas L. Pickering, Houston, Texas, Court of Federal Claims Number 03–1357V
600. Lisa Thomas on behalf of Christian Thomas, Houston, Texas, Court of Federal Claims Number 03–1358V
601. Yadira Garcia on behalf of Marcos Cortez, Houston, Texas, Court of Federal Claims Number 03–1359V
602. Christina Bylsma on behalf of Shane Conley, Houston, Texas, Court of Federal Claims Number 03–1360V
603. April and Thomas Miller on behalf of Amanda Dawn Miller, Houston, Texas, Court of Federal Claims Number 03–1361V
604. Rochelle and John McKinney on behalf of Faith Love Irwin, Houston, Texas, Court of Federal Claims Number 03–1362V
605. Betty and Patrick Furphy on behalf of Mark Joseph Furphy, Houston, Texas, Court of Federal Claims Number 03–1363V
606. Kathy and Dave Morrison on behalf of Kyle Alan Morrison, Houston, Texas, Court of Federal Claims Number 03–1364V
607. Kate and McMillan Ogbughi on behalf of Maximillan Chikanma Ogbughi, Houston, Texas, Court of Federal Claims Number 03–1365V
608. Sherry and Dennis Riddell on behalf of Nicholas Andrew Riddell, Houston, Texas, Court of Federal Claims Number 03–1366V
609. Marion and Kenneth Neal on behalf of Adrianne Nicole Neal, Houston, Texas, Court of Federal Claims Number 03–1367V
610. Shelly Donohue on behalf of Riley A. Donohue, Houston, Texas, Court of Federal Claims Number 03–1368V
611. George McElroy on behalf of George William McElroy, V, Houston, Texas, Court of Federal Claims Number 03–1369V
612. Michelle and Daniel Murray on behalf of Courtney Joann Murray, Houston, Texas, Court of Federal Claims Number 03–1370V
613. Jennifer and Kevin Christian on behalf of Kevin Richard Christian, Jr., Houston, Texas, Court of Federal Claims Number 03–1371V
614. Richard Robinson and Shaila McCleese on behalf of Clayton McCleese, Houston, Texas, Court of Federal Claims Number 03–1372V
615. Lukman Latona on behalf of Oluwatoni Dabi Latona, Houston, Texas, Court of Federal Claims Number 03–1373V
616. Latisha Bethel on behalf of DeQuan Lamont Bethel, Houston, Texas, Court of Federal Claims Number 03–1374V
617. Nicole Broda on behalf of Justin Broda, Houston, Texas, Court of Federal Claims Number 03–1375V
618. Laneika Curley on behalf of Juan Ye Deshaun Jackson, Houston, Texas, Court of Federal Claims Number 03–1376V
619. Andrea Castellano on behalf of Anthony J. Castellano, Houston, Texas, Court of Federal Claims Number 03–1377V
620. Valerie Buckley on behalf of Vincent Blaise Buckley, Houston, Texas, Court of Federal Claims Number 03–1378V
621. Eileen and Michael Becker on behalf of Trevor Scott Becker, Houston, Texas, Court of Federal Claims Number 03–1379V
622. Pearl Cavazos on behalf of Paul M. Cavazos, Houston, Texas, Court of Federal Claims Number 03–1380V
623. Sharon and Marvin Lipschitz on behalf of Fay Lipschitz, Houston, Texas, Court of Federal Claims Number 03–1381V
624. Melissa and Christopher Jones on behalf of Ryan Creel Jones, Houston, Texas, Court of Federal Claims Number 03–1382V
625. Joseph Loughlin on behalf of Brandon Zachery Loughlin, Houston, Texas, Court of Federal Claims Number 03–1383V
626. Felicia and Augustin Gonzalez on behalf of Augustin Gonzalez, Jr., Houston, Texas, Court of Federal Claims Number 03–1384V
627. Therese and Tim Bercyzk on behalf of Nicholas Eugene Bercyzk, Houston, Texas, Court of Federal Claims Number 03–1385V
628. Francis Ruiz on behalf of Alexander Guerrero, Jr., Houston, Texas, Court of Federal Claims Number 03–1386V
629. Laura and JR Black on behalf of Cameron A. Black, Houston, Texas, Court of Federal Claims Number 03–1387V
630. Kelly and Matthew Bowerman on behalf of Perrin W. Bowerman, Houston, Texas, Court of Federal Claims Number 03–1388V
631. Anissa Walker on behalf of Sean Christopher Walker, Houston, Texas, Court of Federal Claims Number 03–1391V
632. Lashay Spencer on behalf of Jene Javon Douglas Spencer, Houston, Texas, Court of Federal Claims Number 03–1392V
633. Valerie Stallworth on behalf of William Michael Stallworth, Houston, Texas, Court of Federal Claims Number 03–1393V
634. Rose Vicks on behalf of Laron Keith Huff, Houston, Texas, Court of Federal Claims Number 03–1394V
635. Tina Woskobunik on behalf of Kyle Paul Orozco, Houston, Texas, Court of Federal Claims Number 03–1395V
636. Emily Vie Brooks on behalf of Arrienne Leigh Begley, Houston, Texas, Court of Federal Claims Number 03–1396V
637. Adrienne Wojcik on behalf of Michael Mojcik, Houston, Texas, Court of Federal Claims Number 03–1397V
638. Priscilla Quesada on behalf of Brandon Anthony Quesada, Houston, Texas, Court of Federal Claims Number 03–1398V
639. Milya Gemal on behalf of Isaac Marshall Gemal, Houston, Texas, Court of Federal Claims Number 03–1399V
640. Janet Rivera on behalf of Ashan Alias Ortiz, Houston, Texas, Court of Federal Claims Number 03–1400V
641. Joyce and Dean Scott on behalf of Samuel Dean Scott, Houston, Texas, Court of Federal Claims Number 03–1401V
642. Edwina Sharp on behalf of Chandler Brisbane Comer, Houston, Texas, Court of Federal Claims Number 03–1402V
643. Janet Russum on behalf of Randi Russum, Boston, Massachusetts, Court of Federal Claims Number 03–1403V
644. Lisa Menne on behalf of Jake Menne, Boston, Massachusetts, Court of Federal Claims Number 03–1404V
645. Barbara Fox on behalf of Sean Fox, Boston, Massachusetts, Court of Federal Claims Number 03–1405V
646. Marilyn Riley on behalf of William Nicholas Riley, Boston, Massachusetts, Court of Federal Claims Number 03–1406V
647. Dawn Meyers on behalf of Parker Meyers, Boston, Massachusetts, Court of Federal Claims Number 03–1407V
648. Ellen Shanberg on behalf of Cameron Shanberg, Boston, Massachusetts, Court of Federal Claims Number 03–1408V
649. Wendy Aston on behalf of Timoteo Aston, Boston, Massachusetts, Court of Federal Claims Number 03–1409V
650. Katherine Chachere on behalf of Elise Chachere, Boston, Massachusetts, Court of Federal Claims Number 03–1410V
651. Kristena Wilson on behalf of Tiana Wilson, Boston, Massachusetts, Court of Federal Claims Number 03–1411V
652. Alcinda Walters on behalf of Tyler Walters, Boston, Massachusetts, Court of Federal Claims Number 03–1412V
653. Lori Fleming on behalf of Luke Fleming, Boston, Massachusetts, Court of Federal Claims Number 03–1413V
654. Amie Gibbons on behalf of Blaine Esser, Dallas, Texas, Court of Federal Claims Number 03–1414V
655. Holly and Henry Blackmon on behalf of Adam Blackmon, Dallas, Texas, Court of Federal Claims Number 03–1415V
656. Tiffany Sanders on behalf of Tyan Marie Green, Vienna, Virginia, Court of Federal Claims Number 03–1419V
657. Satra Dee Zurita on behalf of Armani Taylor, Harbor City, California, Court of Federal Claims Number 03–1421V
658. Karen and John Best on behalf of Samuel Best, Concord, New Hampshire, Court of Federal Claims Number 03–1422V
659. Lisa Hendry on behalf of Christopher Gyorok, New York, New York, Court of Federal Claims Number 03–1423V
660. Lainie and Jamyson Villa on behalf of Elijah Matthew Villa, Houston, Texas, Court of Federal Claims Number 03–1425V
661. Meri and Shawn Kelly on behalf of Daniel Laurence Kelly, Houston, Texas, Court of Federal Claims Number 03–1426V
662. Melanie Villa on behalf of Elise Marie Villa, Houston, Texas, Court of Federal Claims Number 03–1427V
663. Maria Gonzalez and Manuel Mendoza on behalf of Alberto D. Mendoza, Houston, Texas, Court of Federal Claims Number 03–1428V
664. Deborah West on behalf of Corbin Andrew West, Houston, Texas, Court of Federal Claims Number 03–1429V

665. Julie and Leon Virnig on behalf of Mariah Anne Virnig, Houston, Texas, Court of Federal Claims Number 03–1430V
666. John Thompson on behalf of Elijah J. Thompson, Houston, Texas, Court of Federal Claims Number 03–1431V
667. Leanne Copertino and Michael Wands on behalf of Michael William Wands, Houston, Texas, Court of Federal Claims Number 03–1432V
668. Stacey and Timothy Boger on behalf of Ravyn Chante Boger, Olathe, Kansas, Court of Federal Claims Number 03–1434V
669. Stephany Dunn and Hughton Fuller on behalf of Omar S. Fuller, Melbourne, Florida, Court of Federal Claims Number 03–1435V
670. Catherine MacKrell on behalf of Matthew MacKrell, Great Neck, New York, Court of Federal Claims Number 03–1436V
671. Alex Olsen and Lisa Worden on behalf of Nicholas Worden, Great Neck, New York, Court of Federal Claims Number 03–1437V
672. Karen Rea on behalf of Harrison Rea, Great Neck, New York, Court of Federal Claims Number 03–1438V
673. Donna Marie and Robert Hintelmann on behalf of Erik Martin Hintelmann, Great Neck, New York, Court of Federal Claims Number 03–1439V
674. Sarah and H. Grady McElyea on behalf of Seth McElyea, Dallas, Texas, Court of Federal Claims Number 03–1440V
675. Sharon and Ron Salazar on behalf of Ronnie Salazar, Taos, New Mexico, Court of Federal Claims Number 03–1441V
676. Katie and Richard Thomas on behalf of Connor Thomas, Jacksonville, Florida, Court of Federal Claims Number 03–1442V
677. Janice Lein on behalf of Kristopher Patterson, Sarasota, Florida, Court of Federal Claims Number 03–1443V
678. Lori Kay Masterson on behalf of Keith Patrick Masterson, Somers Point, New Jersey, Court of Federal Claims Number 03–1445V
679. Kathy and William Gerhardt on behalf of Jeffrey W. Gerhardt, Egg Harbor City, New Jersey, Court of Federal Claims Number 03–1448V
680. Tiffany Sanders on behalf of Tyan Marie Green, Vienna, Virginia, Court of Federal Claims Number 03–1449V
681. Mary Dellavalle on behalf of Jacob Michael Dellavalle, Houston, Texas, Court of Federal Claims Number 03–1450V
682. Cheryl and Randy McCall on behalf of Caroline Ann McCall, Houston, Texas, Court of Federal Claims Number 03–1451V
683. Christine and John Dunn on behalf of Joseph Michael Dunn, Houston, Texas, Court of Federal Claims Number 03–1452V
684. Yesenia and Juan Reyes on behalf of Elieser I. Reyes, Houston, Texas, Court of Federal Claims Number 03–1453V
685. Shelia and John Penrose on behalf of Ryan J. Penrose, Houston, Texas, Court of Federal Claims Number 03–1454V
686. Angela Schaffer on behalf of Kyra Denise Schaffer, Houston, Texas, Court of Federal Claims Number 03–1455V
687. Linda Puckett on behalf of Brittany L. Puckett, Houston, Texas, Court of Federal Claims Number 03–1456V
688. Collett Tillett on behalf of Collett Edward Tillett, Jr., Houston, Texas, Court of Federal Claims Number 03–1457V
689. Raynite Corbin on behalf of Justin Durrell Corbin, Houston, Texas, Court of Federal Claims Number 03–1458V
690. Karla and Jose Martinez on behalf of Jessica Leigh Martinez, Houston, Texas, Court of Federal Claims Number 03–1459V
691. Wendy and Todd Fout on behalf of Noah Matthew Fout, Houston, Texas, Court of Federal Claims Number 03–1460V
692. Constance and Scott Dunham on behalf of Dale Dunham, Houston, Texas, Court of Federal Claims Number 03–1461V
693. Amber and Rick Schuster on behalf of Rickey Schuster, Houston, Texas, Court of Federal Claims Number 03–1462V
694. Elliot Rubin on behalf of Zipporak Teresa Rubin, Houston, Texas, Court of Federal Claims Number 03–1463V
695. Monica Vaughn on behalf of Jaicob Elijah Lamont Ross, Houston, Texas, Court of Federal Claims Number 03–1464V
696. Cecilia and Geoffrey Hall on behalf of Griffin Hall, Houston, Texas, Court of Federal Claims Number 03–1465V
697. Rachel and Paul Terry on behalf of James Cooper Terry, Houston, Texas, Court of Federal Claims Number 03–1466V
698. Tamara and Ronald Peterson on behalf of Taylor Nicole Peterson, Houston, Texas, Court of Federal Claims Number 03–1467V
699. Sally and Raymond Everhart on behalf of Halie Rae Everhart, Houston, Texas, Court of Federal Claims Number 03–1468V
700. Michelle and Carlos Sanchez on behalf of Adrian Carlos Estranda, Houston, Texas, Court of Federal Claims Number 03–1469V
701. Ivonne Valez on behalf of Darien Richard Crespo, Houston, Texas, Court of Federal Claims Number 03–1470V
702. Reeva Worsley and Reeva Lacayo on behalf of Sergio Alexander Lacayo, Houston, Texas, Court of Federal Claims Number 03–1471V
703. Martha Widner on behalf of Spencer D. Widner, Houston, Texas, Court of Federal Claims Number 03–1472V
704. Lucia Olarerin on behalf of Olanlaoluwa Mokiolu Olajuwon, Houston, Texas, Court of Federal Claims Number 03–1473V
705. Disa and Peter Orosz on behalf of Kyle David Orosz, Houston, Texas, Court of Federal Claims Number 03–1474V
706. Christina and Steven Mullins on behalf of Austin Ray Mullins, Houston, Texas, Court of Federal Claims Number 03–1475V
707. Cynthia and Gary Merrill on behalf of Ryan Charles Mashen, Houston, Texas, Court of Federal Claims Number 03–1476V
708. Jane Gathuo on behalf of Kagua Njenga, Houston, Texas, Court of Federal Claims Number 03–1477V
709. Patricia and Conrad Silk on behalf of Lance Conrad Silk, Houston, Texas, Court of Federal Claims Number 03–1478V
710. Mary Anne and Jim Pelletier on behalf of Zachary Pelletier, Houston, Texas, Court of Federal Claims Number 03–1479V
711. Latoya and Christian Lowe on behalf of X-Zavion Ja'Quavious Lowe, Houston, Texas, Court of Federal Claims Number 03–1480V
712. Connie Taylor on behalf of Ashley Dawn Strait, Houston, Texas, Court of Federal Claims Number 03–1481V
713. Robin and Robert Delaney on behalf of Joshua Robert Delaney, Houston, Texas, Court of Federal Claims Number 03–1482V
714. Houria Hrieche on behalf of Brianna Lopez, Houston, Texas, Court of Federal Claims Number 03–1483V
715. Robin and Gilbert Reynoso on behalf of Breanna Gail Reynoso, Houston, Texas, Court of Federal Claims Number 03–1484V
716. Tamerria and Charles Fagan on behalf of TailaChante Fagan, Houston, Texas, Court of Federal Claims Number 03–1485V
717. Laura and Alejandro Poli on behalf of Alejandro Poli, III, Houston, Texas, Court of Federal Claims Number 03–1486V
718. Donna and Jeffrey Dodson on behalf Dianna Nicole Dodson, Houston, Texas, Court of Federal Claims Number 03–1487V
719. Kelly and Anthony Mann on behalf of Daniel Christopher Mann, Houston, Texas, Court of Federal Claims Number 03–1488V
720. Frankie Story on behalf of Dominick Juan Diego, Houston, Texas, Court of Federal Claims Number 03–1489V
721. Latasha Curry on behalf of Latonya Tanasia Curry, Houston, Texas, Court of Federal Claims Number 03–1490V
722. Bernice Johnson on behalf of Shaymear Levourgiea Johnson, Houston, Texas, Court of Federal Claims Number 03–1491V
723. Judy Smitty on behalf of Catherine Lee Paige Smitty, Houston, Texas, Court of Federal Claims Number 03–1492V
724. Irene Miller on behalf of Robert Miller, Houston, Texas, Court of Federal Claims Number 03–1493V
725. Zeyda Bernabe on behalf of Anthony Bernabe, Kissimmee, Florida, Court of Federal Claims Number 03–1494V
726. Melody and Jody Cannady on behalf of Joshua Cannady, Vienna, Virginia, Court of Federal Claims Number 03–1495V
727. Ashley Martin on behalf of Michael Martin, Vienna, Virginia, Court of Federal Claims Number 03–1496V
728. Melody and Jody Cannady on behalf of Jacob Cannady, Vienna, Virginia, Court of Federal Claims Number 03–1497V
729. Joseph Van Goethem, Vienna, Virginia, Court of Federal Claims Number 03–1498V
730. Rhonda and Thomas Williams on behalf of Thomas Meada Williams, VI, Cape Girardeau, Missouri, Court of Federal Claims Number 03–1504V
731. Lisa and John DeSherlia on behalf of Hannah Elizabeth DeSherlia, Cape Girardeau, Missouri, Court of Federal Claims Number 03–1505V
732. Betty Jane Berry on behalf of Marvin T. Berry, Deceased, Cottonwood, Idaho, Court of Federal Claims Number 03–1506V
733. Anthony Esposito on behalf of Kelley (Cramer) Esposito, Alexandria, Virginia, Court of Federal Claims Number 03–1507V
734. Holly and Carlton Fisher on behalf of Emilee Fisher, Bartlett, Tennessee, Court of Federal Claims Number 03–1510V
735. Dawn Wedemeyer on behalf of Jarod Wedemeyer, Houston, Texas, Court of Federal Claims Number 03–1511V
736. Diane Stott on behalf of Michael Stott, Houston, Texas, Court of Federal Claims Number 03–1512V
737. Adrienne Roussean on behalf of Alexander Roussean, Houston, Texas, Court of Federal Claims Number 03–1513V

738. Sara Puffett on behalf of Shaylynn Puffett, Houston, Texas, Court of Federal Claims Number 03–1514V
739. Rafael and Bente Medina on behalf of Paloma Medina, Houston, Texas, Court of Federal Claims Number 03–1515V
740. Jacqueline Moynihan on behalf of Ryan Moynihan, Houston, Texas, Court of Federal Claims Number 03–1516V
741. Carolyn and Matthew Herc on behalf of Jonathan Herc, Houston, Texas, Court of Federal Claims Number 03–1517V
742. Heather Haggerty on behalf of Pedraic Haggerty, Houston, Texas, Court of Federal Claims Number 03–1518V
743. Janet Fabricius on behalf of Justin Jerry Fabricius, Houston, Texas, Court of Federal Claims Number 03–1519V
744. Margaret and Sean Donoghue on behalf of Kevin Michael Donoghue, Houston, Texas, Court of Federal Claims Number 03–1520V
745. Michele Coffey on behalf of Grace Elizabeth Coffey, Houston, Texas, Court of Federal Claims Number 03–1521V
746. Grisel Gonzalez-Diaz on behalf of Jennifer Alvarez-Martinez, Houston, Texas, Court of Federal Claims Number 03–1522V
747. Janet and Ronnie Boyer on behalf of Noah Boyer, Houston, Texas, Court of Federal Claims Number 03–1523V
748. Beth and Michael Lanier on behalf of William Lanier, Houston, Texas, Court of Federal Claims Number 03–1524V
749. Elizabeth and Chris Rupp on behalf of Isabella Rupp, Houston, Texas, Court of Federal Claims Number 03–1525V
750. Lisa and Rodney Calvert on behalf of Rodney J. Calvert, Kansas City, Missouri, Court of Federal Claims Number 03–1526V
751. Alisa Peters on behalf of Brayden Rafferty, Boston, Massachusetts, Court of Federal Claims Number 03–1527V
752. Gloria Martinez on behalf of William R. Wilson, III, Boston, Massachusetts, Court of Federal Claims Number 03–1528V
753. Brandi Plants on behalf of Griffen Plants, Boston, Massachusetts, Court of Federal Claims Number 03–1529V
754. Lisa Jolly on behalf Matthew Jolly, Boston, Massachusetts, Court of Federal Claims Number 03–1530V
755. Patricia Vaporis on behalf of Nomikos Vaporis, Boston, Massachusetts, Court of Federal Claims Number 03–1531V
756. Kristin Lebaron on behalf of Matthew Lebaron, Boston, Massachusetts, Court of Federal Claims Number 03–1532V
757. Luz Arevalo on behalf of Anna Zabin, Boston, Massachusetts, Court of Federal Claims Number 03–1533V
758. Rebecca Nelson on behalf of Sarah Nelson, Boston, Massachusetts, Court of Federal Claims Number 03–1534V
759. Rebecca Nelson on behalf of Matthew Nelson, Boston, Massachusetts, Court of Federal Claims Number 03–1535V
760. John Humphrey on behalf of Travis Humphrey, Boston, Massachusetts, Court of Federal Claims Number 03–1536V
761. Daijing and Yuan-Fang Wang on behalf of Eric Wang, Temecula, California, Court of Federal Claims Number 03–1539V
762. Tiffany E. and Randy P. Bowen on behalf of Elizabeth Bowen, Richmond, Virginia, Court of Federal Claims Number 03–1540V
763. Douglas Hillman on behalf of Sean Hillman, Somers Point, New Jersey, Court of Federal Claims Number 03–1541V
764. Bernadette and Salvatore Tagliaferro on behalf of Christopher Tagliaferro, Lake Success, New York, Court of Federal Claims Number 03–1542V
765. James Francis, Charleston, South Carolina, Court of Federal Claims Number 03–1543V
766. Michelle L. Prather on behalf of Brandon L. Begley, Alexandria, Virginia, Court of Federal Claims Number 03–1544V
767. Carmen Hutton on behalf of Joseph Hutton, Alexandria, Virginia, Court of Federal Claims Number 03–1545V
768. Earlesha N. Richardson on behalf of Marquise T. Paige, Alexandria, Virginia, Court of Federal Claims Number 03–1546V
769. Christina Taylor on behalf of Noah N. Taylor, Alexandria, Virginia, Court of Federal Claims Number 03–1547V
770. Rebecca Harper on behalf of Dallin Harper, Bowling Green, Ohio, Court of Federal Claims Number 03–1549V
771. Stacie Anderle on behalf Nolan Anderle, Boston, Massachusetts, Court of Federal Claims Number 03–1550V
772. Andrea Hensley on behalf of Noah Hensley, Boston, Massachusetts, Court of Federal Claims Number 03–1551V
773. Arline Pettway on behalf of Jordan Pettway, Boston, Massachusetts, Court of Federal Claims Number 03–1552V
774. Mohammad Salehpour on behalf of Jafar Salehpour, Boston, Massachusetts, Court of Federal Claims Number 03–1553V
775. Theresa Pancari on behalf of James Pancari, Boston, Massachusetts, Court of Federal Claims Number 03–1554V
776. Meredith Hess on behalf of Benjamin Hess, Boston, Massachusetts, Court of Federal Claims Number 03–1555V
777. Cilemba Loshi on behalf of Stephanie Loshi Kimbambe, Charlotte, North Carolina, Court of Federal Claims Number 03–1556V
778. Kimberly Hudson on behalf of Anthony T. Jones, Jr., Alexandria, Virginia, Court of Federal Claims Number 03–1560V
779. Elizabeth M. Ivy on behalf of Christina A. Blue, Alexandria, Virginia, Court of Federal Claims Number 03–1561V
780. Karen Melf on behalf of Katherine Melf, Scranton, Pennsylvania, Court of Federal Claims Number 03–1564V
781. Mary and Paul Hughes on behalf of Paul Hughes, Jr., Scranton, Pennsylvania, Court of Federal Claims Number 03–1565V
782. Sheila and Stephen Haigh on behalf of Kyle Haigh, Scranton, Pennsylvania, Court of Federal Claims Number 03–1566V
783. Debbie and James Fruehan on behalf of John L. Fruehan, Scranton, Pennsylvania, Court of Federal Claims Number 03–1567V
784. Kelly Kelly on behalf of Robert Kelly, Scranton, Pennsylvania, Court of Federal Claims Number 03–1568V
785. Mary Ann and Mike Davis on behalf of Corey Davis, Scranton, Pennsylvania, Court of Federal Claims Number 03–1569V
786. George Shadie on behalf of Alex Shadie, Scranton, Pennsylvania, Court of Federal Claims Number 03–1570V
787. Sherry Mercer on behalf of Steven Mercer, Scranton, Pennsylvania, Court of Federal Claims Number 03–1571V
788. Tery and Adam Serafin on behalf of Jaboc Serafin, Scranton, Pennsylvania, Court of Federal Claims Number 03–1572V
789. Judy and Joseph Manley on behalf of Brett Manley, Scranton, Pennsylvania, Court of Federal Claims Number 03–1573V
790. Leonardia and Edward Karpowicz on behalf of Quentin Karpowicz, Scranton, Pennsylvania, Court of Federal Claims Number 03–1574V
791. William P. Sukus on behalf of William J. Sukus, Scranton, Pennsylvania, Court of Federal Claims Number 03–1575V
792. Mary Ann and Mike Davis on behalf of Kimberly Davis, Scranton, Pennsylvania, Court of Federal Claims Number 03–1576V
793. Dolly and Gary Belles on behalf of Gary Belles, Jr., Scranton, Pennsylvania, Court of Federal Claims Number 03–1577V
794. Cathy and Scott Fuller on behalf of Bradley Fuller, Scranton, Pennsylvania, Court of Federal Claims Number 03–1578V
795. Katrina and Mark Burdetsky on behalf of Kayla Emily Burdetsky, Jacksonville, Florida, Court of Federal Claims Number 03–1579V
796. Elizabeth and Bradford Downes on behalf of Ryan A. Downes, Plantation, Florida, Court of Federal Claims Number 03–1580V
797. Barbara and William Labrecque on behalf of Sierra Labrecque, Vienna, Virginia, Court of Federal Claims Number 03–1581V
798. Barbara and William Labrecque on behalf of Jonathan Labrecque, Vienna, Virginia, Court of Federal Claims Number 03–1582V
799. Deannea and Steven Dagilis on behalf of Colton Bryce Dagilis, Temecula, Florida, Court of Federal Claims Number 03–1583V
800. Trudy Ricks and Gary Leader on behalf of Jeffrey Leader, Temecula, Florida, Court of Federal Claims Number 03–1584V
801. Jillian Lowrie on behalf of Emily Paige Lowrie, Sugarland, Texas, Court of Federal Claims Number 03–1585V
802. Christina Weisensel on behalf of David Vanmeter, Houston, Texas, Court of Federal Claims Number 03–1586V
803. Sharon Merrill on behalf of Matthew Merrill, Houston, Texas, Court of Federal Claims Number 03–1587V
804. Shanika Bell on behalf of La'Shundra Shaute Bell, Moorhead, Mississippi, Court of Federal Claims Number 03–1588V
805. Bobbi and Edward Peery on behalf of Kindra Peery, Houston, Texas, Court of Federal Claims Number 03–1589V
806. Marlean Beach on behalf of Esteau Shamal Williams, Houston, Texas, Court of Federal Claims Number 03–1590V
807. Shelia and Johnny Bishop on behalf of Jesse Taylor Bishop, Houston, Texas, Court of Federal Claims Number 03–1591V
808. Nancy and Terry Couch on behalf of Anthony Jarell Couch, Houston, Texas, Court of Federal Claims Number 03–1592V
809. Leanne and Lawrence Arena on behalf of Rocco Lawrence Arena, Bronx, New York, Court of Federal Claims Number 03–1593V
810. Monika and David Nugent on behalf of Daniel James Nugent, Danbury, Connecticut, Court of Federal Claims Number 03–1594V

811. Lori Schweiger on behalf of Sophia Rose Schweiger, Duluth, Minnesota, Court of Federal Claims Number 03–1595V
812. Gabriela Sweet on behalf of Leeroy Sweet, Houston, Texas, Court of Federal Claims Number 03–1596V
813. Candace and Scott Neu on behalf of Aaron Mathew Neu, Andover, Minnesota, Court of Federal Claims Number 03–1597V
814. Candace and Scott Neu on behalf of Hunter Allen Neu, Andover, Minnesota, Court of Federal Claims Number 03–1598V
815. Christine and Terry Peters on behalf of Braden Scott Peters, Houston, Texas, Court of Federal Claims Number 03–1599V
816. Diane and Richard Schmid on behalf of Jacob Allen Schmid, Houston, Texas, Court of Federal Claims Number 03–1600V
817. Anabel and Abdi Priego on behalf of Abdi Jared Priego, Houston, Texas, Court of Federal Claims Number 03–1601V
818. Alicia Clayton on behalf of Aaron Maliq Clayton, Houston, Texas, Court of Federal Claims Number 03–1602V
819. Sheri and Kevin Graham on behalf of Preston Tyler Graham, Houston, Texas, Court of Federal Claims Number 03–1603V
820. Anna and Anthony Thompson on behalf of James Martin Thompson, Boston, Massachusetts, Court of Federal Claims Number 03–1604V
821. Tammie and Thomas Anderson on behalf of Sion Anderson, Baltimore, Maryland, Court of Federal Claims Number 03–1605V
822. Lisa Osterkamp on behalf of Joshua Jacob Andberg, Houston, Texas, Court of Federal Claims Number 03–1606V
823. Bertha Boswell on behalf of Marquavis Devonta Boswell, Houston, Texas, Court of Federal Claims Number 03–1607V
824. Alvinese and Robert Henderson on behalf of Robert Lewis Henderson, Houston, Texas, Court of Federal Claims Number 03–1608V
825. Deena and Olando Rivera on behalf of Anthony Michael Rivera, Houston, Texas, Court of Federal Claims Number 03–1609V
826. Regina and Ricky King on behalf of Joshua Lynn King, Paducah, Kentucky, Court of Federal Claims Number 03–1610V
827. Nicole and Russell Rider on behalf of Logan Nicole Rider, Houston, Texas, Court of Federal Claims Number 03–1611V
828. Barbara and Gregory Haines on behalf of Kevin J. Haines, Woodbury, New Jersey, Court of Federal Claims Number 03–1612V

Dated: October 27, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–27883 Filed 11–5–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; Call for Public Comments on Seven Nominations Proposed for Listing in the Report on Carcinogens, Eleventh Edition

Summary

The National Toxicology Program (NTP) solicits final public comments on the nominations reviewed in 2003 for listing in the Report on Carcinogens, Eleventh Edition. Comments will be accepted for 60 days from the publication date of this announcement and should be directed to Dr. C. W. Jameson (contact information below).

Background

The Report on Carcinogens (''the Report'') (previously known as the Annual Report on Carcinogens) is a Congressionally mandated listing of known human carcinogens and reasonably anticipated human carcinogens, and its preparation is delegated to the NTP by the Secretary, Department of Health and Human Services (DHHS). Section 301 (b) (4) of the Public Health Service Act, as amended, provides that the Secretary, DHHS, shall publish a biennial report which contains a list of all substances (1) which either are known to be human carcinogens or may reasonably be anticipated to be human carcinogens; and (2) to which a significant number of persons residing in the United States (US) are exposed. The law also states that the reports should provide available information on the nature of exposures, the estimated number of persons exposed and the extent to which the implementation of Federal regulations decreases the risk to public health from exposure to these chemicals.

In 2003, seven nominations were reviewed by three scientific committees, two Federal and one non-government, for listing in the Eleventh Report. This review included public comment and review. The three scientific review committees evaluated all available data relevant to the criteria for inclusion of candidate nominations in the Report. The seven nominations along with their Chemical Abstract Services (CAS) Registry numbers (where available) and the recommendations from the three scientific peer reviews are provided in the table below. The NTP will review the recommendations from each of the review committees and consider all public comments received throughout the review process. Based upon this information, the NTP Director will make a recommendation to the Secretary, DHHS, regarding the listing of each nominated substance in the Eleventh Report.

The criteria used in the review process and a detailed description of the review procedures, including the steps in the current formal review process, can be obtained from the NTP Web site at *http://ntp-server.niehs.nih.gov/* (choose Report on Carcinogens) or by contacting Dr. C. W. Jameson (contact information below). Background documents on the nominations are also available on the NTP Report on Carcinogens Web site in PDF-format and in hard copy or on CD upon request from Dr. Jameson.

Public Comment Requested

The NTP solicits final public comments on the seven nominations reviewed in 2003 for listing in the Eleventh Report. The public is invited to submit comments that supplement any previously submitted comments or to provide comments for the first time on any nomination. Comments will be accepted for 60 days from the publication date of this announcement and should be directed to Dr. C. W. Jameson (National Toxicology Program, Report on Carcinogens, MD EC–14, P.O. Box 12233, Research Triangle Park, NC 27709; phone: (919) 541–4096, fax: (919) 541–0144, e-mail: *jameson@niehs.nih.gov*). Individuals submitting public comments are asked to include relevant contact information (name, affiliation (if any), address, telephone, fax, e-mail, and sponsoring organization (if any)).

Dated: October 28, 2003.

Kenneth Olden,

Director, National Toxicology Program.

SUMMARY OF RG1,[1] RG[2] AND NTP BOARD SUBCOMMITTEE[3] RECOMMENDATIONS FOR THE NOMINATIONS REVIEWED IN 2003 FOR LISTING IN THE REPORT ON CARCINOGENS, 11TH EDITION

Nomination/CAS number	Primary uses or exposures	RG1 action	RG2 action	NTP board subcommittee action
Diazoaminobenzene (DAAB)/136–35–6.	DAAB is used as an intermediate in the production of dyes and to promote adhesion of natural rubber to steel.	Motion to list DAAB as *reasonably anticipated to be a human carcinogen* passed by unanimous vote (5/0).	Motion to list DAAB as *reasonably anticipated to be a human carcinogen* passed by majority vote (8/1). Negative vote cast because member felt there was not sufficient evidence for DAAB to list in the Report on Carcinogens..	Motion to list DAAB as *reasonably anticipated to be a human carcinogen* passed by majority vote (6/4) with 1 abstention. Negative votes: 3 members felt nominations did not meet criteria for listing and 1 member felt that because DAAB is metabolized to benzene, it should be listed as *known to be a human carcinogen.* Abstention—member felt if DAAB is metabolized to benzene, it should be listed as *known to be a human carcinogen;* however, not convinced chemical is metabolized to benzene in humans.
Hepatitis B Virus (HBV)	HBV is a small DNA-enveloped virus that along with Hepatitis C Virus causes most parentally transmitted viral hepatitis.	Motion to list HBV as *known to be a human carcinogen* passed by unanimous vote (4/0).	Motion to list HBV as *known to be a human carcinogen* passed by unanimous vote (8/0).	Motion to list HBV as *known to be a human carcinogen* passed by unanimous vote (12/0).
Hepatitis C Virus (HCV)	HCV is an RNA-enveloped virus that along with Hepatitis B Virus causes most parenterally transmitted viral hepatitis.	Motion to list HCV as *known to be a human carcinogen* passed by unanimous vote (7/0).	Motion to list HCV as *known to be a human carcinogen* passed by unanimous vote (8/0).	Motion to list HCV as *known to be a human carcinogen* passed by unanimous vote (12/0).
Human Papillomaviruses (HPVs), Genital-Mucosal Types.	HPVs are small, non-enveloped viruses that infect genital skin, and genital and non-genital mucosa. HPV infections are common throughout the world.	Motion to list HPVs as *known to be a human carcinogen* passed by unanimous vote (7/0).	Motion to list HPVs as *known to be a human carcinogen* passed by unanimous vote (8/0).	Motion to list HPVs as *known to be a human carcinogen* passed by unanimous vote (12/0).
Lead and Lead Compounds.	Major use of metal is in making lead-acid storage batteries. Other common uses include ammunition and cable covering. Lead compounds are used in paint, glass, ceramics, fuel additives, and some traditional cosmetics.	Motion to list Lead and Lead Compounds as *known to be human carcinogens* passed by unanimous vote (8/0).	Motion to list Lead and Lead Compounds as *reasonably anticipated to be human carcinogens* passed by majority vote (4/3). Negative votes cast because members felt that human data were sufficient to list lead and lead compounds as *known to be human carcinogens*.	Motion to list Lead and Lead Compounds as *reasonably anticipated to be human carcinogens* passed by majority vote (11/0).
Neutrons	Exposure to neutrons normally occurs from a mixed irradiation field in which neutrons are a minor component. The exceptions are exposure of patients to neutron radiotherapy beams and exposures of aircraft passengers and crew.	Motion to list Neutrons as *known to be a human carcinogen* passed by unanimous vote (7/0).	Motion to list Neutrons as *known to be a human carcinogen* passed by unanimous vote (8/0).	Motion to list Neutrons as *known to be a human carcinogen* passed by unanimous vote (11/0).

SUMMARY OF RG1,[1] RG[2] AND NTP BOARD SUBCOMMITTEE[3] RECOMMENDATIONS FOR THE NOMINATIONS REVIEWED IN 2003 FOR LISTING IN THE REPORT ON CARCINOGENS, 11TH EDITION—Continued

Nomination/CAS number	Primary uses or exposures	RG1 action	RG2 action	NTP board subcommittee action
X-Radiation and Gamma (γ)-Radiation.	Exposure to these forms of ionizing radiation comes from a variety of natural (environmental exposure) and anthropogenic sources, including exposure for military, medical, and occupational purposes.	Motion to list X-Radiation and γ-Radiation as *known to be human carcinogens* passed by unanimous vote (7/0).	Motion to list X-Radiation and γ-Radiation as *known to be human carcinogens* passed by unanimous vote (8/0).	Motion to list X-Radiation and γ-Radiation as *known to be human carcinogens* passed by unanimous vote (11/0).

1—The NIEHS Review Committee for the Report on Carcinogens (RG1).
2—The NTP Executive Committee* Interagency Working Group for the Report on Carcinogens (RG2).
*Agencies from the NTP Executive Committee represented on RG2 include: Agency for Toxic Substances and Disease Registry (ATSDR), Consumer Product Safety Commission (CPSC), Environmental Protection Agency (EPA), National Center for Environmental Health of the Centers for Disease Control and Prevention (NCEH/CDC), National Center for Toxicological Research of the Food and Drug Administration (NCTR/FDA), National Institute for Occupational Safety and Health/CDC (NIOSH/CDC), Occupational Safety and Health Administration (OSHA), National Cancer Institute of the National Institutes of Health (NCI/NIH), and National Institute of Environmental Health Sciences/NIH (NIEHS/NIH).
3—The NTP Board of Scientific Counselors Report on Carcinogens Subcommittee (a standing subcommittee of the NTP Board of Scientific Counselors that serves as an external peer review group).

[FR Doc. 03–27892 Filed 11–5–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–84]

Notice of Submission of Proposed Information Collection to OMB: Logic Model Grant Performance Reporting Standard

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Applications of HUD Federal Financial Assistance are required to indicate intended results and impacts. Grant recipients report against their baseline performance standards. This process standardizes grants progress reporting requirements and promotes greater emphasis on performance and results in grant programs.

DATES: *Comments Due Date:* December 8, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2535–0114) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Logic Model Grant Performance Reporting Standard.

OMB Approval Number: 2535–0114.

Form Numbers: HUD–96010.

Description of the Need for the Information and Its Proposed Use: Applicants of HUD Federal Financial Assistance are required to indicate intended results and impacts. Grant recipients report against their baseline performance standards. This proves standardizes grants progress reporting requirements and promotes greater emphasis on performance and results in grant programs.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, State, Local or Tribal Government.

Frequency of Submission: Quarterly, Annually.

Reporting Burden: Number of Respondents 11,000; Average response per Respondent 2.8; Total annual responses 30,800; Average burden per response 18 hrs.

Total Estimated Burden Hours: 554,400.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 30, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–27884 Filed 11–5–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–85]

Notice of Submission of Proposed Information Collection to OMB: Utility Allowance Adjustments

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Multifamily project owners are required to advise the Secretary of the need for and request approval of a new utility allowance for tenants.

DATES: *Comments Due Date:* December 8, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0352) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Utility Allowance Adjustments.

OMB Approval Number: 2502–0352.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: Multifamily project owners are required to advise the Secretary of the need for and request approval of a new utility allowance for tenants.

Respondents: Business or other for-profit.

Frequency of Submission: On occasion.

Reporting Burden: Number of Respondents 1,200; Average response per respondent 1; Total annual response 1,200; Average burden per response 0.5 hrs.

Total Estimated Burden Hours: 600.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 30, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–27885 Filed 11–5–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Final Recovery Plan for the Star Cactus (*Astrophytum asterias*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability of the Final Recovery Plan for the star cactus (*Astrophytum asterias*). Star cactus has been documented on one private land site in Starr County, Texas. Additional populations may be found in the United States in Texas, and in Tamaulipas and Nuevo Leon, Mexico.

ADDRESSES: Persons wishing to receive the Final Recovery Plan can obtain a copy from the U.S. Fish and Wildlife Service, Corpus Christi Ecological Services Field Office, c/o TAMUCC, Box 338, 6300 Ocean Drive, Corpus Christi, Texas, 78412. The Final Recovery Plan will also be available through the Fish and Wildlife Region 2 Web site at: *http://southwest.fws.gov.*

FOR FURTHER INFORMATION CONTACT: Field Office Supervisor, Corpus Christi Ecological Services Field Office, at the above address; telephone (361) 994–9005, facsimile (361) 994–8262.

SUPPLEMENTARY INFORMATION:

Background

The star cactus (*Astrophytum asterias*) was listed as endangered on November 17, 1993, under authority of the Endangered Species Act of 1973, as amended. The threats facing the survival and recovery of this species include habitat destruction through conversion of native habitat to agricultural land and increasing urbanization, competition with exotic invasive species, genetic vulnerability due to low population numbers, and collecting pressures for the cactus trade. The Final Recovery Plan includes information about the species and provides objectives and actions needed to downlist the species. Recovery activities designed to achieve downlisting objectives include: Protecting known populations; searching for additional populations; performing outreach activities to educate the general public on the need for protection; building partnerships with private landowners who are interested in voluntary conservation of the species on their land; establishing additional populations through reintroduction in the known range of the plant; formalizing a conservation strategy with Mexico; and filling information gaps to guide management decisions and provide a basis for delisting criteria. The Recovery Plan will be reviewed in five years to evaluate management direction and reconsider delisting criteria.

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare Recovery Plans for most of the listed species native to the United States. Recovery Plans describe actions considered necessary for conservation of species, establish criteria for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of Recovery Plans for listed species unless such a Plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during Recovery Plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing Recovery Plans.

The Final Star Cactus Recovery Plan is cosigned by the Director of the Texas Parks and Wildlife Department.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 9, 2003.

Bryan Arroyo,

Acting Regional Director, Region 2.

[FR Doc. 03–27919 Filed 11–5–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Environmental Impact Statement/Environmental Impact Report on the Proposed Amendment of the Water Service Contract Between the United States of America and the Sacramento Municipal Utility District, Sacramento, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of cancellation.

SUMMARY: The Bureau of Reclamation and the Sacramento Municipal Utility District (SMUD) are canceling plans to continue work on a joint environmental impact statement/environmental impact report (EIS/EIR) on a proposed amendment of the water service contract between the United States and SMUD. The reason for canceling is that the project will be addressed as part of the environmental review processes for both the Freeport Regional Water Project and the American River Division long-term contract renewal.

FOR FURTHER INFORMATION CONTACT: Mr. Rob Schroeder, Reclamation, at (916) 989–7274.

SUPPLEMENTARY INFORMATION: Reclamation and SMUD had proposed to amend the existing contract to change the point of diversion of 30,000 acre-feet annually of contract water for municipal and industrial uses for Sacramento County Water Agency.

Dated: October 24, 2003.

Frank Michny,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 03–27920 Filed 11–5–03; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on September 30, 2003, a proposed Consent Decree in *United States* v. *Alliant Techsystems, Inc.,* Civil Action No. 03–4648, was lodged with the United States District Court for the District of New Jersey.

In this action the United States seeks the recovery of response costs incurred regarding the Radiation Technology Superfund Site, in Rockaway Township, New Jersey. The proposed consent decree embodies an agreement with Alliant Techsystems, Inc. (ATK) to perform the groundwater remedy at the Site and to reimburse the U.S. Environmental Protection Agency for up to $249,000 of its past response costs and for all oversight costs in connection with the performance of the remedy. The decree provides ATK with a covenant not to sue under Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9606 and 9607(a).

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Alliant Techsystems, Inc.,* D.J. No. 90–11–2–07691/1.

The Consent Decree may be examined at the Office of the United States Attorney, 970 Broad Street, Room 400, Newark, NJ 07102, and at the Region II Office of the U.S. Environmental Protection Agency, Region II Records Center, 290 Broadway, 17th Floor, New York, NY 10007–1866. During the public comment period, the Consent Decree also may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $32.25 (25 cents per page reproduction cost) payable to U.S. Treasury.

Catherine R. McCabe,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–27886 Filed 11–5–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Filing of Environmental Bankruptcy Settlement in In re Fansteel, Inc. et al.

Notice is hereby given that a proposed settlement entered into by the United States, on behalf of the Environmental Protection Agency (''EPA''), the Department of the Navy (''Navy''), the Department of the Interior (''DOI'') and the National Oceanic and Atmospheric Administration (''NOAA''), and Fansteel, Inc. (''Debtor'') was filed on September 18, 2003, in *In re Fansteel, Inc. et al.,* No. 02–10109 (Bank. D. Del.) with the United States Bankruptcy Court for the District of Delaware. The proposed settlement is contained in Article XIII(C) of the Debtor's proposed Plan of Reorganization (''Plan'') and would resolve certain claims of the United States against the settling party under the Comprehensive Environmental Response Compensation and Liability Act (''CERCLA'') 42 U.S.C. 9601 *et seq.,* relating to the following locations: (1) The Vulcan Louisville Smelter Site/Vacant Lot Site (''Vacant Lot Site''); (2) Pettibone Creek; and (3) the Naval Station Great Lakes including the boat basin, inner harbor, and the outer harbor (''NAVSTA Great Lakes'') all in North Chicago, Lake County, Illinois.

Under the settlement, Reorganized Fansteel will contribute $1,600,000 to North Chicago, Inc. (''NCI''), a wholly-owned subsidiary of Fansteel created under the Plan, to perform the response action selected by the EPA (''North Chicago Response Action'') at the real property owned by Fansteel, which is a portion of the Vacant Lot Site (''North Chicago Facility''). The Department of Defense, the General Services Administration, the Department of Commerce, and the Department of Treasury (''Federal Settling Agencies'') will contribute $425,000, which funds will be used, if necessary, by NCI, with EPA oversight, to clean up the North Chicago Facility following NCI's expenditure of the $1,600,000. If the above is not sufficient, Reorganized Fansteel will contribute an amount of up to an additional $500,000 to complete the North Chicago Response Action. In the event that the City of North Chicago, Illinois (''City'') exercises eminent domain with respect to the North Chicago Facility before the cleanup is commenced, Reorganized Fansteel and the City will contribute the requisite funds to perform the North Chicago Response Action.

In addition, the EPA, Navy, DOI, and NOAA are granted an allowed unsecured claim in the amount of $10,000,000, on account of which they will receive a distribution of (1) Available General Unsecured Cash in the amount of $100,000 (to be allocated among the Navy, NOAA, and the DOI only) and (2) 50% of certain insurance proceeds received by Reorganized Fansteel. The proposed settlement would be implemented through a Consent Decree in conformance with the settlement terms described in the proposed Plan. The Plan also grants the EPA allowed general unsecured claims related to the Old Southington Superfund Site in Southington, Connecticut; the PCB Treatment Inc. Superfund Site in Kansas City, Kansas and Kansas City, Missouri; the Li Tungsten Superfund Site in Glen Cove, New York; and the Operating Industries, Inc. Superfund Site in Monterey Park, California.

The hearing on whether to confirm the Plan is set for November 17, 2003. Comments relating to the proposed settlement must be received by the Department of Justice by close of business November 14, 2003. Comments may be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice and sent by any of the following methods: (1) Telefax or e-mail to Richard Gladstein (*richard.gladstein@usdoj.gov*), fax no. (202) 514–8395, phone confirmation number (202) 514–1711; or (2) first class mail to P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *In re Fansteel, et al.,* D.J. Ref. No. 90–10–07797/1. Copies of the proposed settlement may be examined at the Office of the United States Attorney for the District of Delaware, 1201 Market Street, Suite 1100, Wilmington, DE and the Region V Office of the United States Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604. During the public comment period, the settlement may be viewed on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the settlement also may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $21.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Thomas A. Mariani, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–28018 Filed 11–4–03; 2:38 pm]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'')

Consistent with the policy of Section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d)(2), notice is hereby given that on November 3, 2003, a Settlement Agreement with Plainwell, Inc. (''Plainwell'') and five affiliated companies was lodged with the Bankruptcy Court for the District of Delaware, in *In re Plainwell, Inc. and Plainwell Holding Co.,* Case No. 00–4350 (JWV).

The proposed Settlement Agreement is with: (1) Plainwell and its parent company, Plainwell Holding Company (collectively, the ''Debtors''), both of which are in liquidation proceedings under Chapter 11 of the Bankruptcy Code; and (2) the Debtors' past parent companies, Colonial Heights Packaging, Inc., Philip Morris USA Inc., Chesapeake Corporation, and Simpson Paper Company (collectively, the ''non-debtor Plainwell Parties''), which are not in bankruptcy. The Settlement Agreement resolves claims of the United States and the State of Michigan against those parties under Section 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), for response costs, the performance of response actions, and natural resource damages with respect to the Allied/Portage Creek/Kalamazoo River Superfund Site in Plainwell, Michigan (''Site''). The claims by the United States addressed in the Settlement Agreement include claims on behalf of the United States Environmental Protection Agency (''EPA''), the United States Department of the Interior (''DoI''), and the National Oceanic and Atmospheric Administration of the United States Department of Commerce (''NOAA''). The State of Michigan (''State'') is also a signatory to the Agreement.

Under the proposed Settlement Agreement, the non-debtor Plainwell Parties will pay approximately (1) $6.2 million towards EPA's future response costs in connection with the Site; (2) $23,000 towards EPA's past response costs; (3) $900,000 for use jointly by DOI, NOAA, and the State, as trustees of natural resources injured at the Site, to restore, replace, or acquire the equivalent of the injured resources; and (4) $16,000 towards the Federal and State trustees' natural resource damages assessment costs. In addition, the Agreement requires Plainwell to execute a restrictive covenant in favor of the United States and the State on a landfill that it owns.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In re Plainwell, Inc. and Plainwell Holding Co.,* Case No. 99–4350 (JWV) (DOJ Ref. No. 90–11–2–1306).

The Settlement Agreement may be examined at the Office of the United States Attorney, District of Delaware, 1007 North Orange Street, Suite 700, Wilmington, Delaware 19899–2046; and at EPA Region 5, 77 W. Jackson Blvd., Chicago, Illinois 60604 (contact Eileen L. Furey, Esq. (312) 886–7950). During the public comment period, the Settlement Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Settlement Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please refer to *In re Plainwell, Inc. and Plainwell Holding Co.,* Case No. 00–4350 (JWV) (DOJ Ref. No. 90–11–2–1306), and enclose a check in the amount of $11.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 03–27996 Filed 11–5–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Bureau of International Labor Affairs; U.S. National Administrative Office, National Advisory Committee for the North American Agreement on Labor Cooperation; Notice of Open Meeting

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of open meeting November 24, 2003.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 94–463), the U.S. National Administrative Office (NAO) gives notice of a meeting of the National Advisory Committee for the North American Agreement on Labor Cooperation (NAALC), which was established by the Secretary of Labor.

The Committee was established to provide advice to the U.S. Department of Labor on matters pertaining to the implementation and further elaboration of the NAALC, the labor side accord to the North American Free Trade Agreement (NAFTA). The Committee is authorized under Article 17 of the NAALC.

The Committee consists of independent representatives drawn from among labor organizations, business and industry, educational institutions, and the general public.

DATES: The Committee will meet on November 24, 2003 from 9 a.m. to 1 p.m.

ADDRESSES: U.S. Department of Labor, 200 Constitution Avenue, NW., Executive Conference Room at C–5515, Washington, DC 20210. The meeting is open to the public on a first-come, first served basis.

FOR FURTHER INFORMATION CONTACT: Lewis Karesh, designated Federal Officer, U.S. NAO, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–5205, Washington, DC 20210. Telephone 202–693–4900 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Please refer to the notice published in the **Federal Register** on December 15, 1994 (59 FR 64713) for **SUPPLEMENTARY INFORMATION.**

Signed at Washington, DC on October 31, 2003.

Lewis Karesh,

Acting Director, U.S. National Administrative Office.

[FR Doc. 03–27925 Filed 11–5–03; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,691]

American Bag Corp., Winfield, TN; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 27, 2003 in response to a petition filed by a company official on behalf of workers of American Bag Corporation, Winfield, Tennessee.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 1st day of October 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–27931 Filed 11–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,869]

Clayson Knitting Company, Inc., Star, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 17, 2003 in response to a worker petition filed a company official on behalf of workers at Clayson Knitting Company, Inc., Star, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 30th day of September 2003

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–27928 Filed 11–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the periods of September and October 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign county of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criteria (a)(2)(A)(I.C.) (Increased imports) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W–52,827; Dana Glacier Vandervell, Bearings Div., Caldwell, OH
TA–W–52,807; Brubaker Tool Corp., a subsidiary of Talbott Holdings, Millersburg, PA
TA–W–52,741; Etto Tool and Machine Company, Inc., York, PA
TA–W–52,307; Ovalstrapping, Inc., Fort Payne, AL
TA–W–52,262; Sierra Pine, Ltd, Springfield, OR
TA–W–52,728; TRW Automotive, Body Controls Systems, NA, Rushford, MN
TA–W–52,410; Radio Frequency Services, Inc., Wilkesboro, NC
TA–W–52,659; Connex Pipe Systems, a subsidiary of The Shaw Group, Inc., Troutville, VA
TA–W–52,474; Kulicke and Soffa Industries, Austin, TX
TA–W–52,472; Arlee Home Fashions, Inc., Mexico, MO
TA–W–52,627; Flextronics Logistics, including leased workers of Wood Personnel, Mount Juliet, TN
TA–W–52,541; Alabama Metals, Div. of Amico Klemp, Liberty, MO
TA–W–52,980; Worcester Gear Works, Inc., Worcester, MA
TA–W–53,035; Supreme Bumper, Inc., Toledo, OH
TA–W–52,859; Prestige Products, Inc., Minneapolis, MN
TA–W–52,774; Weyerhauser Co., North Bend, OR
TA–W–52,814; Precision Tool and Design, Erie, PA
TA–W–52,913; Spectrulite Consortium, Inc., Madison, IL
TA–W–52,971; Goodyear Tire and Rubber Co., Engineered Products Div., Cartersville, GA
TA–W–52,560; Minnesota Ore Operations, div. of U.S. Steel Corp., Mt. Iron, MN
TA–W–52,779; Avondale Mills, Inc., Bon Air Plant, Sylacauga, AL
TA–W–52,734; Bendtec, Inc., Duluth, MN
TA–W–52,707; Parker Hannifin Corp., Hose Products Div., Green Camp, OH
TA–W–52,787; Western Technology Services International, Inc., a/k/a WOTCO, Inc., Casper, WY
TA–W–52,633; Highland Supply Corp., Highland, IL
TA–W–52,908; Coastal Apparel, LLC, Tabor City, NC
TA–W–52,561; Benchmark Electronics, Inc., Winona, MN
TA–W–52,521; Novell, Inc., Provo, UT

The investigation revealed that criteria (a) (2) (A) (I.C) (increased imports) and (a) (2) (B) (II.C) (has shifted production to a foreign country) have not been met.

TA–W–53,041; Tecumseh Products Co., Evergy Div., Paris, TN

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–52,937; Zephyrhills Natural Spring Water, a subsidiary of Nestle Waters North America, Inc., Tamarac, FL
TA–W–52,960; Rosenbluth International, Inc., Kannapolis, NC
TA–W–52,911; International Paper, U.S. Container Div., Orange, TX
TA–W–52,839; General Electric Engine Services, a div. of the General Electric Company, McAllen, TX
TA–W–52,950; Alva Distributing, Inc., Albemarle, NC
TA–W–53,020; Intercontinental Hotels Group, Reservation Center, Cary, NC
TA–W–52,985; Canon USA, Inc., Semiconductor Div., San Antonio, TX
TA–W–52,828; AK Steel Corp., Rockport Works, Shipping, Receiving and Packaging Department, Rockport, IN
TA–W–52,850; Breed Safety Restraint Systems, El Paso, TX
TA–W–52,920; Sony Ericcson Mobile Communications, CDMA Development Group, Research Triangle Park, NC
TA–W–52,942; Innovative Marketing Strategies, Pittsburg, KS
TA–W–52,798; ADC Telecommunications, Inc., Eden Prairie, MN
TA–W–52,766; American Sussen Corp., a subsidiary of Spindelfabrik Suessen, Charlotte, NC
TA–W–52,663; Stanley Services, Henderson, NC
TA–W–52,643; Matsushita Avionics Systems Corp., Coppell, TX
TA–W–52,567; Agilent Technologies, Inc., Global Financial Accounting Div., Colorado Springs, CO
TA–W–52,642; Cyberware Laboratories, Inc., Engineering Department Monterey, CA
TA–W–52,958; Electronic Data Systems, GM/SPO, Flint, MI
TA–W–52,957; Stmicroelectronics, Inc., Raleigh, NC
TA–W–52,837; Sykes Enterprises, Inc., Klamath Falls, OR
TA–W–52,716; Uniprise, Dayton, OH
TA–W–53,079; Electronic Data Systems Corp., Troy, MI
TA–W–53,100; Computer Sciences Corp., Lehigh Valley Location, Bethlehem, PA
TA–W–53,162; Spherion Corp., Victoria, TX
TA–W–52,875; Lucent Technologies, Naperville, IL
TA–W–52,806; BMC Software, Inc., Houston, TX
TA–W–52,933; Ashland Specialty Chemical Co., a div. of Ashland, Inc., San Antonio, TX
TA–W–53,088; L.B. Smith, Inc., a subsidiary of Smith Land & Improvement Corp., Camp Hill, PA
TA–W–53,181; BIK Corp., d/b/a Nutec Bickley, Bensalem, PA
TA–W–53,182; RMH Teleservices, Inc., Wilkes-Barre, PA
TA–W–52,965; Agri Beef Co., Boise, ID
TA–W–53,016; Accenture, LLP, Anchorage, AK
TA–W–52,981; Oce Groupware Technology, Inc. (OGT), a subsidiary of Oce-USA Holding, Inc., a member of The Oce Group, a subsidiary of Oce N.V., Boise, ID
TA–W–52,751; Cliffs Mining Services Co., Ishpeming, MI
TA–W–52,802; Sappi Cloquet LLC, d/b/a Sappi Fine Paper North America, Cloquet, MN
TA–W–52,842; Wal-Mart Distribution Center,

Laurens, SC

TA–W–52,975; Fall River Paper and Supply, New Bedford, MA

TA–W–52,987; SACM Textiles, Inc., Lyman, SC

TA–W–52,865; Washington Logistics, Inc., Olympia, WA

TA–W–52,671; Siebel Systems, Emeryville, CA

TA–W–52,709; Kana Software, Inc., Research and Development Department, Menlo Park, CA

TA–W–52,772; Baltimore Marine Industries, Inc., Baltimore, MD

TA–W–52,745; Erie Power Technologies, Inc., Erie, PA

TA–W–52,743; Hewlett Packard, Boise, ID

TA–W–52,711; AT&T Wireless Service, Inc., Livermore, Call Center, Livermore, CA

TA–W–52,918; Nationalwide Title Clearing, Inc., Glendale, CA

TA–W–52,800; GE Betz Regional Business Center, Grand Rapids, MI

TA–W–52,771; Central-PA Distribution & Warehouse, LLC, Reedsville, PA

The investigation revealed that criterion (a)(2)(A)(I.A) (no employment decline) has not been met.

TA–W–52,897; Alchemist, Inc., Bellingham, WA

TA–W–52,932; Fishing Vessel (F/V) Erika, Kodiak, AK

TA–W–52,884; Fishing Vessel (F/V) Confidence, Sitka, AK

TA–W–52,894; Fishing Vessel (F/V) Desperado, Wasilla, AK

TA–W–52,808; Maui Pineapple Co., Ltd, Honolua Plantation and Kahului Cannery, Kahului, HI

TA–W–52,912; Boise Cascade Corp., Yakima, WA

TA–W–52,585; Oregon Woodworking Co., Bend, OR

The investigation revealed that criteria (3) has not been met. The subject firm did not supply component parts accounting for at least 20 percent of production or sales to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance.

TA–W–52,835; Southeastern Adhesives Co., Lenoir, NC

The investigation revealed that criteria (a) (2) (A) (I.B) (Sales or production, or both, did not decline) and (a) (2) (B) (II.B) (has shifted production to a county not under the free trade agreement with U.S.) have not been met.

TA–W–52,824; Givaudan Flavors Corp., a wholly owned subsidiary of Givaudan United States, Inc., Cincinnati, OH

TA–W–52,574; Waggoner/Parker Fisheries, Kenai, AK

TA–W–52,847; Medsource Technologies, Newton, MA

TA–W–52,789; Alkahn Labels, Inc., Jac-Arts Div., Cochran, GA

TA–W–52,730; Berwick Weaving, Inc., Berwick, PA

TA–W–52,677; Westinghouse Electric Co., Nuclear Services Div., Monroeville, PA

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies

TA–W–52,810; Knernschield Manufacturing Co, Columbia, MO

TA–W–52,812; Metaldyne Sintered Components, a Part of the Engine Group of Metaldyne Corp., St, Marys, PA

TA–W–53,008; Martins Manufacturing, LLC, Kingsford, MI

TA–W–52,499; Pennsylvania Electric Coil, Ltd, Glassport, PA

TA–W–52,782; Progressive Processing, Inc., Elyria, OH

TA–W–52,705; Trojan Steel Co., Charleston, WV

TA–W–52,563; Sheet Metal Specialties, Inc., Waxhaw, NC

TA–W–52,674; ADM Milli8ng Co., ''A'' Mill, a subsidiary of Archer Daniels Midland Co., Minneapolis, MN

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a) (2) (A) (increased imports) of section 222 have been met.

TA–W–52,778; Titan Tire, Brownsville, TX: August 28, 2002.

TA–W–52,811; RBX Industries, Inc., Conover, NC: September 2, 2002.

TA–W–52,836; A and A Consultants, Inc., El Paso, TX: September 5, 2002.

TA–W–52,856; Starbase Technologies, Inc., Pittsfield, MA: August 28, 2002.

TA–W–52,909; Dolly, Inc., including leased workers of CBS Personnel and Express Personnel, Tipp City, OH: August 28, 2002.

TA–W–52,930; Carolina Mills, Inc., Fiber Department, Maiden, NC: September 10, 2002.

TA–W–53,140; Grammerler U.S. Corp., Hanover Park, IL: September 29, 2002.

TA–W–52,938; Alliance Fiber Optic Products, Inc., Sunnyvale, CA: August 27, 2002.

TA–W–53,046; Quality Home Fashions, Inc., Richfield, NC: September 19, 2002.

TA–W–52,732; Agere Systems, Inc., Reading, PA: August 15, 2002.

TA–W–52,838; Vitco, LLC, Nappanee, IN: September 3, 2002.

TA–W–52,852; Aurora Metals Division, LLC, Montgomery, IL: September 3, 2002.

TA–W–53,024; Columbia Cable Co., a div. of Hood Cable Co., Columbia, MS: September 12, 2002.

TA–W–52,885; U.S. Tsubaki, Inc., Roller Chain Div., Holyoke, MA: September 18, 2002.

TA–W–52,953; Briggs Plumbing Products, Inc., a div. of Sayco/Briggs, Flora, IN: September 12, 2002.

TA–W–52,441 & A; Conn-Selmer, Inc., Selmer Main Street Div., Elkhart, IN and Selmer Plant 2 Div., Elkhart, IN: July 14, 2002.

TA–W–52,809; Janef, Inc. T/A Alperin Mayflower, Old Forge, PA: August 14, 2002.

TA–W–52,540; I.P.C. Acquisition, Corinth, MS: July 29, 2002.

TA–W–52,239; Titan Tire Corp., Des Moines, IA: June 24, 2002.

TA–W–52,506; K and S Interconnect, Inc., Dallas, TX: July 11, 2002.

TA–W–52,516; The John S. Tilley Ladders Co., Inc., Watervliet, NY: July 30, 2002.

TA–W–52,291; Sterling China Co., Wellsville, OH: June 19, 2002.

TA–W–52,496; Mann Edge Tool Co., Forge Div., Lewistown, PA: April 6, 2003.

TA–W–52,513; Del Monte Fresh Produce (HI), HCFO Div., Honolulu, HI: July 28, 2002.

TA–W–52,829; New Bedford Plastic Bag Co., New Bedford, MA: August 28, 2002.

TA–W–52,843; Lear Corp., Traverse City, MI: September 5, 2002.

TA–W–53,092; Jan-Sew Manufacturing, Crossville, TN: September 15, 2002.

TA–W–53,082; Dekko Heating Technologies, Inc., Plant 37, Appliance Div., Afton, IA: September 25, 2002.

TA–W–52,939; TRTL Enterprises, LLC, Monmouth, OR: August 22, 2002.

TA–W–52,764; New Castle Industries, Bimex Div., Wales, WI: August 3, 2002.

TA–W–52,799; Western Metal Specialty Co., a div. of Western Industries, Inc., Milwaukee, WI: September 5, 2002.

TA–W–52,587; Ramtex, Inc., Ramseur, NC: August 6, 2002.

TA–W–52,738; Vermont Tubbs, Inc., a div. of Carris Financial Corp., Brandon, VT: August 19, 2002.

TA–W–52,868; Badorf Shoe Co., Inc., Lititz, PA: September 9, 2002.

TA–W–52,788 & A, B; Springs Industries, Lancaster Plant, Lancaster, SC, White Plant, Fort Mill, SC and Grace Fabrication Plant, Lancaster, SC: August 28, 2002.

TA–W–52,790; Hanes Dye and Finishing Co., Winston-Salem, NC: September 4, 2002.

TA–W–52,681; Reuther Mold and Manufacturing Co., Inc., Cuyahoga Falls, OH: August 15, 2002.

TA–W–52,785; Gould Electronics, Inc., Materials Div., a subsidiary of Japan Energy Corp. (JEC), McConnelsville, OH: August 18, 2002.

TA–W–52,564; Prewett Mills Distribution Center, a div. of Prewett Hosiery Sales Corp., Fort Payne, AL, A; V.I. Prewett and Son, Inc., a div. of V.I. Prewett and Son, Fort Payne, AL, B; McKeehan Hosiery Mills, Inc., Fort Payne, AL, C; Johnson Hosiery Mills, Inc., Fort Payne, AL, D; Johnco Hosiery, Inc., Fort Payne, AL, E; Wee Socks, a div. of V.I. Prewett and Son, Fort Payne, AL, F; Cherokee Hosiery Mills, Inc., Fort Payne, AL and G; Lala Ellen Knitting, Fort Payne, AL: August 12, 2002.

TA–W–52,656; Agere Systems, Inc., Allentown, PA: August 15, 2002.

TA–W–52,833; The Owenby Co., Blairsville, GA: September 2, 2002.

TA–W–52,970; Miller Casket Co., Jermyn, PA: September 23, 2002.

TA–W–52,657; C and C Sportswear, Inc., Westmoreland, TN: August 21, 2002.

TA–W–52,667 & A; G.O. Carlson, Inc., Steel Div., Downingtwon, PA and Coatesville, PA: August 21, 2002.

TATA–W–52,685; Mead Westvaco, Greenville, GA: August 21, 2002.

TA–W–52,817; Spencer, Inc., Mt. Airy, NC: September 2, 2002.
TA–W–52,534; Advanced Cast Products, Inc., Meadville, PA: August 11, 2002.
TA–W–52,832; Apparel Ventures, Inc., South Gate, CA: September 8, 2002.
TA–W–52,735; Guardian Industries Corp., including leased workers of Spherion, Lewistown, PA: August 21, 2002.
TA–W–52,661; Gloves Cut and Sew, Inc., Albemarle, NC: August 18, 2002.
TA–W–52,684; PSC Metals, Inc., Headquarters, Cleveland, OH, A; Ashland, VA, B; Beaver Falls, PA, C; Burns Harbor, IN, D; Canton, OH, E; Gallatin, TN, F; Granite City, IL, G; St. Louis, MO, H; Nashville, TN, I; Philadelphia Office, Fort Washington, PA, J; Chattanooga, TN, K; Chicago Office, Arlington Heights, IL: August 19, 2002.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of section 222 have been met.

TA–W–52,795; Connector Service Corp., York Operations, including leased workers of Kelly Temps, JFC Temps, York, PA: August 25, 2002.
TA–W–52,803 & A; Mastercraft Fabrics LLC, Norwood Yarn Sales, Norwood, NC and Troy, NC: August 11, 2002.
TA–W–53,064; ATMI-Ecosys, Materials Lifecycle Solutions, Napa, CA: September 29, 2002.
TA–W–53,111; Liberty Cut and Sew, Stuart, VA: September 24, 2002.
TA–W–53,119; Orrco, Inc., Killbuck, OH: October 1, 2002.
TA–W–53,029; American Electric Lighting, a div. of Acuity Lighting Group, a subsidiary of Acuity Brands, Inc., Bainbridge, GA: September 15, 2002.
TA–W–52,921; Federal Mogul Corp., Powertrain Systems, including leased workers of Kelly Services, Palmetto Training and PDS Technical Services, Sumter, SC: September 10, 2002.
TA–W–52,936; Cook Communications Ministries, Elgin, IL: September 22, 2002.
TA–W–52,969 & A, B; Agilent Technologies, Inc., Computer Test Equipment Div. (CTE), Arlington Heights, CO, Liberty Lake, WA and Santa Rose, CA: September 16, 2002.
TA–W–52,949; Pacific Scientific, a subsidiary of Danaher Motion Group, including leased workers of Dickey Staffing Solutions, Rockford, IL: September 8, 2002.
TA–W–52,972; Exfo Gnubi Products Group, Inc., Addison, TX: September 9, 2002.
TA–W–52,752; TRW Automotive, Jackson, MI: August 25, 2002.
TA–W–53,095; Collins and Aikman Corp., North American Plastics, St. Joseph, MI: September 20, 2002.
TA–W–52,831; SPX Dock Products, Mechanical Dock Lever Div., Carrollton, TX: September 3, 2002.
TA–W–52,592; Cincinnati Advertising Products, LLC, Springdale, OH: August 5, 2002.
TA–W–52,929; Kaydon Corp., Sumter, SC: September 15, 2002.
TA–W–52,708; Carolina Pad and Paper, Charlotte, NC: August 25, 2002.
TA–W–52,731; Heraeus Quartztech, Inc., Fairfield, NJ: August 29, 2002.
TA–W–51,753; Agilent Technologies, Inc., Network Systems Test Div. (NSTD), Colorado Springs, CO., A; Englewood, CO, B; Loveland, CO, C; Boxborough, MA, D; Portsmouth, NH, E; Andover, MA, F; Richardson, TX, G; Santa Rosa, CA, H; Cypress, TX, I; Santa Clara, CA, J; Arlington Heights, IL: May 12, 2002.
TA–W–52,545; Bose Corp., Framingham, MA: July 25, 2002.
TA–W–52,517; Solutia, In., including leased workers from Kelly Services and Austin Industrial, Decatur, AL: August 5, 2002.
TA–W–53,004; Xerox Corp., Business Group Operations (BGO), Webster, NY: September 15, 2002.
TA–W–53,053; F. Ziegler Enterprises, Ltd, Fond du Lac, WI: September 25, 2002.
TA–W–52,906; Radioshack Corp., TDP Electronics Div., an operating Entity of North American Manufacturing, Swannanoa, NC: September 10, 2002.
TA–W–52,849 & A; Renaissance Mark, Baltimore, MD and Peoria, IL: September 4, 2002.
TA–W–53,060; G. Leblanc Corp., Case Co., Elkhorn, WI: September 23, 2002.
TA–W–52,775; Taylor Precision Products, Fletcher, NC: August 15, 2002.
TA–W–52,989; Standard Textile Co., Inc., Pridecraft Div., Manual Sewing Unit, Enterprise, AL: September 23, 2002.
TA–W–53,071; A & E Products Groups, LP, including leased workers of Manpower, Inc., American Personnelservice, One Source Staffing, Advanle Personnel, Adecco, Ringtown, PA: September 15, 2002.
TA–W–53,124; American Bag Corp., a div of Milliken & Co., Winfield, TN: September 17, 2002.
TA–W–52,903; Straits Steel and Wire, Ludington, MI: September 8, 2002.
TA–W–52,159; General Mills Operations, Inc., including leased workers of Masterson Personnel, Inc., Eden Prairie, MN: September 16, 2002.
TA–W–53,070; Home Products International, Inc., Eagan, MN: September 30, 2002.
TA–W–52,956; SEMCO, div. of Leggett and Platt Components Co., Ocala, FL: September 12, 2002.
TA–W–52,804; Garden State Tannin, Williamsport, MD: August 26, 2002.
TA–W–52,867; Pittsfield Woolen Yarns Co., Inc., Pittsfield, ME: September 4, 2002.
TA–W–52,765; Mirco Motion, Inc., Boulder, CO: September 3, 2002.
TA–W–52,696; Hilti North America, a div. of Hilti Corp., Plant 5, Tulsa, OK: August 26, 2002.
TA–W–52,747; Sligh Furniture Operating Co., d/b/a Sligh Furniture, Holland, MI: August 26, 2002.
TA–W–52,769; American Fiber and Finishing, Inc., Newberry, SC: September 5, 2002.
TA–W–52,977; Minnesota Rubber, Watertown, SD: September 11, 2002.
TA–W–52,916; Rite Industries, Inc., High Point, NC: September 4, 2002.
TA–W–52,784; JLG Omniquip, Inc., formerly Omniquip Textron, Inc., a subsidiary of JLG Industries, Port Washington, WI: September 5, 2002.
TA–W–52,522; Relax-R Corp., Milton, VT: August 6, 2002.
TA–W–52,753; Metal Powder Products Co., Coldwater, MI: August 29, 2002.
TA–W–52,668; Parker Hannifin Corp., Techseal Div., Snow Hill, NC: August 18, 2002.
TA–W–52,533; GECP Lighting, Mattoon Lamp Plant, Coiling Operations Div., Mattoon, IL: August 4, 2002.
TA–W–52,746; Plano Molding Co., Plano, IL: August 26, 2002.
TA–W–52,658; Tally Printer Corp., Kent, WA: August 19, 2002.

The following certification has been issued. The requirement of upstream supplier to a trade certified primary firm has been met.

TA–W–52,860; Olympic Tool and Engineering Co., Inc., Shelton, WA: August 26, 2002.
TA–W–52,888; Santoku Corp., Japan, Santoku America, Inc., Tolleson, AZ: July 7, 2002.

The following certification has been issued. The requirement of downstream producer to a trade certified primary firm has been met.

TA–W–53,024; Columbia Cable Co., a div. of Hood Cable Co., Columbia, MS: September 12, 2002.

Negative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.

In the following cases, it has been determined that the requirements of section 246(a)(3)(ii) have not been met for the reasons specified.

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

TA–W–52,912; Boise Cascade Corp., Yakima, WA
TA–W–52,774; Weyerhauser Co., North Bend, OR
TA–W–52,814; Precision Tool and Design, Erie, PA
TA–W–52,847; Medsource Technologies, Newton, MA
TA–W–52,913; Spectrulite Consortium, Inc., Madison, IL
TA–W–52,933; Ashland Specialty Chemical Co., a div. of Ashland, Inc., San Antonio, TX
TA–W–52,971; Goodyear Tire and Rubber Co., Engineered Products Div., Cartersville, GA
TA–W–53,088; L.B. Smith, Inc., a subsidiary of Smith Land & Improvement Corp., Camp Hill, PA
TA–W–53,181; BIK Corp., d/b/a Nutec Bickley, Bensalem, PA
TA–W–53,182; RMH Teleservices, Inc., Wilkes-Barre, PA
TA–W–52,560; Minnesota Ore Operations, div. of U.S. Steel Corp., Mt. Iron, MN
TA–W–52,779; Avondale Mills, Inc., Bon Air

Plant,Sylacauga, AL
TA–W–53,041; Tecumseh Products Co., Evergy Div., Paris, TN
TA–W–52,965; Agri Beef Co., Boise, ID
TA–W–53,008; Martins Manufacturing, LLC, Kingsford, MI
TA–W–53,016; Accenture, LLP, Anchorage, AK
TA–W–52,981; Oce Groupware Technology, Inc. (OGT), a subsidiary of Oce-USA Holding, Inc., a member of The Oce Group, a subsidiary of Oce N.V., Boise, ID
TA–W–52,734; Bendtec, Inc., Duluth, MN
TA–W–52,751; Cliffs Mining Services Co., Ishpeming, MI
TA–W–52,707; Parker Hannifin Corp., Hose Products Div., Green Camp, OH
TA–W–52,802; Sappi Cloquet LLC, d/b/a Sappi Paper North America, Cloquet, MN
TA–W–52,789; Alkahn Labels, Inc., Jac-Arts Div., Cochran, GA
TA–W–52,787; Western Technology Services International, Inc., a/k/a WOTCO, Inc., Casper, WY
TA–W–52,730; Berwick Weaving, Inc., Berwick, PA
TA–W–52,499; Pennsylvania Electric Coil, Ltd, Glassport, PA
TA–W–52,633; Highland Supply Corp., Highland, IL
TA–W–52,677; Westinghouse Electric Co., Nuclear Services Div., Monroeville, PA
TA–W–52,842; Wal-Mart Distribution Center, Laurens, SC
TA–W–52,908; Coastal Apparel, LLC, Tabor City, NC
TA–W–52,975; Fall River Paper and Supply, New Bedford, MA
TA–W–52,987; SACM Textiles, Inc., Lyman, SC
TA–W–52,865; Washington Logistics, Inc., Olympia, WA
TA–W–52,782; Progressive Processing, Inc., Elyria, OH
TA–W–52,705; Trojan Steel Co., Charleston, WV
TA–W–52,561; Benchmark Electronics, Inc., Winona, MN
TA–W–52,521; Novell, Inc., Provo, UT
TA–W–52,671; Siebel Systems, Emeryville, CA
TA–W–52,709; Kana Software, Inc., Research and Development Department, Menlo Park, CA
TA–W–52,772; Baltimore Marine Industries, Inc., Baltimore, MD
TA–W–52,585; Oregon Woodworking Co., Bend, OR
TA–W–52,563; Sheet Metal Specialties, Inc., Waxhaw, NC
TA–W–52,745; Erie Power Technologies, Inc., Erie, PA
TA–W–52,743; Hewlett Packard, Boise, ID
TA–W–52,711; AT&T Wireless Services, Inc., Livermore Call Center, Livermore, CA
TA–W–52,674; ADM Milling Co., ''A'' Mill, a subsidiary of Archer Daniels Midland Co., Minneapolis, MN
TA–W–52,918; Nationwide Title Clearing, Inc., Glendale, CA
TA–W–52,800; GE Betz Regional Business Center, Grand Rapids, MI
TA–W–52,771; Central-PA Distribution and Warehouse, LLC, Reedsville, PA

Affirmative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determinations.

In the following cases, it has been determined that the requirements of section 246(a)(3)(ii) have been met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.

II. Whether the workers in the workers' firm possess skills that are not easily transferable.

III. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

TA–W–53,004; Xerox Corp., Business Group Operations (BGO), Webster, NY: September 15, 2002.
TA–W–53,053; F. Ziegler Enterprises, Ltd, Fond du Lac, WI: September 25, 2002.
TA–W–52,906; Radioshack Corp., TDP Electronics Div., and Operating Entity of North American Manufacturing, Swannanoa, NC: September 10, 2002.
TA–W–52,849 & A; Renaissance Mark, Baltimore, MD and Peoria, IL: September 4, 2002.
TA–W–53,060; G. Leblanc Corp., Case Co., Elkhorn, WI: September 23, 2002.
TA–W–52,775; Taylor Precision Products, Fletcher, NC: August 15, 2002.
TA–W–52,829; New Bedford Plastic Bag Co., New Bedford, MA: August 28, 2002
TA–W–52,843; Lear Corp., Traverse City, MI: September 5, 2002.
TA–W–53,092; Jan-Sew Manufacturing, Crossville, TN: September 15, 2002
TA–W–52,989; Standard Textile Co., Inc., Pridecraft Div., Manual Sewing Unit, Enterprise, AL: September 23, 2002.
TA–W–53,071; A & E Products Group, LP, including leased workers of Manpower, Inc., American Personnelservice, One Source Staffing Advanle Personnel and Adecco, Ringtown, PA: September 15, 2002
TA–W–53,082; Dekko Heating Technologies, Inc., Plant 37, Appliance Div., Afton, IA: September 25, 2002.
TA–W–53,124; American Bag Corp., a div. of Milliken and Co., Winfield, TN: September 17, 2002.
TA–W–52,903; Straits Steel and Wire, Ludington, MI: September 8, 2002.
TA–W–52,939; TRTL Enterprises, LLC, Monmouth, OR: August 29, 2002.
TA–W–52,764; New Castle Industries, Bimex Div., Wales, WI: August 3, 2002.
TA–W–52,799; Western Metal Specialty Co., a div. of Western Industries, Inc., Milwaukee, WI: September 5, 2002.
TA–W–52,587; Ramtex, Inc., Ramseur, NC: August 6, 2002.
TA–W–53,159; General Mills Operations, Inc., including leased workers of Masterson Personnel, Inc., Eden Prairie, MN: September 16, 2002.
TA–W–53,070; Home Products International, Inc., Eagan, MN: September 30, 2002.
TA–W–52,956; SEMCO, div. of Leggett and Platt Components Co., Ocala, FL: September 12, 2002.
TA–W–52,738; Vermont Tubbs, Inc., a div. of Carris Financial Corp., Brandon, VT: August 19, 2002.
TA–W–52,804; Garden State Tanning, Williamsport, MD: August 26, 2002.
TA–W–52,867; Pittsfield Woolen Yarns Co., Inc., Pittsfield, ME: September 4, 2002.
TA–W–52,868; Badorf Shoe Co., Inc., Lititz, PA: September 9, 2002.
TA–W–52,765; Mirco Motion, Inc., Boulder, CO: September 3, 2002.
TA–W–52,788, A, B; Springs Industries, Lancaster Plant, Lancaster, SC, White Plant, Fort Mill, SC and Grace Fabrication Plant, Lancaster, SC: August 28, 2002.
TA–W–52,790; Hanes Dye and Finishing Co, Winston-Salem, NC: September 4, 2002.
TA–W–52,681; Reuther Mold and Manufacturing Co., Inc., Cuyahoga Falls, OH: August 15, 2002.
TA–W–52,696; Hilti North America, a div. of Hilti Corp., Plant 5, Tulsa, OK: August 26, 2002.
TA–W–52,747; Sligh Furniture Operating Co., d/b/a Sligh Furniture, Holland, MI: August 26, 2002.
TA–W–52,769; American Fiber and Finishing, Inc., Newberry, SC: September 5, 2002.
TA–W–52,785; Gould Electronics, Inc., Materials Div., a subsidiary of Japan Energy Corp (JEC), McConnelsville, OH: August 18, 2002.
TA–W–52,656; Agere Systems, Inc., Allentown, PA: August 15, 2002.
TA–W–52,833; The Owenby Co., Blairsville, GA: September 2, 2002.
TA–W–52,970; Miller Casket Co., Jermyn, PA: September 23, 2002.
TA–W–52,657; C & C Sportswear, Inc., Westmoreland, TN: August 23, 2002.
TA–W–52,667 & A; G.O. Carlson, Inc., Steel Div., Downingtown, PA and Coatesville, PA: August 21, 2002.
TA–W–52,564; Prewett Mills Distribution Center, a div. of Prewett Hosiery Sales Corp., Fort Payne, AL, A; V.I. Prewett & Son, Inc., a div. of V.I. Prewett & Son, Fort Payne, AL, B; McKeehan Hosiery Mill, Inc., Fort Payne, AL, C; Johnson Hosiery Mills, Inc., Fort Payne, AL, D; Johnco Hosiery, Inc., Fort Payne, AL, E; Wee Socks, a div. of V.I. Prewett & Son, Fort Payne, AL, F; Cherokee Hosiery Mills, Inc., Fort Payne, AL, G; Lala Ellen Knitting, Fort Payne, AL: August 12, 2002.
TA–W–52,685; Mead Westvaco, Greenville, GA: August 21, 2002.
TA–W–52,817; Spencer, Inc., Mt. Airy, NC: September 2, 2002.
TA–W–52,977; Minnesota Rubber, Watertown, SC: September 11, 2002.
TA–W–52,916; Rite Industries, Inc., High Point, NC: September 4, 2002.
TA–W–52,784; JLG Omniquip, Inc., formerly Omniquip Textron, Inc., a subsidiary of JLG Industries, Port Washington, WI:

September 5, 2002.

TA–W–52,522; Relax-R-Corp., Milton, VT: August 6, 2002.

TA–W–52,753; Metal Powder Products Co., Coldwater, MI: August 29, 2002.

TA–W–52,684; PSC Metals, Inc., Headquarters, Cleveland, OH, A; Ashland, VA, B; Beaver Falls, PA, C; Burns Harbor, IN, D; Canton, OH, E; Gallatin, TN, F; Granite City, IL, G; St. Louis, MO, H; Nashville, TN, I; Philadelphia Office, Fort Washington, PA, J; Chattanooga, TN, K; Chicago Office, Arlington Heights, IL: August 19, 2002.

TA–W–52,534; Advanced Cast Products, Inc., Meadville,PA: August 11, 2002.

TA–W–52,668; Parker Hannifin Corp., Techseal Div., Snow Hill, NC: August 18, 2002.

TA–W–52,533; GECP Lighting, Mattoon Lamp Plant, Coiling Operations Div., Mattoon, IL: August 4, 2002.

TA–W–52,832; Apparel Ventures, Inc., South Gate, CA: September 8, 2002.

TA–W–52,735; Guardian Industries Corp., including leased workers of Spherion, Lewistown, PA: August 21, 2002.

TA–W–52,746; Plano Molding Co., Plano, IL: August 26, 2002.

TA–W–52,661; Gloves Cut and Sew, Inc., Albemarle, NC: August 18, 2002.

TA–W–52,658; Tally Printer Corp., Kent, WA: August 19, 2002.

I hereby certify that the aforementioned determinations were issued during the months of September and October. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: October 29, 2003.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–27929 Filed 11–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,895 and TA–W–52,895A]

Fishing Vessel (F/V) Madam Ching, Fairbanks, AK, Fishing Vessel (F/V) Village Idiot, Fairbanks, AK; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 23, 2003 in response to a petition filed by a company official on behalf of workers F/V Madam Ching, Fairbanks, Alaska (TA–W–52,895) and F/V Village Idiot, Fairbanks, Alaska (TA–W–52,895A).

The investigation revealed that the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by section 222 of the Trade Act of 1974. Significant number or proportion of the workers means that at least three workers in a firm with a workforce of fewer than 50 workers would have to be affected. Separations by the subject firm did not meet this threshold level; consequently the investigation has been terminated.

Signed at Washington, DC this 25th day of September 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–27927 Filed 11–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,591]

Kentucky Derby Hosiery, Lynne Finishing Plant 6, Mount Airy, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 18, 2003 in response to a worker petition filed on behalf of workers at Kentucky Derby Hosiery, Lynne Finishing Plant 6, Mount Airy, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 4th day of September 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–27935 Filed 11–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,703]

McMurray Fabrics, Inc., Jamesville, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 29, 2003, in response to a worker petition filed by a company official on behalf of workers at McMurray Fabrics Jamesville, Inc., Jamesville, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 30th day of September, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–27930 Filed 11–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,602]

Reed-Rico, Holden Facility, Holden MA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 18, 2003 in response to a petition filed by a company official on behalf of workers of Reed-Rico, Holden Facility, Holden, Massachusetts.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 26th day of September 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–27933 Filed 11–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,612]

Solectron, Creedmoor, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 19, 2003 in response to a petition filed on behalf of workers at Solectron, Creedmoor, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 29th day of September, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–27932 Filed 11–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,597]

Sure-Fit, Inc., Allentown, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 18, 2003 in response to a worker petition filed on behalf of workers at Sure-Fit, Inc., Allentown, Pennsylvania.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 25th day of September, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–27934 Filed 11–5–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,009]

W.B. Place, Hartford, WI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 26, 2003, in response to a petition filed on behalf of workers at W.B. Place, Hartford, Wisconsin.

The petition regarding the investigation has been deemed invalid. In order for employees to establish a valid petition, there must be at least three valid petitioners. The petition in this case did not meet this threshold number. Consequently, the investigation has been terminated.

Signed at Washington, DC this 1st day of October 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–27926 Filed 11–5–03; 8:45 am]

BILLING CODE 4510–30–P

OFFICE OF NATIONAL DRUG CONTROL POLICY

Notice of Re-Establishment

AGENCY: Office of National Drug Control Policy.

ACTION: Notice of Re-Establishment of Drug Control Research, Data, and Evaluation Committee.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 and 41 CFR part 101–6.1013, the Office of National Drug Control Policy re-established the Charter of the Drug Control Research, Data, and Evaluation Committee on October 29, 2003. The re-established charter is available for viewing through the Library of Congress and the United States General Services Administration.

FOR FURTHER INFORMATION CONTACT: Please direct any questions to Daniel Petersen, Assistant General Counsel, (202) 395–6622, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20503.

Daniel Petersen,

Assistant General Counsel.

[FR Doc. 03–27913 Filed 11–5–03; 8:45 am]

BILLING CODE 3180–02–P

OFFICE OF NATIONAL DRUG CONTROL POLICY

Meeting of the Advisory Commission on Drug Free Communities

AGENCY: Office of National Drug Control Policy.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Drug-Free Communities Act, a meeting of the Advisory Commission on Drug Free Communities will be held on December 11 & 12, 2003 at the Office of National Drug Control Policy in the 5th Floor Conference Room, 750 17th Street NW., Washington, DC. The meeting will commence at 8:30 a.m. on Thursday, December 11, 2003 and adjourn for the evening at 4:30 p.m. The meeting will reconvene at 8:30 a.m. on Friday, December 12, 2003 and adjourn at 1:30 p.m. The agenda will include: Remarks by ONDCP Director John P. Walters; updates on the Drug Free Communities Program; the National Youth Anti-Drug Media Campaign; and the National Anti-Drug Coalition Institute. There will be an opportunity for public comment from 11:30 a.m. until 12 noon on Thursday, December 11, 2003. Members of the public who wish to attend the meeting and/or make public comment should contact Stella Price at (202) 395–3617 to arrange building access.

FOR FURTHER INFORMATION CONTACT: Daniel Petersen, (202) 395–6622.

Dated: November 3, 2003.

Daniel Petersen,

Assistant General Counsel.

[FR Doc. 03–27912 Filed 11–5–03; 8:45 am]

BILLING CODE 3180–02–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440]

FirstEnergy Nuclear Operating Co., Perry Nuclear Power Plant; Exemption

1.0 Background

The FirstEnergy Nuclear Operating Company (FENOC/ the licensee) is the holder of Facility Operating License No. NPF–58 which authorize operation of Perry Nuclear Power Plant (PNPP). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consists of a boiling water reactor located on FENOC's Perry site, which is located in Lake County, Ohio.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR) part 50, § 50.71(e)(4) requires that licensees provide the Nuclear Regulatory Commission (NRC) with updates to the Final Safety Analysis Report (FSAR) annually or 6 months after each refueling outage provided the interval between successive updates does not exceed 24 months. The revisions must reflect changes up to 6 months prior to the date of filing. This regulation would require the submittal of the PNPP FSAR update by September 10, 2003.

The licensee has requested a one-time schedular exemption from the requirements of 10 CFR 50.71(e)(4). The proposed exemption would extend the PNPP submittal date up to 120 days beyond the required filing date of September 10, 2003. The new filing date would be January 8, 2004. The requirement to reflect changes up to 6 months prior to the date of filing would still apply.

3.0 Discussion

By letter dated August 8, 2003, the licensee requested a one-time schedular exemption from the requirements of 10 CFR 50.71(e)(4). Specifically, the licensee requested that it be permitted to delay the required update from September 10, 2003, to January 8, 2004, which is a 120 day delay.

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Section 50.12 (a)(2)(v) of 10 CFR Part 50 indicates that special circumstances exist when an exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation.

The requested exemption is administrative and would not affect the plant equipment, operation, or procedures. The FSAR contains the analysis, assumptions, and technical details of the facility design and operating parameters. Until the FSAR is updated, the recent changes are documented in the licensee's safety analysis reports and in the Commission's Safety Evaluations for actions requiring prior approval. Changes to a facility or its operation are made through the use of processes which are defined in regulations other than 10 CFR 50.71, such as, 10 CFR 50.59 and 10 CFR 50.54. These regulations provide the basis for evaluating proposed changes and ensuring that the changes will not present an undue risk to the public health and safety and are consistent with the common defense and security. Because the FSAR update reflects changes after they have been implemented, extending the due date does not present an undue risk to the public health and safety.

While preparing the scheduled submittal, a computer failure occurred affecting the PNPP electronic data management system (EDMS) which resulted in the loss of over 11,000 electronic documents. Updates to the FSAR that were being prepared were among the documents lost. Due to the need to reconstruct the updated FSAR information that was lost, additional time is needed to complete the submittal. The requirement to reflect changes up to 6 months prior to the date of filing would still apply. The exemption is requested to allow adequate time to complete the submittal.

The licensee has made a good faith effort to comply with the regulations for filing in September 2003, in that the updated FSAR submittal was approximately 80 percent completed, however, due to circumstances beyond their control the computer supporting the EDMS failed resulting in the loss of the documents prepared for the submittal. Therefore, the exemption would only provide temporary relief from the applicable regulation and the extension would allow the time necessary for corrective actions and would result in an improved update to the FSAR. Thus, there are special circumstances present which would satisfy the requirements of 10 CFR 50.12(1)(2)(v).

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Therefore, the Commission hereby grants FirstEnergy Nuclear Operating Company, exemption from the requirements of 10 CFR part 50, § 50.71(e)(4) for PPNP.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (68 FR 59824).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 31st day of October 2003.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–27943 Filed 11–5–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission (NRC) has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in its review of applications for permits and licenses, and data needed by the NRC staff in its review of applications for permits and licenses.

Regulatory Guide 3.73, ''Site Evaluations and Design Earthquake Ground Motion for Dry Cask Independent Spent Fuel Storage and Monitored Retrievable Storage Installations,'' provides guidance acceptable to the NRC staff for (1) conducting a detailed evaluation of site area geology and foundation stability, (2) conducting investigations to identify and characterize uncertainty in seismic sources in the site region important for the probabilistic seismic hazard analysis; (3) evaluating and characterizing uncertainty in the parameters of seismic sources; (4) conducting a probabilistic seismic hazard analysis for the site; and (5) determining the design earthquake ground motion for the site to satisfy the requirements of NRC's regulations.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555. Questions on the content of this guide may be directed to Mr. M. Shah, (301) 415–8537; email *MJS3@NRC.GOV.*

Regulatory guides are available for inspection or downloading at the NRC's Web site at *http://www.nrc.gov* under Regulatory Guides and in NRC's Electronic Reading Room (ADAMS System) at the same site. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301) 415–2289, or by e-mail to *distribution@nrc.gov.* Issued guides may also be purchased from the National Technical Information Service (NTIS) on a standing order basis. Details on this service may be obtained by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161; telephone 1–800–553–6847; *http://www.ntis.gov/.* Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them. (5 U.S.C. 552(a))

Dated at Rockville, MD this 22nd day of October 2003.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 03–27944 Filed 11–5–03; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: SF 2802 and SF 2802A

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) will submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. SF 2802, Application for Refund of Retirement Deductions (Civil Service Retirement System) is used to support the payment of monies from the Retirement Fund. It identifies the applicant for refund of retirement contributions. SF 2802A, Current/Former Spouse's Notification of Application for Refund of Retirement Deductions, is used to comply with the legal requirement that any spouse or former spouse of the applicant has been notified that the former employee is applying for a refund.

Approximately 32,100 SF 2802 forms are completed annually. We estimate it takes approximately 45 minutes to complete the form. The annual burden if 24,075 hours. Approximately 28,890 SF 2802A forms are processed annually. We estimate it takes approximately 15 minutes to complete this form. The annual burden is 7,223 hours. The total annual burden is 31,298 hours.

Comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Ronald W. Melton, Chief, Operations Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3425, Washington, DC 20415–3660.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–27911 Filed 11–5–03; 8:45 am]

BILLING CODE 6325–50–M

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 17Ad–15, SEC File No. 270–360, OMB Control No. 3235–0409.

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.

Rule 17Ad–15 Signature Guarantees

Rule 17Ad–15 requires approximately 1,093 transfer agents to establish written standards for accepting and rejecting guarantees of securities transfers from eligible guarantor institutions. Transfer agents are also required to establish procedures to ensure that those standards are used by the transfer agent to determine whether to accept or reject guarantees from eligible guarantor institutions. Transfer agents must maintain, for a period of three years following the date of a rejection of transfer, a record of all transfers rejected, along with the reason for the rejection, identification of the guarantor, and whether the guarantor failed to meet the transfer agent's guarantee standard. These recordkeeping requirements assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule.

There are approximately 900 registered transfer agents. The average number of hours necessary for every transfer agent to comply with the Rule 17Ad–15 is about forty hours annually. The total burden is 36,000 hours for all transfer agents. The average cost per hour is approximately $30. Therefore, the total cost of compliance for all transfer agents is about $1,080,000.

The retention period for the recordkeeping requirement under Rule 17Ad–15 is three years following the date of a rejection of transfer. The recordkeeping requirement under the rule is mandatory to assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. This rule does not involve the collection of confidential information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, D.C. 20503; and (ii) Kenneth A. Fogash, Associate Executive Director/Acting CIO, 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: October 29, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–27978 Filed 11–5–03; 8:45 am]

BILLING CODE 8010–01–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 14f–1, OMB Control No. 3235–0108, SEC File No. 270–127.
Rule 12d1–3; OMB Control No. 3235–0109; SEC File No. 270–116.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Rule 14f–1(OMB Control No. 3235–0108; SEC File No. 270–127) requires issuers to disclose a change in a majority of the directors of the issuer. The information filed under Rule 14f–1 must be filed with the Commission and is publicly available. We estimate that it takes 18 burden hours to provide the information required under Rule 14f–1 and that the information is filed by 44 respondents for a total of 792 burden hours.

Rule 12d1–3(OMB Control No. 3235–0109; SEC File No. 270–116) requires a certification that a security has been approved by an exchange for listing and registration pursuant to section 12(d) of the Securities Exchange Act of 1934 to be filed with the Commission. The information required under Rule 12d1–3 must be filed with the Commission and is publicly available. We estimate that it takes one-half hour to provide the information required under Rule 12d1–3 and that the information is filed by 688 respondents for a total of 344 burden hours.

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

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, 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: October 27, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–27979 Filed 11–5–03; 8:45 am]

BILLING CODE 8010–01–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:
- Schedule 13E–4F; OMB Control No. 3235–0375; SEC File No. 270–340.
- Form F–X; OMB Control No. 3235–0379; SEC File No. 270–336.
- Form DF; OMB Control No. 3235–0482; SEC File No. 270–430.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Schedule 13E–4F (OMB Control No. 3235–0375; SEC File No. 270–340) may be used by any foreign private issuer if: (1) The issuer is incorporated or organized under the laws of Canada; (2) the issuer is making a cash tender or exchange offer for the issuer's own securities; and (3) less than 40 percent of the class of such issuer's securities outstanding that is the subject of the tender offer is held by U.S. holders. The information collected must be filed with the Commission and is publicly available. We estimate that it takes 2 burden hours to prepare Schedule 13E–4F and that the information is filed by 3 respondents for a total of 6 burden hours.

Form F–X (OMB Control No. 3235–0379; SEC File No. 270–336) is used to appoint an agent for service of process by Canadian issuers registering securities on Form F–7, F–8, F–9 or F–10 or filing periodic reports on Form 40–F under the Exchange Act. The information collected must be filed with the Commission and is publicly available. We estimate that it takes 2 hours to prepare and is filed 129 respondents for a total of 258 burden hours.

Form DF (OMB Control No. 3235–0482; SEC File No. 270–430) allows registrants to identify a filing that was filed late because of electronic filing difficulties in order to preserve the timeliness of the filing. The information collected must be filed with the Commission and is publicly available. We estimate that it takes 12 minutes to prepare and is filed by an estimated 500 respondents for a total annual burden of 100 hours.

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

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, 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: October 29, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–27980 Filed 11–5–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26237; 812–12967]

Bear, Stearns & Co. Inc., et al; Notice of Application and Temporary Order

October 31, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (''Act'').

SUMMARY OF APPLICATION: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against Bear, Stearns & Co. Inc. (''BS&Co.'') on October 31, 2003 by the U.S. District Court for the Southern District of New York (the ''Federal Injunction''), until the earlier of the date the Commission takes action on an application for a permanent order, or two years from the date of the Federal Injunction. Applicants have requested a permanent order.

APPLICANTS: BS&Co. and Bear Stearns Asset Management Inc. (''BSAM'' and together, the ''Applicants'').[1]

FILING DATES: The application was filed on April 28, 2003. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice. Applicants have also agreed to file amendments to the application reflecting the issuance of each State Injunction (as defined below).

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 25, 2003, and should be accompanied by proof of service on Applicants, in the form of an

[1] Applicants request that any relief granted pursuant to the application also apply to any other company of which BS&Co. is or hereafter becomes an affiliated person (included in the term Applicants).

affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Stephen Bornstein, Bear Stearns Asset Management Inc., 383 Madison Avenue, New York, NY 10179.

FOR FURTHER INFORMATION CONTACT: Stacy L. Fuller, Senior Counsel, or Todd F. Kuehl, Branch Chief, at 202–942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a temporary order and a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone 202–942–8090).

Applicants' Representations

1. BS&Co., a Delaware corporation, is a full service investment banking firm, engaged in securities underwriting, sales and trading, investment banking, financial advisory services, and investment research services. BSAM serves as investment adviser or subadviser for one or more registered investment companies (''Funds''). BS&Co. acts as the depositor or principal underwriter for Funds.[2]

2. On October 31, 2003, the U.S. District Court for the Southern District of New York entered the Federal Injunction against BS&Co. in a matter brought by the Commission.[3] The Commission alleged in the complaint (''Complaint'') that BS&Co. violated certain Conduct Rules of the National Association of Securities Dealers (''NASD'') and Rules of the New York Stock Exchange (''NYSE'') (the NASD Conduct Rules and NYSE Rules together, the ''Exchange Rules'') by engaging in acts and practices that created or maintained inappropriate influence by BS&Co.'s investment banking business (the ''Investment Banking Department'') over the research analysts in BS&Co.'s research department (the ''Research Department''). The Federal Injunction enjoined BS&Co. directly or through its officers, directors, agents and employees, from violating the specific rules cited in the Complaint. Without admitting or denying the allegations in the Complaint, BS&Co. consented to the entry of the Federal Injunction as well as the payment of disgorgement and penalties and other equitable relief, including undertakings by BS&Co. to adopt and implement policies and procedures relating to certain research activities. Applicants state that BS&Co. expects to enter into settlement agreements relating to the activities referred to in the Complaint with certain state and territorial agencies which may result in an injunction by a court of competent jurisdiction that is based on the same conduct and the same facts as the Complaint (each, a ''State Injunction,'' and, together with the Federal Injunction, the ''Injunctions''). Applicants request that this application cover any disqualifications of the Applicants under section 9(a) resulting from the Injunctions.

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered UIT or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines ''affiliated person'' to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that BS&Co. is an affiliated person of BSAM within the meaning of section 2(a)(3) of the Act. Applicants further state that the entry of the Injunctions would result in Applicants being subject to the disqualification provisions of section 9(a) of the Act.

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that the Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting them from the disqualification provisions of section 9(a) of the Act.

3. Applicants believe they meet the standard for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that the conduct giving rise to the Injunctions did not involve any of the Applicants acting in the capacity of investment adviser, subadviser, depositor, or principal underwriter for a Fund. Applicants state that none of the current or former officers or employees of the Applicants, who served or serves as adviser, subadviser, principal underwriter or depositor to the Funds, was involved in the conduct that forms the basis of the Complaint. While the Applicants' portfolio managers had access to research reports issued by the Research Department, there is no indication that the portfolio managers relied on these research reports more than any other data that would have been considered by the portfolio managers in making investment decisions for the Funds, except as noted in the application.[4] Although some of the Funds held securities in their portfolios at the time that BS&Co. issued research reports concerning the issuers of such securities, as far as Applicants are aware, none of the officers, portfolio managers, or any other investment personnel employed by the Applicants had any knowledge of any non-public information relating to, or had any involvement in, the conduct underlying the Final Judgment. In addition, each of the Applicants that serve as an investment adviser or sub-adviser to Funds has adopted policies regarding information barriers (the ''Policies'') designed to protect the Funds from any conflict of interest that may arise between portfolio managers and other employees of BS&Co. The Policies, which were in effect at the time of the conduct described in the Complaint, restrict communications between portfolio managers and certain other employees of BS&Co.

[2] Any registered unit investment trusts (''UIT'') or registered face amount certificate company for which Applicants may serve as principal underwriter or depositor are also included in the defined term Funds.

[3] *Securities and Exchange Commission* v. *Bear, Stearns & Co. Inc.,* 03 CV 2937 (WHP) (S.D.N.Y., filed April 28, 2003).

[4] Applicants state that they act as investment adviser to one Fund whose portfolio securities were selected based primarily on a list of recommended securities compiled by the Research Department.

5. The Applicants will distribute written materials, including an offer to meet in person to discuss the materials, to the board of directors or trustees of each Fund (each, a ''Board''), including the directors who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Fund, and their independent legal counsel, if any, regarding the Federal Injunction, any impact on the Funds, and this application.[5] The Applicants will provide the Boards with all information concerning the Injunctions and this application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6.Applicants state that the inability to continue providing advisory services to the Funds and the inability to continue serving as principal underwriter to the Funds would result in potentially severe hardships for the Funds and their shareholders. Applicants also assert that, if they were barred from providing services to the Funds, the effect on their businesses and employees would be severe. The Applicants state that they have committed substantial resources to establish an expertise in advising and distributing Funds. Applicants state that no Applicant has previously applied for an exemption pursuant to section 9(c) of the Act.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Applicants, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

It is hereby ordered, pursuant to section 9(c) of the Act, that the Applicants are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Injunctions, subject to the condition in the application, until the date the Commission takes final action on their application for a permanent order or, if earlier, October 31, 2005.

[5] Applicants will advise the Boards of any State Injunctions that are issued.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–27981 Filed 11–5–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26240; 812–12960]

Citigroup Global Markets Inc., f/k/a Salomon Smith Barney Inc., et al.; Notice of Application and Temporary Order

October 31, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (''Act'').

SUMMARY OF APPLICATION: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against Citigroup Global Markets Inc., f/k/a Salomon Smith Barney Inc. (''SSB'') on October 31, 2003, by the U.S. District Court for the Southern District of New York (the ''Federal Injunction''), until the earlier of the date the Commission takes action on an application for a permanent order, or two years from the date of the Federal Injunction. Applicants have requested a permanent order.

APPLICANTS: SSB, CEFOF GP I Corp. (''CEFOF''), CELFOF GP Corp. (''CELFOF''), Citi Fund Management Inc. (''Citi Fund''), Citibank, N.A. (''Citibank''), Citicorp Life Insurance Company (''Citicorp Life''), Citigroup Alternative Investments LLC (''Citigroup Alternative''), Citigroup Asset Management Limited (''Citigroup Asset''), CitiStreet Equities LLC (''CitiStreet Equities''), CitiStreet Funds Management LLC (''CitiStreet''), First Citicorp Life Insurance Company (''First Citicorp Life''), PFS Distributors, Inc. (''PFS Distributors''), SSBCP GP I Corp. (''SSBCP''), SSBPIF GP Corp. (''SSBPIF''), Salomon Brothers Asset Management Inc. (''Salomon Brothers''), Salomon Brothers Asset Management, Ltd. (''Salomon Brothers Ltd.''), Smith Barney Fund Management LLC (''Smith Barney''), Smith Barney Global Capital Management Inc. (''Smith Barney Global''), Travelers Asset Management International Co., LLC (''TAMIC''), Travelers Distribution LLC (''Travelers Distribution''), The Travelers Insurance Company (''TIC''), Travelers Investment Adviser, Inc. (''TIMCO''), The Travelers Investment Management Company (''Travelers''), the Travelers Life and Annuity Company (''TLAC''), and Winter Capital International LLC (''Winter''), (together, the ''Applicants'').[1]

FILING DATES: The application was filed on April 29, 2003 and amended on June 19, 2003. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is reflected in this notice. Applicants have also agreed to file amendments to the application reflecting the issuance of each State Injunction (as defined below).

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 25, 2003, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, SSB and Salomon Brothers, 399 Park Avenue, New York, New York 10022; CEFOF, CELFOF, Citi Fund and Travelers, 100 First Stamford Place, Stamford, Connecticut 06902–6729; Citibank, 153 East 53rd Street, 5th Floor, New York, New York 10043; Citicorp Life, Travelers Distribution, Travelers Insurance and Travelers Life, One Cityplace, Hartford, Connecticut 06103–3415; Citigroup Alternative, 399 Park Avenue, 7th Floor, New York, New York 10043; Citigroup Asset, Salomon Brothers Ltd. and Smith Barney Global, Citigroup Centre, Canada Square, Canary Wharf, London, England, E14 5LB; CitiStreet Equities and CitiStreet, Two Tower Center, East Brunswick, New Jersey 08816; First Citicorp Life, 666 Fifth Avenue, 3rd Floor, New York,

[1] Applicants request that any relief granted pursuant to the application also apply to any other company of which SSB is or hereafter becomes an affiliated person (together with the Applicants, the ''Covered Persons'').

New York 10103; PFS Distributors, 3120 Breckinridge Boulevard, Building 200, Duluth, Georgia 30099–0001; SSBCP and SSBPIF, 338 Greenwich Street, New York, New York 10013; Smith Barney and TIMCO, 399 Park Avenue, 4th Floor, New York, New York 10022; TAMIC, 242 Trumbull Street—6TS, Hartford, Connecticut, 06115–0449; and Winter, 153 East 53rd Street, 3rd Floor, New York, New York 10043.

FOR FURTHER INFORMATION CONTACT: Marc R. Ponchione, Senior Counsel, or Todd F. Kuehl, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a temporary order and a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone 202–942–8090).

Applicants' Representations

1. SSB, a New York corporation, is a full service investment banking firm engaged in securities underwriting, sales and trading, investment banking, financial advisory services, and investment research services. Certain Applicants serve as investment adviser or sub-adviser for one or more registered investment companies (''Funds''). Certain Applicants act as the depositor or principal underwriter for Funds.[2]

2. On October 31, 2003, the U.S. District Court for the Southern District of New York entered the Federal Injunction against SSB in a matter brought by the Commission.[3] The Commission alleged in the complaint (''Complaint'') that SSB violated certain Conduct Rules of the National Association of Securities Dealers (''NASD'') and Rules of the New York Stock Exchange (''NYSE'') (the NASD Conduct Rules and NYSE Rules together, the ''Exchange Rules''). The Complaint alleged that SSB's research department (''Research Department'') and investment banking department (''Investment Banking Department'') issued research reports that were fraudulent, violated SRO rules regulating their members' communications with the public, and allocated hot IPO shares to executives of current or potential investment banking clients and provided special treatment for these executives. The Federal Injunction enjoined SSB directly or through its officers, directors, agents and employees, from violating the specific rules cited in the Complaint. Without admitting or denying the allegations in the Complaint, SSB consented to the entry of the Federal Injunction as well as the payment of disgorgement and penalties and other equitable relief. Applicants state that SSB has entered, and expects to enter into settlement agreements relating to the activities referred to in the Complaint with certain state and territorial agencies which may result in an injunction by a court of competent jurisdiction that is based on the same conduct and the same facts as the Complaint (each, a ''State Injunction,'' and, together with the Federal Injunction, the ''Injunctions''). Applicants request that this application cover any disqualifications of the Applicants under section 9(a) resulting from the Injunctions.

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered UIT or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines ''affiliated person'' to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that SSB is an affiliated person of each of the other Applicants within the meaning of section 2(a)(3) of the Act. Applicants state that the entry of the Injunctions would result in Applicants being subject to the disqualification provisions of section 9(a) of the Act.

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that the Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting the Applicants and the other Covered Persons from the disqualification provisions of section 9(a) of the Act.

3. Applicants believe they meet the standard for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that the conduct giving rise to the Injunctions did not involve any of the Applicants acting in the capacity of investment adviser, sub-adviser, depositor, or principal underwriter for a Fund. Applicants state that the Complaint did not expressly reference the conduct of any current or former officer or employee of any of the Applicants who is or was involved in providing advisory, sub-advisory or underwriting services to the Funds advised or underwritten by Applicants.[4] While the Applicants' portfolio managers had access to research reports issued by the Research Department, there is no indication that the portfolio managers relied on these research reports more than any other data that would have been considered by the investment adviser or sub-adviser in making investment decisions for the Funds, except as noted in the application.[5] Although some of the Funds held securities in their portfolios at the time that SSB issued research reports concerning the issuers of such securities, none of the Applicants are aware that any of their investment personnel, including employees, officers, or portfolio managers, had any knowledge of any non-public information relating to, or had any involvement in, the conduct underlying the Injunctions. In addition, each of the Applicants that is an investment adviser or sub-adviser to Funds has adopted policies regarding information barriers (the ''Policies'') designed to protect the

[2] Any registered unit investment trust (''UIT'') or registered face amount certificate company for which Applicants may serve as principal underwriter or depositor are also included in the defined term Funds.

[3] *Securities and Exchange Commission* v. *Citigroup Global Markets Inc., f/k/a Salomon Smith Barney Inc.*, 03 Civ. 2945 (WHP) (S.D. N.Y., filed April 28, 2003) (the ''Action'').

[4] The Complaint also refers to general practices regarding the relationship between SSB's Investment Banking and Research Departments. It is possible that one or more current or former officers or employees of the Applicants who is or was involved in providing advisory, sub-advisory or underwriting services to the Funds was at some time an officer or employee of the Investment Banking or Research Departments of SSB.

[5] Applicants state that they act as principal underwriter or depositor to certain UITs whose portfolio selection process placed special emphasis on equity research issued by the Research Department.

investment adviser's or sub-adviser's clients, including Fund shareholders, from any conflict of interest that may arise between the investment adviser's or sub-adviser's portfolio managers and SSB's investment banking business as referenced in the Complaint. The Policies, which were in effect at the time of the conduct described in the Complaint, restrict communications between portfolio managers of the investment adviser or sub-adviser and other employees of SSB.

5. The Applicants will distribute written materials, including an offer to meet in person to discuss the materials, to the board of directors or trustees of each Fund (each, a ''Board''), including the directors who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Fund, and their independent legal counsel, if any, regarding the Federal Injunction,[6] any impact on the Funds, and this application.[7] The Applicants will provide the Boards with all information concerning the Injunctions and this application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants state that the inability to continue providing advisory services to the Funds and the inability to continue serving as principal underwriter to the Funds would result in potentially severe hardships for the Funds and their shareholders. Applicants also assert that, if they were barred from providing services to the Funds, the effect on their businesses and employees would be severe. The Applicants state that they have committed substantial resources to establish an expertise in advising and distributing Funds. Certain affiliated persons of SSB previously have received exemptions under section 9(c) as the result of conduct that triggered section 9(a) as described in greater detail in the application.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Applicants, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

It Is Hereby Ordered, pursuant to section 9(c) of the Act, that the Applicants and the other Covered Persons are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Injunctions, subject to the condition in the application, until the date the Commission takes final action on their application for a permanent order or, if earlier, October 31, 2005.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–27987 Filed 11–5–03; 8:45 am]

BILLING CODE 8010–01–P

[6] Applicants state that they will advise the Boards of any State Injunctions that are issued.

[7] With respect to the Funds discussed in footnote 4 that are UITs, Applicants state that they will provide written notification to the trustee for each of these UITs concerning the Injunctions, any impact on the UITs, and this application and will provide any other related information as may be requested by a trustee.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26243; 812–12968]

Credit Suisse First Boston LLC, et al.; Notice of Application and Temporary Order

October 31, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (''Act'').

Summary of Application: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against Credit Suisse First Boston LLC (''CSFB'') on October 31, 2003 by the U.S. District Court for the Southern District of New York (the ''Federal Injunction''), until the earlier of the date the Commission takes action on an application for a permanent order, or two years from the date of the Federal Injunction. Applicants have requested a permanent order.

Applicants: CSFB; Credit Suisse Asset Management, LLC (''CSAM Americas''); Credit Suisse Asset Management Securities, Inc.; Credit Suisse Asset Management Limited, a corporation organized under the laws of England and Wales (''CSAM London''); Credit Suisse Asset Management (Australia) Limited (''CSAM Australia''); Credit Suisse Asset Management Limited, a Japanese company (''CSAM Japan''); Merchant Capital Inc. (''Merchant''); Credit Suisse First Boston (Bermuda) Limited (''CSFB Bermuda''); and DLJ LBO Plans Management Corporation (''LBO Plans'') (together, the ''Applicants'').[1]

Filing Dates: The application was filed on April 29, 2003. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is reflected in this notice. Applicants also have agreed to file amendments to the application reflecting the issuance of each State Injunction (as defined below).

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 25, 2003, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: CSFB, Merchant, CSFB Bermuda, and LBO Plans, Eleven Madison Avenue, New York, NY 10010–3629; CSAM Americas and Credit Suisse Asset Management Securities, Inc., 466 Lexington Avenue, New York, NY 10017–3147; CSAM London, Beaufort House, 15 St. Botolph Street, London (England), United Kingdom EC3A 7JJ; CSAM Australia, Level 32 Gateway, 1 Macquarie Place, Sydney 2001, Australia; and CSAM Japan, Shiroyama JT Trust Tower, 3–1, Toranomon 4-Chome, Minato-Ku, Tokyo 105–6025 Japan.

FOR FURTHER INFORMATION CONTACT: Julia Kim Gilmer, Senior Counsel, at (202) 942–0528, or Annette Capretta, Branch Chief, at 202–942–0564 (Division of Investment Management, Office of Investment Company Regulation).

[1] Applicants request that any relief granted pursuant to the application also apply to any other company of which CSFB is or hereafter becomes an affiliated person (included in the term Applicants).

SUPPLEMENTARY INFORMATION: The following is a temporary order and a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone 202–942–8090).

Applicants' Representations

1. CSFB, a Delaware limited liability company, is a full service investment banking firm, engaged in securities underwriting, sales and trading, investment banking, financial advisory services, and investment research services. Certain Applicants serve as investment adviser or sub-adviser for one or more registered investment companies (''Funds''). Certain Applicants act as the depositor or principal underwriter for Funds.[2]

2. On October 31, 2003, the U.S. District Court for the Southern District of New York entered the Federal Injunction against CSFB in a matter brought by the Commission.[3] The Commission alleged in the complaint (''Complaint'') that CSFB violated sections 15(c) and 17(a) of the Securities Exchange Act of 1934 (''Exchange Act'') and rules 15c1–2 and 17a-3 under the Exchange Act, and certain Conduct Rules of the National Association of Securities Dealers (''NASD'') and Rules of the New York Stock Exchange (''NYSE'') by engaging in acts and practices that created or maintained inappropriate influence by CSFB's investment banking business over the research analysts in CSFB's research department. The Federal Injunction enjoined CSFB directly or through its officers, directors, agents and employees, from violating sections 15(c) and 17(a) of the Exchange Act and the specific rules cited in the Complaint. Without admitting or denying the allegations in the Complaint, CSFB consented to the entry of the Federal Injunction as well as the payment of disgorgement and penalties and other equitable relief, including undertakings by CSFB to adopt and implement policies and procedures relating to certain research activities. Applicants state that CSFB expects to enter into settlement agreements relating to the activities referred to in the Complaint with certain state and territorial agencies which may result in an injunction by a court of competent jurisdiction that is based on the same conduct and the same facts as the Complaint (each, a ''State Injunction,'' and, together with the Federal Injunction, the ''Injunctions''). Applicants request that this application cover any disqualifications of the Applicants under Section 9(a) resulting from the Injunctions.

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered UIT or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines ''affiliated person'' to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that CSFB is an affiliated person of each of the other Applicants within the meaning of section 2(a)(3) of the Act. Applicants further state that the entry of the Injunctions would result in Applicants being subject to the disqualification provisions of section 9(a) of the Act.

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that the Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting them from the disqualification provisions of section 9(a) of the Act.

3. Applicants believe they meet the standard for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that the conduct giving rise to the Injunctions did not involve any of the Applicants acting in the capacity of investment adviser, sub-adviser, depositor, or principal underwriter for a Fund. Applicants state that the Complaint did not expressly reference the conduct of any current or former employee of any of the Applicants who is or was involved in providing advisory, sub-advisory or underwriting services to the Funds advised or underwritten by Applicants.[4] While the Applicants' portfolio managers had access to research reports issued by CSFB's research analysts, there is no indication that the portfolio managers relied on these research reports more than any other data that would have been considered by the portfolio managers in making investment decisions for the Funds, except as noted in the application.[5] Although some of the Funds held securities in their portfolios at the time that CSFB issued research reports concerning the issuers of such securities, as far as Applicants are aware, none of the officers, portfolio managers, or any other investment personnel employed by the Applicants made any investment decisions based on any non-public information relating to the conduct underlying the Judgment. In addition, CSFB had policies regarding information barriers between CSAM Americas and other employees of CSFB that were designed to restrict communications between CSAM Americas and other employees of CSFB. These information barriers, which were in effect at the time of the complaint, together with other policies of the Applicants, are designed to protect the Funds from conflicts of interest between portfolio managers and certain employees of CSFB.

5. The Applicants will distribute written materials, including an offer to meet in person to discuss the materials, to the board of directors or trustees of each Fund (each, a ''Board''), including the directors who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Fund, and their independent legal counsel, if any,

[2] Any registered unit investment trusts (''UIT'') or registered face amount certificate company for which Applicants may serve as principal underwriter or depositor are also included in the defined term Funds.

[3] Securities and Exchange Commission v. Credit Suisse First Boston LLC, f/k/a Credit Suisse First Boston Corporation, 03 CV 2946 (WHP) (S.D.N.Y., filed April 28, 2003).

[4] The Complaint also refers to general practices regarding the relationship between the investment banking and research departments of CSFB. It is possible that one or more current or former officers or employees of an Applicants who is or was involved in providing advisory, sub-advisory or underwriting services to the Funds was at some time an officer or employee of the investment banking or research department of CSFB.

[5] Applicants state that they acted as investment adviser, principal underwriter, or depositor to a Fund whose portfolio securities were selected based primarily on research conducted by equity research analysts employed by CSFB, or its predecessor.

regarding the Federal Injunction, any impact on the Funds, and this application.[6] The Applicants will provide the Boards with all information concerning the Injunctions and this application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants state that the inability to continue providing advisory services to the Funds and the inability to continue serving as principal underwriter to the Funds would result in potentially severe hardships for the Funds and their shareholders. Applicants also assert that, if they were barred from providing services to the Funds, the effect on their businesses and employees would be severe. The Applicants state that they have committed substantial resources to establish an expertise in advising and distributing Funds. Certain affiliated persons of CSFB previously have received exemptions under section 9(c) as the result of conduct that triggered section 9(a) as described in greater detail in the application.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Applicants, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

It is hereby ordered, pursuant to section 9(c) of the Act, that the Applicants are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Injunctions, subject to the condition in the application, until the date the Commission takes final action on their application for a permanent order or, if earlier, October 31, 2005.

[6] Applicants will notify the Boards of the issuance of any State Injunctions.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–27982 Filed 11–5–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26242; 812–12958]

Goldman Sachs & Co., et al.; Notice of Application and Temporary Order

October 31, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (''Act'').

SUMMARY OF APPLICATION: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against Goldman, Sachs & Co. (''Goldman Sachs'') on October 31, 2003 by the U.S. District Court for the Southern District of New York (the ''Federal Injunction''), until the earlier of the date the Commission takes action on an application for a permanent order, or two years from the date of the Federal Injunction. Applicants have requested a permanent order.

APPLICANTS: Goldman Sachs, Goldman Sachs Asset Management, L.P., and Goldman Sachs Asset Management International (together, the ''Applicants'').[1]

FILING DATES: The application was filed and amended on April 28, 2003. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is reflected in this notice. Applicants also have agreed to file additional amendments to the application reflecting the issuance of each State Injunction (as defined below).

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 25, 2003, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

[1] Applicants request that any relief granted pursuant to the application also apply to any other company of which Goldman Sachs is or hereafter becomes an affiliated person (included in the term Applicants).

ADDRESSES: Secretary, Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Applicants: Goldman Sachs, 85 Broad Street, New York, NY 10004; Goldman Sachs Asset Management, L.P., 32 Old Slip, New York, NY 10005; Goldman Sachs Asset Management International, Christchurch Court, 10–15 Newgate Street, London, England, EC1A7HD.

FOR FURTHER INFORMATION CONTACT: Julia Kim Gilmer, Senior Counsel, at (202) 942–0528, or Todd Kuehl, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a temporary order and a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street NW., Washington, DC 20549–0102, telephone: (202) 942–8090.

Applicants' Representations

1. Goldman Sachs, a New York limited partnership, is a full service investment banking firm, engaged in securities underwriting, sales and trading, investment banking, financial advisory services, and investment research services. The Applicants serve as investment adviser or sub-adviser for one or more registered investment companies (''Funds''). Goldman Sachs also acts as the principal underwriter for Funds.

2. On October 31, 2003, the U.S. District Court for the Southern District of New York entered the Federal Injunction against Goldman Sachs in a matter brought by the Commission.[2] The Commission alleged in the complaint (''Complaint'') that Goldman Sachs violated certain Conduct Rules of the National Association of Securities Dealers (''NASD'') and Rules of the New York Stock Exchange (''NYSE'') (the NASD Conduct Rules and NYSE Rules together, the ''Exchange Rules'') by engaging in acts and practices that created or maintained inappropriate influence by Goldman Sachs' investment banking business (the ''Investment Banking Department'') over

[2] Securities and Exchange Commission v. Goldman, Sachs & Co., 03 Civ. 2944 (WHP) (S.D.N.Y., filed April 28, 2003).

the research analysts in Goldman Sachs' research department (the ''Research Division''). The Federal Injunction enjoined Goldman Sachs directly or through its officers, directors, agents and employees, from violating the Exchange Rules cited in the Complaint. Without admitting or denying the allegations in the Complaint, Goldman Sachs consented to the entry of the Federal Injunction as well as the payment of disgorgement and penalties and other equitable relief, including undertakings by Goldman Sachs to adopt and implement policies and procedures relating to certain research activities. Applicants state that Goldman Sachs expects to enter into settlement agreements relating to the activities referred to in the Complaint with certain state and territorial agencies which may result in an injunction by a court of competent jurisdiction that is based on the same conduct and the same facts as the Complaint (each, a ''State Injunction,'' and, together with the Federal Injunction, the ''Injunctions''). Applicants request that this application cover any disqualifications of the Applicants under Section 9(a) resulting from the Injunctions.

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered UIT or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines ''affiliated person'' to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that Goldman Sachs is an affiliated person of each of the other Applicants within the meaning of section 2(a)(3) of the Act. Applicants further state that the entry of the Injunctions would result in Applicants being subject to the disqualification provisions of section 9(a) of the Act.

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that the Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting them from the disqualification provisions of section 9(a) of the Act.

3. Applicants believe they meet the standard for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that the conduct giving rise to the Injunctions did not involve any of the Applicants acting in the capacity of investment adviser, sub-adviser, depositor, or principal underwriter for a Fund. Applicants state that the Complaint did not expressly reference the conduct of any current or former personnel of any of the Applicants who is or was involved in providing advisory, sub-advisory or underwriting services to the Funds advised or underwritten by Applicants.[3] While the Applicants' portfolio managers had access to research reports issued by the Research Division, there is no indication that the portfolio managers relied on these research reports more than any other data that would have been considered by the portfolio managers in making investment decisions for the Funds, except as noted in the application.[4] Although some of the Funds held securities in their portfolios at the time that Goldman Sachs issued research reports concerning the issuers of such securities, as far as Applicants are aware, none of the officers, portfolio managers, or any other investment personnel employed by the Applicants made any investment decisions based on any non-public information relating to the conduct underlying the Final Judgment. In addition, each of the Applicants that serve as an investment adviser or sub-adviser to Funds has adopted policies regarding information barriers (the ''Policies'') designed to protect the Funds from certain conflicts of interest that may arise between portfolio managers and other employees of Goldman Sachs. The Policies, which were in effect at the time of the conduct described in the Complaint, restrict communications between portfolio managers and certain other employees of Goldman Sachs.

5. The Applicants will distribute written materials, including an offer to meet in person to discuss the materials, to the board of directors or trustees of each Fund (each, a ''Board''), including the directors who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Fund, and their independent legal counsel, if any, regarding the Injunctions, any impact on the Funds, and this application. The Applicants will provide the Boards with all information concerning the Injunctions and this application that is necessary for the Funds to fulfill their disclosure and other obligations under the Federal securities laws.

6. Applicants state that the inability to continue providing advisory services to the Funds and the inability to continue serving as principal underwriter to the Funds would result in potentially severe hardships for the Funds and their shareholders. Applicants also assert that, if they were barred from providing services to the Funds, the effect on their businesses and employees would be severe. Goldman Sachs previously has received exemptions under section 9(c) as the result of conduct that triggered section 9(a) as described in greater detail in the application.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Applicants, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

[3] The Complaint also refers to general practices regarding the relationship between the Investment Banking Department and Research Division of Goldman Sachs. It is possible that one or more current or former personnel of the Applicants who is or was involved in providing advisory, subadvisory or underwriting services to the Funds was at some time an officer or employee of the Investment Banking Department or Research Division of Goldman Sachs.

[4] Applicants state that they act as investment adviser, principal underwriter, or depositor to a Fund whose portfolio securities were formerly selected based primarily on a list of recommended securities compiled by the Research Division.

Accordingly,

It is hereby ordered, pursuant to section 9(c) of the Act, that the Applicants are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Injunctions, subject to the condition in the application, until the date the Commission takes final action on their application for a permanent order or, if earlier, October 31, 2005.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–27984 Filed 11–5–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26239; 812–12959]

J.P. Morgan Securities Inc., et al.; Notice of Application and Temporary Order

October 31, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (''Act'').

SUMMARY OF APPLICATION: Applicants have received a temporary order exempting Covered Persons (as defined below) from section 9(a) of the Act, with respect to an injunction entered against J.P. Morgan Securities Inc. (''JPMSI'') on October 31, 2003 by the U.S. District Court for the Southern District of New York (the ''Federal Injunction''), until the earlier of the date the Commission takes action on an application for a permanent order, or two years from the date of the Federal Injunction. Applicants have requested a permanent order.

APPLICANTS: JPMSI, JF International Management Inc., J.P. Morgan Alternative Asset Management, Inc., J.P. Morgan Fleming Asset Management (London) Limited and J.P. Morgan Investment Management Inc. (together, the ''Applicants'').[1]

FILING DATES: The application was filed on April 28, 2003, and amended on June 12, 2003 and on August 26, 2003. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice. Applicants have also agreed to file additional amendments to the application reflecting the issuance of each State Injunction (as defined below).

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 25, 2003, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Scott G. Campbell, J.P. Morgan Chase & Co., One Chase Manhattan Plaza, New York, NY 10081.

FOR FURTHER INFORMATION CONTACT: Stacy L. Fuller, Senior Counsel, or Todd F. Kuehl, Branch Chief, at 202–942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a temporary order and a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone 202–942–8090).

Applicants' Representations

1. JPMSI, a Delaware corporation, is a full service investment banking firm, engaged in securities underwriting, sales and trading, investment banking, financial advisory services, and investment research services. Certain Applicants serve as investment adviser or subadviser for one or more registered investment companies (''Funds''). Certain Applicants may in the future act as the depositor or principal underwriter for Funds.[2]

2. On October 31, 2003, the U.S. District Court for the Southern District of New York entered the Federal Injunction against JPMSI in a matter brought by the Commission.[3] The Commission alleged in the complaint (''Complaint'') that JPMSI violated certain Conduct Rules of the National Association of Securities Dealers (''NASD'') and Rules of the New York Stock Exchange (''NYSE'') (the NASD Conduct Rules and NYSE Rules together, the ''Exchange Rules'') by engaging in acts and practices that created or maintained inappropriate influence by JPMSI's investment banking business (the ''Investment Banking Department'') over the research analysts in JPMSI's research department (the ''Research Department''). The Federal Injunction enjoined JPMSI directly or through its officers, directors, agents and employees, from violating the specific rules cited in the Complaint. Without admitting or denying the allegations in the Complaint, JPMSI consented to the entry of the Federal Injunction as well as the payment of disgorgement and penalties and other equitable relief, including undertakings by JPMSI to adopt and implement policies and procedures relating to certain research activities. Applicants state that JPMSI expects to enter into settlement agreements relating to the activities referred to in the Complaint with certain state and territorial agencies which may result in an injunction by a court of competent jurisdiction that is based on the same conduct and the same facts as the Complaint (each, a ''State Injunction,'' and, together with the Federal Injunction, the ''Injunctions''). Applicants request that this application cover any disqualifications of Covered Persons under section 9(a) resulting from the Injunctions.

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered UIT or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines ''affiliated

[1] Applicants request that any relief granted pursuant to the application also apply to any other company of which JPMSI is, or hereafter becomes, an affiliated person within the meaning of section 2(a)(3) of the Act (together with Applicants, ''Covered Persons'').

[2] Any registered unit investment trusts (''UIT'') or registered face amount certificate company for which Applicants may serve as principal underwriter or depositor are also included in the defined term Funds.

[3] *Securities and Exchange Commission* v. *J.P. Morgan Securities Inc.*, 03 CV 2939 (WHP) (S.D.N.Y., filed April 28, 2003).

person'' to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that JPMSI is an affiliated person of each of the other Applicants within the meaning of section 2(a)(3) of the Act. Applicants further state that the entry of the Injunctions would result in Covered Persons being subject to the disqualification provisions of section 9(a) of the Act.

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that the Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants have filed an application pursuant to section 9(c) seeking temporary and permanent orders exempting them from the disqualification provisions of section 9(a) of the Act.

3. Applicants believe they meet the standard for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to Covered Persons would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that the conduct giving rise to the Injunctions did not involve any of the Applicants acting in the capacity of investment adviser, subadviser, depositor, or principal underwriter for a Fund. Applicants state that the Complaint did not expressly reference the conduct of any current or former officer or employee of any of the Applicants who is or was involved in providing advisory or subadvisory services to the Funds advised or subadvised by Applicants.[4] While the Applicants' portfolio managers had access to research reports issued by the Research Department, there is no indication that the portfolio managers relied on these research reports more than any other data that would have been considered by the portfolio managers in making investment decisions for the Funds. Although some of the Funds held securities in their portfolios at the time that JPMSI issued research reports concerning the issuers of such securities, as far as Applicants are aware, none of the officers, portfolio managers, or any other investment personnel employed by the Applicants made any investment decisions based on any non-public information relating to the conduct underlying the Final Judgment. In addition, each of the Applicants that serves as an investment adviser or subadviser to Funds has adopted policies regarding information barriers (the ''Policies'') designed to protect the Funds from any conflict of interest that may arise between portfolio managers and employees of the Research and Investment Banking Departments. The Policies, which were in effect at the time of the conduct described in the Complaint, restrict communications between portfolio managers and certain other employees of JPMSI.

5. The Applicants have distributed, or will distribute, written materials, including an offer to meet in person to discuss the materials, to the board of directors or trustees of each Fund (each, a ''Board''), including the directors who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Fund, and their independent legal counsel, if any, regarding the Injunctions, any impact on the Funds, and this application. The Applicants will provide the Boards with all information concerning the Injunctions and this application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants state that the inability to continue providing advisory services to the Funds would result in potentially severe hardships for the Funds and their shareholders. Applicants also assert that, if they were barred from providing services to the Funds, the effect on their businesses and employees would be severe. The Applicants state that they have committed substantial resources to establish an expertise in advising and subadvising Funds. As described in greater detail in the application, certain Applicants recently applied for, and received, exemptions pursuant to section 9(c) for conduct that triggered section 9(a) of the Act.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Applicants, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

It Is Hereby Ordered, pursuant to section 9(c) of the Act, that Covered Persons are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Injunctions, subject to the condition in the application, until the date the Commission takes final action on their application for a permanent order or, if earlier, October 31, 2005.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–27988 Filed 11–5–03; 8:45 am]

BILLING CODE 8010–01–P

[4] The Complaint refers to general practices regarding the relationship between the Investment Banking and Research Departments. It is possible that one or more current or former officers or employees of the Applicants who is or was involved in providing advisory or sub-advisory services to the Funds was at some time an officer or employer of the Investment Baning or Research Department.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26241; 812–12966]

Lehman Brothers Inc., et al.; Notice of Application and Temporary Order

October 31, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (''Act'').

SUMMARY OF APPLICATION: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against Lehman Brothers Inc. on October 31, 2003, by the U.S. District Court for the Southern District of New York (the ''Federal Injunction''), until the earlier of the date the Commission takes action on an application for a permanent order, or two years from the date of the Federal Injunction. Applicants have requested a permanent order.

APPLICANTS: Lehman Brothers Inc. (''Lehman''), Lehman Brothers Asset Management Inc. (''LBAM''), and Lincoln Capital Fixed Income

Management Company, LLC (''Lincoln Capital'') (together, the ''Applicants'').[1]

FILING DATES: The application was filed on April 28, 2003. Applicants have agreed to file an amendment to the application, the substance of which is reflected in this notice, during the notice period. Applicants have also agreed to file amendments to the application reflecting the issuance of each State Injunction (as defined below).

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 25, 2003, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, Lehman, 745 Seventh Avenue, New York, NY 10019; LBAM, 399 Park Avenue, New York, NY 10022; and Lincoln Capital, 200 S. Wacker Drive, Suite 2100, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Marc R. Ponchione, Senior Counsel, at (202) 942–7927, or Todd F. Kuehl, Branch Chief, at 202–942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a temporary order and a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone 202–942–8090).

Applicants' Representations

1. Lehman, a Delaware corporation, is a full service investment banking firm, which, among other activities, engages in securities offerings, including initial public offerings, secondary offerings and debt financings, and provides merger and acquisition and other services. LBAM serves as investment adviser to one registered investment company (''Fund'') and Lincoln Capital serves as investment subadviser for eight Funds. Lehman acts as the depositor or principal underwriter for Funds.[2]

2. On October 31, 2003, the U.S. District Court for the Southern District of New York entered the Federal Injunction against Lehman in a matter brought by the Commission.[3] The Commission alleged in the complaint (''Complaint'') that Lehman violated certain Conduct Rules of the National Association of Securities Dealers (''NASD'') and Rules of the New York Stock Exchange (''NYSE'') (the NASD Conduct Rules and NYSE Rules together, the ''Exchange Rules'') by engaging in acts and practices that created or maintained inappropriate influence by Lehman's investment banking business (the ''Investment Banking Department'') over the research analysts in Lehman's research department (the ''Research Department''). The Federal Injunction enjoined Lehman directly or through its officers, directors, agents and employees, from violating the specific rules cited in the Complaint. Without admitting or denying the allegations in the Complaint, Lehman consented to the entry of the Federal Injunction as well as the payment of disgorgement and penalties and other equitable relief. Applicants state that Lehman expects to enter into settlement agreements relating to the activities referred to in the Complaint with certain state and territorial agencies which may result in an injunction by a court of competent jurisdiction that is based on the same conduct and the same facts as the Complaint (each, a ''State Injunction,'' and, together with the Federal Injunction, the ''Injunctions''). Applicants request that this application cover any disqualifications of the Applicants under section 9(a) of the Act resulting from the Injunctions.

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered UIT or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines ''affiliated person'' to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Lehman is an affiliated person of each of LBAM and Lincoln Capital within the meaning of section 2(a)(3) of the Act. Applicants further state that the entry of the Injunctions would result in Applicants being subject to the disqualification provisions of section 9(a) of the Act.

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that the Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants have filed an application pursuant to section 9(c) seeking temporary and permanent orders exempting them from the disqualification provisions of section 9(a) of the Act.

3. Applicants believe they meet the standard for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that the conduct giving rise to the Injunctions did not involve any of the Applicants acting in the capacity of investment adviser, subadviser, depositor, or principal underwriter for a Fund.[4] Applicants state that the Complaint did not expressly reference the conduct of any current or former officer or employee of Lehman who is or was involved in providing underwriting services to the

[1] Applicants request that any relief granted pursuant to the application also apply to any other company of which Lehman is or hereafter becomes an affiliated person (included in the term Applicants).

[2] Any registered unit investment trusts (''UIT'') or registered face amount certificate company for which Applicants may serve as principal underwriter or depositor are also included in the defined term Funds.

[3] *Securities and Exchange Commission* v. *Lehman Brothers Inc.*, 03 Civ. 2940 (WHP) (S.D.N.Y., filed April 28, 2003) (the ''Action'').

[4] Lincoln Capital was acquired by Lehman Brothers Holdings Inc., the ultimate parent company of the Applicants, on January 31, 2003, and the only Fund advised by LBAM was first registered on May 7, 2003. Both of these events occurred after the conduct giving rise to the Injunctions.

Funds underwritten by Lehman.[5] While LBAM's and Lincoln Capital's portfolio managers may have had access to research reports issued by the Research Department, there is no indication that the portfolio managers relied on these research reports more than any other data that would have been considered by the portfolio managers in making investment decisions for the Funds.[6] Although some of the Funds held securities in their portfolios at the time that Lehman issued research reports concerning the issuers of such securities, Applicants state that LBAM began serving as investment adviser to a Fund and Lincoln Capital was acquired by Lehman Brothers Holdings Inc. after the time period covering the conduct that forms the basis for the Injunctions. As far as Lehman is aware, none of the current or former officers, employees, portfolio managers, or any other investment personnel employed by Lehman, who is or was involved in providing principal underwriting services to the Funds, acted in their capacity as such based on any non-public information relating to the conduct underlying the Injunctions. In addition, each of the Applicants that serve or may serve as an investment adviser or sub-adviser to Funds has adopted policies regarding information barriers designed to protect the Funds from any conflict of interest that may arise between portfolio managers and other employees of Lehman.

5. Each of LBAM and Lincoln Capital has distributed or will distribute written materials, including an offer to meet in person to discuss the materials, to the board of directors or trustees of each Fund that it advises or subadvises (each, a ''Board''), including the directors or trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Fund, and their independent legal counsel, if any, regarding the Federal Injunction, any impact on the Funds, and this application.[7] The Applicants will provide the Boards with all information concerning the Injunctions and this application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants state that the inability to continue providing advisory services to the Funds and the inability to continue serving as principal underwriter to the Funds would result in potentially severe hardships for the Funds and their shareholders. Applicants also assert that, if they were barred from providing services to the Funds, the effect on their businesses and employees would be severe. The Applicants state that they have committed substantial resources to establish an expertise in advising and distributing Funds. Lehman and certain affiliated persons of Lehman previously have received exemptions under section 9(c) as the result of conduct that triggered section 9(a) as described in greater detail in the Application.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Applicants, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

It Is Hereby Ordered, pursuant to section 9(c) of the Act, that the Applicants are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Injunctions, subject to the condition in the application, until the date the Commission takes final action on their application for a permanent order or, if earlier, October 31, 2005.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–27986 Filed 11–5–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26244; 812–12961]

Merrill Lynch Investment Managers, L.P., et al.; Notice of Application and Temporary Order

October 31, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (''Act'').

SUMMARY OF APPLICATION: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against Merrill Lynch, Pierce, Fenner & Smith Incorporated (''MLPF&S') on October 31, 2003, by the U.S. District Court for the Southern District of New York (the ''Injunction''), until the Commission takes action on an application for a permanent order. Applicants have requested a permanent order.

APPLICANTS: Merrill Lynch Investment Managers, L.P. (''MLIM''), Fund Asset Management, L.P. (''FAM''), Merrill Lynch Investment Managers International Limited (''MLIMIL''), Merrill Lynch Asset Management U.K. Limited (''MLAM UK''), Roszel Advisors, LLC (''Roszel,'' and with MLIM, FAM, MLIMIL and MLAM UK, the ''Advisers''), MLPF&S and FAM Distributors, Inc. (''FAMD,'' and with MLPF&S, the ''Underwriters''), KECALP Inc. (''KECALP''), ML Taurus, Inc. (''Taurus'') and Merrill Lynch Ventures, LLC (''Ventures'') (together, the ''Applicants'').[1]

FILING DATES: The application was filed on April 28, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission

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[5] The Complaint also refers to general practices regarding the relationship between the Investment Banking and Research Departments. It is possible that one or more current or former officers or employees of the Applicants, who is or was involved in providing advisory, sub-advisory or underwriting services to the Funds, was at some time an officer or employee of the Investment Banking or Research Departments.

[6] Lehman states that it acts as principal underwriter to certain UITs whose portfolio securities were selected by an unaffiliated third party depositor based on information published by the Research Department.

[7] LBAM and Lincoln Capital also will advise the Boards of any State Injunctions that are issued. With respect to the UITs discussed in footnote 6, Lehman states that it has provided or will provide written notification to the trustees for each of these UITs and their independent depositor concerning the Injunctions, any impact on the UITs, and this Application, and will provide any other related information that may be requested by the trustees or independent depositors.

[1] Applicants request that any relief granted pursuant to the application also apply to any other company of which MLPF&S is or hereafter becomes an affiliated person (included in the term Applicants).

by 5:30 p.m. on November 25, 2003, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Jerry Weiss, Esq., Merrill Lynch Investment Managers, L.P., 800 Scudders Mill Road, Princeton, NJ 08536.

FOR FURTHER INFORMATION CONTACT: Marc R. Ponchione, Senior Counsel, or Todd F. Kuehl, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a temporary order and a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone: 202–942–8090).

Applicants' Representations

1. MLPF&S, a Delaware corporation, is a leading global investment banking firm. Certain Applicants serve as investment adviser or sub-adviser for one or more registered investment companies (''Funds''). Certain Applicants act as the depositor or principal underwriter for Funds.[2]

2. On October 31, 2003, the U.S. District Court for the Southern District of New York entered the Injunction against MLPF&S in a matter brought by the Commission.[3] The Commission alleged in the complaint (''Complaint'') that MLPF&S violated certain Conduct Rules of the National Association of Securities Dealers (''NASD'') and Rules of the New York Stock Exchange (''NYSE'') (the NASD Conduct Rules and NYSE Rules together, the ''Exchange Rules'') by engaging in acts and practices that created or maintained inappropriate influence by MLPF&S'' investment banking business (the ''Investment Banking Department'') over the research analysts in MLPF&S' research department (the ''Research Department''). The Injunction enjoined MLPF&S directly or through its officers, directors, agents and employees, from violating the specific rules cited in the Complaint. Without admitting or denying the allegations in the Complaint, MLPF&S consented to the entry of the Injunction as well as the payment of disgorgement and penalties and other equitable relief.

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered UIT or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines ''affiliated person'' to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that MLPF&S is an affiliated person of each of the other Applicants within the meaning of section 2(a)(3) of the Act. Applicants further state that the entry of the Injunction would result in Applicants being subject to the disqualification provisions of section 9(a) of the Act.

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that the Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting them from the disqualification provisions of section 9(a) of the Act.

3. Applicants believe they meet the standard for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that the conduct giving rise to the Injunction did not involve activities of any of the Applicants acting in the capacity of investment adviser, depositor, or principal underwriter for a Fund. Applicants state that none of their current or former officers or employees who are engaged in the provision of investment advisory or principal underwriting services was involved in the conduct that forms the basis of the Injunction. Applicants state that, while the Advisers had access to research reports issued by the Research Department, the fact that the source of a particular research report might be MLPF&S causes it to receive no more weight than research received from other sources in their analysis of a particular investment.[4] Although some of the Funds held securities in their portfolios at the time that MLPF&S issued research reports concerning the issuers of such securities, as far as Applicants are aware, none of the officers, portfolio managers, or any other investment personnel employed by the Advisers has any knowledge of any non-public information relating to, or had any involvement in, the conduct underlying the Injunction. In addition, each of the Advisers has adopted policies regarding information barriers (the ''Policies'') designed to protect the Advisers' clients, including Fund shareholders, from any conflict of interest that may arise between the Advisers' portfolio managers and other employees of Merrill Lynch & Co., Inc. (''ML&Co.'').[5] The Policies, which were in effect at the time of the conduct described in the Complaint, restrict communications between portfolio managers and certain other employees of ML&Co.

5. The Applicants have distributed written materials, including an offer to meet in person to discuss the materials, to the board of directors or trustees of each Fund (each, a ''Board''), including the directors who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Fund, and their independent legal counsel, if any, regarding the Injunction, any impact on the Funds, and this application.[6] The

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[2] Any registered unit investment trust (''UIT'') or registered face amount certificate company for which Applicants may serve as principal underwriter or depositor are also included in the defined term Funds.

[3] *Securities and Exchange Commission* v. *Merrill Lynch, Pierce, Fenner & Smith Incorporated,* 03 Civ. 2941 (WHP) (S.D.N.Y., filed April 28, 2003) (the ''Action'').

[4] Applicants state that they formerly acted as principal underwriter or depositor to one UIT whose portfolio selection process placed special emphasis on equity research issued by the Research Department.

[5] ML&Co. is a holding company that, through its subsidiaries and affiliates, provides investment, financing, advisory, insurance, banking and related products and services on a global basis. Each of the Applicants is a direct or indirect wholly owned subsidiary of ML&Co.

[6] With respect to the UIT discussed in footnote 4, Applicants state that they will provide written

Applicants will provide the Boards with all information concerning the Injunction and this application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants state that the inability to continue providing advisory services to the Funds and the inability to continue serving as principal underwriter to the Funds would result in potentially severe hardships for the Funds and their shareholders. Applicants also assert that, if they were barred from providing services to the Funds, the effect on their businesses and employees would be severe. The Applicants state that they have committed substantial resources to establish an expertise in advising and distributing Funds. Certain affiliated persons of MLPF&S previously have received exemptions under section 9(c) as the result of conduct that triggered section 9(a) as described in greater detail in the application.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Applicants, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

It is hereby ordered, pursuant to section 9(c) of the Act, that the Applicants are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Injunction, subject to the condition in the application, until the date the Commission takes final action on their application for a permanent order.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–27985 Filed 11–5–03; 8:45 am]

BILLING CODE 8010–01–P

notification to the trustee of the UIT concerning the Injunction, any impact on the UIT, and this application, and will provide any other related information that may be requested by the trustee.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26236; 812–12964]

Morgan Stanley Investment Advisors Inc., et al.; Notice of Application and Temporary Order

October 31, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (''Act'').

Summary of Application: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against Morgan Stanley & Co. Incorporated (''MS&Co.'') on October 31, 2003 by the U.S. District Court for the Southern District of New York (the ''Federal Injunction''), until the earlier of the date the Commission takes action on an application for a permanent order, or two years from the date of the Federal Injunction. Applicants have requested a permanent order.

Applicants: Morgan Stanley Investment Advisors Inc., Van Kampen Asset Management Inc., Morgan Stanley Investment Management Inc., Morgan Stanley Investments LP, Van Kampen Investment Advisory Corp., Van Kampen Advisors Inc., Morgan Stanley Alternative Investment Partners LP, Morgan Stanley AIP GP LP, Morgan Stanley Capital Partners III, Inc., MSDW Capital Partners IV, Inc., Morgan Stanley Global Emerging Markets, Inc., Morgan Stanley Venture Capital II, Inc., Morgan Stanley Venture Capital III, Inc., MSDW Venture Partners IV, Inc., MSVP 2002, Inc., MSREF II, Inc., MSREF III, Inc., MSREF IV, L.L.C., MSDW Real Estate Special Situations II Manager, L.L.C., Van Kampen Funds Inc., Morgan Stanley Distributors Inc., MS&Co., Morgan Stanley Distribution, Inc., Morgan Stanley DW Inc., Morgan Stanley Investment Management Limited; MSDW OIP Investors, Inc.; Morgan Stanley Investment Management Company; and Morgan Stanley Asset & Investment Trust Management Co., Limited (together, the ''Applicants'').[1]

Filing Dates: The application was filed on April 28, 2003. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice. Applicants also have agreed to file amendments to the application reflecting the issuance of each State Injunction (as defined below).

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 25, 2003, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o A. Thomas Smith, Esq., Morgan Stanley, 1585 Broadway, New York, NY 10036.

FOR FURTHER INFORMATION CONTACT: Annette M. Capretta, Branch Chief, at 202–942–0687 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a temporary order and a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone 202–942–8090).

Applicants' Representations

1. Each Applicant is a direct or indirect subsidiary of Morgan Stanley, a Delaware corporation. Morgan Stanley is a publicly held global financial services company that provides investment, financing, advisory, insurance, banking and related products and services. Certain Applicants serve as investment adviser or subadviser for one or more registered investment companies (''Funds''). Certain Applicants act as the depositor or principal underwriter for Funds.[2]

2. On October 31, 2003, the U.S. District Court for the Southern District of New York entered the Federal Injunction against MS&Co. in a matter

[1] Applicants request that any relief granted pursuant to the application also apply to any other company of which MS&Co. is or hereafter becomes an affiliated person (included in the term Applicants).

[2] Any registered unit investment trusts (''UIT'') or registered face amount certificate company for which Applicants may serve as principal underwriter or depositor are also included in the defined term Funds.

brought by the Commission.[3] The Commission alleged in the complaint (''Complaint'') that MS&Co. violated certain Conduct Rules of the National Association of Securities Dealers (''NASD'') and Rules of the New York Stock Exchange (''NYSE'') (the NASD Conduct Rules and NYSE Rules together, the ''Exchange Rules'') by engaging in conduct involving conflicts of interest between research analysts in MS&Co's research department (''Research Department'') and MS&Co.'s investment banking business (the ''Investment Banking Department''). The Federal Injunction enjoined MS&Co. directly or through its officers, directors, agents and employees, from violating the specific rules cited in the Complaint. Without admitting or denying the allegations in the Complaint, MS&Co. consented to the entry of the Federal Injunction as well as the payment of disgorgement and penalties and other equitable relief, including undertakings by MS&Co. to adopt and implement policies and procedures relating to certain research activities. Applicants state that MS&Co. expects to enter into settlement agreements relating to the activities referred to in the Complaint with certain State and territorial agencies which may result in an injunction by a court of competent jurisdiction that is based on the same conduct and the same facts as the Complaint (each, a ''State Injunction,'' and, together with the Federal Injunction, the ''Injunctions''). Applicants request that this application cover any disqualifications of the Applicants under Section 9(a) resulting from the Injunctions.

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered UIT or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines ''affiliated person'' to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that MS&Co. is an affiliated person of each of the other Applicants within the meaning of section 2(a)(3) of the Act. Applicants further state that the entry of the Injunctions would result in Applicants being subject to the disqualification provisions of section 9(a) of the Act.

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that the Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting them from the disqualification provisions of section 9(a) of the Act.

3. Applicants believe they meet the standard for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that the conduct giving rise to the Injunctions did not involve any of the Applicants acting in the capacity of investment adviser, subadviser, depositor, or principal underwriter for a Fund. Applicants state that the Complaint did not expressly reference the conduct of any current or former employee of any of the Applicants who is or was involved in providing advisory, sub-advisory or underwriting services to the Funds advised or underwritten by Applicants.[4] While the Applicants' portfolio managers had access to research materials issued by the Research Department, there is no indication that the portfolio managers relied on such research more than any other data that would have been considered by the portfolio managers in making investment decisions for the Funds, except as noted in the application.[5] Although some of the Funds held securities in their portfolios at the time that MS&Co. issued research reports concerning the issuers of such securities, as far as Applicants are aware, none of the officers, portfolio managers, or any other investment personnel employed by the Applicants made any investment decisions based on any non-public information relating to the conduct underlying the Final Judgment. In addition, Morgan Stanley has adopted policies regarding information barriers (the ''Policies''). The Policies, which apply to each of the Applicants and which were in effect at the time of the conduct described in the Complaint, are designed to separate and maintain information barriers between investment management operations and certain other Morgan Stanley businesses, such as research analysts.

5. The Applicants will distribute written materials, including an offer to meet in person to discuss the materials, to the board of directors or trustees of each Fund (each, a ''Board''), including the directors who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Fund, and their independent legal counsel, if any, regarding the Federal Injunction, any impact on the Funds, and this application.[6] The Applicants will provide the Boards with all information concerning the Injunctions and this application that is necessary for the Funds to fulfill their disclosure and other obligations under the Federal securities laws.

6. Applicants state that the inability to continue providing advisory services to the Funds and the inability to continue serving as principal underwriter to the Funds would result in potentially severe hardships for the Funds and their shareholders. Applicants also assert that, if they were barred from providing services to the Funds, the effect on their businesses and employees would be severe. The Applicants state that they have committed substantial resources to establish an expertise in advising and distributing Funds. Certain affiliated persons of MS&Co. previously have received exemptions under section 9(c) as the result of conduct that triggered

[3] *Securities and Exchange Commission* v. *Morgan Stanley & Co. Incorporated,* 03 Civ. 2948 (WHP) (S.D.N.Y., filed April 28, 2003).

[4] The Complaint refers to general practices regarding the relationship between the research and investment banking departments of MS&Co. It is possible that one or more current or former officers or employees of Applicants, who is or was engaged in the provision of investment advisory, principal underwriter or depositor services to the Funds was at some time involved in investment banking or research activities.

[5] Applicants state that they have acted as investment adviser, principal underwriter, or depositor to certain Funds whose portfolio securities were selected based primarily on a list of recommended securities compiled by the Research Department.

[6] Applicants state that they will advise the Boards of any State Injunctions that are issued. With respect to the Funds discussed in footnote 5 that are UITs, Applicants state that they will provide written notification to the trustee for each of these UITs concerning the Final Judgment, any impact on the UITs, and this application, and will provide any other related information that may be requested by the trustee.

section 9(a) as described in greater detail in the application.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Applicants, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

It Is Hereby Ordered, pursuant to section 9(c) of the Act, that the Applicants are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Injunctions, subject to the condition in the application, until the date the Commission takes final action on their application for a permanent order or, if earlier, October 31, 2005.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–27990 Filed 11–5–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26238; 812–12965]

U.S. Bancorp Piper Jaffray Inc., et al.; Notice of Application and Temporary Order

October 31, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (''Act'').

SUMMARY OF APPLICATION: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against U.S. Bancorp Piper Jaffray Inc. (''Piper'') on October 31, 2003 by the U.S. District Court for the Southern District of New York (the ''Federal Injunction''), until the earlier of the date the Commission takes action on an application for a permanent order, or two years from the date of the Federal Injunction. Applicants have requested a permanent order.

APPLICANTS: Piper, U.S. Bancorp Asset Management, Inc. and Quasar Distributors, LLC (together, the ''Applicants'').[1]

FILING DATES: The application was filed on April 28, 2003. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice. Applicants have also agreed to file amendments to the application reflecting the issuance of each State Injunction (as defined below).

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 25, 2003, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Joseph D. Edmondson, Jr., Foley & Lardner, 3000 K Street, NW, Suite 500, Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Stacy L. Fuller, Senior Counsel, or Annette M. Capretta, Branch Chief, at 202–942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a temporary order and a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone 202–942–8090).

Applicants' Representations

1. Piper, a Delaware corporation, is a full service investment banking firm, engaged in securities underwriting, sales and trading, investment banking, financial advisory services, and investment research services. Certain Applicants serve as investment adviser or subadviser for one or more registered investment companies (''Funds''). Certain Applicants act as the depositor or principal underwriter for Funds.

2. On October 31, 2003, the U.S. District Court for the Southern District of New York entered the Federal Injunction against Piper in a matter brought by the Commission.[2] The Commission alleged in the complaint (''Complaint'') that Piper violated section 17(b) of the Securities Act of 1933 (''Securities Act''), certain Conduct Rules of the National Association of Securities Dealers (''NASD'') and Rules of the New York Stock Exchange (''NYSE'') (the NASD Conduct Rules and NYSE Rules together, the ''Exchange Rules'') by engaging in acts and practices that created or maintained inappropriate influence by Piper's investment banking business (the ''Investment Banking Department'') over the research analysts in Piper's research department (the ''Research Department''). The Federal Injunction enjoined Piper directly or through its officers, directors, agents and employees, from violating section 17(b) of the Securities Act and the specific rules cited in the Complaint. Without admitting or denying the allegations in the Complaint, Piper consented to the entry of the Federal Injunction as well as the payment of disgorgement and penalties and other equitable relief, including undertakings by Piper to adopt and implement policies and procedures relating to certain research activities. Applicants state that Piper expects to enter into settlement agreements relating to the activities referred to in the Complaint with certain state and territorial agencies which may result in an injunction by a court of competent jurisdiction that is based on the same conduct and the same facts as the Complaint (each, a ''State Injunction,'' and, together with the Federal Injunction, the ''Injunctions''). Applicants request that this application cover any disqualifications of the Applicants under section 9(a) resulting from the Injunctions.

[1] Applicants request that any relief granted pursuant to the application also apply to any other company of which Piper is or hereafter becomes an affiliated person (included in the term Applicants).

[2] Securities and Exchange Commission v. U.S. Bancorp Piper Jaffray Inc., 03 CV 2942 (WHP) (S.D.N.Y., filed April 28, 2003).

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered unit investment trust (''UIT'') or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines ''affiliated person'' to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that Piper is an affiliated person of each of the other Applicants within the meaning of section 2(a)(3) of the Act. Applicants further state that the entry of the Injunctions would result in Applicants being subject to the disqualification provisions of section 9(a) of the Act.

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that the Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting them from the disqualification provisions of section 9(a) of the Act.

3. Applicants believe they meet the standard for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that the conduct giving rise to the Injunctions did not involve any of the Applicants acting in the capacity of investment adviser, depositor or principal underwriter for a Fund. Applicants state that the Complaint did not expressly reference the conduct of any current or former employee of any of the Applicants,[3] who is or was involved in providing advisory, sub-advisory or underwriting services to the Funds advised or underwritten by Applicants.[4] While the Applicants' portfolio managers had access to research reports issued by the Research Department, there is no indication that the portfolio managers relied on these research reports more than any other data that would have been considered by the portfolio managers in making investment decisions for the Funds. Although some of the Funds held securities in their portfolios at the time that Piper issued research reports concerning the issuers of such securities, as far as Applicants are aware, none of the officers, portfolio managers, or any other investment personnel employed by the Applicants made any investment decisions based on any non-public information relating to the conduct underlying the Final Judgment. In addition, Piper and USBAM have policies and procedures, which were in effect at the time of the conduct described in the Complaint, which prohibit (a) prepublication disclosure of research opinions, (b) disclosure of certain information concerning investment banking transactions prior to public announcement, and (c) trading based on material non-public information. Each of the Applicants that serve as an investment adviser or sub-adviser to the Funds also has adopted policies regarding information barriers (the ''Policies'') designed to protect the Funds from any conflict of interest that may arise between portfolio managers and other employees of Piper. The Policies restrict communications between portfolio managers and certain employees of Piper.

5. The Applicants will distribute written materials, including an offer to meet in person to discuss the materials, to the board of directors or trustees of each Fund (each, a ''Board''), including the directors who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Fund, and their independent legal counsel, if any, regarding the Federal Injunction, any impact on the Funds, and this application.[5] The Applicants will provide the Boards with all information concerning the Injunctions and this application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants state that the inability to continue providing advisory services to the Funds and the inability to continue serving as principal underwriter to the Funds would result in potentially severe hardships for the Funds and their shareholders. Applicants also assert that, if they were barred from providing services to the Funds, the effect on their businesses and employees would be severe. The Applicants state that they have committed substantial resources to establish an expertise in advising and distributing Funds. Applicants state that no Applicant has previously applied for an exemption pursuant to section 9(c) of the Act.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Applicants, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

It Is Hereby Ordered, pursuant to section 9(c) of the Act, that the Applicants are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Injunctions, subject to the condition in the application, until the date the Commission takes final action on their application for a permanent order or, if earlier October 31, 2005.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–27989 Filed 11–5–03; 8:45 am]

BILLING CODE 8010–01–P

[3] Applicants state that the former head of the Research Department whose activities are generally referred to in the Complaint is now the chief executive officer of USBAM.

[4] The Complaint refers to general practices regarding the relationship between the Investment Banking and Research Departments. It is possible that one or more current or former officers of USBAM or Quasar, other than the individual discussed in footnote 3, who is or was involved in providing advisory, subadvisory or underwriting services to the Funds was at some time an officer or employee of the Investment Banking or Research Department.

[5] Applicants will advise the Boards of any State Injunctions that are issued.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26245; 812–12963]

UBS Securities L.L.C., et al.; Notice of Application and Temporary Order

October 31, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (''Act'').

SUMMARY OF APPLICATION: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against UBS Securities L.L.C. (f/k/a UBS Warburg L.L.C.) (''UBS Securities'') on October 31, 2003 by the U.S. District Court for the Southern District of New York (the ''Federal Injunction''), until the earlier of the date the Commission takes action on an application for a permanent order, or two years from the date of the Federal Injunction. Applicants have requested a permanent order.

APPLICANTS: UBS Securities; UBS Financial Services Inc.; UBS Fund Advisor, L.L.C., UBS Aspen Management, L.L.C., UBS Willow Management, L.L.C., UBS Eucalyptus Management, L.L.C., UBS Tamarack Management, L.L.C., UBS Juniper Management, L.L.C., UBS Redwood/Sequoia Management, L.L.C. (''UBSFS Entities''); UBS Global Asset Management (NY) Inc., UBS Global Asset Management (US) Inc., UBS Global Asset Management (Americas) Inc. (''American Global AM Entities''); DSI International; UBS Global Asset Management International Ltd.; GAM International Management Ltd.; GAM (USA), Inc.; and GAM Services, Inc. (together, the ''Applicants'').[1]

FILING DATES: The application was filed on April 28, 2003. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is reflected in this notice. Applicants also have agreed to file amendments to the application reflecting the issuance of each State Injunction (as defined below).

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 25, 2003, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: UBS Securities, 299 Park Avenue, New York, NY 10171; UBS Financial Services Inc., 1285 Avenue of the Americas, New York, NY 10019; UBSFS Entities, 1285 Avenue of the Americas, New York, NY 10019; American Global AM Entities, 51 West 52nd Street, New York, NY 10019; DSI International, 3001 Merritt 7, Suite 201, Norwalk, CT 06851; UBS Global Asset Management International, Ltd., 21 Lombard Street, London EC3V 9AH, United Kingdom; GAM International Management Ltd., 12 St. James's Place, London SW1A INX, United Kingdom; GAM (USA) Inc. and GAM Services, Inc., 135 East 57th Street, New York, NY 10022.

FOR FURTHER INFORMATION CONTACT: Julia Kim Gilmer, Senior Counsel, at (202) 942–0528, or Annette Capretta, Branch Chief, at 202–942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a temporary order and a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone 202–942–8090).

Applicants' Representations

1. UBS Securities, a Delaware limited liability company, is a full service investment banking firm, engaged in securities underwriting, sales and trading, investment banking, financial advisory services, and investment research services. Certain Applicants serve as investment adviser or sub-adviser for one or more registered investment companies (''Funds''). Certain Applicants act as the principal underwriter for Funds.[2]

2. On October 31, 2003, the U.S. District Court for the Southern District of New York entered the Federal Injunction against UBS Securities in a matter brought by the Commission.[3] The Commission alleged in the complaint (''Complaint'') that UBS Securities violated section 17(b) of the Securities Act of 1933 (the ''Securities Act''), and certain Conduct Rules of the National Association of Securities Dealers (''NASD'') and Rules of the New York Stock Exchange (''NYSE'') (the NASD Conduct Rules and NYSE Rules together, the ''Exchange Rules'') by engaging in acts and practices that created or maintained inappropriate influence by UBS Securities' investment banking business over the research analysts in UBS Securities' research department. The Federal Injunction enjoined UBS Securities directly or through its officers, directors, agents and employees, from violating section 17(b) of the Securities Act and the Exchange Rules cited in the Complaint. Without admitting or denying the allegations in the Complaint, UBS Securities consented to the entry of the Federal Injunction as well as the payment of disgorgement and penalties and other equitable relief, including undertakings by UBS Securities to adopt and implement policies and procedures relating to certain research activities. Applicants state that UBS Securities expects to enter into settlement agreements relating to the activities referred to in the Complaint with certain state and territorial agencies which may result in an injunction by a court of competent jurisdiction that is based on the same conduct and the same facts as the Complaint (each, a ''State Injunction,'' and, together with the Federal Injunction, the ''Injunctions''). Applicants request that this application cover any disqualifications of the Applicants under Section 9(a) resulting from the Injunctions.

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered UIT or registered face-amount certificate company. Section 9(a)(3) of the Act makes the

[1] Applicants request that any relief granted pursuant to the application also apply to any other company of which UBS Securities is or hereafter becomes an affiliated person (included in the term Applicants).

[2] Any registered unit investment trusts (''UIT'') or registered face amount certificate company for which Applicants may serve as principal underwriter or depositor are also included in the defined term Funds.

[3] *Securities and Exchange Commission* v. *UBS Warburg, L.L.C.,* 03 CV 2943 (WHP) (S.D.N.Y., filed April 28, 2003).

prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines ''affiliated person'' to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that UBS Securities is an affiliated person of each of the other Applicants within the meaning of section 2(a)(3) of the Act. Applicants further state that the entry of the Injunctions would result in Applicants being subject to the disqualification provisions of section 9(a) of the Act.

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that the Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting them from the disqualification provisions of section 9(a) of the Act.

3. Applicants believe they meet the standard for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that the conduct giving rise to the Injunctions did not involve any of the Applicants acting in the capacity of investment adviser, sub-adviser, depositor, or principal underwriter for a Fund. Applicants state that the Complaint did not expressly reference the conduct of any current or former or employee of any of the Applicants who is or was involved in providing advisory, sub-advisory or underwriting services to the Funds advised or underwritten by Applicants.[4] While the Applicants' portfolio managers had access to research reports prepared by UBS Securities employees, there is no indication that the portfolio managers relied on these research reports more than any other data that would have been considered by the portfolio managers in making investment decisions for the Funds, except as noted in the application.[5] Although some of the Funds held securities in their portfolios at the time that UBS Securities (or its predecessor) issued research reports concerning the issuers of such securities, as far as Applicants are aware, none of the officers, portfolio managers, or any other investment personnel employed by the Applicants made any investment decisions based on any non-public information relating to the conduct underlying the Final Judgment. In addition, each of the Applicants that serve as an investment adviser or sub-adviser to Funds has adopted policies regarding information barriers (the ''Policies'') designed to protect the Funds from any conflict of interest that may arise between portfolio managers and other employees of UBS Securities. The Policies, which were in effect at the time of the conduct described in the Complaint, restrict communications between portfolio managers and certain other employees of UBS Securities.

5. The Applicants will distribute written materials, including an offer to meet in person to discuss the materials, to the board of directors or trustees of each Fund (each, a ''Board''), including the directors or trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Fund, and their independent legal counsel, if any, regarding the Federal Injunction, any impact on the Funds, and this application.[6] The Applicants will provide the Boards with all information concerning the Injunctions and this application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants state that the inability to continue providing advisory services to the Funds and the inability to continue serving as principal underwriter to the Funds would result in potentially severe hardships for the Funds and their shareholders. Applicants also assert that, if they were barred from providing services to the Funds, the effect on their businesses and employees would be severe. Certain affiliated persons of UBS Securities previously have received exemptions under section 9(c) as the result of conduct that triggered section 9(a) as described in greater detail in the application.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Applicants, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

It is hereby ordered, pursuant to section 9(c) of the Act, that the Applicants are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Injunctions, subject to the condition in the application, until the date the Commission takes final action on their application for a permanent order or, if earlier, October 31, 2005.

By the Commission.

Jill Peterson,

Assistant Secretary.

[FR Doc. 03–27983 Filed 11–5–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26235]

Notice of Applications for Deregistration under Section 8(f) of the Investment Company Act of 1940

October 31, 2003.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of October, 2003. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a

[4] The complaint also refers to general practices regarding investment banking and research activities. It is possible that one or more current or former officers or employees of an Applicant, who is or was involved in providing advisory, sub-advisory or underwriting services to the Funds, was at some time involved in investment banking or research activities.

[5] Applicants state that they acted as investment adviser, principal underwriter, or depositor to a Fund whose portfolio securities were selected based primarily on a list of recommended securities compiled by USB Securities.

[6] Applicants will advise the Boards of any State Injunctions that are entered.

copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 24, 2003, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549–0504.

Vega Capital Corporation [File No. 811–2508]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Pursuant to an order of the United States District Court for the Southern District of New York (the ''Court'') dated February 24, 2000, the Court appointed the U.S. Small Business Administration as receiver of applicant. The order instructed the receiver to assume and control the operation of applicant and wind-up applicant's business. An order relating to the winding-up of the receivership was entered by the Court on September 29, 2003. Applicant's liabilities are greater than its assets, therefore no liquidating distribution was made to its shareholders. Expenses of $8,955 incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on August 26, 2003 and amended on October 24, 2003.

Applicant's Address: U.S. Small Business Administration, Receiver for Vega Capital Corporation, 666 Eleventh St., NW., Suite 200, Washington, DC 20001.

ARK Funds [File No. 811–7310]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 15, 2003 and August 22, 2003, applicant transferred its assets to corresponding series of MTB Group of Funds (formerly Vision Group of Funds), based on net asset value. Expenses of $130,000 incurred in connection with the reorganization were paid by M&T Bank, applicant's custodian.

Filing Dates: The application was filed on September 26, 2003, and amended on October 22, 2003.

Applicant's Address: 25 South Charles St., Baltimore, MD 21201.

Scioto Investment Company [File No. 811–2670]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering. Applicant will continue to operate as a management investment company in reliance on section 3(c)(1) of the Act.

Filing Dates: The application was filed on October 2, 2003, and amended on October 23, 2003.

Applicant's Address: 4561 Lanes End St., Columbus, OH 43220–4254.

The Italy Fund Inc. [File No. 811–4517]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On February 24, 2003, applicant made a liquidating distribution to its shareholders, based on net asset value. Applicant has placed the unclaimed assets of its former shareholders who have not yet surrendered their share certificates with PFPC Global Fund Services. Any unclaimed assets remaining at the end of three years will be presumed abandoned and will escheat to the appropriate jurisdiction in accordance with relevant New York and Maryland state law. Expenses of $130,500 incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on July 24, 2003, and amended on October 21, 2003.

Applicant's Address: 125 Broad St., New York, NY 10004.

Pioneer Large Cap Value Fund [File No. 811–9875]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 24, 2003, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $4,000 incurred in connection with the liquidation were paid by Pioneer Investment Management, Inc., applicant's investment adviser.

Filing Date: The application was filed on October 1, 2003.

Applicant's Address: 60 State St., Boston, MA 02109.

Davis International Series, Inc. [File No. 811–8870]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 18, 2003, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $3,120 incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on August 20, 2003, and amended on October 14, 2003.

Applicant's Address: 2949 East Elvira Rd., Suite 101, Tucson, AZ 85706.

Pioneer Small Cap Growth Fund [File No. 811–21106]

Pioneer Aggressive Growth Fund [File No. 811–21107]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. Applicants have never made a public offering of their securities and do not propose to make a public offering or engage in business of any kind.

Filing Date: The applications were filed on September 12, 2003.

Applicants' Address: 60 State St., Boston, MA 02109.

Quintara Funds [File No. 811–10563]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 25, 2003, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $530 incurred in connection with the liquidation were paid by applicant's investment adviser.

Filing Date: The application was filed on October 8, 2003.

Applicant's Address: 615 E. Michigan St., Milwaukee, WI 53202.

Trust for Investment Managers [File No. 811–9393]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 28, 2002, applicant transferred its assets to Gilford Oakwood Equity Fund, a series of Advisors Series Trust, based on net asset value. Expenses of $96,047 incurred in connection with the reorganization were paid by U.S. Bancorp Fund Services, LLC, applicant's administrator.

Filing Dates: The application was filed on July 10, 2003, and amended on October 2, 2003.

Applicant's Address: 615 East Michigan St., Milwaukee, WI 53202.

Asset Allocation Portfolio [File No. 811–6646]

Growth Stock Portfolio [File No. 811–6647]

Bond Portfolio [File No. 811–6648]

Utilities Portfolio [File No. 811–9028]

The Growth Portfolio [File No. 811–9829]

The Aggressive Growth Portfolio [File No. 811–9831]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On April 11, 2003, each applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of less than $25 were incurred by each applicant in connection with the liquidations.

Filing Date: The applications were filed on September 22, 2003.

Applicants' Address: 6125 Memorial Dr., Dublin, OH 43017.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–27991 Filed 11–5–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Federal Register Citation of Previous Announcement: [68 FR 62333, November 3, 2003]

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

ANNOUNCEMENT OF ADDITIONAL MEETING: Additional Meeting.

An additional Closed Meeting will be held on Tuesday, November 4, 2003 at 11:30 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

Commissioner Atkins, as duty officer, determined that no earlier notice thereof was possible.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (5), (7), and (8) and 17 CFR 200.402(a) (5), (7), and (8), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Atkins, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the Closed Meeting to be held on Tuesday, November 4, 2003 will be: Regulatory matter bearing enforcement implications; and Report of investigation.

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: November 3, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–28019 Filed 11–3–03; 4:37 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of November 10, 2003:

A Closed Meeting will be held on Thursday, November 13, 2003 at 2:15 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), 9(B) and (10) and 17 CFR 200.402(a)(5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Goldschmid, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, November 13, 2003 will be:

Formal orders of investigation;
Institution and settlement of administrative proceedings of an enforcement nature; and
Institution and settlement of injunctive actions.

For further information, please contact the Office of the Secretary at (202) 942–7070.

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: November 4, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–28146 Filed 11–4–03; 3:57 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48730; File No. PCAOB–2003–05]

Public Company Accounting Oversight Board; Order Approving Proposed Rules Relating to Compliance With Auditing and Related Professional Practice Standards and Advisory Groups

October 31, 2003.

I. Introduction

On July 14, 2003, the Public Company Accounting Oversight Board (the ''Board'' or the ''PCAOB'') filed with the Securities and Exchange Commission (the ''Commission'') proposed rules PCAOB–2003–05 pursuant to Sections 101, 103 and 107 of the Sarbanes-Oxley Act of 2002 (the ''Act'') [1], relating to compliance with auditing and related professional practice standards and to advisory groups. Notice of the proposed rules was published in the **Federal Register** on September 26, 2003.[2] The Commission received two comment letters. For the reasons discussed below, the Commission is granting approval of the proposed rules.

II. Description

Section 103 of the Act directs the PCAOB to establish auditing and related attestation standards, quality control standards, and ethics standards to be used by registered public accounting firms in the preparation and issuance of audit reports as required by the Act or the rules of the Commission. Section 103 also gives the PCAOB authority to convene advisory groups to assist the Board in its establishment of auditing and related professional practice standards.

In furtherance of these provisions, the PCAOB proposed rules to define the term ''auditing and related professional practice standards'' (''Standards'') to mean the standards established or

[1] 15 U.S.C. 7201, *et seq.*

[2] Release No. 34–48511 (September 22, 2003); 68 FR 55667 (September 26, 2003).

adopted by the Board under Section 103(a) of the Act. Also, while implicit in the Act, the Board's proposed rules codify the requirement that all registered public accounting firms must comply with the Board's Standards. Pursuant to its authority to convene advisory groups and in order to obtain the advice of a broad range of experts, the Board's proposed rules also provide general guidelines for the creation of advisory groups.

The PCAOB adopted the proposed rules on June 30, 2003 and filed them with the Commission's Office of the Secretary on July 14, 2003. Pursuant to the requirements of Section 107(b) of the Act and Section 19(b) of the Securities Exchange Act of 1934 (the ''Exchange Act''), the Commission published the proposed rules for public comment on September 26, 2003.

The PCAOB's proposed rules include two rules (PCAOB Rules 3100 and 3700) and a definition that would appear in Rule 1001. Proposed PCAOB Rule 1001(a)(viii) defines ''auditing and related professional practice standards'' as the auditing standards, related attestation standards, quality control standards, ethical standards, and independence standards (including any rules implementing Title II of the Act), and any other professional standards, that are established or adopted by the Board under Section 103 of the Act. Proposed Rule 3100 codifies the obligation of registered public accounting firms to comply with the Standards. While this obligation is implicit in Section 103(a)(1) of the Act, adoption of Rule 3100 would mean that any registered public accounting firm or person associated with such a firm that fails to adhere to applicable Standards could be the subject of a Board disciplinary proceeding. Proposed Rule 3700 establishes guidelines for the formation, composition, and other basic matters concerning advisory groups that will participate in the standards-setting process. Rule 3700 also provides that the Board may establish ad hoc task forces, the members of which do not necessarily have to be members of an established advisory group.

III. Discussion

In a comment letter dated October 17, 2003, the National Association of State Boards of Accountancy (''NASBA'') urged that the PCAOB, in its future rulemaking and oversight of public accounting firms, emphasize the importance of compliance with state regulatory requirements. As noted in the Commission's July 16, 2003 order [3] approving the PCAOB's rules for registration of public accounting firms, we appreciate NASBA's efforts to work with the PCAOB on auditor regulation and oversight, and we believe that both the PCAOB and state regulatory bodies will benefit from continued close cooperation. The second comment letter, from the accounting firm of Deloitte & Touche (October 17, 2003), contained suggestions for greater openness in the activities of the PCAOB's standing advisory group, and requested more notice of Board meetings, advisory group meetings and public roundtables. The comments in this letter also did not appear to warrant changes in the proposed rules.

Section 103 of the Act directs the PCAOB to establish auditing and related professional practice standards and empowers the PCAOB to convene advisory groups to assist it in fulfilling its standards-setting responsibilities. The proposed rules will facilitate the Board's exercise of its standards-setting authority and establish guidelines for the Board's use of advisory groups in connection with its standards-setting activities.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rules are consistent with the requirements of the Act and the securities laws and are necessary and appropriate in the public interest and for the protection of investors.

It is therefore ordered, pursuant to Section 107 of the Act and Section 19(b)(2) of the Exchange Act, that the proposed rules (File No. PCAOB–2003–05) be and hereby are approved.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–27992 Filed 11–5–03; 8:45 am]

BILLING CODE 8010–01–P

[3] Release No. 34–48180 (July 10, 2003); 68 FR 43244 (July 21, 2003). Technical corrections in Release No. 34–48180A (July 22, 2003); 68 FR 44370 (July 28, 2003).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48722; File No. SR–PCX–2003–31]

Self-Regulatory Organizations; Order Granting Approval to a Proposed Rule Change and Amendments No. 1 and 2 Thereto by the Pacific Exchange, Inc. Making Housekeeping Changes to its Options Trading Rules

October 31, 2003.

On July 8, 2003, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules to clarify existing provisions, eliminate superfluous provisions, re-number rules where appropriate, and to otherwise update its rules. On September 10, 2003, the PCX filed Amendment No. 1 to the proposed rule change.[3]

The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on September 29, 2003.[4] The Commission received no comments on the proposal. On September 24, 2003, the PCX filed Amendment No. 2 to the proposed rule change.[5]

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [6] and, in particular, the requirements of Section 6 of the Act [7] and the rules and regulations thereunder. Specifically, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act [8] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of

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

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced the PCX's original Rule 19b–4 filing in its entirety.

[4] *See* Securities Exchange Act Release No. 48522 (September 23, 2003), 68 FR 56029.

[5] *See* letter from Tania J. Cho, Staff Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 23, 2003 (Amendment No. 2''). In Amendment No. 2, PCX made a technical correction to its rule text. Because this is a technical amendment, it is not subject to notice and comment.

[6] In approving this proposed rule change, as amended, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission finds that the proposed rule change, as amended, is also consistent with Section 6(b)(6) of the Act,[9] which requires that members and persons associated with members be appropriately disciplined for violations of Exchange rules.[10]

The Commission believes that the housekeeping changes proposed by the Exchange to PCX Rule 6 (''Options Trading—Rules Principally Applicable to Trading of Options Contracts'') and to other PCX rules should help to correct, clarify, and ensure consistency in and among the PCX's current rules and in the terminology used in those rules. The Commission notes that many of these housekeeping changes are the result of the incorporation of new or amended rules pursuant to the Commission's approval of PCX Plus.[11]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (File No. SR–PCX–2003–31), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–27993 Filed 11–5–03; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78f(b)(6).

[10] The Commission believes that PCX's amendment to PCX Rule 6.35 should help to clarify that Market Makers must apply for primary appointments and that a Market Maker's refusal to accept a primary appointment zone may be deemed a sufficient cause for termination or suspension of the Market Maker's registration.

[11] *See* Securities Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003) (File No. SR–PCX–2002–36) (order approving PCX Plus, the Exchange's new electronic platform for options trading).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before December 8, 2003. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416 and *David_Rostker@omb.eop.gov,* fax number 202–395–7285 Office of Information and Regulatory Affairs, Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION: *Title:* Statement of Personal History.

No.: 1081.

Frequency: On Occasion.

Description of Respondents: Small Business Lending Companies.

Responses: 200.

Annual Burden: 100.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 03–27872 Filed 11–5–03; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

Development Company Program Job Opportunity Requirement

Title V of the Small Business Investment Act, section 501, defines the purpose of the Development Company Loan Program (504 Program) as fostering economic development and creating and preserving job opportunities in both urban and rural areas by providing long-term financing for small business concerns through the development company program. 504 loans are principally used by small businesses to build or to purchase long-term fixed assets (mostly acquiring land and constructing or renovating commercial buildings) to assist in the growth of the business. The 504 Program is required to create a certain minimum number of jobs as a result of 504 loans. A 504 loan is required to either create or retain a minimum number of jobs within two years of the disbursement of the loan as a result of the project, or to meet other defined economic development objectives (13 CFR 120.861–120.862). In the final rule published on October 7, 2003, effective November 6, 2003, 13 CFR 120.861 states that ''A Project must create or retain one Job Opportunity per an amount of 504 loan funding that will be specified by SBA from time to time in a **Federal Register** notice. Such Job Opportunity average remains in effect until changed by subsequent **Federal Register** publication.'' The current standard which was established in 1990 requires a 504 project to create or retain one Job Opportunity for every $35,000 guaranteed by SBA. During the past twelve years since the Job Opportunity requirement was last modified, the cost of acquiring real estate has increased substantially. For example, construction wages have increased more than 65 percent and the consumer price index has increased 50 percent during the same period. Due to the substantial increases in costs, SBA is modifying the Job Opportunity requirements by approximately 43 percent effective November 6, 2003, as follows:

A Project must create or retain one Job Opportunity for every $50,000 guaranteed by SBA.

James E. Rivera,

Associate Administrator for Financial Assistance.

[FR Doc. 03–27946 Filed 11–5–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Development Company Program Job Opportunity Requirement

Title V of the Small Business Investment Act, section 501, defines the purpose of the Development Company Loan Program (504 Program) as fostering economic development and creating and preserving job opportunities in both urban and rural areas by providing long-term financing for small business concerns through the development company program. 504 loans are principally used by small businesses to build or to purchase long-term fixed assets (mostly acquiring land and constructing or renovating commercial buildings) to assist in the growth of the business. The 504 Program is required to create a certain minimum number of jobs as a result of 504 loans. A 504 loan is required to either create or retain a minimum number of jobs within two years of the disbursement of the loan as a result of the project, or to meet other defined economic development objectives (13 CFR 120.861–120.862). In

the final rule published on October 7, 2003, effective November 6, 2003, 13 CFR 120.829(a) states that ''A CDC's portfolio must maintain a minimum average of one Job Opportunity per an amount of 504 loan funding that will be specified by SBA from time to time in a **Federal Register** notice. Such Job Opportunity average remains in effect until changed by subsequent **Federal Register** publication.'' The current standard which was established in 1990 requires a CDC's portfolio to reflect an average of one Job Opportunity per $35,000 of 504 loan funding. The AA/FA may permit a CDC to average up to one per $45,000 for good cause in Alaska; Hawaii; State-designated urban or rural jobs and enterprise zones; Empowerment Zones and Enterprise Communities; and Labor Surplus Areas. During the past twelve years since the Job Opportunity requirement was last modified, the cost of acquiring real estate has increased substantially. For example, construction wages have increased more than 65 percent and the consumer price index has increased 50 percent during the same period. Due to the substantial increases in costs, SBA is modifying the requirements by approximately 43 percent effective November 6, 2003, as follows:

A CDC's portfolio must reflect an average of one Job Opportunity per $50,000 of 504 loan funding. The AA/FA may permit a CDC to average up to one per $65,000 for good cause for all 504 projects located in

(1) Alaska;

(2) Hawaii;

(3) State-designated urban or rural jobs and enterprise zones;

(4) Empowerment Zones and Enterprise Communities; and

(5) Labor Surplus Areas as listed by the Department of Labor.

James E. Rivera,

Associate Administrator for Financial Assistance.

[FR Doc. 03–27947 Filed 11–5–03; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

New Agreement To Replace the Agreement Between the United States and Norway on Social Security; Entry Into Force

AGENCY: Social Security Administration.

ACTION: Notice.

SUMMARY: The Commissioner of Social Security gives notice that on September 1, 2003, a new agreement entered into force that replaces the original U.S.-Norwegian Social Security agreement that has been in effect since July 1, 1984. The new agreement, which was signed on November 30, 2001, was concluded pursuant to section 233 of the Social Security Act.

The new agreement updates and clarifies several provisions in the original U.S.-Norwegian Social Security agreement. Its primary purpose, however, is to permit U.S. citizens who have lived in Norway to receive full credit for their periods of residence under Norway's Social Security system and to increase thereby the amount of their Norwegian benefits. The new agreement also improves disability and survivors benefit protection under the Norwegian system for people who have worked in both countries.

Individuals who wish to obtain copies of the new agreement or want general information about its provisions may write to the Social Security Administration, Office of International Programs, Post Office Box 17741, Baltimore, Maryland 21235–7741. The Social Security Web site at *http://www.socialsecurity.gov/international* also includes the text of the new agreement. Anyone who wants information about the Norwegian Social Security programs may write to the National Insurance Administration, International Affairs Division, N–0241 Oslo, Norway.

Dated: October 29, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

[FR Doc. 03–27890 Filed 11–5–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4524]

30-Day Notice of Proposed Information Collection: Form DS–3032, Choice of Address and Agent for Immigrant Visa Applicants; OMB Control Number 1405–0126

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Extension of currently approved collection.

Originating Office: Bureau of Consular Affairs, Department of State (CA/VO).

Title of Information Collection: Choice of Address and Agent for Immigrant Visa Applicants.

Frequency: On occasion.

Form Number: DS–3032.

Respondents: Aliens applying for Immigrant Visas whose petitions have been approved in U.S.

Estimated Number of Respondents: 330,000 per year.

Average Hours Per Response: 10 minutes.

Total Estimated Burden: 55,000 hours per year.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Brendan Mullarkey of the Office of Visa Services, U.S. Department of State, 2401 E St. NW., RM L–703, Washington, DC 20520, who may be reached on (202) 663–1166. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on (202) 395–3897.

Dated: October 22, 2003.

Janice L. Jacobs,

Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 03–27973 Filed 11–5–03; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice No. 4414]

Advisory Committee on International Law; Notice of Committee Meeting

A meeting of the Advisory Committee on International Law will take place on

Friday, November 21, 2003, from 10 a.m. to approximately 4 p.m., as necessary, in Room 1107 of the United States Department of State, 2201 C Street, NW., Washington, DC. The meeting will be chaired by the Legal Adviser of the Department of State, William H. Taft, IV, and will be open to the public up to the capacity of the meeting room. The meeting will discuss issues relating to the use of force and the law of armed conflict, developments relating to the Alien Tort Statute, the recent session of the International Law Commission, UN reform, the decision of the International Court of Justice in Case Concerning Oil Platforms, and other current legal topics.

Entry to the building is controlled and will be facilitated by advance arrangements. Members of the public desiring access to the session should, by Wednesday, November 19, 2003, notify the Office of the Assistant Legal Adviser for United Nations Affairs (telephone (202) 647–2767) of their name, Social Security number, date of birth, professional affiliation, address and telephone number in order to arrange admittance. This includes admittance for government employees as well as others. All attendees must use the ''C'' Street entrance. One of the following valid IDs will be required for admittance: Any U.S. driver's license with photo, a passport, or a U.S. Government agency ID. Because an escort is required at all times, attendees should expect to remain in the meeting for the entire morning or afternoon session.

Dated: October 31, 2003.

Judith L. Osborn,

Attorney-Adviser, Office of United Nations Affairs, Office of the Legal Adviser, Executive Secretary, Advisory Committee on International Law, Department of State.

[FR Doc. 03–27972 Filed 11–5–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at Monroe Regional Airport, Monroe, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at Monroe Regional Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before December 8, 2003.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Lacey D. Spriggs, Manager, Federal Aviation Administration, Southwest Region, Airports Division, LA/NM Airports Development Office, ASW–640, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0640.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to The Honorable James Mayo, Mayor, City of Monroe, Louisiana at the following address: Mayor James Mayo, City of Monroe, P.O. Box 123, Monroe, Louisiana 71201–0123.

FOR FURTHER INFORMATION CONTACT: Mr. John M. Dougherty, Program Manager, Federal Aviation Administration, Southwest Region, Airports Division, LA/NM Airports Development Office, ASW–640c, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0640.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Monroe Regional Airport under the provisions of the AIR 21. On October 9, 2003, the FAA determined that the request to release property at Monroe Regional Airport submitted by the City of Monroe, Louisiana, met the procedural requirements of the Federal Aviation Regulations, Part 155. The FAA may approve the request, in whole or in part, no later than January 9, 2004.

The following is a brief overview of the request:

The City of Monroe, Louisiana, requests the release of 5.091 acres of airport property. The release of property will allow for two industrial development projects to proceed. The sale is estimated to provide $115,900.00 to allow improvements to Monroe Regional Airport's Closed Circuit TV System and Computerized Access Control System in the terminal building.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Monroe Regional Airport.

Issued in Fort Worth, Texas on October 15, 2003.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 03–27895 Filed 11–5–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Premium War Risk Insurance

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of extension of Aviation Insurance.

SUMMARY: This notice contains the text of a memo from the Secretary of Transportation to the President regarding the extension of the provision of a aviation insurance coverage for U.S. flag commercial air carrier service in domestic and international operations.

DATES: Dates of extension from October 12, 2003–December 10, 2003.

FOR FURTHER INFORMATION CONTACT: Helen Kish, Program Analyst, APO–3, or Eric Nelson, Program Analyst, APO–3, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, telephone 202–267–9943 or 202–267–3090. Or online at FAA Insurance Web site: *http://insurance.faa.gov.*

SUPPLEMENTARY INFORMATION: On October 10, 2003, the Secretary of Transportation authorize a 60-day extension of aviation insurance provided by the Federal Aviation Administration as follows:

Memorandum to the President

Pursuant to the authority delegated to me by the President in paragraph (3) of Presidential Determination No. 01–29 of September 23, 2001, and the direction of Section 1202 of the Homeland Security Act of 2002, I hereby extend that determination to allow for the provision of aviation insurance and reinsurance coverage for U.S. Flag commercial air carrier service in domestic and international operations for an additional 60 days.

Pursuant to section 44306(b) of Chapter 443 of 49 U.S.C., Aviation Insurance, the period for provision of insurance shall be extended from October 12, 2003, through December 10, 2003.

/s/ Norman Y. Mineta

Affected Public: Air Carriers who currently have Premium War-Risk Insurance with the Federal Aviation Administration.

Issued in Washington, DC on October 30, 2003.

Nan Shellabarger,

Deputy Director, Office of Aviation Policy and Plans.

[FR Doc. 03–27896 Filed 11–5–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Associate Administrator for Commercial Space Transportation; Notice of Availability and Request for Comment on a Draft Environmental Assessment (EA)/Initial Study for the East Kern Airport District (EKAD) Launch Site Operator License for the Mojave Airport, CA

AGENCY: Federal Aviation Administration (FAA), Associate Administrator for Commercial Space Transportation (AST) is the lead Federal agency for NEPA. The U.S. Air Force is a cooperating agency for NEPA. The EKAD is the lead agency for CEQA.

ACTION: Notice of availability and request for comment.

SUMMARY: In accordance with NEPA regulations, the FAA is initiating a public review and comment period for a Draft EA/Initial Study. Under the proposed action, the FAA would issue a launch site operator license for the EKAD to operate a launch facility at the Mojave Airport. The FAA may also use the analysis from this EA to issue a launch license to individual operators for launches from the Mojave Airport. If issued, the launch site operator license would authorize the EKAD to operate a launch facility at the Mojave Airport. This launch site operator license would be for the purpose of operating a facility to launch horizontally launched, suborbital rockets.[1] In addition, the EKAD may offer other services for commercial launch companies at the Mojave Airport including static engine firings, launch vehicle manufacturing, and other testing and manufacturing activities. The function of the launch facility would be to provide a location to launch manned suborbital rockets and other payloads[2] into suborbital trajectories. The issuance of a launch site operator license to EKAD does not permit EKAD to conduct launches, only to offer the facility and infrastructure to launch operators. A launch site operator license remains in effect for five years from the date of issuance unless surrendered, suspended, or revoked before the expiration of the term and is renewable upon application by the licensee (14 Code of Federal Regulations (CFR) 420.43). A license to operate a launch site authorizes a licensee to offer its launch site to a launch operator for each launch point for the type and weight class of launch vehicle identified in the license application and upon which the licensing determination is based. Issuance of a license to operate a launch site does not relieve a licensee of its obligation to comply with any other laws or regulations, nor does it confer any proprietary, property, or exclusive right in the use of airspace or outer space (14 CFR 420.41). The FAA may use the analysis in this document as the basis for an environmental determination of the impacts of these launches to support licensing decisions for the launch of specific launch vehicles from the Mojave Airport.

DATES: The public comment period for the NEPA process begins with the publication of this notice and request for comment in the **Federal Register**. To ensure that all comments can be addressed in the Final EA, comments must be received by the FAA no later than December 12, 2003.

FOR FURTHER INFORMATION CONTACT: Written and oral comments regarding the Draft EA/Initial Study should be submitted to Ms. Michon Washington, FAA Environmental Specialist, Mojave Airport EA, c/o ICF Consulting, 9300 Lee Highway, Fairfax, VA 22031; e-mail *mojave.ea@icfconsulting.com;* toll-free phone (800) 767–9956; toll-free fax (800) 380–1009; or through an online comment form available at *http://ast.faa.gov.*

SUPPLEMENTARY INFORMATION: The proposed action is for the FAA to issue a launch site operator license to the EKAD for the Mojave Airport. 14 CFR Chapter III, part 420 contains the requirements for obtaining and possessing a license to operate a launch site. Under the regulations, an applicant is required to provide the FAA with information sufficient to conduct environmental and policy reviews and determinations. The EKAD intends to operate a launch site at the Mojave Airport for commercial use by providing customers a site from which to launch suborbital missions using horizontally launched vehicles, and therefore must obtain a launch site operator license from the FAA.

The successful completion of the environmental review process does not guarantee that the FAA would issue a launch site operator license to the EKAD for the Mojave Airport or a launch license to an individual launch operator. The project must also meet all FAA safety, risk, and indemnification requirements. A license to operate a launch site does not guarantee that a launch license would be granted for any particular launch proposed for the site. All individual launch license applicants would be subject to separate FAA licensing.

The EKAD has identified two types of launch vehicles, identified in this analysis as Concept A and Concept B, which would be typical of the vehicles that would operate from the Mojave Airport. The proposed action/preferred alternative would include launches of both Concept A and Concept B launch vehicles. The potential users of the launch site would be responsible for obtaining any necessary permits or approvals including a launch license for specific missions from the FAA. This document may be used as the basis for the FAA to make a determination about licensing the launches of some types of launch vehicles from the Mojave Airport. The FAA may also use this document as the basis for an environmental finding that would serve as part of the requirements of the FAA launch licensing process for proposed launch operators at the Mojave Airport. Additional environmental analysis would need to be conducted for any activity that is not addressed in this Draft EA/Initial Study or in previous environmental analyses.

Launch vehicles included in Concept A consist of two components both of which would be piloted, a carrier aircraft and a mated suborbital launch vehicle. The carrier aircraft would carry the launch vehicle to the designated launch release altitude. The launch vehicle would use only suborbital trajectories and, therefore, would not reach Earth orbit. Concept A launch vehicles would launch and land horizontally at the Mojave Airport. They would not require runway lengths in excess of existing infrastructure at the Mojave Airport.

Launch vehicles included in Concept B would be a single piloted component. The rocket motors would be ignited while the launch vehicle is on the

[1] The FAA has proposed the following definition for suborbital rocket which is being considered for adoption but has not yet been approved: ''a rocket propelled vehicle intended for flight on a suborbital trajectory whose thrust is greater than its lift for the majority of the powered portion of its flight.'' The following definition has been proposed but not approved for suborbital trajectory: ''the intentional flight path of a launch vehicle, reentry vehicle, or any portion thereof whose vacuum instantaneous impact point does not leave the surface of the earth.''

[2] For purposes of this document, the payload is the item that an aircraft or rocket carries over and above what is necessary for the operation of the vehicle in flight.

runway at the Mojave Airport. Concept B launch vehicles would use suborbital trajectories and, therefore, would not reach Earth orbit. Concept B launch vehicles would launch and land horizontally at the Mojave Airport. They would not require runway lengths in excess of existing infrastructure at the Mojave Airport.

Two alternatives to the proposed action were considered in the Draft EA/Initial Study. The first alternative would be to issue a launch site operator license to the EKAD for the Mojave Airport for inclusion of launch vehicles specifically fitting the description of Concept A. The second alternative would be to issue a launch site operator license to the EKAD for the Mojave Airport for inclusion of launch vehicles specifically fitting the description of Concept B.

Potential impacts of the proposed action and alternatives were analyzed in the Draft EA/Initial Study. Potential environmental impacts of successful launches include impacts to air quality, airspace, biological resources, cultural resources, health and safety, hazardous materials and hazardous waste, geology and soils, land use, noise, socioeconomics and environmental justice, transportation, visual and aesthetic resources, and water resources. The impacts of the No Action Alternative would be the same as those described for the affected environment in the Draft EA/Initial Study.

Potential cumulative impacts of the operation of the proposed launch site are also addressed in the Draft EA/Initial Study.

Date Issued: October 30, 2003.

Herbert Bachner,

Manager, Space Systems Development Division.

[FR Doc. 03–27894 Filed 11–5–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 200: Modular Avionics (MA)/EUROCAE WG–60

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 200 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 200: Modular Avionics.

DATES: The meeting will be held on November 18–21, 2003 from 9 am to 5 pm.

ADDRESS: The meeting will be held at Smiths Aerospace, Cheltenham, Gloucestershire, GL52 8SF, United Kingdom.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; Website *http://www.rtca.org.* (2) Smiths-Aerospace contact, Mr. Robin Perry; +44(0)1242 632661; e-mail *robin.perry@smiths-aerospace.com.*

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 Special Committee 200 meeting. The agenda will include:

- November 18:
  - Subgroup 1–3 Meetings
- November 19:
  - Opening Session (Welcome, Introductory and Administrative Remarks, Review Agenda, Review Summary of Previous Meeting)
  - Review Action Items
  - Briefings on Related Committees
  - Establish Editorial Working Group

November 20:
- Subgroups 1–3 Meetings

November 21:
- Report of Subgroup Meetings
- Review of Consolidated Draft Document
- Plans for Editorial Group Activities
- Review of Action Items
- Closing Session (Make Assignments, Date and Place of Next Meeting, Closing Remarks, 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 October 22, 2003.

Robert Zoldos,

FAA Systems Engineer, RTCA Advisory Committee.

[FR Doc. 03–27897 Filed 11–5–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 201: Aeronautical Operational Control (AOC) Message Hazard Mitigation (AMHM)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 201 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 201: Aeronautical Operational Control (AOC) Message Hazard Mitigation (AMHM).

DATES: The meeting will be held on November 11–13, 2003, beginning at 10 a.m.

ADDRESSES: The meeting will be held at Boeing, Boeing Everett Bldg. 40–86, Everett, Washington.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.* (2) Mr. Rich Rawls, telephone (425) 266–9873.

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 Special Committee 201 meeting. The agenda will include:

- November 11:
- Opening Session (Welcome, Introductory and Administrative Remarks, Review Agenda, Background)
- Review comments to Draft Document AOC Message Hazard Mitigation (AMHM) Version E1.
- Drafting group work on other sections of the document
  - Subgroup A Section 2
  - Subgroup B Section 3
  - Subgroup C Section 4
- Closing Session (Other Business, Date and Place of Next Meeting, Closing Remarks, Adjourn)

Note: This agenda will be followed as appropriate over the course of 3 days.

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 October 22, 2003.

Robert Zoldos,

FAA System Engineer, RTCA Advisory Committee.

[FR Doc. 03–27898 Filed 11–5–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Bartow, Cherokee and Forsyth Counties, GA

AGENCY: Federal Highway Administration (FHWA), Georgia Department of Transportation (GDOT).

ACTION: Notice of recision of the Notice of Intent.

SUMMARY: The FHWA is issuing this notice of recision to advise the public that preparation of an environmental impact statement for the Northern Arc, a proposed west-east connector between U.S. 411 in Bartow County, Georgia and S.R. 400 in Forsyth County, Georgia has been terminated. This is a formal recision of the Notice of Intent that was published in the **Federal Register** on September 18, 2000.

FOR INFORMATION CONTACT: Jennifer Giersch, Environmental Coordinator, Federal Highway Administration, 61 Forsyth Street, SW., Suite 17T100, Atlanta, GA 30303–3104, Telephone (404) 562–3653 and/or Mr. Harvey Keepler, State Environmental/Location Engineer, Georgia Department of Transportation, Office of Environmental/Location, 3993 Aviation Circle, Atlanta, Georgia 30336, Telephone (404) 699–4400.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the GDOT, will not prepare an EIS for a proposal to construct a four-lane, limited access highway located between U.S. 411 in Bartow County and S.R. 400 in Forsyth County, Georgia. The State of Georgia has withdrawn the proposal to construct the 50-mile long project.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. Georgia's approved clearinghouse review procedures apply to this program.)

Issued on: September 25, 2003.

Jennifer Giersch,

Environmental Coordinator, Atlanta, Georgia.

[FR Doc. 03–27964 Filed 11–5–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD 2003 16455]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel BRANDY.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–16455 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before December 8, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003 16455. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel BRANDY is:

Intended Use: Applicant will be doing several multi-hour tours per day.

Geographic Region: ''U.S. Gulf Coast, U.S. East Coast, U.S. West Coast except S.E. Alaska.''

Dated: November 3, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–27958 Filed 11–5–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD 2003 16454]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel RUMBOW.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003 16454 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the

comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before December 8, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003 16454. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel RUMBOW is:

Intended Use: Day and Overnight-''Live Aboard While You Learn'' sailing school with emphasis on teaching handicapped persons, both adults and children. An exemption is requested for 12 passengers.

Geographic Region: Puerto Rico and Florida.

Dated: November 3, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–27957 Filed 11–5–03; 8:45 am]

BILLING CODE 4910–81–P

Department of Transportation

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Harkins Cunningham on behalf of Canadian National Railway Company (WB525–10/28/2003), for permission to use certain data from the Board's Carload Waybill Samples. A copy of the request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Mac Frampton, (202) 565–1541.

Vernon A. Williams,

Secretary.

[FR Doc. 03–27969 Filed 11–5–03; 8:45 am]

BILLING CODE 4915–00–P

Corrections

Federal Register

Vol. 68, No. 215

Thursday, November 6, 2003

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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 195–1195a; FRL–7559–9]

Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Missouri

Correction

In rule document 03–23586 beginning on page 54366 in the issue of Wednesday, September 17, 2003, make the following correction:

§52.1320 [Corrected]

On page 54369, in §52.1320(c), in the table, under the column ''EPA approval date,'' ''September 12, 2003'' should read ''September 17, 2003.''

[FR Doc. C3–23586 Filed 11–5–03; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48662; File No. SR–PCX–2003–41]

Self–Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. To Trade, Either by Listing or Pursuant to Unlisted Trading Privileges, Fixed Income Exchange Traded Funds

October 20, 2003.

Correction

In notice document 03–27094 beginning on page 61535 in the issue of Tuesday, October 28, 2003 make the following correction:

On page 61541, in the second column, in the 19th and 20th lines, ''[Insert date 21 days from date of publication].'' should read ''November 18, 2003''.

[FR Doc. C3–27094 Filed 11–5–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice for Indianapolis International Airport, Indianapolis, IN

Correction

In notice document 03–27275 beginning on page 61713 in the issue of Wednesday, October 29, 2003, make the following correction:

On page 61713, in the second column, under the heading **SUPPLEMENTARY INFORMATION**, in the second paragraph, in the seventh line, ''depend'' should read, ''depict''.

[FR Doc. C3–27275 Filed 11–5–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,

November 6, 2003

Part II

Securities and Exchange Commission

17 CFR Part 240

Alternative Net Capital Requirements for Broker-Dealers That Are Part of Consolidated Supervised Entities; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–48690; File No. S7–21–03]

RIN 3235–AI96

Alternative Net Capital Requirements for Broker-Dealers That Are Part of Consolidated Supervised Entities

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Proposed rule.

SUMMARY: We are proposing for comment rule amendments under the Securities Exchange Act of 1934 that would establish a voluntary alternative method for computing net capital charges for certain broker-dealers. If the broker-dealer is part of a holding company, that holding company must have a group-wide internal risk management control system and must consent to group-wide Commission supervision (the holding company and its affiliates are referred to in this proposal as a ''consolidated supervised entity,'' or ''CSE''). The proposed alternative method of computing certain market and credit risk net capital charges involves the use of internal mathematical models that the broker-dealer uses to measure risk. Commission supervision would include examination of unregulated holding companies, holding companies that are not primarily in the insured depository institutions business, and affiliates that are not functionally regulated. Among other things, the CSE would comply with stringent rules regarding its group-wide internal risk management control system and would make periodic reports to the Commission, which would include group-wide financial and risk management information and a capital computation consistent with the Basel Standards. We expect that this proposal, if adopted, would improve the Commission's oversight of broker-dealers.

DATES: Comments should be received on or before February 4, 2004.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by hard copy or e-mail, but not by both methods. Comments sent by hard copy should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following electronic mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. [S7–21–03] ; please include this file number in the subject line if you use electronic mail. We will make all comment letters available for public inspection and copying in our public reference room at the above address. We will post electronically submitted comment letters on the Commission's Web site *(http://www.sec.gov).*[1]

FOR FURTHER INFORMATION CONTACT: With respect to general questions, contact Catherine McGuire, Chief Counsel, Lourdes Gonzalez, Assistant Chief Counsel, or Linda Stamp Sundberg, Attorney Fellow, at (202) 942–0073, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

With respect to amendments to financial responsibility rules and books and records requirements, contact Michael A. Macchiaroli, Associate Director, at (202) 942–0132, Thomas K. McGowan, Assistant Director, at (202) 942–4886, Rose Russo Wells, Attorney, at (202) 942–0143, Bonnie L. Gauch, Attorney, at (202) 942–0765, or David Lynch, Financial Economist, at (202) 942–0059, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is publishing for comment amendments to Rules 15c3–1, 15c3–4, 17a–5, 17a–11, 17h–1T, and 17h–2T under the Securities Exchange Act of 1934 (''Exchange Act'').

I. Introduction

The Commission is proposing to amend Rule 15c3–1 [2] (''net capital rule'') under the Exchange Act to establish a voluntary alternative method for computing net capital for certain broker-dealers. If the broker-dealer is part of a holding company, that holding company must have a group-wide internal risk management control system and must consent to group-wide Commission supervision (the holding company and its affiliates are referred to in this proposal as a ''consolidated supervised entity'' or ''CSE'').[3] We have modeled the proposal on the Commission's rules pertaining to over-the-counter (''OTC'') derivative dealers.[4] Under the proposal, a broker-dealer that maintains tentative net capital [5] of at least $1 billion and net capital [6] of at least $500 million [7] could apply to the Commission for a conditional exemption from the application of the standard net capital rule calculation and, upon Commission approval, elect to calculate certain of its market and credit risk capital charges using the firm's own internal mathematical models for risk measurement, including internally developed value-at-risk (''VaR'') models and scenario analysis. The standard net capital rule calculation, however, would continue to apply to the broker-dealer's positions where the use of a VaR model or scenario analysis would not be appropriate.

Large broker-dealers typically are owned by holding companies that may also own many other entities. These affiliated entities may engage in both securities and non-securities activities worldwide. Broker-dealer holding company structures vary, and may be quite complex. Depending upon the nature of these structures, broker-dealers may incur risks due to their affiliation with unregistered entities, including the increasingly common arrangement of using unregistered affiliates to trade in derivatives and other highly structured financial products.

The principal purposes of the net capital rule are to protect customers and other market participants from broker-dealer failures and to enable those firms that fall below the minimum net capital requirements to liquidate in an orderly fashion without the need for a formal proceeding or financial assistance from the Securities Investor Protection Corporation. The net capital rule requires different minimum levels of capital based upon the nature of the firm's business and whether the broker-dealer handles customer funds or securities.

A broker-dealer may incur many types of risk through its affiliates. For example, a broker-dealer's access to short-term funding may be affected by the insolvency of an affiliate. In addition, management at the holding company level may attempt to divert

[1] We do not edit personal identifying information, such as names or electronic-mail addresses, from electronic submissions. You should submit only information that you wish to make publicly available.

[2] 17 CFR 240.15c3–1.

[3] If a broker-dealer is the ultimate parent company of its affiliate group, it would be considered the holding company for purposes of this proposal. The holding company may not be a natural person. Nothing in this proposal is intended to create a preference for one organizational structure over another.

[4] See Exchange Act Release No. 40594, 63 FR 59362 (November 3, 1998), effective January 1999 (adopting rules relating to OTC derivatives dealers).

[5] *See* proposed Rule 15c3–1(c)(15).

[6] *See* proposed Rule 15c3–1(a)(7).

[7] According to first quarter 2003 FOCUS reports, 28 broker-dealers reported more than $1 billion in tentative net capital and more than $500 million in net capital.

capital from the broker-dealer, to the extent permitted by the net capital rule, to support an affiliate experiencing financial difficulty. While this shift of assets would not, in itself, place a firm in net capital violation, it could make it more likely that the firm would fail during volatile market conditions. Under the proposed rules, a broker-dealer's ability to calculate its net capital based on the alternative net capital rules would be conditioned on the Commission receiving additional information regarding the financial condition of the holding company and its affiliates, including a calculation of allowable capital at the holding company level.

The significance of a Commission assessment of group-wide risk was highlighted by the failure of the Drexel Burnham Lambert Group (''Drexel'') and its impact on its then-solvent broker-dealer subsidiary.[8] In that case, Drexel had over $1 billion in commercial paper and other unsecured short-term borrowings outstanding. As a result of significant losses and a decline in the rating of its commercial paper, Drexel found it more difficult to renew its short-term borrowings. Drexel was then forced to look to its only liquid sources of capital—the excess net capital of its broker-dealer and an affiliated government securities dealer. Significant amounts of the broker-dealer's capital were transferred to other affiliates over several weeks.

Exchange Act section 17(h) was enacted in part as a response to the failure of Drexel and authorizes the Commission to obtain information regarding certain activities of the holding company and non-regulated affiliates of a broker-dealer. Pursuant to the rules adopted under section 17(h), broker-dealers also submit consolidated and consolidating financial statements, organizational charts of the holding company, descriptions of material legal exposures, and risk management policies and procedures to the Commission.[9]

In addition, member firms of the Derivatives Policy Group (''DPG'') voluntarily supply us with additional information regarding derivative financial instruments, off balance sheet obligations, and the concentration of credit risk. The DPG was formed in March 1995 by the industry and the Commission to provide a voluntary oversight framework for monitoring derivatives activities of broker-dealer affiliates.

The proposed alternative net capital provisions would be conditioned on the broker-dealer and its holding company documenting a comprehensive risk management system for identifying, measuring, and managing risk, which would be subject to Commission review. Risks that are managed on a consolidated basis at the holding company level cannot be understood by reviewing risk management practices of only one regulated entity—the broker-dealer. To have a full understanding of how risks, including risks to the broker-dealer, are identified, quantified, and managed, regulators need to review how risk is managed across the organization, including how risk at the affiliate may affect other interrelated entities.

Under this proposal, a broker-dealer could use its proprietary mathematical risk measurement models under prescribed circumstances to calculate its regulatory capital requirement. Because many broker-dealers and their holding companies already manage risk on a group-wide basis using these models, the proposed supervisory structure also should be more closely aligned with the firms' group-wide financial and risk management. Broker-dealers wanting to take advantage of this alternative capital calculation would need to provide the Commission with access to group-wide information.

In most instances, the Commission's supervision on a group-wide basis would consist of analyzing records and reports provided by the holding company (or ''CSE'') of the broker-dealer.[10] Nevertheless, a CSE that is not an entity that has a principal regulator would permit the Commission to examine its books and records. A CSE also would permit the Commission to examine the books and records of any affiliate of the broker-dealer that does not have a principal regulator.[11] As a condition to the broker-dealer's exemption from the standard net capital rule, for a holding company that has a principal regulator, the holding company would make available to the Commission such information concerning the operations of the holding company that is necessary for the Commission to evaluate the financial and operational risk within the affiliate group of the broker-dealer (including any risks that could affect the reputation of the holding company or broker-dealer) and to evaluate compliance with the conditions of eligibility for computing the broker-dealer capital charges in accordance with this proposal. The Commission would not examine any holding company that is primarily in the insured depository institutions business (excluding its insurance and commercial businesses) and that arranges to provide the records necessary to meet the Commission's supervisory purposes. The Commission also would not examine functionally regulated broker-dealer affiliates. We request comment on the adequacy of the Commission's recordkeeping and examination requirements with respect to the holding company and whether, and to what extent, they should be modified. With respect to any recordkeeping or examination requirement that should be modified, please specifically list the records that a holding company provides to its holding company regulator that could substitute for records that would be required under this proposal.

We believe that broker-dealers that may choose to apply to use the alternative net capital proposal could be affiliated with holding companies that are primarily in the insured depository institutions business. We request comment on whether we should adopt a definition of ''primarily in the insured depository institutions business,'' and, if so, what factors we should consider.

As a condition of the broker-dealer using the alternative capital calculation, the broker-dealer's holding company would also be required to comply with stringent rules regarding its group-wide

[8] *See, e.g.* Breeden, Richard C., ''Statement Before the Committee on Banking, Housing and Urban Affairs, United States Senate, Concerning the Bankruptcy of Drexel Burnham Lambert'' (March 2, 1990) and Exchange Act Release No. 28347 (Aug. 15, 1990), 55 FR 34027 (Aug. 21, 1990) (''Recent events have indicated that the existing early warning restrictions may not be sufficient to address the problems that have arisen in connection with the development by many broker-dealers of large, complex holding companies.'').

[9] 17 CFR 240.17h–1T and 17 CFR 240.17h–2T (the ''risk assessment rules'').

[10] In some instances, another financial regulator may require reports and calculations that are similar to those we propose here. We intend to make the proposal available to broker-dealers that have regulated holding companies. We do not intend to examine holding companies that are primarily in the insured depository institution business (excluding their insurance and commercial businesses) when the Commission determines that the information the holding company provides is sufficient to meet the Commission's supervisory purposes as set forth in this proposal. We request comment on how and to what extent the Commission's recordkeeping and examination requirements applicable to the holding company should be modified.

[11] The rules would define affiliates with a principal regulator as banks or savings associations, entities registered with the Commodity Futures Trading Commission (other than broker-dealers), and licensed or registered insurance companies. Bank holding companies, savings and loan holding companies, and foreign banks also would be considered to have a principal regulator if: (1) The Commission determines that it has in place appropriate arrangements so that information provided to the Commission is sufficient; and (2) The holding companies or foreign banks are primarily in the insured depository business (excluding their insurance and commercial businesses).

internal risk management control system. Those rules are designed to ensure the integrity of the risk measurement, monitoring, and management process, and to clarify accountability, at the appropriate organizational level, for defining the permitted scope of activity and level of risk. This would help to ensure that the control system would adequately address the risks posed by the CSE's business and the environment in which it is being conducted. It is important that the Commission be informed that these risks are adequately addressed because financial or operational problems at the holding company or affiliate of a broker-dealer could impair the financial and operational stability of the broker-dealer.

Large broker-dealers have long expressed interest in having their supervisory risk assessment and regulatory capital requirements more closely aligned to the mathematical modeling methods they already use to manage their own business risk and capital. In response, the Commission considered reformulating its net capital rule to incorporate mathematical risk management techniques into the computation of regulatory capital charges.[12] The proposed alternative capital calculation responds to the firms' requests while recognizing the complexities of modern financial services conglomerates.

The proposal also responds to international developments. Firms that do business in the European Union (''EU'') have told us that they may need to demonstrate that they have consolidated supervision at the holding company level that is ''equivalent'' to EU consolidated supervision.[13] We expect that the Commission supervision contemplated by this proposal would meet this standard. As a result, we believe this proposal would minimize duplicative regulatory burdens on firms that are active in the EU as well as in other jurisdictions that may have similar laws.

We note that the EU uses the international regulatory standards developed by the Basel Committee on Banking Supervision (''Basel Committee''), which aim to align economic capital calculations with regulatory capital requirements for large internationally active banking institutions (''Basel Standards'').[14] Our proposal incorporates a capital computation for the CSE that is designed to be consistent with the Basel Standards. The Basel Standards have been used by many other financial regulators for many years as a method to assess capital adequacy at the holding company level. Requiring that the CSE calculate its allowable capital based on the Basel Standards would provide the Commission with a useful measure of the CSE's financial position and allow for greater comparability of the CSE's financial position to that of international securities firms and banking institutions.

Eliminating the need to maintain a separate system to calculate regulatory capital should reduce regulatory costs for broker-dealers that have developed mathematical risk measurement models as part of a risk management system for business purposes. We also expect it to lower the market and credit risk deductions from net capital for eligible broker-dealers. Despite this anticipated reduction in required net capital, we believe that the proposal's safeguards, including the proposed minimum tentative net capital and net capital levels, should reduce systemic risk and not impair investor protection.

II. Alternative Capital Computation for Eligible Broker-Dealers

Exchange Act section 15(c)(3) gives the Commission broad authority to adopt rules and regulations regarding the financial responsibility of broker-dealers that we find are necessary or appropriate in the public interest or for the protection of investors.[15] The Commission has promulgated various rules under this provision, including the net capital rule,[16] the hypothecation rules,[17] and the customer protection rule.[18] Other rules, such as the Commission's books and records rules,[19] reporting requirements,[20] and the early warning rule,[21] support our financial responsibility framework. The Commission receives additional information, including information about affiliates of broker-dealers, financial and risk information about holding companies and certain affiliates of broker-dealers, and certain off-balance sheet items of broker-dealers, their holding companies, and their affiliates through the risk assessment rules and meetings with and reports from members of the Derivatives Policy Group. Since its adoption, we believe that the net capital rule and these other

[12] In 1997, the Commission issued a concept release to solicit comment regarding whether to consider reformulating its net capital rule to incorporate mathematical risk management techniques into the computation of regulatory capital charges. *See* Securities Exchange Act Release No. 39456 (December 30, 1997), 62 FR 68011.

[13] EU ''consolidated supervision'' would take the form of a series of quantitative and qualitative rules, imposed at the level of the holding company, regarding firms' internal controls, capital adequacy, intra-group transactions, and risk concentration. Without a demonstration of ''equivalent'' supervision, we understand that an affiliate institution located in the EU may either be subject to additional capital charges or be required to form a sub-holding company in the EU. *See* ''Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002.''

[14] The central bank governors of the Group of Ten countries (''G–10 countries'') established the Basel Committee in 1974 to provide a forum for ongoing cooperation among member countries on banking supervisory matters. Its basic consultative papers are: the Basel Capital Accord (1988), the Core Principles for Effective Banking Supervision (1997), and the Core Principles Methodology (1999). The Basel Standards establish a common measurement system, a framework for supervision, and a minimum standard for capital adequacy for international banks in the G–10 countries. In April 2003, the Basel Committee released for public comment a document entitled ''The New Basel Capital Accord.'' Comments were accepted through July 31, 2003. On October 11, 2003, the Basel Committee announced that it had received over 200 comment letters and that there is continued broad support for the structure of the proposed New Basel Capital Accord and agreement on the need to adopt a more risk-sensitive capital framework. The Committee requested comment by December 31, 2003 on an amendment to its proposed treatment of expected and unexpected losses. The Basel Committee expects to issue a final revision of the proposed New Basel Capital Accord by the middle of 2004, with an effective date for implementation of December 31, 2006.

The Basel Standards generally have been implemented for internationally active, large banking institutions by U.S. bank regulators. *See* Office of the Comptroller of the Currency, Federal Reserve System, Federal Deposit Insurance Corporation, ''Risk Based Capital Standards; Market Risk,'' 61 FR 47358 (Sept. 6, 1996). Currently, U.S. banking regulators have released an Advanced Notice of Proposed Rulemaking to seek comment on their preliminary views regarding the implementation of the proposed New Basel Capital Accord (68 FR 45900 (August 4, 2003)). Comments are due by November 3, 2003.

Proposed Appendix G is designed to be consistent with the Basel Standards.

[15] 15 U.S.C. 78o(c)(3).

[16] 17 CFR 240.15c3–1. In calculating its net capital, a broker-dealer is required to reduce the value of its proprietary positions to provide a capital cushion if the value of these positions should decline. The rule also places restrictions on the withdrawal of equity capital from a broker-dealer.

[17] 17 CFR 240.15c2–1 and 240.8c–1. The hypothecation rule restricts broker-dealers' handling and use of customer securities, including prohibiting commingling of customers' securities without their consent.

[18] 17 CFR 240.15c3–3. The customer protection rule requires broker-dealers to have possession or control of all fully paid and excess margin securities that they carry for their customers. In addition, the customer protection rule prohibits the broker-dealer's use of customer funds to finance the broker-dealer's proprietary business. The rule also requires broker-dealers that carry customer accounts to establish a special reserve bank account for the exclusive benefit of customers.

[19] 17 CFR 240.17a–3 and 240.17a–4.

[20] 17 CFR 240.17a–5.

[21] 17 CFR 240.17a–11. The early warning rule requires that if a broker-dealer's net capital falls below a certain specified level or if it discovers a material internal control inadequacy, the broker-dealer must file a notice with us and with the firm's designated examining authority.

supervisory tools generally have performed well by assisting the Commission and the self-regulatory organizations (''SROs'') in identifying at an early stage firms that are experiencing financial problems.

This proposal would expand the use of mathematical model-based capital charge calculations, which the Commission has permitted for several years in the context of OTC derivatives dealers,[22] to eligible broker-dealers that elect Commission supervision of their holding company and affiliates, subject to certain specified conditions.[23]

A broker-dealer's use of this alternative net capital treatment would be conditioned on the CSE complying with a series of requirements. The CSE would be required on a monthly and quarterly basis to compute group-wide capital and allowances for market, credit, and operational risk as if it were subject to the Basel Standards. The CSE also would be required to provide the Commission with certain financial, operational, and risk management information. The CSE would be required to implement and maintain a consolidated internal risk management control system and procedures to monitor and manage group-wide risk, including market, credit, funding, operational, and legal risks.

We are proposing what we believe are prudent parameters for measuring a broker-dealer's net capital charges and allowances for risk for its holding company, although in some cases these parameters may be more conservative than some firms may believe are necessary to account for risk. For example, the proposal contains the requirements that the VaR model used to calculate market risk for the broker-dealer and for the holding company be based on a ten business-day movement in rates and prices and that a 99% confidence level be used, and that the VaR measure be multiplied by a factor of at least three. These parameters are based on our experience and existing Commission rules and rules of other regulatory agencies where there are similar risk factors in the regulated entities. We ask for comment on all these parameters.

Proposed paragraph (a)(7) of Rule 15c3–1 provides that the Commission may grant, in whole or in part, an application, or an amendment to an application, by a broker-dealer to use the voluntary alternative net capital computation.[24] This proposed paragraph also provides that the broker-dealer must at all times maintain tentative net capital of not less than $1 billion and net capital of not less than $500 million.

We expect that net capital charges will be reduced for broker-dealers that use the proposed alternative net capital computation. The present haircut structure is designed so that firms will have a sufficient capital base to account for, in addition to market and credit risk, other types of risk, such as operational risk, leverage risk, and liquidity risk. Raising the minimum tentative net capital requirement to $1 billion and net capital requirement to $500 million is one way to ensure that firms that use the alternative capital computation maintain sufficient capital reserves to account for these other risks. In addition, based on our experience, firms must have this scale of operations in order to have developed internal risk management control systems necessary to support reliable VaR computations.

We request comment on these required minimum levels of tentative net capital and net capital. Should they be raised or lowered?

Proposed paragraph (c)(13) of Rule 15c3–1 defines ''entity that has a principal regulator'' as a person (other than a natural person) that is not a registered broker-dealer (other than a broker-dealer registered under § 15(b)(11) of the Exchange Act) and that belongs to one of two categories. Under proposed paragraph (c)(13)(i), the person could be an insured depository institution, an entity registered with the Commodities Futures Trading Commission, or a licensed or regulated insurance company. Under proposed paragraph (c)(13)(ii), bank holding companies, savings and loan holding companies, and foreign banks that do business in the U.S. would also be considered to have a principal regulator if there are in place appropriate arrangements so that information provided to the Commission is sufficiently reliable for the purposes of proposed Appendix E and proposed Appendix G and if the entity is primarily in the insured depository institutions business (excluding its insurance and commercial businesses). We request comment on this definition of ''entity that has a principal regulator.''

The proposed amendment to paragraph (c)(15) of Rule 15c3–1 defines ''tentative net capital'' for a broker-dealer using the alternative net capital computation.

A. Proposed Appendix E to Rule 15c3–1

Proposed Appendix E to Exchange Act Rule 15c3–1 would include application requirements and the proposed new alternative method of calculating market and credit risk capital charges for the broker-dealer as well as additional supervisory conditions the Commission could impose on the broker-dealer in appropriate circumstances, such as compliance failures. Many of these requirements are similar to the rules applicable to OTC derivatives dealers. The requirements are also based on our experience with the risk assessment rules and meetings with and reports from members of the DPG and other broker-dealers. Once a broker-dealer has submitted an application, the Commission will conduct an intensive review of how the firm manages its market, credit, liquidity and funding, legal, and operational risks to determine whether the broker-dealer has met the requirements of proposed Appendix E and is in compliance with other applicable rules and whether the holding company of the broker-dealer is in compliance with the terms of its undertaking.

1. Application

Pursuant to paragraph (a) of proposed Appendix E, a broker-dealer may apply to the Commission for an exemption from the standard net capital rule to calculate certain market and credit risk capital charges in accordance with Appendix E.[25] Paragraph (a) describes

[22] The Commission permits broker-dealers that limit their business to OTC derivatives trading and ancillary cash and portfolio management activities (''OTC derivatives dealers'') to calculate capital charges based on VaR models. Exchange Act Release No. 40594 (November 3, 1998), 63 FR 59362. This voluntary registration allows an OTC derivatives dealer to use mathematical models to calculate its market and credit risk capital charges upon Commission approval of an application that is subject to an intensive Commission review of how the firm manages its market, credit, liquidity and funding, legal, and operational risks. Because the amounts at risk are calculated across the affiliate group of the OTC derivatives dealer, the Commission gains a group-wide perspective on how the firm is managed and how it handles large group-wide exposures.

[23] The affiliate group, *i.e.* the CSE, includes the broker-dealer and all affiliates of the broker-dealer, including the holding company.

[24] The application and approval process for firms that elect this capital treatment would be similar to the one for firms using the alternative capital computation for OTC derivatives dealers. Among other things, the Commission would issue a firm-specific approval setting forth the terms of the alternative capital computation. We would expect to revise the approval when circumstances change. Changes that might necessitate revising the approval would include a change in the firm's internal risk management control systems or a change in the firm's eligibility to use models for certain categories of positions.

[25] From time to time, the broker-dealer will submit amendments to its application. For example, the broker-dealer will be required to submit an amendment to its application if it materially

Continued

the various documents and information which must be submitted as part of the application from the broker-dealer and from the holding company of the broker-dealer that will allow the Commission to determine whether an exemption from the net capital rule is necessary or appropriate in the public interest and consistent with the protection of investors.

The documents and information that must be submitted as part of the application are similar to those we presently obtain under the OTC derivatives dealer rules, under the risk assessment rules, and voluntarily from the DPG firms and other broker-dealers. We have found that they are useful in gaining insight into the financial condition, internal risk management control system, and activities of the broker-dealer and its holding company and affiliates and to understand and evaluate group-wide risk exposures. Adverse financial or operational conditions at the holding company or an affiliate of the broker-dealer may expose the broker-dealer to additional risk. For example, the failure of an affiliate may adversely affect the ability of the broker-dealer to obtain short-term funding. Therefore, we would require receipt of these documents and information relating to the operational and financial condition of the broker-dealer, and its holding company and other affiliates, as a condition for the broker-dealer's use of proposed Appendix E to calculate certain of its capital charges. We request comment on all aspects of the application requirements.

a. Documents and Information To Be Submitted by the Broker-Dealer

Paragraph (a)(1) of proposed Appendix E lists the documents and information to be submitted by the broker-dealer as part of its application to use the alternative capital computation. The documents and information would include:

- An executive summary of the documents and information submitted to the Commission by the broker-dealer and a description of the holding company of the broker-dealer (which may not be a natural person);
- A list of types of positions the broker-dealer holds in its proprietary account and a description of the method the broker-dealer would use to compute its capital charges on those positions;
- A description of mathematical models used to price positions and to compute capital charges and how those models meet the quantitative and qualitative requirements of proposed Appendix E;
- If the broker-dealer is applying to the Commission to use scenario analysis to calculate capital charges for certain positions, a list of the positions and a description of how the capital charges will be calculated; and
- A description of the broker-dealer's internal risk management control system and how that system satisfies the requirements set forth in Rule 15c3–4.

b. Holding Company Undertaking

As part of the application, and as a condition of the broker-dealer's use of proposed Appendix E to calculate certain of its capital charges, the broker-dealer would also be required, by paragraph (a)(1)(viii) of proposed Appendix E, to file a written undertaking by the broker-dealer's holding company, signed by a duly authorized person at the holding company, in which the holding company would agree, among other things, to:

- Comply with proposed Appendix G to Rule 15c3–1, discussed in further detail below, which generally would require that the holding company make certain capital calculations, make certain reports to the Commission, maintain and keep certain records, and notify the Commission upon the occurrence of certain events;
- Comply with all applicable provisions of proposed Appendix E;
- Comply with the provisions of Rule 15c3–4 with respect to a group-wide internal risk management control system for the CSE as if it were a broker-dealer that computes its capital charges in accordance with proposed Appendix E;
- As part of the group-wide internal risk management control system, establish, document, and maintain procedures for the detection and prevention of money laundering and terrorist financing;
- Permit the Commission to examine the books and records of any affiliate, including the holding company, if the affiliate is not an entity that has a principal regulator (as defined in proposed paragraph (c)(13) of Rule 15c3–1) for the purposes of these rules;
- For certain entities that have principal regulators (those entities listed in proposed paragraph (c)(13)(ii) of Rule 15c3–1) for the purposes of these rules, make available to the Commission such information concerning the operations of the entity that the Commission determines is necessary to evaluate risks that may affect the financial or operational condition of the holding company;
- If the disclosure to the Commission of any information required as a condition for the broker-dealer to use proposed Appendix E would be prohibited by law or otherwise, cooperate with the Commission as needed, including by describing any secrecy laws or other impediments that could restrict the ability of the broker-dealer or its affiliates from providing information to the Commission and by discussing the manner in which the broker-dealer and the holding company propose to provide the Commission with adequate assurances of access to information;
- For any non-U.S. holding company, consent to the jurisdiction of the Commission and agree to maintain a U.S. registered agent;
- Submit to the Commission all material changes to mathematical models used to calculate allowances for market and credit risk for Commission approval;
- Submit to the Commission all material changes to the group-wide internal risk management system; and
- Acknowledge that the Commission may implement additional supervisory conditions, described in detail below, if the holding company fails to comply with any provision of its undertaking.

The proposed terms of the undertaking are those that we have determined are necessary for us to understand the risks to the broker-dealer that may result from activities of its affiliates and for us to have access to information concerning the CSE. For example, permitting the Commission to examine the books and records of non-functionally regulated affiliates of the broker-dealer will provide the Commission with an understanding of the group-wide risk exposures that may have a material effect on the financial or operational condition of the broker-dealer. The requirement to establish a group-wide internal risk management control system in accordance with the standards of Rule 15c3–4 will help provide assurance that the control system that is implemented will adequately address the risks posed by the firm's business and the environment in which it is being conducted. We request comment on the documents that the broker-dealer must submit as part of its application to use proposed Appendix E to compute certain of its capital charges.

As noted above, use of the alternative net capital treatment by a broker-dealer is conditioned on the broker-dealer's holding company undertaking to comply with the above requirements. We request comment on all aspects of the holding company undertaking.

amends a VaR model that it uses to calculate a market or credit risk capital charge.

Should we consider any other conditions? Are any of the proposed conditions problematic?

c. Documents and Information To Be Submitted by the Holding Company

Under paragraph (a)(2) of proposed Appendix E, as a condition of the broker-dealer's use of the alternative capital treatment, the holding company of the broker-dealer must submit the following documents and information to the Commission as part of the application of the broker or dealer:

- A narrative description of the business and organization of the holding company;
- An organizational chart depicting the holding company and its subsidiaries and affiliates;
- An alphabetical list of the affiliates of the broker-dealer (''affiliate group''), with an identification of the financial regulator, if any, with whom the affiliate is registered and a designation of those affiliates that are material to the holding company (''material affiliates'');
- Consolidated and consolidating financial statements;
- Certain sample capital calculations made according to proposed Appendix G to Rule 15c3–1;
- A description of the categories of positions held by the holding company and affiliates;
- A description of the methods the holding company intends to use for computing allowances for market risk, credit risk, and operational risk;
- A description of any differences between the models used by the holding company and those used by the broker-dealer to compute capital charges on the same instrument or counterparty;
- A description of the internal risk management control system used by the holding company to manage group-wide risk and how that system satisfies the requirements of Rule 15c3–4; and
- Sample risk reports that the holding company provides to its senior management.

Because each firm manages its internal risk differently, the Commission, during the application process, must assess each firm's business and internal risk management control systems to determine whether an exemption is appropriate. The documents and information we would require the holding company to file as a condition for the exemption would allow us to evaluate this risk. In certain circumstances, depending on the relationship or the geographic location of the holding company and its affiliates, the Commission may condition its approval on obtaining additional information or documents necessary to adequately assess the risks to the CSE and to the broker-dealer. Paragraph (a)(3) of proposed Appendix E provides that the application shall be supplemented by such other information or documents relating to the internal risk management control system, mathematical models, and financial position of the broker-dealer or the holding company that the Commission may request to complete its review of the application.

Under paragraph (a)(4) of proposed Appendix E, the application would be considered filed when received at the Commission's principal office in Washington, DC. All information and documents submitted in connection with the application would be accorded confidential treatment under the proposal.

We request comment on the documents and information we propose to require that the broker-dealer and holding company file as a condition for the exemption. For example, are there other documents or information we should require?

As part of its group-wide internal risk management control system, the holding company would be required to establish, document, and maintain procedures for the detection and prevention of money laundering and terrorist financing. These procedures would include appropriate safeguards at the holding company level to prevent money laundering through affiliates.[26]

Under paragraph (a)(6) of proposed Appendix E, the Commission would grant an application by a broker-dealer to use the alternative capital computation if it determines that the broker-dealer has met the requirements of Appendix E and is in compliance with other applicable Exchange Act rules and that the holding company is in compliance with the terms of its undertaking, which are conditions for the approval.

Under paragraph (a)(7) of proposed Appendix E, a broker-dealer would be required to amend and resubmit its application to use Appendix E to the Commission if the broker-dealer or its holding company desires to make a material change to a mathematical model used to calculate market or credit risk or its internal risk management control system as described in the application. Because material changes to the mathematical models may have a significant impact on the firm's net capital or risk allowances and changes to the internal risk management control systems could result in changes to the amount of risk assumed by the broker-dealer or holding company, Commission review of those changes would be appropriate to determine if the exemption continues to be consistent with the Exchange Act. Under paragraph (a)(8) of proposed Appendix E, the broker-dealer would be required to notify the Commission of any material change to the corporate structure of the broker-dealer or the holding company as described in the application.

Under paragraph (a)(9) of proposed Appendix E, as a condition of the exemption to compute its capital charges pursuant to Appendix E, a broker-dealer would agree to provide 45 days written notice to the Commission if it chose to end its reliance on the exemption. The broker-dealer would also agree that the Commission could determine that the notice would be effective after a shorter or longer period of time if the broker-dealer consents or if the Commission determines that the shorter or longer period is necessary or appropriate in the public interest and consistent with the protection of investors. We request comment on this notice provision. For example, is 45 days an appropriate notification period? Would a shorter or longer time period be preferable?

Pursuant to paragraph (a)(10) of proposed Appendix E, the Commission may, by order, revoke the broker-dealer's exemption that allows it to use proposed Appendix E to calculate certain capital charges if the Commission finds that the exemption is no longer necessary or appropriate in the public interest or is no longer consistent with the protection of investors. A broker-dealer that is no longer permitted to calculate its regulatory capital requirements pursuant to Appendix E must compute its capital charges using the standard haircut method in the net capital rule. We request comment on the revocation provisions. Should paragraph (a)(10) of proposed Appendix E specify certain circumstances where revocation of the exemption would be appropriate?

2. Risk Management Control System

Under paragraph (b) of proposed Appendix E, the broker-dealer would be required to establish, document, and maintain an internal risk management control system that meets the requirements of § 240.15c3–4 (with proposed amendments to apply the rule

[26] This parallels requirements in the proposed New Basel Capital Accord. *See also* Financial Action Task Force on Money Laundering (FATF) Recommendation 22 and *see generally* the FATF's *Special Recommendations on Terrorist Financing*. (The FATF's documents can be found at *http://www.FATF-GAFI.org*).

to broker-dealers using Appendix E).[27] Rule 15c3–4 is designed to ensure the integrity of the risk measurement, monitoring, and management process, and to clarify accountability, at the appropriate organizational level, for defining the permitted scope of activity and level of risk. We request comment on this proposed requirement.

3. Market Risk Capital Charge

Under paragraph (c) of proposed Appendix E, the market risk capital charge on certain of the broker-dealer's positions would be computed either using VaR mathematical models, scenario analysis, or the standard haircut method of paragraph (c)(2)(vi) of Rule 15c3–1. The computation of the market risk capital charge under this proposal is based on the method for computing market risk under the OTC derivatives dealer rules. Generally, when a statistical model is used to determine market risk charges, the VaR amount determined by using the model must be multiplied by a multiplication factor to take into account the risk that the model does not measure the effects of unlikely but significant events.

a. Market Risk Capital Charge Calculation Using a VaR Model

For positions for which a market risk capital charge may be computed using a VaR model,[28] the market risk capital charge would be the VaR of the positions, which would be multiplied by the appropriate multiplication factor to provide an adequate measure of risk during periods of market stress.[29]

In order for the Commission to monitor whether the broker-dealer's VaR models provide an adequate measure of the broker-dealer's risk exposures, an eligible broker-dealer would be required to obtain authorization from the Commission, either in its original application or by submitting an amendment to its application, before using a VaR model to calculate market risk capital charges on particular categories of exposures. The multiplication factor would be determined by reference to Table 1 of proposed Appendix E based on the results of quarterly backtests of the VaR model, which compare the losses predicted by the model to actual losses incurred in the broker-dealer's portfolio, except that the initial multiplication factor would be three. In considering an application or amendment, the Commission may adjust the multiplication factor or take other action, as appropriate, after evaluating the firm's adherence to robust internal risk management procedures, including a review of its VaR models.[30]

Paragraph (e) of proposed Appendix E would set forth the qualitative and quantitative requirements for VaR models used by the broker-dealer to calculate capital charges.[31] These requirements are intended to make the capital charges based on the VaR measures a more accurate measure of losses that may occur during periods of market stress and are based on those in the OTC derivatives dealer rules and our experience in implementing those rules. The qualitative requirements, listed in paragraph (e)(1) of proposed Appendix E, would require that the VaR models used to calculate market and credit risk be the same models used to report market and credit risk to the firm's senior management and must be integrated into the internal risk management system of the firm; that the VaR model must be reviewed by the firm periodically and annually by a registered public accounting firm, as that term is defined in the Sarbanes-Oxley Act of 2002;[32] and that for purposes of computing market risk, the multiplication factor must be determined based on quarterly backtesting of the VaR model used to calculate market risk and by reference to Table 1 of proposed Appendix E.

The quantitative requirements would set forth basic standards for each model including, (i) it must use a 99 percent, one-tailed confidence level and with price changes equivalent to a ten business-day movement in rates and prices for purposes of determining market risk, (ii) it must use an effective historical observation period that must be at least one year in length and include periods of market stress, and (iii) it must take into account and incorporate all significant identifiable market risk factors applicable to the firm's positions.[33]

Under paragraph (c)(3) of proposed Appendix E, the Commission proposes to phase in the use of VaR models to calculate capital charges for three bands of positions over a period of at least 18 months beginning with positions with lower risk exposures and progressing to those with higher levels of risk. During the phase-in period, Commission approval of an application or amendment would be required before a broker-dealer could begin to use VaR models to calculate market risk capital charges at each of the succeeding levels of risk exposures. The phase-in of the application of mathematical models to calculate capital charges and the requirement that the previous stage VaR use must have been successful are intended to allow the Commission to determine whether an applicant has management controls that can adequately assess increasing risk levels and whether the models have flaws or other defects. A broker-dealer would request Commission approval by filing an amendment to its application.

Upon Commission approval of its application to use proposed Appendix E to calculate certain of its capital charges, the broker-dealer would be able to use VaR models to calculate market risk capital charges on the first level of eligible positions, which are generally securities with lower risk exposures: (1) U.S. government securities and derivatives on those securities; (2) investment grade corporate debt and derivatives on those securities; (3) highly rated foreign government securities and derivatives on those securities; (4) highly rated short-term asset-backed securities and derivatives on those securities; (5) highly rated municipal securities and derivatives on those securities; and (6) derivatives on major market foreign currencies.

After at least nine months of successfully using VaR models to calculate market risk capital charges on the first level of eligible positions, a broker-dealer could amend its exemptive application to request Commission approval to use VaR models to calculate market risk capital charges on the second level of eligible positions, which include equities and derivatives on equities.

After at least another nine months of successfully using VaR models to calculate market risk capital charges on the second level of eligible positions as well as continuing to successfully calculate market risk charges on the first level of eligible positions, a broker-

[27] *See infra*, discussion of proposed amendments to Rule 15c3–4.

[28] These positions include those that have a ready market and for which there is adequate historical data to support a VaR model.

[29] Proposed Rule 15c3–1e(c)(1).

[30] The Commission may take such actions, for example, in considering an application or amendment to an application of a broker-dealer to calculate certain market and credit risk capital charges in accordance with proposed Appendix E or during its routine oversight of the broker-dealer.

[31] Proposed Rule 15c3–1e(e)(1)–(2).

[32] "Registered public accounting firm" is defined in section 2(a)(12) of the Sarbanes-Oxley Act of 2002 (Pub. L. 107–204) as "a public accounting firm registered with the [Public Company Accounting Oversight] Board in accordance with this Act." We propose that a registered public accounting firm conduct the review of the VaR models, prepare supplemental reports concerning management controls and inventory pricing and modeling for the broker-dealer and its holding company, and prepare the holding company's annual audit report because such firms would be subject to Board rules, examination, and discipline.

[33] Proposed Rule 15c3–1e(e)(2).

dealer could amend its exemptive application to request Commission approval to use VaR models to calculate market risk capital charges for other eligible positions, which would include positions for which there is a ready market and for which there is adequate historical data to support a VaR model.

The Commission seeks comment on all aspects of the phase-in timetable, including the appropriateness of the positions selected for each level of eligibility and the 9-month time periods between successive levels. Should these time periods be shorter or longer? How should the Commission evaluate the success or adequacy of the models during these phase-in periods? Are there any other additional criteria or methods the Commission should consider using?

The Commission seeks comment on all aspects of the proposed calculation of market risk capital charges. In particular, we request comment on the use of mathematical models for regulatory capital purposes, including the quantitative and qualitative requirements for VaR models, the multiplication factors used to calculate the capital charge for market risk, and the use of backtesting to determine the multiplication factor. For example, should the multiplication factors be higher or lower? How should the multiplication factors be determined? Are the backtesting procedures appropriate? Is the 99% one-tailed confidence level appropriate? Is the requirement that the price changes be equivalent to a ten business-day movement in rates and prices appropriate? If not, what parameters would be appropriate?

Because VaR models use historical price data to predict future price movements, under paragraph (c)(4) of proposed Appendix E, an eligible broker-dealer could not use VaR models to calculate capital charges on securities that do not have adequate historical data available to make the VaR models reliable. For example, a broker-dealer could not use VaR models to calculate capital charges on securities recently sold in an initial public offering or for securities without a ready market. In those cases, the broker-dealer could apply to use scenario analysis or would continue to use the standard haircut method to calculate the capital charges on those positions.

b. Market Risk Capital Charge Calculation Using Scenario Analysis

Under paragraph (c)(5) of proposed Appendix E, for positions for which the Commission has approved the broker-dealer's use of scenario analysis [34] to compute a market risk capital charge (for example, positions having no ready market) the market risk capital charge would be three times the greatest adverse price movement resulting from the scenario over any ten-day period on a daily basis. The broker-dealer would be required to take a minimum market risk capital charge of $25 per 100-share equivalent equity contract for equity positions or ½ of one percent of the face value of the contract for all other types of contracts, even if the scenario model indicates a lower amount. We believe that it is appropriate to build in minimum charges to help assure that the firm has adequate capital in view of risks that may not be captured by scenario analysis. We request comment on the proposed calculation of capital charges using scenario analysis. Specifically, is three the appropriate multiplier? Is $25 per 100-share equivalent equity contract the appropriate minimum charge for equity positions? Is ½ of one percent of the face value of the contract the appropriate minimum for all other types of contracts? The Commission also could require a broker-dealer using scenario analysis to take additional capital charges for specific risk based on the liquidity or the perceived risks of the instruments. We request comment on the appropriate capital charge for specific risk.

The Commission solicits comment on all aspects of the use of scenario analysis to determine capital charges including the proposed multipliers and minimum charges. We are also interested in receiving any comments on other methodologies that may be appropriate to more accurately measure risk and correlate that risk to capital charges.

c. Market Risk Capital Charge Calculation for Other Positions

Under paragraph (c)(6) of proposed Appendix E, an eligible broker-dealer that computes its market risk capital charges pursuant to proposed Appendix E to Rule 15c3–1 would continue to compute market risk capital charges using paragraph (c)(2)(vi) of Rule 15c3–1 (the ''haircut method'') for positions for which the Commission has not approved its use of a VaR model or scenario analysis to compute those capital charges.

4. Credit Risk Capital Charge

An eligible broker-dealer would be required to use paragraph (d) of proposed Appendix E to compute its credit risk capital charge on credit exposures arising from the broker-dealer's positions in derivatives instruments if the Commission authorized the broker-dealer to use VaR or scenario analysis to compute its market risk capital charge on those positions. The credit risk capital charge computed pursuant to proposed Appendix E would be similar to the credit risk capital charge calculated pursuant to Appendix F to Rule 15c3–1, which applies to electing OTC derivatives dealers. The credit risk capital charge would be the sum of counterparty exposure charges for each counterparty, concentration charges by counterparty, and a portfolio concentration charge across all counterparties. Each of these charges is designed to address different components of credit risk.

First, for each counterparty, the broker-dealer would compute a counterparty exposure charge equal to the ''credit equivalent amount'' (defined below) of the broker-dealer's exposures to the counterparty, multiplied by 8%,[35] and further multiplied by a credit risk weight for the counterparty (or, under paragraph (d)(1) of proposed Appendix E, the counterparty exposure charge is the net replacement value in the account of a counterparty if that counterparty is insolvent, in bankruptcy, or that has senior long-term debt in default). This method for computing credit risk capital charges is consistent with the computation of credit risk capital charges for OTC derivatives dealers under Appendix F to Rule 15c3–1.

The credit equivalent amount to a counterparty would be defined in paragraph (d)(2) of proposed Appendix E as the sum of: (1) the broker-dealer's maximum potential exposure to the counterparty multiplied by the appropriate multiplication factor; and (2) the broker-dealer's current exposure to the counterparty. The multiplication factor would generally be determined based on backtesting results of the VaR model used to calculate maximum potential exposure, except that the initial multiplication factor would be one. Current exposure would be defined in paragraph (d)(3) of proposed Appendix E as the replacement value of

[34] Scenario analysis is the identification of the potential impact on the profit or loss on a position of various extreme events that affect the pricing of the position in the portfolio.

[35] The 8% multiplier is consistent with the calculation of credit risk in the OTC derivatives dealers rules and with the Basel Standards and is designed to dampen leverage to assure that the firm maintains a safe level of capital.

the counterparty's positions with the broker-dealer, after applying specified netting agreements [36] and taking into account the value of certain collateral [37] received from the counterparty. Maximum potential exposure would be defined in paragraph (d)(4) of proposed Appendix E as the increase in the replacement value of the counterparty's positions with the broker-dealer, after applying the effect of specified netting agreements and taking into account the value of certain collateral received from the counterparty, that will not be exceeded with 99% confidence over a time horizon of one year. The broker-dealer would have to calculate maximum potential exposure using a VaR model meeting the applicable quantitative and qualitative requirements of proposed Appendix E.[38] The Commission requests comment on the proposed calculations of current exposure and maximum potential exposure, including the use of VaR models to measure maximum potential exposure as well as the impact of netting agreements and collateral.

The credit risk weight of the counterparty would be calculated under paragraph (d)(7) of proposed Appendix E using methods that are consistent with the computation of credit risk capital charges for OTC derivatives dealers under Appendix F to Rule 15c3–1. If a counterparty is rated by a nationally recognized statistical rating organization (''NRSRO''), the credit risk weight would range from 20% to 150% depending on the credit rating of the counterparty, which provides a measure of credit risk. If a counterparty is not rated by an NRSRO, the broker-dealer could apply to the Commission, either in its original application or by amending its application, for permission to determine a credit rating for the counterparty using internal calculations and to use the internal credit rating in lieu of a rating by an NRSRO for purposes of determining the credit risk weight of the counterparty. We request comment on whether the broker-dealer should also be able to apply to the Commission for permission to determine the credit risk weight of a counterparty using internal calculations. For exposures covered by guarantees, where the guarantee is an unconditional and irrevocable guarantee of the due and punctual payment and performance of the obligation and the broker-dealer can demand immediate payment from the guarantor after any payment is missed without having to make collection efforts, a broker-dealer would be able to substitute the average of the credit risk weights of the guarantor and the counterparty for the credit risk weight of the counterparty.

Concentration charges are appropriate when a lack of diversification exposes the broker-dealer to additional risk. When evaluating the debt holdings of an entity, a lack of diversification would be evidenced by either a relatively (relative to the amount of the broker-dealer's tentative net capital) large exposure to a single party (the credit rating of that counterparty would, of course, affect the amount of additional risk) or a relatively large amount of unsecured debt holdings.

The second part of the credit risk capital charge, as provided in paragraph (d)(8) of proposed Appendix E, would take into account the additional risk of a relatively large exposure to a single party and would consist of concentration charges by counterparty that would generally apply when the current exposure of the broker-dealer to a single counterparty exceeds 5% of the tentative net capital of the broker-dealer. The amount of the concentration charge would be larger for counterparties with lower credit ratings and would range from 5% to 50% of the amount of the current exposure of the broker-dealer to the counterparty in excess of 5% of the broker-dealer's tentative net capital. The 5% is based on the OTC derivatives dealers rules and Commission experience.

The third part of the credit risk capital charge, as provided in paragraph (d)(9) of proposed Appendix E, would recognize the additional risk of holding a relatively large amount of unsecured debt and would consist of a portfolio concentration charge across all counterparties that would be the amount, if any, that the broker-dealer's aggregate current exposure across all counterparties for unsecured exposures exceeds 15% of the broker-dealer's tentative net capital.

The Commission requests comment on all aspects of the credit risk capital charge; in particular, the determination of credit risk weights for counterparties. The Commission requests comment on whether an additional method of calculating credit risk weights, based on internal estimates of annual probabilities of default, should be included in proposed Appendix E. If such a method should be used, the Commission requests comment on whether the following table appropriately matches credit risk weights to annual probabilities of default:

CREDIT RISK WEIGHT OF COUNTERPARTY BASED ON ANNUAL PROBABILITY OF DEFAULT [39]

Annual probability of default	Credit risk weight (in percent)
Less than .003%	2
0.05%	17
0.11%	30
3.80%	200
5.30% or higher	230
Event of default has occurred	1250

The Commission believes that calculating a credit risk capital charge on exposures arising from transactions in derivatives instruments using a qualifying VaR model to calculate maximum potential exposure is a more precise method than using a ''notional add-on'' to approximate maximum potential exposure. In addition, Commission reviews of risk management systems of large U.S. broker-dealers indicate that these broker-dealers use maximum potential exposure to measure and manage the credit risk of their portfolios. These broker-dealers would therefore incur small, if any, additional costs to calculate maximum potential exposure as opposed to ''notional add-ons.''

The Commission requests comment on all aspects of this approach to the calculation of credit risk capital charges on derivatives instruments, including the two concentration charges that are applicable both to individual counterparties and across all counterparties. The Commission also requests comment on the appropriate treatment of credit derivatives in this

[36] Only netting agreements that meet the requirements of paragraph (d)(5) of proposed Appendix E could be used to derive current exposure and maximum potential exposure. For example, the netting agreements would have to be legally enforceable in each relevant jurisdiction, including in insolvency proceedings. These proposed requirements are designed to allow a broker-dealer to reduce its credit risk capital charge only if the netting agreement reduces credit risk.

[37] Only collateral that meets the requirements of paragraph (d)(6) of proposed Appendix E could be used to derive current exposure and maximum potential exposure. For example, the collateral must have a ready market or consist of certain major market foreign currency or U.S. currency. These proposed requirements are designed to allow a broker-dealer to reduce its credit risk capital charge only if the collateral reduces credit risk.

[38] *See* proposed Rule 15c3–1e(e).

[39] These credit risk weights are based on the formulas provided in the Advanced Internal Ratings-Based approach to credit risk proposed by the Basel Committee. *The New Basel Capital Accord*, April 2003. The credit risk weights were derived using a loss given default (the percentage of the amount owed by the counterparty the firm expects to lose if the counterparty defaults) of 75%. We believe that 75% is a conservative number for use in determining credit risk weights. We request comment on whether 75% is appropriate, or whether it should be increased or decreased.

context. Credit derivatives can enter into the calculation of credit risk in two ways. The first would be to substitute the credit risk weight of the writer of the credit derivative for the credit risk weight of the counterparty. This is the treatment included in proposed Appendix E. The second would be to adjust the current exposure and the maximum potential exposure by the value of the credit derivative. We request comment on these methods of including credit derivatives in the calculation of credit risk capital charges. We also request comment on whether any special treatment should be accorded guaranteed obligations or other obligations that may have double default effects.

5. Additional Regulatory Conditions for Noncompliance With Appendices E and G, Model Failures, or Control Failures

Paragraph (f) of proposed Appendix E provides that as a condition for the broker-dealer to be permitted to use proposed Appendix E to calculate certain of its capital charges, the Commission may impose additional regulatory conditions on the broker-dealer or may condition further use of the exemption on the holding company of the broker-dealer filing more frequent reports, modifying its internal risk management control procedures or on imposing such other appropriate additional regulatory conditions that the Commission finds are necessary or appropriate in the public interest and consistent with the protection of investors. The Commission may impose these additional regulatory conditions if: the broker-dealer or the CSE fails to comply with reporting requirements under the proposal; if there is a material deficiency in the internal risk management control system or certain mathematical models of the broker-dealer or the CSE; if the CSE fails to comply with its undertakings; if the broker-dealer or the CSE notifies the Commission of the occurrence of certain events; if there is a material change in a mathematical model, internal risk management control system, or corporate structure as described in the application; or if the Commission finds that imposing an additional regulatory condition is necessary or appropriate in the public interest, and is consistent with the protection of investors. The events that require notification are specified in paragraph (e) of proposed Appendix G (for the CSE) and in the proposed amendments to Rule 17a–11 (for the broker-dealer), which are described in detail below. The proposed additional regulatory conditions include requiring the broker-dealer to restrict its business, to provide a plan for increasing its net capital or tentative net capital, or to calculate its capital charges using the haircut method of Rule 15c3–1.

This provision is intended to identify situations where the broker-dealer may be exposed to increased levels of risk. We could respond to that increased risk level by, for example, requiring increased capital charges or requiring that we be provided more information concerning the operational or financial condition of the broker-dealer, its holding company, and its affiliates.

We seek comment on the additional conditions that would be available to the Commission under paragraph (f) of Appendix E. Are the events pursuant to which the Commission may impose additional conditions appropriate? Should any other events be added to this list? Should we specify in the rule other conditions that could be imposed if the broker-dealer or CSE did not comply with applicable requirements? What should these conditions be?

B. Proposed Appendix G to Rule 15c3–1

As a condition of Commission approval, the holding company of a broker-dealer applying for authorization to compute certain of its capital charges in accordance with proposed Appendix E would undertake to comply with the requirements listed in proposed Appendix G to Rule 15c3–1, in addition to those listed in paragraph (a)(1)(viii) of proposed Appendix E. Under Appendix G, the CSE would be required to compute allowable capital and allowances for market, credit, and operational risk on a consolidated basis for the CSE; provide the Commission with certain monthly, quarterly, and annual reports; maintain certain books and records relating to the CSE's consolidated financial reports and internal risk management controls; and notify the Commission upon the occurrence of certain events. These conditions are designed to help the Commission assess the financial and operational health of the holding company and the potential impact on the risk exposure of the broker-dealer.

We are proposing what we believe are prudent parameters for measuring allowable capital and risk allowances for the CSE and that are consistent with the Basel Standards, which are used by many other financial regulators as a method to assess capital adequacy at the holding company level. For example, the proposal contains requirements placing limits on the amount of subordinated debt that may be included in allowable capital, that the VaR model used to calculate the allowance for market risk be based on a ten business-day movement in rates and prices, and that the VaR measure be multiplied by a factor of at least three. Requiring that a CSE calculate its allowable capital based on the Basel Standards would provide the Commission with a useful measure of the CSE's financial position and allow for greater comparability of an CSE's financial condition to that of other international securities firms and banking institutions.

1. Calculation of Allowable Capital and Allowances for Market, Credit, and Operational Risk by the CSE

Pursuant to proposed paragraph (a) of Appendix G, the CSE would be required to calculate allowable capital and allowances for market, credit, and operational risk on a consolidated basis for the affiliate group on a monthly basis, which is designed to be consistent with the Basel Standards, which will allow for greater comparability of CSEs to international securities firms and banking institutions. This requirement is necessary to monitor the financial condition of the affiliate group, which may impact the financial stability of the broker-dealer. A CSE that makes a capital calculation consistent with the Basel Standards that it is required to submit to another regulator can request in the original exemption application or in an amendment to substitute that calculation for the calculations required by paragraph (a) of proposed Appendix G. If the Commission finds that the calculation gives the Commission sufficient information about the financial health of the holding company, it will approve that request.

e. Group-Wide Allowable Capital Calculation

Under proposed paragraph (a)(1) of Appendix G, the CSE would calculate ''allowable capital'' on a consolidated basis for the affiliate group. Consistent with the Basel Standards, allowable capital would include common shareholders' equity (less goodwill, deferred tax assets, and certain other intangible assets), certain cumulative and non-cumulative preferred stock,[40] and certain properly subordinated debt. As set forth in detail in the rule, the cumulative and non-cumulative preferred stock and the subordinated

[40] To qualify, the cumulative and noncumulative preferred stock could not have a maturity date, could not be redeemed at the option of the holder, and could not contain any other provisions that would require future redemption of the issue. In addition, the issuer would have to be able to defer or eliminate dividends. Preferred stock meeting these conditions would have characteristics consistent with capital, as opposed to debt.

debt are subject to additional limitations based on comparisons of the individual components of allowable capital.

We request comment on whether goodwill should be included in allowable capital or whether it is appropriate to include goodwill subject to a phase-out. If so, we request comment on how the phase-out should be structured and how long the phase-out should last.

An entity's debt is not ordinarily regarded as capital. Because subordinated debt can provide a long-term source of working capital to the entity and may have many of the characteristics of capital, however, the Basel Standards permit unrestricted long-term subordinated debt [41] to count as capital. Under paragraph (a)(1)(iii)(B) of proposed Appendix G, and consistent with the Basel Standards, subordinated debt can be included in allowable capital if it meets four criteria, which generally are designed to assure that the subordinated debt will provide a long-term source of working capital to the holding company and that it has many of the characteristics of capital. First, the original weighted average maturity of the CSE's subordinated debt must be at least five years. Second, the subordinated debt instrument must state clearly on its face that repayment of the debt is not protected by the Securities Investor Protection Corporation (''SIPC'') or any Federal agency. Third, the debt must be unsecured and subordinated in right of payment to all senior indebtedness of the CSE. Fourth, the terms of the subordinated debt agreement may permit acceleration only in the event of bankruptcy or reorganization of the CSE under Chapters 7 (liquidation) or 11 (reorganization) of the U.S. Bankruptcy Code. The intent of these four criteria is to provide for permanency of capital and to inform subordinated lenders of the risks associated with being a subordinated lender.

Funds lent under a subordinated debt agreement necessarily are subject to the risks of the CSE's business and must be available to pay other creditors if the holding company defaults on other obligations or fails. Although the customers of certain of the entities which are part of the CSE may be entitled to the protection of SIPC or a Federal agency under specific circumstances, such as the failure of a broker-dealer subsidiary, subordinated lenders of the holding company, as subordinated lenders, would not be entitled to any such protection.

Under the proposal, to be included in allowable capital, subordinated debt must have characteristics that are consistent with capital. Therefore, the subordinated debt must be unsecured and subordinated in right of payment to all of the CSE's senior debt. Debt that, upon default, can be repaid by conversion of collateral or before other debt cannot be considered subordinated in right of repayment to all senior indebtedness of the CSE because the debt effectively would have priority over at least some other debt.

Subordinated debt instruments that permit acceleration of payment upon events other than bankruptcy or reorganization of the holding company would not qualify for inclusion in allowable capital under the proposed rules.[42] Acceleration clauses raise significant supervisory concerns because repayment of the debt could be accelerated at a time when a CSE may be experiencing financial difficulties. Acceleration, therefore, could inhibit a CSE's ability to resolve its financial problems in the normal course of business and force the company into involuntary bankruptcy, thereby affecting the financial stability of the broker-dealer.

We request comment on the inclusion of subordinated debt in allowable capital generally and on the following questions in particular:

- Is five years the appropriate maturity for subordinated debt to be included in allowable capital? Would another term, whether longer or shorter, be more appropriate?
- To be included in allowable capital, could subordinated debt be subject to negative pledge provisions that, for example, would restrict a CSE's ability to pledge the equity securities of a subsidiary to secure the debt or to sell a subsidiary unless the buyer agreed to assume liability for some portion of the debt?
- Should subordinated debt that is subject to acceleration events other than bankruptcy or reorganization of the CSE under the Bankruptcy Code be included in allowable capital?
- Should there be a maximum amount of subordinated debt that is includible in allowable capital? If so, what should be the amount?
- What are the additional costs of issuing subordinated debt versus long-term debt of the same maturity?

Some industry participants have suggested that certain long-term debt that cannot be accelerated should be included in allowable capital because, since at the holding company level there is no protected class of creditors, there is no significant difference between that type of long-term debt and subordinated debt. In addition, they assert that subordinated debt is more costly to an entity than long-term debt that cannot be accelerated because of the restrictive provisions associated with subordinated debt and the lack of an active trading market for subordinated debt. They see no other legitimate purpose behind the requirement that the debt be subordinated in order to count as capital.

We solicit comment on whether long-term debt, subject to appropriate limitations, should be included in allowable capital. Specifically, we request comment on the following issues:

- If long-term debt is included in allowable capital, what restrictions should apply?
- Does a holder of a CSE's subordinated debt have a greater incentive to monitor the financial condition of CSE than a holder of its long-term debt because its claim is more junior? Would trading in its subordinated debt provide a more reliable indication of the credit quality of the CSE than long-term debt and, if so, why?
- Are there debt instruments other than subordinated debt that provide an equivalent market signal about the credit quality of the issuer?
- Is there a material difference between the depth of the market for the long-term debt of a CSE and the depth of the market for its subordinated debt and, if so, how would any such difference impact the cost of financing for the CSE?
- Would there be any other adverse effects if the CSE was permitted to include long-term debt in allowable capital?
- If long-term debt could be included in allowable capital, what, if any, requirements should apply to the maturity date of the long-term debt? What should permissible events of acceleration be?
- Should long-term debt be subject to a negative pledge, that, for example, would restrict a holding company's

[41] By contract, subordinated debt is debt that is subordinated in right of payment to all senior indebtedness of the company.

[42] The prohibition on acceleration of payment also would prohibit inclusion of credit sensitive subordinated debt in allowable capital. Credit sensitive subordinated debt ties payments to the financial condition of a borrower/holding company or its affiliates. This feature of the debt forces a holding company to make increased payments as its financial condition deteriorates and, therefore, acts as a de facto acceleration clause that may deplete the CSE's resources and increase the likelihood of default on debt. Furthermore, the clause potentially would allow a subordinated lender to obtain payment before senior creditors.

ability to pledge the equity securities of a subsidiary to secure the debt or to sell a subsidiary unless the pledgor or buyer agreed to assume liability for some portion of the debt?

• Would the inclusion of long-term debt in allowable capital affect the liquidation priority of the customers of entities which are part of the CSE in the event of the holding company's bankruptcy?

• What other provisions concerning the inclusion of long-term debt in allowable capital should be considered?

We request comment on all aspects of the calculation of allowable capital.

b. Group-Wide Calculation of Allowance for Market Risk

Under proposed paragraph (a)(2) of Appendix G, a CSE would calculate a group-wide allowance for market risk on all proprietary positions, using a VaR model or an alternative method approved by the Commission, multiplied by an appropriate multiplication factor to provide an adequate measure of risk during periods of market stress. The calculation of the allowance for market risk is important in determining what risk due to market factors the broker-dealer may be exposed to through its affiliates. The VaR model would have to meet the qualitative and quantitative requirements of paragraph (e) of proposed Appendix E.[43] The computation of the allowance for market risk under this proposal is consistent with the calculation of the market risk capital charge for the broker-dealer under proposed Appendix E. The Commission seeks comment on all aspects of the proposed method of calculating an allowance for market risk. In particular, should other qualitative or quantitative requirements be included in paragraph (e) of proposed Appendix E?

c. Group-Wide Calculation of Allowance for Credit Risk

Paragraph (a)(3) of proposed Appendix G would require that a CSE calculate an allowance for credit risk daily for certain assets on the consolidated balance sheet and certain off-balance sheet items. The allowance for credit risk would be computed using the methodology set forth in paragraph (a)(3)(i) of proposed Appendix G, which is consistent with the proposed New Basel Accord, or, pursuant to paragraph (a)(3)(ii) of proposed Appendix G, if the Commission approves the broker-dealer's request, using a calculation consistent with standards published by the Basel Committee, as modified from time to time. This choice would provide CSEs with some flexibility while the Basel Standards are under review.

The methodology set forth in paragraph (a)(3)(i) of proposed Appendix G would require that a CSE multiply the credit equivalent amount of each asset or off-balance sheet item by the appropriate credit risk weight of that asset or off-balance sheet item, and then multiply the result by 8%.[44] In general, the assets and off-balance sheet items subject to this allowance are loans and loan commitments receivable and receivables arising from derivatives contracts, repurchase and reverse repurchase agreements, stock lending transactions, and similar collateralized transactions, and other extensions of credit.

Paragraph (a)(3)(i) of proposed Appendix G would establish the manner in which the ''credit equivalent amount'' of a balance sheet item should be calculated, which is consistent with the proposed New Basel Capital Accord. The credit equivalent amounts for receivables relating to (i) loans and loan commitments receivable; (ii) derivatives contracts, repurchase agreements, reverse repurchase agreements, stock loans, stock borrows, and other similar collateralized transactions; and (iii) other assets would be calculated differently. These calculations are set forth in paragraphs (a)(3)(i)(A), (B), and (E) of proposed Appendix G, respectively. We request comment on the credit conversion factors set forth in paragraph (a)(3)(i)(A) of proposed Appendix G. In particular, we request comment on the credit conversion factor for margin loans.

Paragraph (a)(3)(i)(C) of proposed Appendix G would define the ''current exposure'' of a member of the affiliate group to a counterparty as the current replacement value of the counterparty's positions with the member of the affiliate group after applying certain netting agreements,[45] taking into account the value of certain collateral[46] pledged to and held by a member of the affiliate group, and subtracting the fair market value of any credit derivatives that specifically change the CSE's exposure to the counterparty (as long as the credit derivatives are not used to change the credit risk weight of the counterparty).[47]

Paragraph (a)(3)(i)(D) of proposed Appendix G would define the ''maximum potential exposure'' of a member of the affiliate group to a counterparty as the increase in the net replacement value of the counterparty's positions with the member of the affiliate group, after applying certain netting agreements,[48] taking into account the value of certain collateral[49] pledged to and held by the member of the affiliate group, and subtracting the fair market value of any credit derivatives that specifically change the CSE's exposure to the counterparty (as long as the credit derivatives are not used to change the credit risk weight of the counterparty)[50] that is obtained daily using an approved VaR model meeting the applicable qualitative and quantitative requirements of paragraph (e) of proposed Appendix E.[51]

We request comment on whether the proposed method of calculating the credit equivalent amount is appropriate, or whether it should be changed. In addition, we request comment on whether the definitions of ''current exposure'' and ''maximum potential exposure'' are appropriate, or if they should be changed. If the proposed method for calculating credit equivalent amount or the definitions of ''current exposure'' or ''maximum potential exposure'' should be changed, please specify how they should be changed.

Paragraph (a)(3)(i)(F) of proposed Appendix G provides that credit risk weights would generally be determined

[43] *See supra,* discussion of the broker-dealer's calculation of its market risk capital charge using a VaR model under proposed Appendix E.

[44] This is consistent with the calculation of credit risk under the OTC derivatives dealers rules (*See* 17 CFR 240.15c3–1f(d)(2)). In addition, use of the 8% basic multiplier to calculate credit risk is consistent with the Basel Standards.

[45] Only netting agreements that meet the requirements set forth in paragraph (d)(5) of proposed Rule 15c3–1e could be used to reduce current or maximum potential exposures. *See supra,* note 36.

[46] Only collateral that meets the requirements set forth in paragraph (d)(6) of proposed Rule 15c3–1e could be used to reduce current or maximum potential exposures. *See supra,* note 37.

[47] The fair market value of any credit derivatives that specifically change the CSE's exposure to the counterparty may be used to calculate ''current exposure'' and ''maximum potential exposure'' only to the extent that the credit derivative is not used to change the credit risk weight of the counterparty as set forth in paragraph (a)(3)(i)(I) of proposed Appendix G.

[48] *See supra,* note 36.

[49] *See supra,* note 37.

[50] *See supra,* note 47.

[51] The quantitative requirements for a VaR model used to calculate maximum potential exposure would include that the model use a 99 percent, one-tailed confidence level with price changes equivalent to a *five-day* movement in rates and prices for repurchase agreements, reverse repurchase agreements, stock lending and borrowing, and similar collateralized transactions (*See* paragraph (c)(1)(i)(E) of proposed Appendix G) and to a *one-year* movement in rates and prices for other positions (*See* proposed paragraph (e)(2(ii) of proposed Appendix E) (as opposed to a *ten business-day* movement in rates and prices for VaR models used to calculate the allowance for market risk. (*See* paragraph (e)(2)(i) of proposed Appendix E).

according to standards published by the Basel Committee, as modified from time to time. If the Commission approves an application by the broker-dealer in its initial application or an amendment to the application, the CSE may use internal credit ratings [52] or calculate credit risk weights using internal calculations [53] when calculating its allowance for credit risk.

In addition, paragraph (a)(3)(i)(J) of proposed Appendix G would allow a CSE to adjust credit risk weights of receivables covered by certain types of guarantees,[54] and paragraph (a)(3)(i)(I) of proposed Appendix G would allow a CSE to adjust credit risk weights of receivables covered by certain credit derivatives (such as credit default swaps, total return swaps, and similar instruments used to manage credit risk) [55] in recognition of the credit protection these instruments provide.

The Commission requests comment on the determination of credit risk weights. In particular, the Commission requests comment on whether an additional method of calculating credit risk weights, based on internal estimates of annual probabilities of default, should be included in proposed Appendix G.[56]

The Commission believes that using a VaR model that meets the applicable qualitative and quantitative requirements of paragraph (e) of proposed Appendix E to calculate maximum potential exposure is a more precise method than using a ''notional add-on'' to approximate maximum potential exposure. In addition, Commission reviews of risk management systems of large U.S. broker-dealers and their affiliates indicate that these firms generally use maximum potential exposure to measure and manage the credit risk of their portfolios. These firms would therefore incur little, if any, additional cost to calculate credit risk using maximum potential exposure as opposed to ''notional add-ons.''

We request comment on this approach to the calculation of credit risk on derivatives, repurchase agreements, reverse repurchase agreements, stock lending and borrowing, and similar collateralized transactions. In addition, we request comment on the proposed requirements for guarantees used to reduce a CSE's allowance for credit risk. We also request comment on the appropriate treatment of credit derivatives in this context. Credit derivatives could enter into the calculation of credit risk in two ways. The first would be to substitute the credit risk weight of the writer of the credit derivative for the credit risk weight of the counterparty for the portion of the exposure covered by the credit derivative. This is the method set forth in paragraph (a)(3)(i)(I) of proposed Appendix G. Another method would be to adjust the current exposure and the maximum potential exposure by the value of the credit derivative. We request comment on these and other methods of treating credit derivatives.

Certain accounting differences between securities firms and banking firms may necessitate certain modifications to the Basel Standards when they are applied to securities firms. For instance, broker-dealers must mark all positions to market, while banks may use historical cost for securities held for investment purposes. The Commission solicits comment on how accounting differences might affect the computation of the allowance for credit risk, and what modifications the Commission should make to the proposed rules to address those differences.

The Commission seeks comment on all aspects of the proposed method of calculating the allowance for credit risk. Because the Basel Standards have been implemented by many financial regulators, we request comment on whether the proposed method is consistent with the Basel Standards as they have been implemented. In addition, we request comment on whether the proposed rule is consistent with the proposed New Basel Capital Accord and whether it is consistent with how various financial regulators have proposed to implement the proposed New Basel Capital Accord. Should a CSE have other alternative methods for calculating the allowance for credit risk?

d. Group-Wide Calculation of Allowance for Operational Risk

The calculation of an allowance for operational risk is intended to measure risks faced by the firm other than market and credit risk; for example, operational risk would include the risk that the prescribed procedures of the firm may not be followed in a particular transaction, causing the firm to incur potentially significant losses. Such losses incurred by the holding company or an affiliate of a broker-dealer could have a significant adverse effect on the broker-dealer. The proposed rule would, therefore, require that the CSE calculate an allowance for operational risk.

Under proposed Rule 15c3–1g(a)(4), the calculation of the allowance for operational risk must be consistent with the proposed New Basel Capital Accord. The Basel Committee has proposed three methods for the calculation of an allowance for operational risk: the basic approach, the standardized approach, and the advanced measurement approach.[57] The basic and standardized approach calculations are based on fixed percentages. Under the basic approach, the allowance is 15% of consolidated annual revenues net of interest expense averaged over the past three years. For the standardized approach, the allowance for operational risk is a percentage of revenues net of interest expense, ranging from 12% to 18%, for each of eight business lines. The advanced measurement approach requires a system for tracking and controlling operational risk and provides that the allowance for operational risk is the largest operational loss that might be expected over a one-year period with 99.9% confidence.

We solicit comment on all aspects of the proposed allowance for operational risk, including how to best measure operational risk and when a calculation of operational risk should be required. We request comment on whether any of the methods is preferable and, if so, why. Further, could any changes be made to these methods or percentages used to calculate the charges that would be more appropriate for the broker-dealer business? Finally, should we allow a holding company to choose one of the three methods, or should the proposal require holding companies to use the advanced measurement approach?

[52] *See* paragraph (a)(3)(i)(G) of proposed Appendix G.

[53] *See* paragraph (a)(3)(i)(H) of proposed Appendix G.

[54] The guarantee would be required to be an unconditional and irrevocable guarantee of the due and punctual payment and performance of the obligation and the holding company or member of the affiliate group can demand payment after any payment is missed without having to make collection efforts. Further, the guarantee would be required to be evidenced by a written obligation of the guarantor that allows the holding company or member of the affiliate group to substitute the guarantor for the counterparty upon default or nonpayment by the counterparty. These proposed requirements are designed to allow a CSE to reduce its allowance for credit risk only if the guarantee contains features that make it more reliable.

[55] The credit derivative would be required to be one that (i) provides credit protection equivalent to a guarantee, (ii) is used for bona fide hedging purposes to reduce the credit risk weight of a counterparty, (iii) is not incorporated into the VaR model used for deriving potential exposures, and (iv) is not held for market-making purposes.

[56] *See supra,* discussion of proposed credit risk capital charge calculation for the broker-dealer.

[57] *See* The New Basel Capital Accord (April 2003).

e. Holding Companies Subject to Supervision by a Financial Regulator Other Than the Commission

Certain CSEs that own broker-dealers are subject to supervision at the holding company level by a financial regulator or supervisor other than the Commission. These holding companies may be required by that financial regulator to compute a capital assessment similar to that required by paragraphs (a)(1) through (a)(4) of proposed Appendix G. To reduce regulatory burdens, and because we think that such calculations will be sufficient to permit us to evaluate the risk to the broker-dealer, paragraph (a)(5) of proposed Appendix G provides that, upon Commission approval of the broker-dealer's original application or amendments to the application, the CSE may compute a capital assessment consistent with the standards issued by the Basel Committee that it is required to submit to a financial regulator or supervisor in lieu of the computations required by paragraphs (a)(1) through (a)(4) of proposed Appendix G, provided these computations are consistent with the Basel Standards. We request comment on this provision.

f. General Discussion of Basel Pillars

This proposal would apply a capital reporting requirement consistent with the Basel Standards to the CSE. The Basel Committee is currently developing a new international agreement (the ''proposed New Basel Capital Accord''). The proposed New Basel Capital Accord specifies three ''pillars'' for the group-wide supervision of internationally active banks and financial enterprises. The first pillar, ''minimum regulatory capital'' requirements, requires calculations for credit and operational risk and, for firms with significant trading activity, market risk. The second pillar, ''supervisory review,'' requires that capital be assessed relative to overall risks and that supervisors review and take action in response to those assessments.[58] We request comment on whether the regulatory regime outlined in this proposal together with existing Commission regulation of broker-dealers would meet the requirements of the first and second pillars of the proposed New Basel Capital Accord or whether changes or enhancements should be made. In addition, we request comment on whether, if the proposed New Basel Capital Accord is adopted, there should be a transition period before the Commission requires its use by CSEs.

The third pillar requires certain disclosures which will allow market participants to assess key pieces of information concerning, for example, the capital, risk exposures, and risk assessment processes of the institution. The purpose of the third pillar is to complement the minimum capital requirements and the supervisory review process by encouraging market discipline.[59]

The third pillar is discussed in the U.S. banking agencies' Advanced Notice of Proposed Rulemaking on the proposed New Basel Capital Accord.[60] As the banking agencies noted, an integral part of the proposed New Basel Capital Accord is enhanced public disclosure practices. Specific disclosure requirements would be applicable to all institutions using the proposed New Basel Capital Accord and would encompass capital, credit risk, credit risk mitigation, securitization, market risk, operational risk, and interest rate risk.

We request comment on whether any additional disclosures by U.S. broker-dealer firms, their holding companies, and affiliates should be required to meet the requirements of the third pillar of the proposed New Basel Capital Accord. If additional, specific disclosure is warranted, commenters are asked to address where that disclosure should be made as well as whether disclosures should be made on a quarterly, annual, or other periodic basis. In addition, we request comment on whether additional required disclosures should depend on whether a firm is privately held or is required to file information, documents, and reports pursuant to §§ 13(a) or 15(d) of the Exchange Act.

2. Reporting Requirements for the CSE

As a condition of Commission approval, pursuant to proposed paragraph (b) of Appendix G, the CSE would be required to file certain monthly and quarterly reports, as well as annual audited statements, with the Commission. The Commission would use the information filed by the CSE to monitor the financial condition, internal risk management control system, and activities of the CSE. This would give the Commission important information regarding activities of its affiliates that could impair the financial and operational stability of the broker-dealer. These reports would also allow the Commission to monitor the condition of the affiliate group to detect any events or trends that may adversely affect the broker-dealer. Failure to require the reports would undermine the Commission's ability to monitor the financial condition of the CSEs and could jeopardize the financial stability of broker-dealers using Appendix E to calculate certain of their capital charges. Moreover, requiring timely financial and other risk information that identifies which business line or affiliated entity may have incurred particular risks is necessary in order to identify areas for Commission examination.

Pursuant to paragraph (b)(1) of proposed Appendix G, the CSE would be required to file a monthly report with the Commission within 17 business days after the end of the month (the FOCUS reporting period) that includes certain consolidated financial and credit risk information, a graph for each business line reflecting the daily intra-month VaR calculations, and certain reports the CSE regularly provides to its senior management to assist it in monitoring and managing risk. We request comment on all aspects of this requirement, including the timing of the reports.

Pursuant to paragraph (b)(2) of proposed Appendix G, the CSE would be required to file a quarterly report within 35 calendar days after the end of each quarter that includes, in addition to the information required in the monthly filing, consolidating financial information, the results of backtesting of models used to compute its allowances for market and credit risk, a description of all material pending legal or arbitration proceedings required to be reported pursuant to generally accepted accounting principles (''GAAP''), and certain short-term borrowings. Requiring reports to be filed within 35 calendar days after the end of each quarter provides time frames similar to those for quarterly reports due from companies required to file information, documents, and reports pursuant to § 13(a) or 15(d) of the Exchange Act. We request comment on all aspects of this requirement, including the timing of the reports.

Paragraph (b)(3) of proposed Appendix G would require that the CSE provide the Commission upon request with such other reports as may be necessary to monitor the financial condition of the CSE and its risk exposures, as they could affect the financial condition of the broker-dealer. We request comment on this provision.

Paragraph (b)(4) of proposed Appendix G would require that the CSE file an annual audit report with the Commission concurrently with the

[58] *Id.*

[59] *Id.*

[60] *See* Risk-Based Capital GUidelines; Implementation of New Basel Capital Accord, 68 FR 45900 beginning at 45943 (August 4, 2003).

annual audit report filed by the broker-dealer. The annual audit report must include consolidated financial statements and must be audited by a registered public accounting firm.[61] Paragraph (b)(5) of Appendix G would require that the CSE file accountants' reports prepared by a registered public accounting firm, in accordance with agreed-upon procedures, regarding management controls and inventory pricing and modeling. By performing an independent review of the firm's financial condition and risk management practices, auditors have an important role in the Commission's regulatory framework by helping to assure that the broker-dealer and the holding company are in compliance with the conditions of the exemption. We request comment on these requirements.

The Commission seeks comment on these reporting requirements, particularly regarding the timing and other aspects of the reporting requirements. In particular, we request comment on whether the audit report and accountants' reports should be prepared by a registered public accounting firm. We request comment on whether these reporting requirements should be modified for a CSE with an affiliate required to file information, documents, and reports pursuant to §§ 13(a) or 15(d) of the Exchange Act or that is subject to supervision at the holding company level by a financial regulator or supervisor other than the Commission and, if so, how they should be modified. Should the reporting requirements under paragraph (b) of proposed Appendix G include a requirement that an electronic filing be made with the Commission before a quarterly report filed pursuant to reporting requirements for companies required to file information, documents, and reports pursuant to §§ 13(a) or 15(d) of the Exchange Act must be filed with the Commission?

3. Records To Be Made and Maintained by the CSE

The CSE of a broker-dealer that uses proposed Appendix E to calculate its capital charges would undertake to make the records listed in paragraph (c) of proposed Appendix G. The purpose of this requirement is to require that the CSE create records that would allow the Commission to determine whether the CSE is in compliance with the terms of the exemption. Most or all of these records already are generated for internal management purposes because a prudent firm that manages risk on a group-wide basis would make and maintain these records in the ordinary course of its business. The Commission would accept the records in the format used by the firms. The records that are made must include a record indicating that the CSE has conducted stress tests of the affiliate group's funding and liquidity in response to certain events, including a credit downgrade of the CSE or an inability of the holding company to obtain short-term financing, the results of those stress tests, a record showing that the CSE has a contingency plan to respond to those events, and a record of the basis for determining credit risk weights in certain circumstances. These events are intended to identify possible liquidity and funding stress scenarios that could impose significant financial distress on the CSE and that could jeopardize the financial stability of the broker-dealer. The Commission believes that records of the CSE's contingency plans to respond to those events would provide the Commission with important information during an examination that would be necessary to adequately assess the CSE's financial condition and risk exposures. We request on whether there are any other records that the CSE should be required to create. We also request comment on whether it would be appropriate to expand the list of specified events described above. In addition, we request comment on whether Exchange Act Rule 17a–3 should be amended, or whether propose Appendix E should be modified, to impose additional recordkeeping requirements on broker-dealers using proposed Appendix E to calculate certain of their capital charges.

Paragraph (d) of proposed Appendix G contains record maintenance requirements for CSEs. The CSE would be required to maintain, for a period of not less than three years, the records it is required to make under paragraph (c) of proposed Appendix G, its application and other documents, reports, and notices it files with the Commission pursuant to proposed Appendix E or proposed Appendix G and any written responses from the Commission, and written policies and procedures concerning its internal risk management system. Exchange Act Rule 17a–4 requires that broker-dealers maintain certain records for this time period, and we believe that this time period is sufficient for purposes of this proposal to allow effective examinations of CSEs.

We request comment on the Commission's proposed recordkeeping requirements applicable to the holding company and its regulated non-broker-dealer affiliates and whether, and to what extent, they should be modified. With respect to any recordkeeping requirements that should be modified because records are already provided to a financial regulator, please specifically list the records that a holding company provides to its financial regulator that are equivalent to records that would be required in this proposal. Are there reports that holding companies submit to bank regulators that would provide the information required in this proposal? We request comment on whether we should amend Exchange Act Rule 17a-4 to require broker-dealers to retain certain of these records or whether proposed Appendix E should be modified to impose these additional record preservation requirements. Should certain of the record preservation requirements of proposed Appendix G be imposed on the broker-dealer rather than on the holding company?

4. Notification Requirements for the CSE

Paragraph (e) of proposed Appendix G requires that the CSE promptly notify the Commission upon the occurrence of certain events, including: the occurrence of any backtesting exception of VaR models that would require the CSE to use a higher multiplication factor; a computation showing the affiliate group's allowable capital is less than 110% of the total of its allowances for market, credit, and operational risk; a declaration of bankruptcy by an affiliate; the downgrading of the credit rating of an affiliate or certain debt of an affiliate; or the receipt of certain regulatory notices regarding an affiliate. The CSE would also be required to file a report if there is a material change in the organization of the affiliate group, the material affiliate status of any affiliate in the affiliate group, or the major business functions of any material affiliate. The notification provisions of proposed Appendix G are designed to give the Commission advance warning of situations that may pose material financial and operational risks to the CSE and the broker-dealer. These provisions are integral to Commission supervision of broker-dealers that use Appendix E.

The Commission seeks comment on all aspects of the notice requirements for CSEs. Are the events for which CSEs must report to the Commission appropriate? Should the CSE notify the Commission regarding other events? We request comment on whether these requirements should be modified for a CSE that is subject to supervision at the holding company level by a financial regulator or supervisor other than the

[61] *See supra,* note 32.

Commission and, if so, how they should be modified.

C. Proposed Amendments to Rule 15c3–4

The proposed amendments to Exchange Act Rule 15c3–4 would expand its coverage to include broker-dealers that use Appendix E to calculate their capital charges, requiring them to establish a system of internal controls for monitoring and managing the risks associated with their business activities.[62] Rule 15c3–4 is designed to improve the integrity of the risk measurement, monitoring, and management process, and to clarify accountability, at the appropriate organizational level, for defining the permitted scope of activity and level of risk.

In addition, as a condition for the broker-dealer to use Appendix E to compute certain of its capital charges, the CSE would agree to establish such a system to manage group-wide risk for the affiliate group of the broker-dealer.

Participants in the securities markets are exposed to various risks, including market risk, credit risk, funding risk, legal risk, and operational risk. These risks are due, in part, to the diverse range of financial instruments now traded by broker-dealers. Risk management controls within a broker-dealer promote the stability of the firm and, consequently, the stability of the general marketplace. A firm that has adopted and follows appropriate risk management controls reduces its risk of significant loss, which also reduces the risk of spreading the losses to other market participants or throughout the financial markets as a whole. Further, as a general prudent business practice, most securities firms have developed risk management systems to manage risk on a consolidated basis at the holding company level. To have a complete understanding of how risks are managed at the broker-dealer, regulators need to understand how risks are managed at the holding company.

The specific elements of a risk management system will vary depending on the size, complexity, and organization of a firm. As a result, the design and implementation of a system of internal controls for a particular CSE may differ from other firms. However, well-developed risk management systems generally share certain core principles such as establishing clear responsibilities at each level of management, separation of certain key responsibilities, and effective monitoring and reporting.

[62] 17 CFR 240.15c3–4.

Individual firms must have the flexibility to implement specific policies and procedures unique to its circumstances. As a result, Rule 15c3–4 establishes only basic elements for the design, implementation, and review of a risk management control system. We previously found these elements to be the appropriate ones for an entity to use when developing such a system.

Rule 15c3–4 requires a firm to consider a number of aspects of its business when adopting its risk management control system. Although each firm must develop controls appropriate to its specific circumstances, the rule requires certain elements to be included in the firm's internal risk management control system. For example, the system must include a risk control unit that reports directly to senior management and is independent from business trading units. In addition, there must be separation of duties between personnel who enter into transactions and personnel who record the transactions.

Finally, the firm's management must periodically review the firm's business activities for consistency with established risk management guidelines to check whether firm personnel are operating within the scope of permissible activity and whether the risk management system continues to be adequate.

We request comment on the proposed amendments to Rule 15c3–4. We request comment on whether the holding company undertakings should incorporate Rule 15c3–4 or whether the requirement to establish a group-wide internal risk management control system should be a stand-alone rule. We request comment on whether any aspect of Rule 15c3–4 could be better tailored to reflect unique aspects of group-wide risk management or risk management of broker-dealers using proposed Appendix E to calculate certain capital charges. We request comment on whether Rule 15c3–4 should be amended to require that results of periodic reviews conducted by an internal auditor or annual reviews conducted by a registered public accounting firm should be reported in writing to the Board of Directors. Should we amend Rule 15c3–4 to require all broker-dealers to do so?

D. Proposed Amendments to Rule 17a–5; Broker-Dealer Reporting Requirements

The proposed amendments to Exchange Act Rule 17a-5 would require a broker-dealer that uses proposed Appendix E to file certain reports with the Commission in addition to the reports that all broker-dealers must file under the rule. These reports would provide current detailed information regarding the financial position of the firm, which would assist us in understanding the risk profile of the firm. The Commission would use the information collected under the proposed amendment to monitor the financial condition, internal risk management control system, and activities of broker-dealers that elect the alternative capital computation.

These additional reports would include a monthly report detailing, among other things, its derivatives revenues, certain market and credit risk information, backtesting results of its mathematical models, and regular risk reports it supplies to its management, quarterly reports on, among other things, how well its daily VaR and maximum potential exposure correspond to the daily net trading loss, and certain supplemental reports concerning management controls and inventory pricing and modeling prepared by a registered public accounting firm.[63] We request comment on the proposed additional reporting requirements for a broker-dealer that uses Appendix E. In particular, we request comment on whether the supplemental reports should be prepared by a registered public accounting firm.

E. Proposed Amendments to Rule 17a–11; Broker-Dealer Notification Requirements

Exchange Act Rule 17a–11 requires that a broker-dealer provide notification of certain net capital levels and certain operational problems to the Commission and its designated examining authority within specified time periods. Currently, Exchange Act Rule 17a–11 also imposes certain additional notification requirements on an OTC derivatives dealer.[64] The Commission proposes to amend Rule 17a–11 to provide for additional notification requirements for a broker-dealer that uses proposed Appendix E to calculate certain of its capital charges. The events that would require Commission notification would indicate that the broker-dealer or its holding company may be experiencing financial or operational difficulty.

The proposed amendments would expand the additional notification requirements that apply to an OTC derivatives dealer to include a broker-dealer that uses Appendix E to calculate certain of its capital charges. For

[63] *See supra,* note 32.

[64] 17 CFR 240.17a–11(b)(2).

example, the broker-dealer would be required to provide notice if its tentative net capital falls below the minimum amount required pursuant to proposed Rule 15c3–1(a)(7)[65] or if its total tentative net capital is less than 120% of its required minimum tentative net capital.[66]

In addition, the proposed amendments would impose additional reporting requirements on a broker-dealer that uses Appendix E to calculate certain of its capital charges. Such a broker-dealer would have to provide notice upon the occurrence of any backtesting exception of its mathematical models that requires the broker-dealer to use a higher multiplication factor in the calculation of its market or credit risk capital charges. The amendments would also require that the broker-dealer provide notice if it becomes aware that an NRSRO has determined to reduce the credit rating of the broker-dealer, one of its affiliates, or an outstanding obligation of the broker-dealer or an affiliate, if the broker-dealer or one of its affiliates receives a notice of noncompliance from a regulatory agency or SRO, or if the broker-dealer becomes aware of a situation that may have a material adverse effect on the financial or operational condition of the holding company or an affiliate of the holding company. These notices would not be required when the holding company has provided notice to the Commission pursuant to its undertakings. We request comment on all aspects of these notification provisions.

F. Proposed Amendments to Rules 17h–1T and 17h–2T

Rule 17h–1T requires that a broker-dealer maintain and preserve records and other information concerning its holding company and affiliates, if the affiliates are likely to have a material impact on the financial or operational condition of the broker-dealer. Rule 17h–2T requires broker-dealers to report to the Commission on the information required to be maintained and preserved under Rule 17h–1T. We propose to amend these rules to exempt broker-dealers that use Appendix E to calculate certain of their capital charges. We believe that this exemption is appropriate because the holding company of the broker-dealer would be required to make and retain documents substantially similar to the documents required by Rule 17h–1T and to make reports to the Commission that are substantially similar to those required by Rule 17h–2T. We request comment on these proposed amendments.

III. General Request for Comment

The Commission solicits comment on its proposal to permit certain broker-dealers to apply for approval to compute capital charges using proposed Appendix E to Exchange Act Rule 15c3–1. First, we solicit comment on whether this proposed supervisory structure would result in adequate Commission oversight on a group-wide basis of eligible broker-dealers that opt for this voluntary capital computation alternative. Second, we solicit comment on whether proposed Appendix E to the net capital rule would provide appropriate capital levels for qualifying broker-dealers and whether the Commission should modify proposed Appendix E in any way. Third, we solicit comment on whether the proposal would address any perceived competitive disadvantages that impact broker-dealers that intend to conduct a global securities business. Fourth, we solicit comment on whether the Commission should consider a different approach to setting capital requirements for the broker-dealer or to the calculation of allowances for market and credit risk for CSEs, and, if so, what that approach should be. Fifth, we solicit comment on the effects on competition from making these proposals available to only certain broker-dealers. Are there firms below the proposed capital thresholds that would benefit from computing capital charges using proposed Appendix E? Would permitting such firms to use proposed Appendix E provide sufficient net capital reserves for these firms?

In addition, we solicit comment on whether we have adequately stated our approach to making this exemption available to firms that are subject to holding company supervision by another financial regulator. We request comment on whether there are any other approaches or issues that we should consider with respect to firms affiliated with holding companies supervised by another financial regulator.

For holding companies that own more than one broker-dealer, the alternative net capital computation under this proposal would be available only to a broker-dealer that meets the minimum capital requirements. We request comment on whether this proposal would create an incentive for such a holding company to change its business structure, such as combining its securities business into a single broker-dealer and, if so, whether there would be any resulting costs or benefits.

We note that on September 12, 2003, the Federal Reserve, OCC, OTS, and FDIC requested public comment on an interim final rule and a notice of proposed rulemaking to amend their risk-based capital standards for the treatment of assets in asset-backed commercial paper programs consolidated under the recently issued Financial Accounting Standards Board Interpretation No. 46, Consolidation of Variable Interest Entities.[67] The rule would also modify the risk-based capital treatment of certain securitizations with early amortization provisions. In addition, the treatment of securitization exposures is discussed in the banking agencies' Advanced Notice of Proposed Rulemaking on the New Basel Capital Accord.[68] Should the Commission consider any modifications to the proposed method for the group-wide calculation of allowances for market or credit risk with respect to asset-backed securitization programs? If so, how and why should the Commission modify the calculations for asset-backed securitization programs? Should the Commission consider any other issues related to the capital treatment of securitization exposures?

Finally, we invite commenters to provide views and data as to the costs and benefits associated with the proposed changes discussed above in comparison to the costs and benefits of the current regulatory framework. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission also requests information regarding the potential impact of the proposed amendments and rules on the economy on an annual basis. Commenters should provide empirical data to support their views. Comments should be submitted by February 4, 2004.

IV. Paperwork Reduction Act

Certain provisions of the proposed rule amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.[69] The Commission has submitted them to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C.

[65] Pursuant to proposed Rule 15c3–1(a)(7), this minimum tentative net capital amount is $1 billion.

[66] In that case, under current rules, the broker-dealer must immediately cease doing business.

[67] Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Capital Treatment of Consolidated Asset-Backed Commercial Paper Program Assets, 68 FR 56568 (proposed rule), 68 FR 56530 (interim final rule) (Oct. 1, 2003).

[68] *See* Risk-Based Capital Guidelines; Implementation of New Basel Capital Accord, 68 FR 45900 beginning at 45932 (August 4, 2003).

[69] 44 U.S.C. 3501 *et seq.*

3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid OMB control number. The titles for the collections of information are: (1) Appendix E to Rule 15c3–1, Market and credit risk capital charges for certain brokers or dealers; (2) Appendix G to Rule 15c3–1, Conditions for holding companies of certain brokers or dealers; (3) Rule 15c3–4, Internal risk management control systems for certain brokers or dealers; (4) Rule 17a–5, Reports to be made by certain brokers and dealers; (5) Rule 17a–11, Notification procedures for brokers and dealers; (6) Rule 17h–1T, Risk assessment recordkeeping requirements for associated persons of brokers and dealers; and (7) Rule 17h–2T, Risk assessment reporting requirements for brokers and dealers.

The Commission proposes to implement a voluntary alternative method for computing net capital charges under the Exchange Act for certain broker-dealers that are part of a holding company that has a group-wide internal risk management system and that consents, as a condition of the net capital treatment, to group-wide Commission supervision. A broker-dealer that maintains tentative net capital of at least $1 billion and net capital of at least $500 million could apply to the Commission for a conditional exemption from the application of the standard net capital computation and, upon Commission approval, elect to calculate certain of its market and credit risk net capital charges using internally developed mathematical models that the firm uses to measure risk. Commission supervision would include reporting and recordkeeping requirements and Commission examination of unregulated holding companies and affiliates that are not functionally regulated.

The collection of information obligations imposed by the proposal would be mandatory. However, applying for approval to use the alternative capital calculation is voluntary.

The information collected, retained, and/or filed pursuant to the proposed rule amendments would be accorded confidential treatment.

The Commission would use the information collected under the proposed amendments to monitor the financial condition, internal risk management control system, and activities of broker-dealers that elect to compute certain of their market and credit risk capital charges under the alternative method and their holding companies and affiliates. In particular, the proposed amendments would allow the Commission access to important information regarding activities of a broker-dealer's affiliates that could impair the financial and operational stability of the broker-dealer.

According to March 31, 2003 FOCUS filings, 28 registered broker-dealers reported that they had tentative net capital of at least $1 billion and net capital of at least $500 million. Based on discussions with industry representatives, the Commission believes, however, that only broker-dealers with at least $1 billion in deductions pursuant to (c)(2)(vi) of Rule 15c3–1 (also know as ''haircuts'') will find it cost effective to use the alternative capital computation. As of March 2003, based on FOCUS filings, there were 12 such broker-dealers. Therefore, the PRA estimates are based on the assumption that 12 broker-dealers will apply for an exemption under the proposal.

Many of the estimates are also based on information Commission staff receives through the risk assessment rules and meetings with and reports from member firms of the Derivatives Policy Group (''DPG'') and other broker-dealers and the Commission's experience in implementing the OTC derivatives dealer rules.

A broker-dealer that applies to use proposed Appendix E and its affiliates would have discretion in allocating the paperwork burden associated with the proposal among the entities in the CSE (''consolidated supervised entity''), including the broker-dealer. In estimating the total burden associated with the proposal on the broker-dealer, we have included the burdens arising from each proposed new rule amendment.

A. Proposed Appendix E to Rule 15c3–1, Market and Credit Risk Capital Charges for Certain Brokers or Dealers

Exchange Act Rule 15c3–1 requires broker-dealers to maintain minimum levels of net capital computed in accordance with the rule's provisions. These net capital reserves are intended to ensure that broker-dealers have sufficient capital to protect the assets of customers and to meet their responsibilities to other broker-dealers.

The Commission is proposing to add Appendix E to the rule to provide an alternative method for determining certain net capital charges for certain broker-dealers that manage risk on a group-wide basis and that submit to group-wide Commission supervision.

As part of the exemptive application to use Appendix E, the broker-dealer and its holding company would submit descriptions of internal risk management controls and methods to be used to measure risk, including descriptions of all mathematical models used to price positions and compute market and credit risk and how those models meet the requirements of proposed Appendix E. The application would also include sample capital assessments for the affiliate group and sample risk reports provided to the firm's management and a written undertaking by the holding company to comply with various requirements of the proposal, including those listed in proposed Appendix G.

Proposed Appendix E would also require that mathematical models used to compute market and credit risk be reviewed periodically and backtested quarterly. For example, the mathematical model used to calculate maximum potential exposure would be required to be backtested quarterly for at least 40 counterparties by comparing the daily change in the firm's daily exposure to the counterparty with the maximum potential exposure generated by the model.

Failure to require the current and proposed collections of information included in this proposal would undermine the Commission's ability to monitor the financial condition of these firms and could jeopardize the financial stability of broker-dealers using Appendix E to compute certain of their capital charges.

We estimate that each broker-dealer that applies under the proposal would spend approximately 1,000 hours to create and compile the various documents to be included with the application and to work with the Commission staff through the application process. This includes approximately 100 hours for an in-house attorney to complete a review of the application. Consequently, the Commission estimates the total burden associated with the application process for the 12 broker-dealers we expect to apply to be 12,000 hours.

These estimates are based on estimates the Commission made for the OTC derivatives dealer rules, which include a similar application requirement.[70] In that proposing release, we estimated that an OTC derivatives dealer would spend approximately 1,000 hours developing and submitting its VaR model and description of its risk management control system to the

[70] *See* 17 CFR 240.15c3–1f(a).

Commission.[71] No comments were received in response to the estimates in the proposing release, and those burden estimates were not changed in the final rule release.[72] For purposes of this proposal, we note that firms applying to use Appendix E will have already developed the VaR models that they would use to calculate market and credit risk under the proposal and will have already developed internal risk management control systems. This conclusion is based on information Commission staff has received through the risk assessment rules and meetings with and reports from the DPG and other broker-dealers and the Commission's experience in implementing the OTC derivatives dealer rules. On the other hand, we note that the proposal contains new requirements. For example, the firm must establish and document procedures to detect and prevent money laundering and terrorist financing. We also note that the application under this rule may be more complicated than the OTC derivatives dealer application and may take more time to complete.

We estimate that a broker-dealer using Appendix E would spend approximately 5,600 hours per year to review the models it uses to compute market and credit risk and approximately 160 hours each quarter, or approximately 640 hours per year, to backtest the models. Consequently, we estimate that the total burden under the proposal associated with reviewing and backtesting mathematical models for the 12 broker-dealers we expect to apply will be approximately 74,880 hours per year ((5,600 + 640) * 12).

B. Proposed Appendix G to Rule 15c3–1, Conditions for Holding Companies of Certain Brokers or Dealers

Under proposed Appendix G to Rule 15c3–1, the CSE would be required to calculate allowable capital and allowances for market, credit, and operational risk monthly on a consolidated basis, file certain monthly, quarterly, and annual reports with the Commission, make, keep current, and preserve certain records, and notify the Commission of certain events. These proposed conditions are needed to allow the Commission to properly oversee a broker-dealer that uses proposed Appendix E and to monitor the financial and operational condition of its affiliate group.

Based on Commission experience and discussions with industry participants, we estimate that the calculation of allowable capital and allowances for market, credit, and operational risk would require approximately 90 hours per month, or approximately 1080 hours per year. Thus, the aggregate annual burden for the 12 broker-dealers we expect to apply under the proposal would be approximately 12,960 hours. In addition, we estimate that it would require approximately 5,600 hours per year to review and update the mathematical models used to make these calculations. Thus, the aggregate annual burden to review and update the models for the 12 broker-dealers would be approximately 67,200 hours. Finally, we estimate that it would require approximately 160 hours each quarter, or approximately 640 hours each year, to backtest the models. Thus, the aggregate annual burden to backtest the models for the 12 broker-dealers we expect to apply under the proposal would be approximately 7,680 hours.

The reporting requirements of proposed Appendix G are necessary to keep the Commission informed of, among other things, the financial condition, financial and operational risk exposures, backtesting results, and management controls of the CSE and whether the CSE is in compliance with the conditions of the broker-dealer's exemption. These reports would help the Commission to anticipate the effect on the CSE of significant economic events and their related impact on the broker-dealer.

We estimate that the average amount of time necessary to prepare and file the monthly reports required by Appendix G would be approximately 8 hours per month, or approximately 96 hours per year, that the average amount of time necessary to prepare and file the quarterly reports would be about 16 hours per quarter, or approximately 64 hours per year, and that the average amount of time necessary to prepare and file the annual audit reports would be approximately 200 hours per year. Consequently, we estimate that the total annual reporting burden of proposed Appendix G for the 12 broker-dealers we expect to apply under the proposal would be approximately 4,320 hours.

We based these estimates on the PRA burden estimates for Exchange Act Rule 17a–12, Reports to be made by certain OTC derivatives dealers. The PRA burden estimate for Rule 17a–12 is 180 hours per year to prepare and file the information required by the rule (based on an average of four responses per year and an average of 20 hours preparing each response with an additional 100 hours spent preparing the annual audit). However, we believe that the burden under this proposal would be lower than the Rule 17a–12 burden estimates because CSEs already generate many of the required reports for internal management purposes.

We expect that any additional burden associated with the requirements of proposed Appendix G relating to making, keeping, and preserving records would be minimal because a prudent firm that manages risk on a group-wide basis would make and preserve these records in the ordinary course of its business. We estimate that the average one-time burden of making and preserving these records would be approximately 40 hours and that the average annual burden would be approximately 290 hours. Consequently, we estimate that the total burden for the 12 broker-dealers we expect will apply under this proposal would be approximately 480 hours on a one-time basis and approximately 3,480 hours per year.

The notification provisions of proposed Appendix G are designed to give the Commission advance warning of situations that may pose material, financial and operational risks to the broker-dealer and the CSE. These provisions are integral to Commission supervision of broker-dealers that use Appendix E. We estimate that it would require a total of approximately one hour per year for all 12 of the broker-dealers to comply with the notification provisions of proposed Appendix G.[73]

C. Proposed Amendments to Rule 15c3–4, Internal Risk Management Control Systems

We propose to amend Rule 15c3–4, which currently applies to OTC derivatives dealers that use Appendix F to calculate certain of their capital charges, to expand its coverage to broker-dealers that use Appendix E. Rule 15c3–4 is designed to ensure the integrity of the risk measurement, monitoring, and management process, and to clarify accountability, at the appropriate organizational level, for defining the permitted scope of activity and level of risk.

[71] Exchange Act Release No. 39454 (Dec. 17, 1997), 62 FR 67940 (December 30, 1997).

[72] Exchange Act Release No. 40594 (Oct. 23, 1998), 63 FR 59362 (November 3, 1998).

[73] The Commission received approximately 1,067 Rule17a–11 notifications during calendar year 2002, when there were approximately 6,800 active broker-dealers registered with the Commission. Thus, approximately 11% of registered broker-dealers filed a Rule 17a–11 notice in 2002. We therefore estimate that of the 12 broker-dealers we expect will apply under the proposal, one may be required to file an Appendix G notice each year. We estimate that, consistent with the Rule 17a–11 PRA burden estimate, it will take approximately one hour to file that notice.

The proposed rule amendments would require a broker-dealer that elects to use Appendix E to consider a number of issues affecting its business environment when creating its risk management control system. For example, such a firm would need to consider, among other things, the sophistication and experience of relevant trading, risk management, and internal audit personnel, as well as the separation of duties among these personnel, when designing and implementing its internal control system's guidelines, policies, and procedures. This would help to ensure that the control system that is implemented would adequately address the risks posed by the firm's business and the environment in which it is being conducted. In addition, this would enable a broker-dealer electing to use Appendix E to implement specific policies and procedures unique to its circumstances.

In implementing its policies and procedures, the broker-dealer would be required to document and record its system of internal risk management controls. In particular, such a firm would be required to document its consideration of certain issues affecting its business when designing its internal controls. The broker-dealer also would be required to prepare and maintain written guidelines that discuss its internal control system.

The proposed rule amendments would be an integral part of the Commission's financial responsibility program for broker-dealers whose applications under Appendix E are approved by the Commission. The information to be collected under the proposed amendments to Exchange Act Rule 15c3–4 would be essential to the regulation and oversight of major securities firms that voluntarily elect to use Appendix E and to the monitoring of their compliance with the proposed financial responsibility requirements. More specifically, requiring a broker-dealer that elects to use Appendix E to document the planning, implementation, and periodic review of its risk management controls are designed to ensure that all pertinent risk management issues are considered, that the risk management controls are implemented properly, and that they continue to adequately address the risks faced by major securities firms.

The following estimates of the initial and annual PRA burdens associated with the amendments to Rule 15c3–4 are based on the present Rule 15c3–4 PRA burden estimates, discussions with potential applicants, and the Commission's experience with the implementation of Rule 15c3–4 for OTC derivatives dealers. The present Rule 15c3–4 burden estimate is an average of 2,000 hours on a one-time basis to implement the risk management control system and an average of 200 hours per year to review and update the system. This estimate was based on the implementation of a risk management control system for a single entity: the OTC derivatives dealer. In this proposal, the broker-dealer is required to implement a risk management control system and the holding company is required to implement a group-wide risk management control system. Although the 12 broker-dealers we expect to apply under this proposal have already developed internal risk management control systems, not all of them have implemented and formally documented a group-wide system. We believe that it would take more than 2,000 hours for such a broker-dealer to implement a formal, documented group-wide risk management control system. On the other hand, if a firm already has a formally documented group-wide internal risk management control system, we believe that it would take less than 2,000 hours to bring that system into compliance with amended Rule 15c3–4. Of the 12 broker-dealers we expect will apply under this proposal, we estimate that 6 have formal, documented, group-wide internal risk management control systems, and that 6 have internal risk management control systems that are not formally documented for the affiliate group. We estimate that a firm with a formal, documented group-wide internal risk management control system would spend approximately 1,000 hours on a one-time basis to comply with the proposed amendments to Rule 15c3–4 and that a firm that does not have a formally documented group-wide internal control system will spend up to approximately 3,600 hours on a one-time basis to comply with the proposed amendments to Rule 15c3–4. The total one-time burden for the twelve firms would therefore be approximately 27,600 hours. In addition, we estimate that each of the 12 broker-dealers would spend approximately 250 hours per year reviewing and updating its risk management control system, for an aggregate annual burden of 3,000 hours.

D. Proposed Amendments to Rule 17a–5, Reports To Be Made by Certain Brokers and Dealers

The proposed amendments to Exchange Act Rule 17a–5 would require broker-dealers using Appendix E to submit monthly, quarterly, and annual reports with the Commission. The proposed amendments would be an integral part of our financial responsibility program for broker-dealers electing to use Appendix E. The information to be collected under the proposed amendments to Rule 17a–5 would be essential to the regulation of these broker-dealers and would assist us and the examining authorities responsible for reviewing the activities of these firms to monitor and enforce compliance with applicable Commission rules, including rules pertaining to financial responsibility. These periodic reports would also aid the Commission in evaluating the activities conducted by these broker-dealers and in anticipating, where possible, how these firms could be affected by significant economic events.

We estimate that the average amount of time necessary to prepare and file the additional monthly reports required by this amendment to Rule 17a–5 would be about 4 hours per month, or approximately 48 hours per year; that the average amount of time necessary to prepare and file the additional quarterly reports would be about 8 hours per quarter, or approximately 32 hours per year; and that the average amount of time necessary to prepare and file the additional supplemental reports with the annual audit required would be approximately 40 hours per year. Consequently, we estimate that the total annual additional burden attributable to the proposed amendments to Rule 17a–5 for the 12 broker-dealers we expect to apply under the proposal would be approximately 1,440 hours.

These estimates are based on our present PRA burden estimate for Rule17a–12. The PRA burden estimate for Rule 17a–12 is 180 hours per year to prepare and file the information required by the rule (based on an average of four responses per year and an average of 20 hours preparing each response with an additional 100 hours spent on preparing the annual audit). However, the estimated burden attributable to the proposed amendments is less than those estimates because the broker-dealer is already required to file monthly, quarterly, and annual reports with the Commission under Rule 17a–5. In addition, the amendments are designed to allow a broker-dealer to provide the required information to the Commission in a form that the firm already produces for internal management purposes.

E. Proposed Amendments to Rule 17a–11, Notification Procedures for Brokers and Dealers

Under the proposed amendments to Rule 17a–11, a broker-dealer that uses proposed Appendix E would have to give notice to the Commission of certain events beyond those the broker-dealer is currently required to give notice of. These events include, for example, that an NRSRO has determined to downgrade the credit rating of the obligations of the broker-dealer or one of its affiliates, the broker-dealer receives notice from a regulator that one of its affiliates is not in compliance with rules or agreements with the regulator, the broker-dealer becomes aware of a situation that may have a material adverse effect on a material affiliate, or the occurrence of certain backtesting exceptions of the broker-dealer's mathematical models.

These events are expected to be rare. However, they are of supervisory concern. The Commission received approximately 1,067 Rule 17a–11 notices from 731 broker-dealers during calendar year 2002. At that time, there were approximately 6,800 active broker-dealers registered with the Commission. Thus we estimate that approximately 11% of active broker-dealers filed a Rule 17a–11 notice during calendar year 2002 (731/6,800 = .1075) and that it would take approximately one hour to file such a notice. Therefore, we estimate that of the 12 broker-dealers we expect to apply under this proposal, approximately one may be required to file notice pursuant to the proposed amendments to Rule 17a–11 each year. Thus, we estimate that the total annual burden of the proposed amendments to Rule 17a–11 for the 12 broker-dealers we expect to apply under the proposal would be about one hour.

F. Proposed Amendments to Rules 17h–1T and 17h–2T, Risk Assessment Recordkeeping Requirements for Associated Persons of Brokers and Dealers and Risk Assessment Reporting Requirements for Brokers and Dealers

Rules 17h–1T and 17h–2T require that certain broker-dealers make records of and file quarterly reports with the Commission regarding the financial condition, organization, and risk management practices of their affiliated group. The amendments to Rules 17h–1T and 17h–2T would exempt a broker-dealer that uses Appendix E from the rules to the extent that the holding company of the broker or dealer maintains the information pursuant to proposed Appendix G.

These amendments would reduce the PRA burden for broker-dealers that use Appendix E. The current PRA burden estimate for Rules 17h–1T and 17h–2T is approximately 10 hours per year for each respondent. We estimate that the aggregate savings under the proposed amendments for the 12 firms we expect to apply under the proposal would be approximately 120 hours per year.

G. Request for Comment

Under 44 U.S.C. 3506(c)(2)(B), the Commission seeks comment to evaluate:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility;
- The accuracy of our estimates of the burden of the proposed collection of information;
- Ways in which we might enhance the quality, utility, and clarity of the information to be collected; and
- Ways in which we might minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements should address them to The Office of Management and Budget, Room 3208, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, New Executive Office Building, Washington, DC 20503; and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. The submission should reference File No. S7–21–03. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**; therefore, comments to OMB are best assured of having full effect if OMB receives them within 30 days of this publication.

The Commission has submitted the proposed collections of information to OMB for approval. Requests for the materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–21–03, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549–0609.

V. Costs and Benefits of the Proposed Rule Amendments

To assist the Commission in its evaluation of the costs and benefits that may result from the proposed amendments, which establish a voluntary alternative method for computing net capital charges for certain broker-dealers, commenters are requested to provide analysis and data relating to the costs and benefits associated with the proposed amendments. In particular, the Commission requests comments on the potential costs for any necessary modifications to internal risk management control, accounting, information management, and recordkeeping systems required to comply with the proposed amendments and the potential benefits arising from participation in the regulatory scheme.

The proposed amendments would establish a voluntary alternative method for computing net capital charges for certain broker-dealers that are part of a holding company that has a group-wide internal risk management control system and that consents to group-wide Commission supervision. We have identified certain costs and benefits that would be associated with the proposal.

A broker-dealer that maintains tentative net capital of at least $1 billion and net capital of at least $500 million could apply to the Commission for a conditional exemption from the application of the standard net capital rule calculation and, upon Commission approval, calculate certain of its market and credit risk capital charges using the firm's own internal mathematical models for risk measurement, including internally developed VaR models and scenario analysis. According to March 31, 2003 FOCUS filings, 28 registered broker-dealers reported tentative net capital and net capital that equaled or exceeded those amounts. Based on discussions with industry representatives, we believe, however, that only broker-dealers with at least $1 billion in deductions pursuant to paragraph (c)(2)(vi) of Rule 15c3–1 (also known as ''haircuts'') will find it cost effective to use the alternative capital computation. As of March 2003, based on FOCUS filings, there were 12 such broker-dealers. Therefore, our cost-benefit estimates are based on the assumption that 12 broker-dealers will apply under the proposal.

Many of the estimates are also based on information Commission staff receives through the risk assessment rules and meetings with and reports from the DPG and other broker-dealers and the Commission's experience in implementing the OTC derivatives dealer rules.

A broker-dealer that applies to use proposed Appendix E and its affiliates have discretion in allocating the costs associated with the proposal among the entities in the CSE (''consolidated supervised entity''), including the broker-dealer. In estimating the total costs associated with the proposal on the broker-dealer, we have included the costs arising from each proposed new rule amendment.

The proposed alternative net capital system is designed to increase a broker-dealer's operational efficiency by having its supervisory risk assessment and the computation of certain capital charges more closely aligned to the mathematical model-based methods the firm already uses to manage its business risk and capital, while establishing net capital requirements sufficient to require maintenance of capital to achieve the goals of the net capital rule and Exchange Act § 15(c)(3). The incorporation of mathematical risk management techniques into the calculation of net capital charges should enable such a broker-dealer to reallocate capital from the broker-dealer to affiliates that may receive a higher return than the broker-dealer. The proposed rule amendments should also allow broker-dealers to increase operational efficiency by adopting risk management practices which have become industry best practice.

We anticipate that cost savings would result in several areas. Under the proposal, a broker-dealer would become subject to specifically tailored capital and other requirements. The broker-dealer would be able to compute certain of its net capital charges using internally developed mathematical models that the firm uses to manage risk and to report risks to the Commission using internal reports that the firm already generates for risk management purposes.

The primary benefit for the broker-dealer would be the reduction in net capital charges that we expect would result from the use of the alternative method. This benefit, however, is difficult to quantify. While reductions in net capital requirements would likely result from the use of the alternative method, broker-dealers typically maintain higher levels of capital than the rules require. Also, the mix of positions held by the broker-dealer may change if the regulatory cost of holding certain positions is reduced. Finally, the reduction in net capital charges would vary significantly among broker-dealers based on the size and risk of their portfolios.

The 12 firms we expect to apply under this proposal reported capital charges ranging from approximately $1 billion to approximately $4 billion, for a total of approximately $32 billion, on their first quarter of 2003 FOCUS reports. We expect that firms with larger capital charges would realize a larger percentage reduction in their capital charges than firms with smaller capital charges. We estimate that the 12 firms would realize an average reduction in capital charges of approximately 40%, or a total reduction in capital charges for the 12 firms of approximately $13 billion. If the firms reallocate that capital to fund business activities for which the rate of return is 20 basis points (0.2%) higher, the 12 broker-dealers could receive a total annual benefit of approximately $26 million.

Firms that do business in the EU have indicated that they may need to demonstrate that they are subject to consolidated supervision at the holding company level that is ''equivalent'' to EU consolidated supervision. Without a demonstration of ''equivalent'' supervision, we understand that the affiliate institution located in the EU may either be subject to additional capital charges or be required to form a sub-holding company in the EU. We expect the Commission supervision contemplated by this proposal would meet this standard. As a result, we believe this proposal would minimize duplicative regulatory burdens on firms that are active in the EU as well as in other jurisdictions that may have similar laws.

Based on the responses of five firms to a survey conducted during the OTC derivatives dealer rulemaking process, we estimate that it would cost approximately $8 million per year for a firm to form and maintain a sub-holding company in the EU.[74] Consequently, for the 12 broker-dealers we expect will apply under this proposal, not being required to form and maintain a sub-holding company in the EU would save the firms a total of approximately $96 million per year.

These amendments would exempt broker-dealers that use Appendix E from Rules 17h–1T and 17h–2T. The current PRA burden estimate for Rules 17h–1T and 17h–2T is approximately 10 hours per year for each respondent. We estimate that the aggregate savings under the proposed amendments for the 12 firms we expect to apply under the proposal would be approximately 120 hours per year, and we expect that a financial reporting manager would do the work. The staff estimates that the hourly salary of a financial reporting manager is $50.63 per hour.[75] The total cost savings for the 12 firms would be approximately $6,000 (120 * $50.63 = $6,076).

To the extent that firms electing the proposed regulatory system improve their internal risk management control systems, we would expect that the firms would realize a benefit in the form of reduced borrowing costs. This benefit will vary widely depending on the risk management practices the firms already have in place. For some firms that already have formally documented group-wide control systems, there may be no benefit.

We believe that the proposed regulatory system would also result in benefits to regulators and to financial markets. The Commission would have access to group-wide information concerning the operation and financial condition of the broker-dealer's holding company and affiliates. This information would help the Commission to assess whether the activities or financial condition of the holding company or affiliates may pose risks to the financial health of the broker-dealer. Also, the broker-dealer and holding company would have to comply with stringent requirements concerning their internal risk management control systems. We expect that this requirement would promote the financial responsibility of these entities and reduce the risk of significant losses by the broker-dealer. By reducing the risk of significant losses by a single firm, internal risk management control systems would also reduce the risk that the problems of one firm would spread, causing defaults by other firms and undermining securities markets as a whole.

Firms electing the alternative capital computation would incur various costs. These firms would incur the one-time and ongoing costs of submitting an application and amendments to the application to use the alternative computation. We estimate that each broker-dealer that applies under the proposal would spend approximately 1,000 hours to create and compile the various documents to be included with the application and to work with the Commission staff through the application process. The staff anticipates that this would include approximately 100 hours for an in-house attorney and 900 hours for a senior compliance staff member. The

[74] The five firms estimated that their annual operating costs would increase by an average of approximately $7 million to set up a separate company operating as an OTC derivatives dealer. We multiplied by 1.12 to account for inflation since 1998.

[75] Securities Industry Association's (SIA) Report on Management and Professional Earnings in the Securities Industry—2002 (''SIA Report''). Generally, to calculate an hourly cost using the SIA's Report, the staff takes the median (or, if no median is provided, the mean) salary provided in the SIA's Report for the position cited, divide that amount by 1,800 hours (in the average year), then multiply the result by 135% to account for employee overhead costs. (Financial Reporting Manager) + 35% overhead (based on end-of-year 2002 figures) ($67,500 per year/1800 hours/year * 1.35 = $50.63 per hour).

staff estimates that the hourly salary of an attorney is $63.75 per hour,[76] for a total cost of approximately $80,000 ($63.75 * 100 * 12 = $76,500). The staff estimates that the hourly salary of a senior compliance staff person is $56.60 per hour,[77] for a total cost of approximately $610,000 ($56.60 * 900 * 12 = $611,280).

These estimates are based on estimates the Commission made for the OTC derivatives dealer rules, which include a similar application requirement.[78] We estimated that an OTC derivatives dealer would spend approximately 1,000 hours developing and submitting its VaR model and description of its risk management control system to the Commission.[79] No comments were received in response to the estimates in the proposing release, and those estimates were not changed in the final rule release. For purposes of this proposal, we note that firms applying to use Appendix E will have already developed the VaR models that they will use to calculate market and credit risk under the proposal and will have already developed internal risk management control systems. This conclusion is based on information Commission staff receives through the risk assessment rules and meetings with and reports from the DPG and other broker-dealers and the Commission's experience in implementing the OTC derivatives dealer rules. On the other hand, we note that the proposal contains additional requirements. For example, the firm must establish and document procedures to detect and prevent money laundering and terrorist financing. We also note that the application under this rule may be more complicated than the OTC derivatives dealer application and may take more time to complete.

We estimate that a broker-dealer using Appendix E would spend approximately 5,600 hours per year to review the models it uses to compute market and credit risk and approximately 160 hours each quarter, or approximately 640 hours per year, to backtest the models. Consequently, we estimate that it will take approximately 74,880 hours ((5,600 + 640) * 12) per year to review and backtest mathematical models for the 12 broker-dealers we expect to apply under the proposal, and that a financial reporting specialist would do the work. The staff estimates that the hourly salary of a financial reporting manager is $50.63 per hour,[80] for a total cost of approximately $3.8 million per year ($50.63 * 74,880 = $3,791,174).

Based on Commission experience and discussions with industry participants, we estimate that the holding company's calculation of allowable capital and allowances for market, credit, and operational risk would require approximately 90 hours per month, or approximately 1,080 hours per year, for a total of approximately 12,960 hours per year for the 12 broker-dealers, and that a senior accountant would do the work. The staff estimates that the hourly salary of a senior accountant is $49.87 per hour.[81] The total annual cost would be approximately $650,000 ($49.87 *12,960 = $646,315). In addition, we estimate that it would require approximately 5,600 hours per year to review and update the mathematical models used to make these calculations, or approximately 67,200 hours per year for the 12 broker-dealers, and we expect that a financial reporting manager would do the work. The staff estimates that the hourly salary of a financial reporting manager is $50.63 per hour.[82] The total annual cost would be approximately $3.4 million ($50.63 * 67,200 = $3,402,336). Finally, we estimate that it would require approximately 160 hours each quarter, or approximately 640 hours each year, to backtest the models. Thus, the aggregate annual burden to backtest the models for the 12 broker-dealers we expect to apply under the proposal would be approximately 7,680 hours, and we expect that a junior research analyst would do the work. The staff estimates that the hourly salary of a junior research analyst is $38.92 per hour,[83] for a total cost of approximately $300,000 ($38.92 * 7,680 = $298,906).

We estimate that the average amount of time necessary to prepare and file the monthly reports required by Appendix G would be approximately 8 hours per month, or approximately 96 hours per year, that the average amount of time necessary to prepare and file the quarterly reports would be about 16 hours per quarter, or approximately 64 hours per year, and that the average amount of time necessary to prepare and file the annual audit reports would be approximately 200 hours per year. Consequently, we estimate that the total for the 12 broker-dealers we expect to apply under the proposal would be approximately 4,320 hours ((96 + 64 + 200) * 12) per year, and we expect that a senior accountant would do the work. The staff estimates that the hourly salary of a senior accountant is $49.87 per hour,[84] for a total of approximately $215,000 ($49.87 * 4,320 = $215,438).

We based these estimates on the PRA burden estimates for Exchange Act Rule 17a–12, Reports to be made by certain OTC derivatives dealers. The PRA burden estimate for Rule 17a–12 is 180 hours per year to prepare and file the information required by the rule (based on an average of four responses per year and an average of 20 hours preparing each response with an additional 100 hours spent on preparing the annual audit). However, we believe that the cost under this proposal would be lower than the Rule 17a–12 estimates because CSEs already generate many of the required reports for internal management purposes.

We expect that any additional costs associated with the requirements of proposed Appendix G relating to making, keeping, and preserving records would be minimal because a prudent firm that manages risk on a group-wide basis would make and preserve these records in the ordinary course of its business. We estimate it would take approximately 40 one-time hours and that the average annual time spent would be approximately 290 hours. Consequently, we estimate that the 12 broker-dealers we expect will apply under this proposal would spend approximately 480 hours on a one-time basis and approximately 3,480 hours per year, and we expect that a senior accountant would do the work. The staff estimates that the hourly salary of a senior accountant is $49.87 per hour,[85] for a total one-time cost of approximately $24,000 ($49.87 * 480 = $23,938) and a total annual cost of

[76] SIA Report, (Attorney) + 35% overhead (based on end-of-year 2002 figures) ($85,00 per year/1800 hours/year * 1.35 = $63.75 per hour).

[77] SIA Report, (Senior Compliance Staff) + 35% overhead (based on end-of-year 2002 figures) ($75,464 per year/1800 hours/year * 1.35 = $56.60 per hour).

[78] *See* 17 CFR 240.15c3–1f(a).

[79] Exchange Act Release No. 39454 (Dec. 17, 1997), 62 FR 67940 (December 30, 1997).

[80] SIA Report, (Financial Reporting Manager) + 35% overhead (based on end-of-year 2002 figures) ($67,500 per year/1800 hours/year * 1.35 = $50.63 per hour).

[81] SIA Report, (Senior Accountant) + 35% overhead (based on end-of-year 2002 figures) ($66,500 per year/1800 hours/year * 1.35 = $49.87 per hour).

[82] SIA Report, (Financial Reporting Manager) + 35% overhead (based on end-of-year 2002 figures) ($67,500 per year/1800 hours/year * 1.35 = $50.63 per hour).

[83] SIA Report, (Junior Research Analyst) + 35% overhead (based on end-of-year 2002 figures) ($51,900 per year/1800 hours/year * 1.35 = $38.92 per hour).

[84] SIA Report, (Senior Accountant) + 35% overhead (based on end-of-year 2002 figures) ($66,500 per year/1800 hours/year * 1.35 = $49.87 per hour).

[85] SIA Report, (Senior Accountant) + 35% overhead (based on end-of-year 2002 figures) ($66,500 per year/1800 hours/year * 1.35 = $49.87 per hour).

approximately $170,000 ($49.87 * 3,480 = $173,548).

We estimate that it would require a total of approximately one hour per year for all 12 of the broker-dealers to comply with the notification provisions of proposed Appendix G,[86] and that a senior compliance staff person would do the work. The staff estimates that the hourly salary of a senior compliance staff person is $56.60 per hour,[87] for a total cost for the 12 firms of approximately $60.

The cost estimates regarding the amendments to Rule 15c3–4 are based on the present Rule 15c3–4 PRA burden estimates, discussions with potential applicants, and the Commission's experience with implementation of Rule 15c3–4 for OTC derivatives dealers. The present Rule 15c3–4 PRA burden estimate is an average of 2,000 hours on a one-time basis to implement the risk management control system and an average of 200 hours per year to review and update the system. This estimate was based on the implementation of a risk management control system for a single entity: the OTC derivatives dealer. In this proposal, the broker-dealer is required to implement a risk management control system and the holding company is required to implement a group-wide risk management control system. Although the 12 broker-dealers we expect to apply under this proposal have already developed internal risk management control systems, not all of them have implemented and formally documented a group-wide system. We believe that it would take more than 2,000 hours for such a broker-dealer to implement a formal, documented group-wide risk management control system. On the other hand, if a firm already has a formally documented group-wide internal risk management control system, we believe that it would take less than 2,000 hours to bring that system into compliance with amended Rule 15c3–4. Of the 12 broker-dealers we expect will apply under this proposal, we estimate that 6 have formal, documented, group-wide internal risk management control systems, and that 6 have internal risk management control systems that are not formally documented for the affiliate group. We estimate that a firm with a formal, documented group-wide internal risk management control system would spend approximately 1,000 hours on a one-time basis to comply with the proposed amendments to Rule 15c3–4 and that a firm that does not have a formally documented group-wide internal control system will spend up to approximately 3,600 hours on a one-time basis to comply with the proposed amendments to Rule 15c3–4. The total for the twelve firms would therefore be approximately 27,600 hours ((6 * 1,000) + (6 * 3,600)) on a one-time basis and, on the basis of an estimate of approximately 250 hours per year to review and update its risk management control system, a total of 3,000 hours per year for the 12 firms. We expect that a senior compliance staff person would do the work. The staff estimates that the hourly salary of a senior compliance staff person is $56.60 per hour,[88] for a total one-time cost of approximately $1.6 million ($56.60 * 27,600 = $1,562,160) and a total annual cost of approximately $170,000 ($56.60 * 3,000 = $169,800).

The information technology systems used by CSEs to manage risk, make and retain records, and report and calculate capital differ widely depending on the size of the CSE and the types of business it engages in. These information technology systems may be in varying stages of readiness to enable the CSE to meet the requirements of the proposal. Based on Commission experience and informal discussions with potential applicants, we estimate that it will cost a CSE that has well-developed information technology systems approximately $5 million to upgrade its systems, that it will cost a CSE that has less well-developed systems approximately $50 million to upgrade its systems, and that, on average, it will cost a CSE approximately $27.5 million to upgrade its systems. Consequently, we estimate that the 12 broker-dealers we expect to apply under the proposal would spend a total of approximately $330 million to upgrade their information technology systems. We believe that this would be a one-time cost.

We estimate that the average amount of time necessary to prepare and file the additional monthly reports required by the proposed amendment to Rule 17a–5 would be about 4 hours per month, or approximately 48 hours per year; that the average amount of time necessary to prepare and file the additional quarterly reports would be about 8 hours per quarter, or approximately 32 hours per year; and that the average amount of time necessary to prepare and file the additional supplemental reports with the annual audit would be approximately 40 hours per year. Consequently, the 12 broker-dealers would spend approximately 1,440 hours ((48 + 32 + 40) * 12) per year to comply, and we expect that a senior accountant would do the work. The staff estimates that the hourly salary of a senior accountant is $49.87 per hour,[89] for a total annual cost of approximately $72,000 ($49.87 * 1,440 = $71,813).

We estimate that approximately 10% of active broker-dealers filed a Rule 17a–11 notice during calendar year 2001 and that it would take approximately one hour to file such a notice. Therefore, we estimate that of the 12 broker-dealers we expect to apply under this proposal, at most one may be required to file notice pursuant to the proposed amendments to Rule 17a–11 each year. Thus, we estimate that the total for the 12 broker-dealers we expect to apply under the proposal would be about one hour. The staff estimates that the hourly salary of a senior compliance staff person is $56.60 per hour,[90] for a total cost of approximately $60.

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

Section 3(f) of the Exchange Act[91] requires us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act[92] requires us to consider the anticompetitive effects of any rules that we adopt under the Exchange Act. Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

[86] The Commission received 692 Rule17a–11 notifications during calendar year 2001, when there were approximately 7,217 broker-dealers registered with the Commission. Thus, approximately 10% of registered broker-dealers filed a Rule 17a–11 notice in 2001. We therefore estimate that of the 12 broker-dealers we expect will apply under the proposal, one may be required to file an Appendix G notice each year. We estimate that, consistent with the Rule 17a–11 PRA burden estimate, it will take approximately one hour to file that notice.

[87] SIA Report, (Senior Compliance Staff) + 35% overhead (based on end-of-year 2002 figures) ($75,464 per year/1800 hours/year 1.35 = $56.60 per hour).

[88] SIA Report, (Senior Compliance Staff) + 35% overhead (based on end-of-year 2002 figures) ($75,464 per year/1800 hours/year * 1.35 = $56.60 per hour).

[89] SIA Report, (Senior Accountant) + 35% overhead (based on end-of-year 2002 figures) ($66,500 per year/1800 hours/year * 1.35 = $49.87 per hour).

[90] SIA, Management and Professional Earnings, (Senior Compliance Staff) + 35% overhead (based on end-of-year 2002 figures) ($75,464 per year/1800 hours/year * 1.35 = $56.60 per hour).

[91] 15 U.S.C. 78c(f).

[92] 15 U.S.C. 78w(a)(2).

The Commission's preliminary view is that the proposed rule amendments should promote efficiency, competition, and capital formation. These amendments should provide eligible broker-dealers an opportunity to increase operational efficiency by having their supervisory risk assessment and the computation of certain capital charges more closely aligned to the sophisticated methods the firms already use to manage their business risk and capital, while at the same time requiring sufficient net capital. The incorporation of mathematical risk management techniques into the calculation of net capital charges should enable such a broker-dealer to reallocate capital from the broker-dealer to affiliates that may receive a higher return than the broker-dealer. The proposed rule amendments should also allow broker-dealers to increase operational efficiency by adopting risk management practices which have become industry best practice. In addition, the proposed amendments should enhance the ability of U.S. securities firms to compete effectively in global securities markets.

We solicit comments on these matters with respect to the proposed rule amendments. Would the amendments have an adverse effect on competition that is neither necessary nor appropriate in furtherance of the purposes of the Exchange Act? Would the proposed amendments, if adopted, promote efficiency, competition, and capital formation? Commenters are requested to provide empirical data and other factual support for their views, if possible.

VII. Regulatory Flexibility Act Certification

The Commission hereby certifies, pursuant to 5 U.S.C. 605(b), that proposed amendments to Rules 15c3–1, 15c3–4, 17a–5, 17a–11, 17h–1T, and 17h–2T, if adopted, would not have a significant economic impact on a substantial number of small entities.

These provisions would be available only to broker-dealers that have tentative net capital of at least $1 billion and net capital of at least $500 million. According to March 2003 FOCUS reports, there are only 28 such firms, and, of these firms, none were small businesses.[93] Further, election to apply for the alternative capital regime is voluntary. The proposed rules and rule amendments, therefore, should not have a significant impact on a substantial number of small entities.

We encourage written comments regarding this certification. We solicit comment on whether the proposed rule amendments could have an effect that we have not considered. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

VIII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,'' [94] a rule is ''major'' if it has resulted, or is likely to result, in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effect on competition, investment or innovation.

We request comment on the potential impact of the proposed amendments on the economy on an annual basis. We request that commenters provide empirical data and other factual support for their views.

IX. Statutory Authority

The Commission proposes to amend Title 17, Chapter II of the Code of Federal Regulations pursuant to the Exchange Act (15 U.S.C. 78a *et seq.*) (particularly sections 15(c), 17(a), 23, 24(b), and 36 thereof (15 U.S.C. 78o(c), 78q(a), 78w, 78x(b), and 78mm)).

List of Subjects in 17 CFR Part 240

Broker-dealers, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule Amendments

For the reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–*1*, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7202, 7241, 7262, and 7263; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

2. Remove the authority citations following §§ 240.15c3–1 and 240.17a–5.

3. Section 240.15c3–1 is amended by:

a. Revising the undesignated section heading preceding paragraph (a)(7);

b. Adding text to paragraph (a)(7);

c. Revising the undesignated section heading preceding paragraph (c)(13);

d. Adding text to paragraph (c)(13); and

e. Adding a sentence to the end of paragraph (c)(15).

The additions and revisions read as follows:

§ 240.15c3–1 Net capital requirements for brokers or dealers.

(a) * * *

Alternative Net Capital Computation for Broker-Dealers That Elect to be Supervised on a Consolidated Basis

(7) In accordance with Appendix E to this section (§ 240.15c3–1e), the Commission may approve, in whole or in part, an application or an amendment to an application by a broker or dealer, when calculating net capital, to use the market risk standards of Appendix E to calculate the market risk capital charge on some or all of its positions instead of the provisions of paragraph (c)(2)(vi) of this section, and to use the credit risk standards of Appendix E to calculate the credit risk capital charge on certain credit exposures arising from transactions in derivatives instruments instead of the provisions of paragraph (c)(2)(iv) of this section, subject to any conditions or limitations the Commission may require as necessary or appropriate in the public interest and consistent with the protection of investors. Such a broker or dealer must at all times maintain tentative net capital of not less than $1 billion and net capital of not less than $500 million.

(c) * * *

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[93] Pursuant to 17 CFR 240.0–10, ''the term *small business* or *small organization* shall: [* * *] (c) [w]hen used with reference to a broker or dealer, mean a broker or dealer that: (1) [h]ad total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to § 240.17–5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) [i]s not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this section * * *'' (17 CFR 240.0–10(c)). Further, pursuant to § 240.0–10(i), ''[f]or purposes of paragraph (c) of this section, a broker or dealer is affiliated with another person if [* * *] [s]uch broker or dealer introduces transactions in securities, other than registered investment company securities or interests or participations in insurance company separate accounts, to such other person or introduces accounts of customers or other brokers or dealers, other than accounts that hold only registered investment company securities or interests or participations in insurance company separate accounts, to such other person that carries such accounts on a fully disclosed basis.'' (17 CFR 240.0–10(i)).

[94] Pub. L. 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

Entity That Has a Principal Regulator

(13) For purposes of Appendix E (§ 240.15c3–1e) and Appendix G (§ 240.15c3–1g) of this section, the term *entity that has a principal regulator* shall mean a person (other than a natural person) that is not a registered broker or dealer (other than a broker or dealer registered under section 15(b)(11) of the Act (15 U.S.C. 78o(b)(11)), provided that:

(i) The person is:

(A) An insured depository institution as defined in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C 1813(c)(2));

(B) Registered with the Commodity Futures Trading Commission; or

(C) Registered with or licensed by a State insurance regulator and issues any insurance, endowment, or annuity policy or contract; or

(ii) There are in place appropriate arrangements so that information provided to the Commission is sufficiently reliable for the purposes of Appendix E and Appendix G, the person is primarily in the insured depository institutions business (excluding its insurance and commercial businesses), and the person is:

(A) A bank holding company as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a));

(B) A savings and loan holding company as defined in Section 10(a)(1)(D) of the Home Owners' Loan Act (12 U.S.C. 1467a(1)(D)); or

(C) A foreign bank as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(7)) that is from a jurisdiction for which any foreign bank has been approved by the Board of Governors of the Federal Reserve System to conduct business under 12 CFR 211.24(c), provided such foreign bank represents that it is subject to the same supervisory regime as the foreign bank previously approved by the Board of Governors of the Federal Reserve System.

* * * * *

(15) * * * For a broker or dealer whose application for exemption under paragraph (a)(7) of this section has been granted by the Commission, the term *tentative net capital* means the net capital of the broker or dealer before deducting the market and credit risk capital charges computed pursuant to Appendix E to this section (§ 240.15c3–1e) or paragraph (c)(2)(vi) of this section, if applicable, and increased by the balance sheet value (including counterparty net exposure) resulting from transactions in derivative instruments which would otherwise be deducted by virtue of paragraph (c)(2)(iv) of this section.

* * * * *

4. Section 240.15c3–1e is revised to read as follows:

§ 240.15c3–1e Market and credit risk capital charges for certain brokers or dealers (Appendix E to 17 CFR 240.15c3–1).

Application

(a) A broker or dealer may apply to the Commission for authorization to compute market risk capital charges pursuant to this Appendix E in lieu of computing haircuts pursuant to § 240.15c3–1(c)(2)(vi) and to compute credit risk capital charges pursuant to this Appendix E on some or all of its credit exposures arising from transactions in derivatives instruments (if this Appendix E is used to calculate market risk capital charges on these instruments) in lieu of computing credit risk capital charges pursuant to § 240.15c3–1(c)(2)(iv).

(1) The documents and information submitted to the Commission by the broker or dealer as part of its application shall include the following:

(i) An executive summary of the documents and information provided to the Commission as part of the application and a description of the holding company of the broker or dealer, which may not be a natural person;

(ii) A comprehensive description of the internal risk management control system of the broker or dealer and how that system satisfies the requirements set forth in § 240.15c3–4;

(iii) A detailed list of the categories of positions that the broker or dealer holds in its proprietary accounts and a brief description of the methods that the broker or dealer will use to calculate market and credit risk capital charges on those categories of positions;

(iv) A description of all mathematical models used to price positions and to compute market and credit risk capital charges; a description of the creation, use, and maintenance of the mathematical models; a description of the broker's or dealer's internal risk management controls over those models, including a description of persons who may input data into the model and persons who have access to any or all of the model's outputs; a statement regarding whether the firm has developed its own mathematical models; if a mathematical model incorporates empirical correlations across risk categories, a description of the process for measuring correlations; a description of the backtesting procedures the broker or dealer will use to backtest the mathematical model used to calculate maximum potential exposure; a description of how each mathematical model satisfies the qualitative and quantitative requirements set forth in paragraph (e) of this Appendix E; and for each mathematical model, a statement that the model is used to analyze and report risk to senior management;

(v) If the broker or dealer is applying to the Commission for approval to use scenario analysis to calculate market risk capital charges for certain positions, a list of those positions, a description of how those charges will be calculated using scenario analysis, and an explanation of why scenario analysis is appropriate to calculate market risk capital charges on those positions;

(vi) A description of how the broker or dealer will calculate current exposure;

(vii) A description of how the broker or dealer will determine internal credit ratings of counterparties, if applicable; and

(viii) A written undertaking by the holding company of the broker or dealer, in a form acceptable to the Commission, signed by a duly authorized person at the holding company, to the effect that, as a condition of Commission approval of the application of the broker or dealer to compute certain market and credit risk capital charges pursuant to this Appendix E, the holding company agrees to:

(A) Comply with the provisions of § 240.15c3–1g;

(B) Comply with all applicable provisions of this Appendix E;

(C) Comply with the provisions of § 240.15c3–4 with respect to an internal risk management control system for the affiliate group as though it were a broker-dealer that computes certain of its capital charges in accordance with this Appendix E;

(D) As part of the internal risk management control system for the affiliate group, establish, document, and maintain procedures for the detection and prevention of money laundering and terrorist financing;

(E) Permit the Commission to examine the books and records of any affiliate of the broker or dealer, including the holding company, if the affiliate is not an entity that has a principal regulator, as defined in § 240.15c3–1(c)(13);

(F) Make available to the Commission, for an entity that has a principal regulator, as defined specifically in § 240.15c3–1(c)(13)(ii), such information concerning the operations of the entity that the Commission finds is necessary to evaluate the financial and operational risk within the affiliate group of the broker or dealer (including any risks that may affect the reputation of the holding company or the broker or dealer) and to evaluate compliance with the conditions of eligibility for computing certain capital charges pursuant to this Appendix E;

(G) If the disclosure to the Commission of any information required as a condition for the broker or dealer to compute certain capital charges pursuant to this Appendix E would be prohibited by law or otherwise, cooperate with the Commission as needed, including by describing any secrecy laws or other impediments that could restrict the ability of the broker or dealer or any affiliates from providing information on their operations or activities and by discussing the manner in which the holding company and the broker or dealer propose to provide the Commission with adequate assurances of access to information;

(H) For any non-U.S. holding company, consent to the jurisdiction of the Commission and agree to maintain a U.S. registered agent;

(I) Submit to the Commission all material changes to mathematical models and other methods used to calculate allowances for market, credit, and operational risk;

(J) Submit to the Commission all material changes to the internal risk management control system for the affiliate group; and

(K) Acknowledge that, if the holding company fails to comply with any provision of its undertaking, the Commission may, in addition to any other supervisory conditions necessary or appropriate in the public interest and consistent with the protection of investors, increase the multiplication factors the holding company uses to calculate allowances for market and credit risk as defined in § 240.15c3–1g(a)(2) and (a)(3) or impose any regulatory condition with respect to the broker or dealer listed in paragraph (f) of this Appendix E;

(2) As a condition of Commission approval, the documents and information submitted to the Commission by the holding company of the broker or dealer as part of the application of the broker or dealer shall include the following:

(i) A narrative description of the business and organization of the holding company;

(ii) An alphabetical list of the affiliates of the broker or dealer (the ''affiliate group''), with an identification of the financial regulator, if any, with whom the affiliate is registered, and a designation of those affiliates that are material to the holding company (''material affiliates'');

(iii) An organizational chart that identifies the holding company, the broker or dealer, and the material affiliates of the broker or dealer;

(iv) Consolidated and consolidating financial statements of the affiliate group as of the end of the quarter preceding the filing of the application;

(v) The following sample computations for the affiliate group:

(A) Allowable capital and allowances for market risk, credit risk, and operational risk, determined pursuant to § 240.15c3–1g(a)(1)—(4); or

(B) A capital assessment calculated pursuant to § 240.15c3–1g(a)(5);

(vi) A detailed list of the categories of positions that the affiliate group holds in its proprietary accounts and a brief description of the method that the holding company proposes to use to calculate allowances for market and credit risk, pursuant to § 240.15c3–1g(a)(2) and (3), on those positions;

(vii) A description of all mathematical models used to price positions and to compute market and credit risk capital charges; a description of the creation, use, and maintenance of the mathematical models; a description of the holding company's internal risk management controls over those models, including a description of persons who may input data into the model and persons who have access to any or all of the model's outputs; a statement regarding whether the firm has developed its own mathematical models; if a mathematical model incorporates empirical correlations across risk categories, a description of the process for measuring correlations; a description of the backtesting procedures the holding company will use to backtest the mathematical model used to calculate maximum potential exposure; a description of how each mathematical model satisfies the qualitative and quantitative requirements set forth in paragraph (e) of this Appendix E; for each mathematical model, a statement that the model is used to analyze and report risk to senior management; and a description of any positions for which the holding company proposes to use an alternative method for computing an allowance for market risk and a description of how that allowance would be determined;

(viii) A description of how the holding company will calculate current exposure;

(ix) A description of how the holding company will calculate the credit risk weights of counterparties and internal credit ratings of counterparties, if applicable;

(x) A description of how the holding company will calculate its allowance for operational risk;

(xi) For each instance in which a mathematical model used by the broker or dealer to calculate a market risk capital charge or maximum potential exposure for a particular product or counterparty differs from the mathematical model used by the holding company to calculate an allowance for credit risk or maximum potential exposure for that same product or counterparty, a description of the difference(s) between the mathematical models;

(xii) A comprehensive description of the risk management control system for the affiliate group that the holding company has established to manage affiliate group-wide risk, including market, credit, liquidity and funding, legal and compliance, and operational risks, and how that system satisfies the requirements of § 240.15c3–4; and

(xiii) Sample risk reports provided to the persons who are responsible for managing group-wide risk that the holding company will provide to the Commission pursuant to § 240.15c3–1g(b)(1)(viii);

(3) The application of the broker or dealer shall be supplemented by such other information or documents relating to the internal risk management control system, mathematical models, and financial position of the broker or dealer or the holding company of the broker or dealer that the Commission may request to complete its review of the application;

(4) The application shall be considered filed when received at the Commission's principal office in Washington, DC. All information and documents submitted in connection with the application will be accorded confidential treatment;

(5) If any of the information or documents filed with the Commission as part of the application of the broker or dealer is found to be or becomes inaccurate before the Commission approves the application, the broker or dealer must promptly notify the Commission and provide the Commission with a description of the circumstances in which the information or documents was found to be or has become inaccurate along with updated, accurate information and documents;

(6) The Commission may approve the application, in whole or in part, subject to any conditions or limitations the Commission may require if the Commission finds it to be necessary or

appropriate in the public interest and consistent with the protection of investors after determining, among other things, whether: The broker or dealer has met the requirements of this Appendix E; the broker or dealer is in compliance with other applicable rules promulgated under the Act and self-regulatory organization rules; and the holding company of the broker or dealer is in compliance with the terms of its undertaking, provided to the Commission pursuant to paragraph (a)(1)(viii) of this Appendix E;

(7) The broker or dealer shall amend and resubmit to the Commission its application to calculate certain market and credit risk capital charges in accordance with this Appendix E if the broker or dealer or its holding company desires to make any material change to a mathematical model used to calculate market or credit risk or its internal risk management control system as described in the application;

(8) The broker or dealer shall notify the Commission of any material change to the corporate structure of the broker or dealer or the holding company as described in the application;

(9) As a condition for the broker or dealer to compute its capital charges under this Appendix E, the broker or dealer agrees that:

(i) The broker or dealer will provide 45 days written notice to the Commission if it intends to cease to use the market risk standards of this Appendix E to calculate its market risk capital charge instead of the provisions of § 240.15c3–1(c)(2)(vi) and the credit risk standards of this Appendix E to calculate its credit risk capital charge on certain credit exposures arising from transactions in derivatives instruments instead of the provisions of § 240.15c3–1(c)(2)(iv); and

(ii) The Commission may determine by order that such notice will become effective after a shorter or longer period of time if the broker or dealer consents or if the Commission determines that the shorter or longer period of time is necessary or appropriate in the public interest and consistent with the protection of investors; and

(10) Notwithstanding paragraph (a)(9) of this section, the Commission, by order, may revoke a broker's or dealer's exemption that allows it to use the market risk standards of this Appendix E to calculate the market risk capital charge instead of the provisions of § 240.15c3–1(c)(2)(vi), and the exemption to use the credit risk standards of this Appendix E to calculate the credit risk capital charge on certain credit exposures arising from transactions in derivatives instruments instead of the provisions of § 240.15c3–1(c)(2)(iv), if the Commission finds that such exemption is no longer necessary or appropriate in the public interest, or is no longer consistent with the protection of investors.

Compliance With § 240.15c3–4

(b) A broker or dealer that computes its market and credit risk capital charges under this Appendix E must comply in all material respects with § 240.15c3–4 regarding its internal risk management control system in order to be in compliance with § 240.15c3–1.

Market Risk

(c) A broker or dealer whose application has been approved under paragraph (a) of this Appendix E shall compute a market risk capital charge daily in accordance with the following:

(1) The broker or dealer shall compute a market risk capital charge on eligible positions, in accordance with the phase-in schedule of paragraph (c)(3) of this Appendix E, equal to the VaR of those positions multiplied by the appropriate multiplication factor. The VaR of the positions must be obtained using approved VaR models meeting the applicable qualitative and quantitative requirements of paragraph (e) of this Appendix E. The broker or dealer must use the multiplication factor determined according to paragraph (e)(1)(iii) of this Appendix E, except that the initial multiplication factor shall be three, unless the Commission determines, based on a review of the broker's or dealer's internal risk management control system and practices, including a review of the VaR models, that another multiplication factor is appropriate;

(2) The broker or dealer may not use a VaR model to determine a capital charge for positions having no ready market or for debt securities which are below investment grade or for any derivative instrument based on the value of these positions, unless the Commission has granted, pursuant to § 240.15c3–1(a)(7), its application to use its VaR model for any such positions. The broker or dealer may apply pursuant to paragraph (c)(5) of this Appendix E to calculate its market risk capital charge for any such positions using scenario analysis. If that application is denied, the broker or dealer must calculate the market risk capital charge for such positions under § 240.15c3–1(c)(2)(vi);

(3) The broker or dealer shall use approved VaR models to compute its market risk capital charge in accordance with the following phase-in schedule:

(i) Upon Commission approval of its application under paragraph (a) of this Appendix E, the broker or dealer may use approved VaR models to calculate its market risk capital charge for the following positions:

(A) U.S. government securities and derivatives on those securities;

(B) Corporate debt securities rated in one of the four highest rating categories by two nationally recognized statistical rating organizations (''NRSROs'') and derivatives on those securities;

(C) Foreign government securities rated in one of the four highest rating categories by two NRSROs and derivatives on those securities;

(D) Derivatives on major market foreign currencies as defined in § 240.15c3–1a(b)(1)(i)(C);

(E) Asset-backed securities with less than 5 years to maturity that are rated in one of the four highest rating categories by two NRSROs and derivatives on those securities; and

(F) Municipal securities rated in one of the four highest rating categories by two NRSROs and derivatives on those securities;

(ii) Nine months after Commission approval of its application under paragraph (a) of this Appendix E, the broker or dealer may amend its application to request approval to use one or more approved VaR models to calculate its market risk capital charge for equities and derivatives on equities; and

(iii) Nine months after the amendment filed pursuant to paragraph (c)(3)(ii) of this Appendix E has been approved, a broker or dealer may amend its application to request approval to use one or more approved VaR models to calculate its market risk capital charge for other eligible positions;

(4) Notwithstanding any other provision in this Appendix E, a broker or dealer that computes its capital charges under this Appendix E may use a VaR model to determine market risk capital charges only for positions for which there is adequate historical data to support a VaR model;

(5) The broker or dealer must request, either in its initial application or an amendment, to use scenario analysis to compute its market risk capital charge for a category of positions. For positions for which the Commission has approved the broker's or dealer's application to use scenario analysis, the market risk capital charge shall be three times the greatest adverse movement resulting from the scenario analysis over any ten-day period on a daily basis, except that the resulting market risk capital charge must be at least $25 per 100 share equivalent contract for equity positions, or one-half of one percent of the face value of the contract for all other types

of contracts, even if the scenario analysis indicates a lower amount. A scenario qualifying for use under this Appendix E must include:

(i) A set of pricing equations for the positions or derivatives based on, for example, arbitrage relations, statistical analysis, historic relationships, merger evaluation, or fundamental valuation of an offering of securities;

(ii) A range of adverse movements of risk factors, prices, or spreads that moved by the greatest amounts over the past 5 years or a 3 standard deviation movement in those risk factors, prices, or spreads over a ten day period;

(iii) Auxiliary relationships mapping risk factors to prices; and

(iv) Data demonstrating the effectiveness of the scenario in capturing market risk; and

(6) For all other positions, the broker or dealer must compute a market risk capital charge pursuant to § 240.15c3–1(c)(2)(vi) and applicable Appendices.

Credit Risk

(d) A broker or dealer whose application, including amendments, has been approved under paragraph (a) of this Appendix E shall compute its credit risk capital charge daily on credit exposures to all counterparties arising from the broker's or dealer's transactions in derivatives instruments (if this Appendix E is used to calculate the market risk capital charge on those instruments) that is the sum of: A counterparty exposure charge to each counterparty, concentration charges by counterparty, and a portfolio concentration charge across all counterparties, determined as follows:

(1) For each counterparty, the *counterparty exposure charge* is:

(i) The net replacement value in the account of the counterparty that is insolvent, or in bankruptcy, or that has senior unsecured long-term debt in default; or

(ii) As to a counterparty not otherwise described in paragraph (d)(1)(i) of this Appendix E, the credit equivalent amount of the broker's or dealer's exposure to the counterparty, as defined in paragraph (d)(2) of this Appendix E, multiplied by the credit risk weight of the counterparty, as determined according to paragraph (d)(7) of this Appendix E, multiplied by 8%;

(2) The *credit equivalent amount* of the broker's or dealer's exposure to a counterparty is the sum of the broker's or dealer's maximum potential exposure to the counterparty, as defined in paragraph (d)(4) of this Appendix E, multiplied by the appropriate multiplication factor, and the broker's or dealer's current exposure to the counterparty, as defined in paragraph (d)(3) of this Appendix E. The broker or dealer must use the multiplication factor determined according to paragraph (e)(1)(iv) of this Appendix E, except that the initial multiplication factor shall be one, unless the Commission determines, based on a review of the broker's or dealer's internal risk management control system and practices, including a review of the VaR models, that another multiplication factor is appropriate;

(3) The *current exposure* of the broker or dealer to a counterparty is the current replacement value of the counterparty's positions with the broker or dealer, after applying netting agreements with the counterparty meeting the requirements of paragraph (d)(5) of this Appendix E and taking into account the value of collateral from the counterparty held by the broker or dealer in accordance with paragraph (d)(6) of this Appendix E;

(4) The *maximum potential exposure* of the broker or dealer to a counterparty is the increase in the replacement value of the counterparty's positions with the broker or dealer, after applying netting agreements with the counterparty meeting the requirements of paragraph (d)(5) of this Appendix E and taking into account the value of collateral from the counterparty held by the broker or dealer in accordance with paragraph (d)(6) of this Appendix E, that is computed daily using approved VaR models meeting the applicable quantitative and qualitative requirements of paragraph (e) of this Appendix E;

(5) *Netting agreements.* When calculating current exposure or maximum potential exposure, a broker or dealer may include the effect of netting agreements that allow a broker or dealer to net gross receivables and gross payables with a counterparty upon default of the counterparty if:

(i) The netting agreement is legally enforceable in each relevant jurisdiction, including in insolvency proceedings;

(ii) The gross receivables and gross payables subject to the netting agreement with a counterparty can be determined at any time; and

(iii) For internal risk management purposes, the broker or dealer monitors and controls its exposure to the counterparty on a net basis;

(6) *Collateral.* When calculating current exposure and maximum potential exposure, the fair market value of collateral pledged and held may be taken into account provided:

(i) The collateral is marked to market each day and is subject to a daily margin maintenance requirement;

(ii) The collateral has a ready market or consists of major market foreign currency as defined in § 240.15c3–1a(b)(1)(i)(C) or United States currency;

(iii) The collateral agreement is legally enforceable by the broker or dealer against the counterparty and any other parties to the agreement;

(iv) The collateral does not consist of securities issued by the counterparty or a party related to the broker or dealer or to the counterparty;

(v) The Commission has approved the broker's or dealer's use of a VaR model to calculate market risk capital charges for the type of security used as collateral in accordance with § 240.15c3–1(a)(7) and paragraphs (g)(2) and (g)(3) of this Appendix E; and

(vi) The collateral is not used in determining the credit rating of the counterparty;

(7) *Credit risk weights of counterparties.* A broker or dealer that computes its credit risk capital charges pursuant to this Appendix E shall determine the credit risk weight of a counterparty as follows:

(i) 20% credit risk weight for transactions with counterparties with ratings for senior unsecured long-term debt or commercial paper in one of the two highest rating categories by an NRSRO or equivalent internal rating, if applicable;

(ii) 50% credit risk weight for transactions with counterparties with ratings for senior unsecured long-term debt or commercial paper in the third and fourth highest rating categories by an NRSRO or equivalent internal rating, if applicable;

(iii) 150% credit risk weight for transactions with counterparties with ratings for senior unsecured long-term debt or commercial paper below the fourth highest rating category by an NRSRO or equivalent internal rating, if applicable;

(iv) As part of its initial application or in an amendment, the broker or dealer may request Commission approval to determine credit ratings using internal calculations for counterparties that are not rated by an NRSRO, and the broker or dealer may use these internal credit ratings in lieu of ratings issued by an NRSRO for purposes of determining credit risk weights. Based on the strength of the broker's or dealer's internal credit risk management system, the Commission may approve the application. The broker or dealer must make and keep current a record of the basis for the credit rating for each counterparty. The record must be preserved for a period of not less than three years, the first two years in an easily accessible place; and

(v) For the portion of a current exposure covered by a guarantee where that guarantee is an unconditional and irrevocable guarantee of the due and punctual payment and performance of the obligation and the broker or dealer can demand immediate payment from the guarantor after any payment is missed without having to make collection efforts, the broker or dealer may substitute the credit risk weight of the guarantor for the credit risk weight of the counterparty if the guarantee is evidenced by a written obligation of the guarantor that allows the broker or dealer to substitute the guarantor for the counterparty upon default or nonpayment by the counterparty;

(8) *Concentration charges by counterparty.* The concentration charge, where the current exposure of the broker or dealer to a counterparty exceeds 5% of the tentative net capital of the broker or dealer, is calculated as follows:

(i) For counterparties with credit risk weights of 20%, 5% of the amount of the current exposure to the counterparty in excess of 5% of the tentative net capital of the broker or dealer;

(ii) For counterparties with credit risk weights of 50%, 20% of the amount of the current exposure to the counterparty in excess of 5% of the tentative net capital of the broker or dealer; and

(iii) For counterparties with credit risk weights of 150%, 50% of the amount of the current exposure to the counterparty in excess of 5% of the tentative net capital of the broker or dealer; and

(9) *Portfolio concentration charge across all counterparties.* The concentration charge across all counterparties for unsecured receivables is 100% of the amount of the broker's or dealer's aggregate current exposure arising from the broker's or dealer's transactions in derivatives instruments across all counterparties in excess of 15% of the tentative net capital of the broker or dealer.

VaR Models

(e) Each VaR model must meet the following minimum qualitative and quantitative requirements:

(1) *Qualitative requirements.* (i) The VaR model used to calculate market or credit risk for a position must be the same model used to report the market or credit risk of that position to senior management and must be integrated into the daily internal risk management system of the firm;

(ii) The VaR model must be reviewed both periodically and annually. The periodic review may be conducted by the firm's internal audit staff, but the annual review must be conducted by a registered public accounting firm, as that term is defined in section 2(a)(12) of the Sarbanes-Oxley Act of 2002 (Pub. L. 107–204);

(iii) For purposes of computing market risk, the firm must determine the appropriate multiplication factor as follows:

(A) Beginning three months after the firm begins using the VaR model to calculate market risk, the firm must conduct backtesting of the model by comparing its actual daily net trading profit or loss with the corresponding VaR measure generated by the VaR model, using a 99 percent, one-tailed confidence level with price changes equivalent to a one business-day movement in rates and prices, for each of the past 250 business days;

(B) On the last business day of each quarter, the firm must identify the number of backtesting exceptions of the VaR model, that is, the number of business days in the past 250 business days for which the actual net trading loss, if any, exceeds the corresponding VaR measure; and

(C) The firm must use the multiplication factor indicated in Table 1 of this Appendix E in determining its market risk until it obtains the next quarter's backtesting results, unless the Commission determines, based, among other relevant factors, on a review of the firm's internal risk management control system, including a review of its VaR model, that a different adjustment or other action is appropriate; and

TABLE 1.—MULTIPLICATION FACTOR BASED ON THE NUMBER OF BACKTESTING EXCEPTIONS OF THE VAR MODEL IN THE PAST 250 BUSINESS DAYS

Number of exceptions	Multiplication factor
4 or fewer	3.00
5	3.40
6	3.50
7	3.65
8	3.75
9	3.85
10 or more	4.00

(iv) For purposes of computing the credit equivalent amount of the firm's exposures to a counterparty, the firm must determine the appropriate multiplication factor as follows:

(A) Beginning three months after the firm begins using the VaR model to calculate maximum potential exposure, the firm must conduct backtesting of the model by comparing, for at least 40 counterparties with widely varying types and sizes of positions with the firm, the daily change in its current exposure to the counterparty based on the end of the previous day's positions with the corresponding maximum potential exposure for the counterparty generated by the VaR model;

(B) Once each quarter, on the last business day of the quarter, the firm must identify the number of backtesting exceptions of the VaR model, that is, the number of business days in the past 250 business days for which the change in current exposure to a counterparty exceeds the corresponding maximum potential exposure; and

(C) Based on the number of backtesting exceptions of the VaR model, the firm will propose, as part of its application, a schedule of multiplication factors, which must be approved by the Commission. The firm must use the multiplication factor indicated in the approved schedule in determining the credit equivalent amount of the firm's exposures to a counterparty until it obtains the next quarter's backtesting results, unless the Commission determines, based, among other relevant factors, on a review of the firm's internal risk management control system, including a review of the VaR model, that a different adjustment or other action is appropriate;

(2) *Quantitative requirements.* (i) For purposes of determining market risk, the VaR model must use a 99 percent, one-tailed confidence level with price changes equivalent to a ten business-day movement in rates and prices;

(ii) For purposes of determining maximum potential exposure, the VaR model must use a 99 percent, one-tailed confidence level with price changes equivalent to a one-year movement in rates and prices;

(iii) The VaR model must use an effective historical observation period of at least one year. The historical observation period must include periods of market stress. Historical data sets must be updated at least monthly and reassessed whenever market prices or volatilities change significantly; and

(iv) The VaR model must take into account and incorporate all significant, identifiable market risk factors applicable to positions in the accounts of the firm, including:

(A) Risks arising from the non-linear price characteristics of derivatives and the sensitivity of the market value of the positions to changes in the volatility of options positions due to different maturities;

(B) Empirical correlations with and across risk factors or, alternatively, risk factors sufficient to cover all the market risk inherent in the positions in the proprietary or other trading accounts of the firm, including interest rate risk, equity price risk, foreign exchange risk, and commodity price risk;

(C) Spread risk, where applicable, and segments of the yield curve sufficient to capture differences in volatility and imperfect correlation of rates along the yield curve for securities and derivatives that are sensitive to different interest rates; and

(D) Specific risk for individual securities and derivatives.

Additional Regulatory Conditions

(f) As a condition for the broker or dealer to use this Appendix E to calculate certain of its capital charges, the Commission may impose additional regulatory conditions on the broker or dealer, which may include: Restricting its business (on a product-specific, category-specific, or general basis); submitting to the Commission a plan to increase its net capital or tentative net capital; filing more frequent reports with the Commission; Modifying its internal risk management control procedures; or computing its market and credit risk capital charges in accordance with § 240.15c3–1(c)(2)(vi) and (c)(2)(iv), as appropriate. The Commission may also require, as a condition of continuation of the exemption, the holding company of the broker or dealer to file more frequent reports or to modify its group-wide internal risk management control procedures. The Commission may impose such additional regulatory conditions if:

(1) The broker or dealer or the holding company of the broker or dealer fails to meet the reporting requirements set forth in § 240.17a–5 or 240.15c3–1g(b), as applicable;

(2) Any event specified in § 240.17a–11 or 240.15c3–1g(e) occurs;

(3) There is a material deficiency in the internal risk management control system or in the mathematical models used to price securities or to calculate market and credit risk capital charges or allowances for market and credit risk, as applicable, of the broker or dealer or the holding company of the broker or dealer;

(4) The holding company of the broker or dealer fails to comply with its undertakings that the broker or dealer has filed with its application pursuant to paragraph (a)(1)(viii) of this Appendix E;

(5) The broker or dealer or the holding company of the broker or dealer materially amends a mathematical model or its internal risk management control system or its corporate structure as described in the application the broker or dealer has submitted to the Commission under this Appendix E; or

(6) The Commission finds that imposing other regulatory conditions are necessary or appropriate in the public interest, and for the protection of investors.

5. Section 240.15c3–1g is added to read as follows:

§ 240.15c3–1g Conditions for holding companies of certain brokers or dealers (Appendix G to 17 CFR 240.15c3–1).

As a condition for a broker or dealer to compute certain of its capital charges in accordance with § 240.15c3–1e, the holding company of the broker or dealer shall comply with the conditions set forth below:

Conditions Regarding Computation of Allowable Capital and Risk Allowances

(a) As a condition of the exemption, the holding company of a broker or dealer that computes certain of its capital charges in accordance with § 240.15c3–1e must calculate allowable capital and allowances for market, credit, and operational risk on a consolidated basis as follows:

(1) *Allowable capital.* The holding company must compute allowable capital monthly as the sum of:

(i) Common shareholders' equity on the consolidated balance sheet of the holding company less:

(A) Goodwill;

(B) Deferred tax assets;

(C) Other intangible assets; and

(D) Other deductions from common stockholders' equity as required by the Federal Reserve Board in calculating Tier 1 capital (as defined in 12 CFR 225, Appendix A);

(ii) Cumulative and non-cumulative preferred stock, provided that:

(A) The stock does not have a maturity date;

(B) The stock cannot be redeemed at the option of the holder of the instrument;

(C) The stock has no other provisions that will require future redemption of the issue; and

(D) The issuer of the stock can defer or eliminate dividends, except that the amount of such cumulative preferred stock may not exceed 33% of the items included in allowable capital pursuant to paragraph (a)(1)(i) of this Appendix G; and

(iii) The sum of the following items on the consolidated balance sheet, to the extent that the sum does not exceed the sum of the items included in allowable capital pursuant to paragraphs (a)(1)(i) and (ii) of this Appendix G:

(A) Cumulative preferred stock in excess of the 33% limit specified in paragraph (a)(1)(ii) of this Appendix G; and

(B) Subordinated debt if the original weighted average maturity of the subordinated debt is at least five years; each subordinated debt instrument states clearly on its face that repayment of the debt is not protected by any Federal agency or the Securities Investor Protection Corporation; the subordinated debt is unsecured and subordinated in right of payment to all senior indebtedness of the holding company; and the subordinated debt instrument permits acceleration only in the event of bankruptcy or reorganization of the holding company under Chapters 7 (liquidation) and 11 (reorganization) of the U.S. Bankruptcy Code;

(2) *Allowance for market risk.* The holding company shall compute an allowance for market risk daily for all proprietary positions, including debt instruments, equity instruments, commodity instruments, foreign exchange contracts, and derivative contracts, as the aggregate of the following:

(i) *Value at risk.* The VaR of its positions, multiplied by the appropriate multiplication factor. The VaR of the positions must be obtained using approved VaR models meeting the applicable qualitative and quantitative requirements of § 240.15c3–1e(e). The holding company must use the multiplication factor determined according to § 240.15c3–1e(e)(1)(iii), except that the initial multiplication factor shall be three, unless the Commission determines, based on a review of the group-wide internal risk management control system and practices, including a review of the VaR models, that another multiplication factor is appropriate. The VaR model must be one that can be disaggregated by each line of business exposed to market risk and by each legal entity exposed to market risk. The holding company may use a VaR model to determine an allowance for market risk only for positions for which there is adequate historical data to support a VaR model; and

(ii) *Alternative method.* For positions for which there does not exist adequate historical data to support a VaR model, an allowance for market risk using a method described in the broker's or dealer's application to use § 240.15c3–1e to calculate certain of its capital charges that produces a suitable allowance for market risk for those positions;

(3) *Allowance for credit risk.* The holding company shall compute an allowance for credit risk daily for

certain assets on the consolidated balance sheet and certain off-balance sheet items, including loans and loan commitments, exposures due to derivatives contracts, structured financial products, and other extensions of credit, and credit substitutes as follows:

(i) The credit equivalent amount of the asset or off-balance sheet item multiplied by the appropriate credit risk weight of the asset or off-balance sheet item or counterparty, determined according to paragraph (a)(3)(i)(F) of this Appendix G, multiplied by 8%, in accordance with the following:

(A) For certain loans and loan commitments made by members of the affiliate group of the broker-dealer, the credit equivalent amount is determined by multiplying the nominal amount of the contract by the following credit conversion factors:

(*1*) 0% credit conversion factor for loan commitments that:

(*i*) May be unconditionally cancelled by the lender; or

(*ii*) May be cancelled by the lender due to credit deterioration of the borrower;

(*2*) 5% credit conversion factor for margin loans extended by members of the affiliate group of the broker or dealer in compliance with applicable self-regulatory organization regulations;

(*3*) 20% credit conversion factor for:

(*i*) Loan commitments of less than one year; or

(*ii*) Short term self-liquidating trade related contingencies, including letters of credit;

(*4*) 50% credit conversion factor for loan commitments with an original maturity of greater than one year that contain transaction contingencies, including performance bonds, revolving underwriting facilities, note issuance facilities and bid bonds; and

(*5*) 100% credit conversion factor for bankers' acceptances, stand-by letters of credit, and forward purchases of assets, and similar direct credit substitutes;

(B) For derivatives contracts and for repurchase agreements, reverse repurchase agreements, stock lending and borrowing, and similar collateralized transactions, the credit *equivalent amount* of the holding company's exposure to a counterparty is the sum of the holding company's maximum potential exposure to the counterparty, as defined in paragraph (a)(3)(i)(D) of this Appendix G, multiplied by the appropriate multiplication factor, and the holding company's current exposure to the counterparty, as defined in paragraph (a)(3)(i)(C) of this Appendix G. The holding company must use the multiplication factor determined according to § 240.15c3–1e(e)(1)(iv), except that the initial multiplication factor shall be one, unless the Commission determines, based on a review of the group-wide internal risk management control system and practices, including a review of the VaR models, that another multiplication factor is appropriate;

(C) The *current exposure* of a member of the affiliate group to a counterparty is the current replacement value of the counterparty's positions with the member of the affiliate group, after applying netting agreements with that counterparty meeting the requirements of § 240.15c3–1e(d)(5), taking into account the value of collateral from the counterparty pledged to and held by any member of the affiliate group in accordance with § 240.15c3–1e(d)(6), and subtracting the fair market value of any credit derivatives that specifically change the exposure to the counterparty (as long as the credit derivatives are not used to change the credit risk weight of the counterparty as provided in paragraph (a)(3)(i)(I) of this Appendix G);

(D) The *maximum potential exposure* of a member of the affiliate group to a counterparty is the increase in the net replacement value of the counterparty's positions with the member of the affiliate group, after applying netting agreements with that counterparty meeting the requirements of § 240.15c3–1e(d)(5), taking into account the value of collateral from the counterparty held by any member of the affiliate group in accordance with § 240.15c3–1e(d)(6), and subtracting the fair market value of any credit derivatives that specifically change the exposure to the counterparty (as long as the credit derivatives are not used to change the credit risk weight of the counterparty as provided in paragraph (a)(3)(i)(I) of this Appendix G), that is obtained daily using an approved VaR model meeting the applicable qualitative and quantitative requirements of § 240.15c3–1e(e), except that for repurchase agreements, reverse repurchase agreements, stock lending and borrowing, and similar collateralized transactions, maximum potential exposure must be calculated using a time horizon of five days;

(E) The credit equivalent amount for other assets shall be the asset's book value on the holding company's consolidated balance sheet;

(F) The credit risk weights that shall be applied to certain assets and counterparties shall be determined according to standards published by the Basel Committee on Banking Supervision, as modified from time to time;

(G) The holding company or other member of the affiliate group may, upon approval by the Commission of a request by the broker or dealer in its initial application or in an amendment, determine credit ratings using internal calculations for counterparties that are not rated by an NRSRO, and the holding company may use these internal credit ratings in lieu of ratings issued by an NRSRO for purposes of determining credit risk weights;

(H) The holding company or other member of the affiliate group may, upon approval by the Commission of a request by the broker or dealer in its initial application or in an amendment, determine credit risk weights of counterparties using internal calculations;

(I) The holding company or member of the affiliate group may reduce the credit risk weight of a counterparty by using credit derivatives such as credit default swaps, total return swaps, and similar instruments used to manage credit risk that provide credit protection equivalent to guarantees, that are used for bona fide hedging purposes to reduce the credit risk weight of a counterparty, that are not incorporated into the VaR model used for deriving potential exposures, and that are not held for market making purposes. The credit risk weight for the covered portion of the exposure shall be the credit risk weight of the writer of the derivative. The uncovered portion of the exposure shall be assigned the credit risk weight of the counterparty;

(J) For the portion of a current exposure covered by a guarantee, where that guarantee is an unconditional and irrevocable guarantee of the due and punctual payment and performance of the obligation and the holding company or member of the affiliate group can demand payment after any payment is missed without having to make collection efforts, the holding company or member of the affiliate group may substitute the credit risk weight of the guarantor for the credit risk weight of the counterparty if the guarantee is evidenced by a written obligation of the guarantor that allows the holding company or member of the affiliate group to substitute the guarantor for the counterparty upon default or nonpayment by the counterparty;

(K) The holding company may recognize a cross-product netting agreement that meets the requirements set forth in § 240.15c3–1e(j); and

(L) The fair market value of collateral may be used to offset the net replacement value of receivables from a counterparty provided the requirements set forth in § 240.15c3–1e(k) are met; or

(ii) If the Commission approves the request of the broker or dealer, in its initial application or in an amendment, the holding company may use a calculation consistent with standards published by the Basel Committee on Banking Supervision, as modified from time to time;

(4) *Allowance for operational risk.* The holding company shall compute an allowance for operational risk determined consistent with appropriate standards published by the Basel Committee on Banking Supervision, as modified from time to time; and

(5) If the Commission approves the request of the broker or dealer, in its initial application or in an amendment, after reviewing the methodology of the computation, the holding company may compute a capital assessment consistent with standards promulgated by the Basel Committee on Banking Supervision (as modified from time to time) that it is required to submit to a financial regulator or supervisor in lieu of the computations described in paragraphs (a)(1) through (a)(4) of this Appendix G.

Conditions Regarding Reporting Requirements

(b) As a condition of the exemption, the holding company of a broker or dealer that computes certain of its capital charges in accordance with § 240.15c3–1e must file the following reports with the Commission:

(1) A monthly report as of the end of the month, filed not later than 17 business days after the end of each month that does not end a quarter, which shall include:

(i) A consolidated balance sheet and income statement (including notes to the financial statements) for the holding company and computations of allowable capital and allowances for market, credit, and operational risk computed pursuant to paragraph (a) of this Appendix G;

(ii) A graph reflecting, for each business line, the daily intra-month VaR;

(iii) Consolidated credit risk information, including aggregate current exposure and current exposures (including commitments) listed by counterparty for:

(A) The 15 largest exposures; and

(B) The 5 largest exposures to regulated financial institutions;

(iv) The 10 largest commitments listed by counterparty;

(v) Maximum potential exposure listed by counterparty for:

(A) The 15 largest exposures; and

(B) The 5 largest exposures to regulated financial institutions;

(vi) The aggregate maximum potential exposure;

(vii) A summary report reflecting the geographic distribution of the holding company's exposures on a consolidated basis for each of the top ten countries to which it is exposed (by residence of the main operating group of the counterparty); and

(viii) Certain regular risk reports provided to the persons responsible for managing group-wide risk as the Commission may request from time to time;

(2) A quarterly report as of the end of the quarter, which may be unaudited, not later than 35 calendar days after the end of each calendar quarter, which shall include:

(i) The information that the holding company files monthly pursuant to paragraph (b)(1) of this Appendix G;

(ii) A consolidating balance sheet and income statement (including notes to the financial statements). The consolidating balance sheet must provide information regarding each material affiliate of the holding company in a separate column, but may aggregate information regarding members of the affiliate group that are not material affiliates into one column;

(iii) The results of backtesting of all internal models used to compute allowable capital and allowances for market and credit risk indicating, for each model, the number of backtesting exceptions;

(iv) A description of all material pending legal or arbitration proceedings, involving either the holding company or any of its affiliates, that are required to be disclosed by the holding company under generally accepted accounting principles;

(v) The aggregate amount of commercial paper, secured and other unsecured borrowing, bank loans, lines of credit, or any other borrowings, and the principal installments of long-term or medium-term debt, scheduled to mature within twelve months from the most recent fiscal quarter by each subsidiary broker or dealer and each material affiliate; and

(vi) A capital assessment computed pursuant to paragraph (a) of this Appendix G;

(3) Upon receiving written notice from the Commission, such other financial or operational information as the Commission may request in order to monitor the holding company's financial condition or risk exposures;

(4) Annually, on a calendar or fiscal year basis, financial statements which must be audited by a registered public accounting firm, as that term is defined in Section 2(a)(12) of the Sarbanes-Oxley Act of 2002 (Pub. L. 107–204), in accordance with the following:

(i) The audited financial statements must include a consolidated balance sheet, income statement, and computations of allowable capital and allowances for market, credit, and operational risk computed pursuant to paragraph (a) of this Appendix G; and

(ii) The audited financial statements must meet the substantive and administrative requirements of § 240.17a–12(b)(5), (b)(6), (c)(1), (c)(3), (d), (e)(1), (e)(2), (e)(3), (f), (g), (h), (i), (j), (n), and (o), as to the holding company and the audited financial statements it must file in accordance with this paragraph;

(5) Concurrently with the audited financial statements, supplemental reports prepared by a registered public accounting firm, as that term is defined in Section 2(a)(12) of the Sarbanes-Oxley Act of 2002 (Pub. L. 107–204), in accordance with the following:

(i) The supplemental reports must include:

(A) *Accountant's report on management controls.* A supplemental report by the registered public accounting firm indicating the results of the registered public accounting firm's review of holding company's compliance with § 240.15c3–4. The procedures are to be performed and the report is to be prepared in accordance with procedures agreed to by the holding company and the registered public accounting firm conducting the review; and

(B) *Accountant's report on inventory pricing and modeling.* A supplemental report by the registered public accounting firm indicating the results of the registered public accounting firm's review of the inventory pricing and modeling procedures. This review must be conducted in accordance with procedures agreed to by the holding company and the registered public accounting firm conducting the review. The purpose of the review is to confirm that the pricing and modeling procedures relied upon by the holding company conform to the procedures submitted to the Commission as part of the application of the broker or dealer, comply with written guidelines pursuant to § 240.15c3–4, and comply with the qualitative and quantitative standards of § 240.15c3e(e);

(ii) The agreed upon procedures are to be performed and the report is to be prepared in accordance with rules promulgated by the Public Company Accounting Oversight Board; and

(iii) The holding company must file, prior to the commencement of the initial review, the procedures agreed to by the holding company and the registered public accounting firm with the Commission's principal office in Washington, DC. Prior to the commencement of each subsequent review, the holding company must notify the Commission of any changes in the procedures;

(6) The reports that the holding company must file pursuant to paragraph (b) of this Appendix G shall be considered filed when two copies are received at the Commission's principal office in Washington, DC, and one copy is received at the regional or district office of the Commission for the region or district in which the broker or dealer has its principal place of business. The copies sent to the Commission's principal office shall be addressed to the Division of Market Regulation, Risk Assessment Group; and

(7) The statements filed by the holding company with the Commission pursuant to paragraph (b) of this Appendix G will be accorded confidential treatment.

Conditions Regarding Records To Be Made

(c) As a condition of the exemption, the holding company of a broker or dealer that computes certain of its capital charges in accordance with § 240.15c3–1e must make and keep current the following records:

(1) A record of the results of stress tests the holding company has conducted of the holding company's funding and liquidity in response to the following events at least once each quarter and a record of the contingency plan to respond to these events:

(i) A credit rating downgrade of the holding company;

(ii) An inability of the holding company to access capital markets for short-term funding;

(iii) An inability of the holding company to access liquid assets in regulated entities across international borders when the events described in paragraphs (c)(1)(i) or (ii) of this Appendix G occur; and

(iv) An inability of the holding company to access credit or assets held at a particular institution when the events described in paragraphs (c)(1)(i) or (ii) of this Appendix G occur;

(2) A record of the basis for the determination of credit risk weights for each counterparty; and

(3) A record of the basis for the determination of internal credit ratings for each counterparty.

Conditions Regarding Preservation of Records

(d)(1) As a condition of the exemption, the holding company of a broker or dealer that computes certain of its capital charges in accordance with § 240.15c3–1e must preserve the following information, documents, and reports for a period of not less than three years in an easily accessible place using any media acceptable under § 240.17a–4(f):

(i) The documents created in accordance with paragraph (c)(1) of this Appendix G;

(ii) Any application or documents filed with the Commission pursuant to § 240.15c3–1e and this Appendix G and any written responses received from the Commission;

(iii) All reports and notices filed with the Commission pursuant to § 240.15c3–1e and this Appendix G; and

(iv) All written policies and procedures concerning the group-wide internal risk management control system established pursuant to § 240.15c3–1e(a)(1)(viii)(B); and

(2) The holding company may maintain the records referred to in paragraph (d)(1) of this Appendix G either at the holding company, at an affiliate, or at a records storage facility, provided that the records are located within the boundaries of the United States. If the records are maintained by an entity other than the holding company, the holding company shall obtain and file with the Commission a written undertaking by the entity maintaining the records, in a form acceptable to the Commission, signed by a duly authorized person at the entity maintaining the records, to the effect that the records will be treated as if the holding company were maintaining the records pursuant to this section and that the entity maintaining the records will permit examination of such records at any time or from time to time during business hours by representatives or designees of the Commission and will promptly furnish the Commission or its designee a true, correct, complete and current hard copy of any or all or any part of such records. The election to operate pursuant to the provisions of this paragraph shall not relieve the holding company that is required to maintain and preserve such records from any of its reporting or recordkeeping responsibilities under this section.

Conditions Regarding Notification

(e) As a condition of the exemption, the holding company of a broker or dealer that computes certain of its capital charges in accordance with § 240.15c3–1e shall notify the Commission of certain events as follows:

(1) The holding company shall send notice promptly (but within 24 hours) after the occurrence of the following events:

(i) The occurrence of any backtesting exception under § 240.15c3–1e(e)(1)(iii) or (iv) that would require that the holding company use a higher multiplication factor in the calculation of its allowances for market or credit risk;

(ii) A computation shows that allowable capital (as defined in § 240.15c3–1g(a)(1)) is less than 110% of the sum of the allowances for market, credit, and operational risk (as defined in § 240.15c3–1g(a)(2)–(a)(4));

(iii) An affiliate declares bankruptcy or otherwise goes into default;

(iv) The holding company becomes aware that an NRSRO has determined to materially reduce its assessment of the creditworthiness of an affiliate or the credit rating(s) assigned to one or more outstanding short or long-term obligations of an affiliate; or

(v) The holding company becomes aware that any financial regulatory agency or self-regulatory organization has taken enforcement or regulatory action against an affiliate;

(2) The holding company shall file a report if there is a material change, along with a description of the reason for the change, in:

(i) Its corporate structure;

(ii) The material affiliate status of any member of the affiliate group; or

(iii) The major business functions of any material affiliate; and

(3) Every notice or report given or transmitted by paragraph (e) of this Appendix G will be given or transmitted to the principal office of the Commission in Washington, DC, and to the regional or district office of the Commission for the region or district in which the broker or dealer has its principal place of business. For the purposes of this Appendix G, ''notice'' shall be given or transmitted by telegraphic notice or facsimile transmission. The report described by paragraph (e)(2) of this Appendix G may be transmitted by overnight delivery. Notices and reports filed pursuant to this paragraph will be accorded confidential treatment.

(f) The holding company of a broker or dealer that computes certain of its capital charges in accordance with § 240.15c3–1e must comply with the requirements listed in § 240.15c3–1e(a)(1)(viii)(B) through (K) and understands that failure to comply may result in revocation of the exemption.

6. Section 240.15c3–4 is amended by:

a. Revising the section heading;

b. In paragraph (a) and the introductory text of paragraph (b), revising the phrase ''An OTC derivatives dealer'' to read ''A broker or dealer that computes certain of its capital charges in accordance with § 240.15c3–1e or § 240.15c3–1f'';

c. Revising the introductory text of paragraphs (c) and (d) and paragraphs (b)(5), (c)(5)(xiii) and (xiv), (d)(1), (d)(8), and (d)(9);

d. Adding paragraph (c)(5)(xv);

e. Revising the phrase ''OTC derivatives dealer'' to read ''broker or dealer'' in paragraphs (b)(1), (b)(2), (b)(3), (c)(2), (c)(5)(xii), and (d)(7);

f. Revising the phrase ''OTC derivatives dealer's'' to read ''broker's or dealer's'' in paragraph (c)(3), the introductory text of paragraph (c)(5), paragraphs (c)(5)(i), (c)(5)(iii), and the introductory text of paragraph (d)(3);

g. Revising the phrase ''an OTC derivatives transaction'' to read ''a securities transaction'' in paragraph (d)(5); and

h. Revising the phrase ''OTC derivatives'' to read ''securities'' in paragraphs (c)(5)(x), (c)(5)(xi), and (d)(10).

The revisions and additions read as follows:

§ 240.15c3–4 Internal risk management control systems for certain brokers or dealers.

* * * * *

(b) * * *

(5) For a broker or dealer that computes certain of its capital charges in accordance with § 240.15c3–1e, the scope and nature of the permissible OTC derivatives activities.

* * * * *

(c) The internal risk management control system of the broker or dealer that computes certain of its capital charges in accordance with § 240.15c3–1e or § 240.15c3–1f shall include the following elements:

* * * * *

(5) * * *

(xiii) For a broker or dealer that computes certain of its capital charges in accordance with § 240.15c3–1e, the procedures to prevent the broker or dealer from engaging in any securities transaction that is not permitted under § 240.15a–1;

(xiv) For a broker or dealer that computes certain of its capital charges in accordance with § 240.15c3–1e, the procedures to prevent the broker or dealer from improperly relying on the exceptions to § 240.15a–1(c) and § 240.15a–1(d), including the procedures to determine whether a counterparty is acting in the capacity of principal or agent; and

(xv) The procedures for reviewing the pricing of positions independent of the business unit.

* * * * *

(d) Management must periodically review, in accordance with written procedures, the business activities of the broker or dealer that computes certain of its capital charges in accordance with § 240.15c3–1e or 240.15c3–1f:

(1) Risks arising from the broker's or dealer's trading activities are consistent with prescribed guidelines;

* * * * *

(8) For a broker or dealer that computes certain of its capital charges in accordance with § 240.15c3–1e, procedures are in place to prevent the broker or dealer from engaging in any securities transaction that is not permitted under § 240.15a–1;

(9) For a broker or dealer that computes certain of its capital charges in accordance with § 240.15c3–1e, procedures are in place to prevent the broker or dealer from improperly relying on the exceptions to § 240.15a–1(c) and § 240.15a–1(d), including the procedures to determine whether a counterparty is acting in the capacity of principal or agent;

* * * * *

7. Section 240.17a–5 is amended by:

a. Redesignating paragraph (a)(5) as paragraph (a)(6), and adding new paragraph (a)(5); and

b. Redesignating paragraphs (k), (l), (m), (n), and (o) as paragraphs (l), (m), (n), (o), and (p) and adding new paragraph (k).

The additions read as follows:

§ 240.17a–5 Reports to be made by certain brokers and dealers.

(a) *Filing of monthly and quarterly reports.** * *

(5) Each broker or dealer that computes certain of its capital charges in accordance with § 240.15c3–1e must file the following additional reports:

(i) Within 17 business days after the end of each month that is not a quarter, as of month-end:

(A) For each product for which the broker or dealer calculates a market risk capital charge other than in accordance with § 240.15c3–1e(c)(1) or (c)(5), the product category and the amount of the market risk capital charge;

(B) A graph reflecting, for each business line, the daily intramonth VaR;

(C) The aggregate value at risk for the broker or dealer;

(D) For each product for which the broker or dealer uses scenario analysis, the product category and the market risk capital charge;

(E) Credit risk information on derivatives exposures, including:

(*1*) Overall current exposure;

(*2*) Current exposure (including commitments) listed by counterparty for:

(*i*) The 15 largest exposures; and

(*ii*) The 5 largest exposures to regulated financial institutions;

(*3*) The 10 largest commitments listed by counterparty;

(*4*) The broker or dealer's maximum potential exposure listed by counterparty for:

(*i*) The 15 largest exposures; and

(*ii*) The 5 largest exposures to regulated financial institutions;

(*5*) The broker or dealer's aggregate maximum potential exposure;

(*6*) A summary report reflecting the broker or dealer's current and maximum potential exposures by credit rating category; and

(*7*) A summary report reflecting the broker or dealer's current exposure for each of the top ten countries to which the broker or dealer is exposed (by residence of the main operating group of the counterparty); and

(F) Regular risk reports supplied to the broker's or dealer's senior management in the format described in the application;

(ii) Within 17 business days after the end of each quarter:

(A) Each of the reports required to be filed in paragraph (a)(5)(i) of this section;

(B) A report identifying the number of business days for which the actual daily net trading loss exceeded the corresponding daily VaR; and

(C) The results of backtesting of all internal models used to compute allowable capital, including VaR and credit risk models, indicating the number of backtesting exceptions.

* * * * *

(k) *Supplemental reports.* Each broker or dealer that computes certain of its capital charges in accordance with § 240.15c3–1e shall file concurrently with the annual audit report supplemental reports, which shall be prepared by a registered public accounting firm (as that term is defined in section 2(a)(12) of the Sarbanes-Oxley Act of 2002 (Public Law 107–204)), in accordance with the following:

(1) *Accountant's report on management controls.* The broker or dealer shall file a supplemental report indicating the results of the accountant's review of the internal risk management control system established and documented by the broker or dealer in

accordance with § 240.15c3–4. This review shall be conducted in accordance with procedures agreed to by the broker or dealer and the registered public accounting firm conducting the review. The purpose of the review is to confirm that the broker or dealer has established, documented, and is in compliance with the internal risk management controls established in accordance with § 240.15c3–4;

(2) *Accountant's report on inventory pricing and modeling.* The broker or dealer shall file a supplemental report indicating the results of the accountant's review of the procedures for pricing financial instrument inventory (including modeling procedures) established by the broker or dealer and approved for use by the Commission. This review shall be conducted in accordance with procedures agreed to by the broker or dealer and the registered public accounting firm conducting the review. The purpose of the review is to confirm that the financial instrument pricing procedures relied upon by the broker or dealer conform to the procedures established by the broker or dealer pursuant to § 240.15c3–4 and comply with the qualitative and quantitative standards set forth in § 240.15c3–1e(e); and

(3) The broker or dealer shall file, prior to the commencement of the review and no later than December 10 of each year, a statement with the Commission's principal office in Washington, DC that includes:

(i) A description of the agreed-upon procedures agreed to by the broker or dealer and the registered public accounting firm (pursuant to paragraphs (*l*)(1) and (*l*)(2) of this section); and

(ii) A notice describing changes in those agreed-upon procedures, if any. If there are no changes, the broker or dealer should so indicate.

* * * * *

8. Section § 240.17a–11 is amended by:

a. Revising the phrase "an OTC derivatives dealer" to read "a broker or dealer that computes certain of its capital charges in accordance with § 240.15c3–1e or 240.15c3–1f" in paragraphs (b)(2) and (c)(3); and

b. Adding paragraph (j);

The addition reads as follows:

§ 240.17a–11 Notification procedures for brokers and dealers.

* * * * *

(j) A broker or dealer that computes certain of its capital charges in accordance with § 240.15c3–1e shall also give notice that same day in accordance with paragraph (g) of this section whenever:

(1) The broker or dealer is notified by an NRSRO or otherwise becomes aware that an NRSRO has determined to reduce its assessment of the creditworthiness of the broker or dealer or of an affiliate of the holding company of the broker or dealer, or has determined to reduce the credit rating(s) assigned to one or more outstanding short or long-term obligations of the broker or dealer or an affiliate of the holding company of the broker or dealer;

(2) The broker or dealer becomes subject to any supervisory agreement, order, resolution, or other notice of non-compliance from, or report of an instance of non-compliance, issued by an appropriate regulatory agency or self-regulatory organization;

(3) The broker or dealer becomes aware of a situation that may have a material adverse effect on the financial or operational condition of the holding company of the broker or dealer or an affiliate of the holding company of the broker or dealer; or

(4) The occurrence of any backtesting exception under § 240.15c3–1e(e)(1)(iii) or (iv) that would require that the broker or dealer use a higher multiplication factor in the calculation of its market or credit risk capital charges.

9. Section 240.17h–1T is amended by:

a. Redesignating paragraph (d)(4) as paragraph (d)(5); and

b. Adding new paragraph (d)(4).

The addition reads as follows:

§ 240.17h–1T Risk assessment recordkeeping requirements for associated persons of brokers and dealers.

* * * * *

(d) *Exemptions.* * * *

(4) The provisions of this section shall not apply to a broker or dealer that computes certain of its capital charges in accordance with § 240.15c3–1e.

10. Section 240.17h–2T is amended by:

a. Redesignating paragraph (b)(4) as paragraph (b)(5); and

b. Adding new paragraph (b)(4).

The addition reads as follows:

§ 240.17h–2T Risk assessment reporting requirements for brokers and dealers.

* * * * *

(b) Exemptions. * * *

(4) The provisions of this section shall not apply to a broker or dealer that computes certain of its capital charges in accordance with § 240.15c3–1e.

* * * * *

Dated: October 24, 2003.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–27306 Filed 11–5–03; 8:45 am]

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November 6, 2003

Part III

Securities and Exchange Commission

17 CFR Part 240

Supervised Investment Bank Holding Companies; Proposed Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–48694; File No. S7–22–03]

RIN 3235–AI97

Supervised Investment Bank Holding Companies

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Proposed rule.

SUMMARY: The Commission is proposing rules to implement Section 17(i) of the Securities Exchange Act of 1934, which created a new framework for supervising an investment bank holding company (''IBHC''). An IBHC that meets certain, specified criteria may voluntarily file a notice of intention with the Commission to become a supervised investment bank holding company (''SIBHC'') and be subject to supervision on a group-wide basis. Pursuant to the statute and proposed rules, an IBHC would be eligible to be an SIBHC if it is not affiliated with certain types of banks and has a substantial presence in the securities markets. The proposed rules would provide an IBHC with a process to become supervised by the Commission as an SIBHC, and would establish regulatory requirements for an SIBHC, including requirements regarding its group-wide internal risk management control system, recordkeeping, and periodic reporting (including reporting of consolidated computations of allowable capital and risk allowances consistent with the Basel Standards). The Commission is also proposing to add an exemption to the Commission's risk assessment rules to exempt a broker-dealer that is affiliated with an SIBHC because the SIBHC will be maintaining records and reporting to the Commission regarding the financial and operational condition of members of the affiliate group. Finally, the Commission is proposing to adjust the audit requirements for OTC derivative dealers to allow accountants to use agreed-upon procedures when conducting audits of risk management control systems.

DATES: Comments must be received on or before February 4, 2004.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by hard copy or by email, but not by both methods. Comment letters sent by hard copy should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Alternatively, comment letters sent electronically should be submitted to the following electronic-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–22–03. This file number should be included in the subject line if you use electronic mail. We will make all comment letters available for public inspection and copying in our public reference room at the above address. We will post electronically submitted comment letters on the Commission's Internet Web site (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: With respect to general questions, contact Catherine McGuire, Chief Counsel, Lourdes Gonzalez, Assistant Chief Counsel, or Linda Stamp Sundberg, Attorney Fellow, at (202) 942–0073, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

With respect to calculations of allowable capital and risk allowances, internal risk management control systems, and books and records and reporting requirements, contact Michael A. Macchiaroli, Associate Director, at (202) 942–0132, Thomas K. McGowan, Assistant Director, at (202) 942–4886, Rose Russo Wells, Attorney, at (202) 942–0143, Bonnie L. Gauch, Attorney, at (202) 942–0765, or David Lynch, Financial Economist, at (202) 942–0059, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is publishing for comment proposed amendments to Rule 17a–12 [17 CFR 240.17a–12] and Rules 17h–1T and 17h–2T [17 CFR 240.17h–1T and 240.17h–2T], and proposed new Rules 17i–1 through 17i–8 [17 CFR 240.17i–1 through 240.17i–8] under the Exchange Act [15 U.S.C. 78a *et seq.*]

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[1] We do not edit personal identifying information, such as names or electronic-mail addresses, from electronic submissions. You should submit only information that you wish to make publicly available.

I. Introduction

Section 231 of the Gramm-Leach-Bliley Act of 1999 [2] (the ''GLBA'') amended Section 17 of the Securities Exchange Act of 1934 (the ''Exchange Act'' or the ''Act'') to create a regulatory framework under which a holding company of a broker-dealer may voluntarily be supervised by the Commission as an SIBHC. The rules we are proposing today would create a framework for the Commission to supervise SIBHCs. These rules also would enhance the Commission's supervision of the SIBHC's subsidiary broker-dealers through collection of additional information and examinations of affiliates of those broker-dealers. This framework would include qualification criteria for IBHCs that file notices of intention to be supervised by the Commission, as well as recordkeeping and reporting requirements for SIBHCs. An IBHC that meets the criteria set forth in the proposed rules would not be required to become an SIBHC; supervision as an SIBHC is voluntary. Taken as a whole, the proposed framework would permit the Commission to better monitor the financial condition, risk management, and activities of a broker-dealer's parent and affiliates on a group-wide basis. In particular, it would create a formal process through which the Commission could access important information regarding activities of a broker-dealer's affiliates that could impair the financial and operational stability of the broker-dealer or the SIBHC.

In addition, securities firms that do business in the European Union (''EU'') have indicated that they may need to demonstrate that they have consolidated supervision at the holding company level that is ''equivalent'' to EU consolidated supervision.[3] Generally, EU ''consolidated supervision'' would take the form of a series of rules, imposed at the holding company level, regarding firms' internal controls, capital adequacy, intra-group transactions, and risk concentration. Without a demonstration of ''equivalent'' supervision, securities firms located in the EU have stated that they may either be subject to additional capital charges or required to form a sub-holding company in the EU.

Congress addressed these concerns by enacting Section 17(i) of the Exchange Act,[4] which authorizes an IBHC to voluntarily elect to be supervised by the Commission as an SIBHC.[5] Pursuant to Section 17(i)(1)(A) of the Exchange Act, an IBHC that is not: (i) An affiliate of an insured bank (with certain exceptions) or a savings association; [6] (ii) a foreign bank, foreign company, foreign bank branch agency, or a state-chartered commercial lending company; [7] or (iii) a foreign bank that controls an Edge Act Corporation [8] may elect to become an SIBHC.[9]

This regulatory framework for SIBHCs is intended to provide a basis for non-U.S. financial regulators to treat the Commission as the principal U.S. consolidated, home-country supervisor [10] for SIBHCs and their affiliated broker-dealers. This would minimize duplicative regulatory burdens on broker-dealers that are active in the EU and in other jurisdictions that may have similar laws.

Under Section 17(i) of the Exchange Act, the Commission may adopt rules regarding, among other things: (i) The form of an IBHC's notice of intention to become an SIBHC and the information and documents to be included with that notice;[11] and (ii) creation and maintenance of records and reports, and submission of those reports to the Commission.[12] Further, Section 17(i)(3)(C) of the Exchange Act authorizes the Commission to examine an SIBHC (including any affiliate) in order to (i) inform the Commission regarding the nature of the operations and financial condition of the SIBHC and its affiliates, the financial and operational risks within the SIBHC that may affect any broker-dealer controlled by the SIBHC, and the systems of the SIBHC and its affiliates for monitoring and controlling those risks; and (ii) monitor compliance with the provisions of Section 17(i) of the Exchange Act.[13] Section 17(i)(3)(C) also provides that the Commission may examine the SIBHC and any affiliate to monitor compliance with the provisions of Exchange Act Section 17(i), provisions governing transactions and relationships between any broker-dealer affiliated with the SIBHC and any of the company's other affiliates, as well as applicable provisions of the Bank Secrecy Act [31 U.S.C. 53, subchapter II].[14] While Section 17(i) of the Exchange Act authorizes the Commission to inspect any affiliate of an SIBHC, it also limits the focus and scope of any examination to the SIBHC and any affiliate of the SIBHC that, because of its size, condition, or activities, the nature or size of the transactions between such affiliate and any affiliated broker-dealer, or the centralization of functions within the holding company system, could, in the discretion of the Commission, have a materially adverse effect on the operational or financial condition of the broker-dealer.[15]

The rules proposed under Section 17(i) are not intended to duplicate regulation of banks, insurance companies, or futures commission merchants by other regulatory agencies. Section 17(i) of the Exchange Act directs the Commission to: (i) Accept, to the fullest extent possible, reports that an SIBHC or an affiliate thereof may have been required to provide to another appropriate regulatory agency or self-regulatory organization;[16] (ii) use, to the fullest extent possible, reports of examination made by the appropriate regulatory agency or state insurance regulator;[17] and (iii) defer to the appropriate regulatory agency or state insurance regulator with regard to interpretation and enforcement of banking or insurance regulations.[18]

II. Description of the Proposed Rules

A. Proposed Rule 17i–1: Definitions

Proposed Rule 17i–1 would incorporate the definitions set forth in Section 17(i)(5) of the Exchange Act [19] into the rules promulgated under Section 17(i). Although these definitions apply regardless of whether they are incorporated into these rules, incorporating them lets individuals reading the proposed rules know that the terms are defined, and directs them to those definitions. In addition, the proposed rule includes definitions of the terms ''affiliate group'' and ''material affiliate,'' which are used

[2] Pub. L. 106–102, 113 Stat. 1338 (1999).

[3] *See* ''Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002.''

[4] *See* H.R. Conf. Rep. No. 106–434, 165 (1999).

[5] Exchange Act Section 17(i) [15 U.S.C. 78q(i)].

[6] Exchange Act Section 17(i)(1)(A)(i) [15 U.S.C. 78q(i)(1)(A)(i)].

[7] Exchange Act Section 17(i)(1)(A)(ii) (State-chartered commercial lending companies described in Section 8(a) of the International Banking Act of 1978 [12 U.S.C. 3106(a)]) [15 U.S.C. 78q(i)(1)(A)(ii)].

[8] Exchange Act Section 17(i)(1)(A)(iii) (12 U.S.C. 611 (''Federal Reserve Act''), and Section 25A thereunder [12 U.S.C. 611]) [15 U.S.C. 78q(i)(1)(A)(iii)].

[9] Exchange Act Section 17(i)(1)(A) [15 U.S.C. 78q(i)(1)(A)].

[10] *See supra* note 4.

[11] Exchange Act Section 17(i)(1)(B) [15 U.S.C. 78q(i)(1)(B)].

[12] Exchange Act Section 17(i)(3)(A) [15 U.S.C. 78q(i)(3)(A)].

[13] 15 U.S.C. 78q(i)(3)(C).

[14] Exchange Act Section 17(i)(3)(C)(i) [15 U.S.C. 78q(i)(3)(C)(i)].

[15] Exchange Act Section 17(i)(3)(C)(ii) [15 U.S.C. 78q(i)(3)(C)(ii)].

[16] Exchange Act Section 17(i)(3)(B)(i) [15 U.S.C. 78q(i)(3)(B)(i)].

[17] Exchange Act Section 17(i)(3)(C)(iii) [15 U.S.C. 78q(i)(3)(C)(iii)].

[18] Exchange Act Section 17(i)(4) [15 U.S.C. 78q(i)(4)].

[19] 15 U.S.C. 78q(i)(5).

throughout proposed Rules 17i–1 through 17i–8.

Pursuant to the definitions in the Act, the term ''investment bank holding company'' means any person, other than a natural person, that owns or controls one or more broker-dealers and the associated persons of the investment bank holding company.[20] The term ''associated person of an investment bank holding company'' means any person directly or indirectly controlling, controlled by, or under common control with the IBHC.[21] Thus, an IBHC includes the holding company and all other entities within the holding company structure that meet the ''control'' test. A ''supervised investment bank holding company'' is any IBHC that is supervised by the Commission pursuant to Section 17(i) of the Exchange Act.[22]

Sections 17(i)(5)(C), (D), and (E) of the Exchange Act state that, for purposes of Section 17(i) of the Exchange Act, the terms ''affiliate,'' [23] ''bank,'' [24] ''bank holding company,'' [25] ''company,'' [26] ''control,'' [27] and ''savings association'' [28] have the same meaning as given in Section 2 of the Bank Holding Company Act of 1956 [29] (the ''Bank Holding Company Act''); the term ''insured bank'' has the same meaning as given in Section 3 of the Federal Deposit Insurance Act; [30] and the term ''foreign bank'' has the same meaning as given in Section 1(b)(7) of the International Banking Act.[31]

Proposed Rule 17i–1 also includes definitions of the terms ''affiliate group'' and ''material affiliate.'' The term ''affiliate group'' is defined to include the SIBHC and every affiliate of the SIBHC because we believe that we would need to obtain information related to all affiliates to provide effective supervision of an SIBHC. We define the term ''material affiliate'' to include any member of the affiliate group that is material to the SIBHC because, based on the Commission's experience in reviewing holding company documentation, receiving information specific to affiliates material to a holding company provides us with a better understanding of the holding company, including how risk is managed on a consolidated level.

We request comment on whether the proposed definitions of affiliate group and material affiliate are appropriate, whether it would be helpful to reproduce the statutory definitions within the rules, and whether any additional terms need to be defined in these rules.

B. Proposed Rule 17i–2: Notice of Intention To Be Supervised by the Commission as an SIBHC

Section 17(i)(1)(B) of the Exchange Act states that in order to elect to become an SIBHC, an IBHC must file with the Commission a written notice of intention to become supervised by the Commission in such form and containing such information and documents concerning the IBHC as the Commission, by rule, may prescribe as necessary and appropriate in furtherance of the purposes of Section 17 of the Act (a ''Notice of Intention'').[32] Proposed Rule 17i–2 would provide the method by which an IBHC could elect to become an SIBHC. In addition, consistent with Section 17(i)(1)(B) of the Exchange Act, proposed Rule 17i–2 indicates that the IBHC will automatically become an SIBHC 45 days after the Commission receives its completed Notice of Intention unless the Commission issues an order indicating either that it will begin its supervision sooner or that it does not believe it to be necessary or appropriate in furtherance of Section 17 of the Act for the IBHC to be so supervised. Finally, proposed Rule 17i–2 sets forth the criteria the Commission would use to make this determination.[33]

If an IBHC becomes an SIBHC, supervision of its affiliated broker-dealer and related associated persons generally would not be affected, except that a broker-dealer affiliated with an SIBHC would be exempted from the requirements of Rules 17h–1T and 17h–2T.

1. Election Criteria

Section 17(i)(1)(A) of the Exchange Act sets forth certain limitations on whether an IBHC is eligible to become an SIBHC.[34] Specifically, an IBHC that is not (i) an affiliate of an insured bank (with certain exceptions) or a savings association; [35] (ii) a foreign bank, foreign company, or a company that is described in section 8(a) of the International Banking Act of 1978; [36] or (iii) a foreign bank that controls, directly or indirectly, a corporation chartered under section 25A of the Federal Reserve Act [37] would be eligible to file a Notice of Intention. Paragraph (a) of proposed Rule 17i–2 would incorporate these statutory exclusions.

2. Notice of Intention To Become an SIBHC

Proposed Rule 17i–2(b) would require that an IBHC that elects to become an SIBHC file a written Notice of Intention with the Commission that includes (i) a request to become an SIBHC; (ii) a statement certifying that it is not affiliated with an entity listed in Section 17(i)(1)(A) of the Exchange Act; [38] (iii) documentation demonstrating that it owns or controls at least one broker-dealer that maintains a substantial presence in the securities business as evidenced either by its holding tentative net capital of $100 million or more or otherwise; and (iv) other supplemental documents described below.

To assist the Commission in evaluating the IBHC's activities, financial condition, risk management control systems, and the relationships among its associated persons in order to determine whether Commission supervision of the IBHC is necessary and appropriate in furtherance of the purposes of Section 17 of the Exchange Act, an IBHC also would be required to file the following supplemental documents with its Notice of Intention pursuant to proposed Rule 17i–2:

- A narrative describing the business and organization of the IBHC;
- An alphabetical list of the members of the affiliate group, a designation of those affiliates it considers to be ''material affiliates'' and the financial regulator(s), if any, with which the affiliate is registered;
- An organizational chart identifying the IBHC and its material affiliates;
- Consolidated and consolidating financial statements;
- Certain sample calculations of allowable capital and allowances for market, credit, and operational risk or

[20] Exchange Act Section 17(i)(5)(A) [15 U.S.C. 78q(i)(5)(A)].

[21] Exchange Act Section 17(i)(5)(F) [15 U.S.C. 78q(i)(5)(F)].

[22] 15 U.S.C. 78q(i)(5)(B).

[23] Bank Holding Company Act Section 2(k) [12 U.S.C. 1841(k)].

[24] Bank Holding Company Act Section 2(c) [12 U.S.C. 1841(c)].

[25] Bank Holding Company Act Section 2(a) [12 U.S.C. 1841(a)].

[26] Bank Holding Company Act Section 2(b) [12 U.S.C. 1841(b)].

[27] Bank Holding Company Act Section 2(a)(2) *et seq.* [12 U.S.C. 1841(a)(2) *et seq*].

[28] Bank Holding Company Act Section 2(j) [12 U.S.C. 1841(j)].

[29] 12 U.S.C. 1841.

[30] 12 U.S.C. 1813(h).

[31] 12 U.S.C. 3101(7).

[32] Exchange Act Section 17(i)(1)(B) [15 U.S.C. 78q(i)(1)(B)].

[33] *Id.*

[34] Exchange Act Section 17(i)(1)(A) [15 U.S.C. 78q(i)(1)(A)].

[35] Exchange Act Section 17(i)(1)(A)(i) [15 U.S.C. 78q(i)(1)(A)(i)].

[36] Exchange Act Section 17(i)(1)(A)(ii) [15 U.S.C. 78q(i)(1)(A)(ii)].

[37] *See* Exchange Act Section 17(i)(1)(A)(iii) (Federal Reserve Act § 25A [12 U.S.C. 611]) [15 U.S.C. 78q(i)(1)(A)(iii)].

[38] 15 U.S.C. 78q(i)(1)(A).

alternative capital assessments made in accordance with proposed Rule 17i–7;

• A list of the positions held by the affiliate group in its proprietary accounts and the methods the IBHC intends to use for computing allowances for market risk and credit risk on those positions;

• A detailed description of the mathematical models the IBHC intends to use to calculate market and credit risk;

• A description of how the IBHC proposes to calculate current exposure;

• A description of how the IBHC proposes to determine credit risk weights;

• A description of the method the IBHC proposes to use to calculate its allowance for operational risk;

• A description of the internal risk management control system established by the IBHC to manage the risks of the affiliate group and how that system satisfies the requirements of proposed Rule 17i–4;

• Sample risk reports that the holding company provides to the persons responsible for managing the risks of the affiliate group; and

• An undertaking providing that the SIBHC will cooperate with the Commission as necessary if the disclosure of any information with regard to Rules 17i–1 through 17i–8 would be prohibited by law or otherwise and that the SIBHC will obtain, for any non-U.S. affiliate, consent to the jurisdiction of the Commission and an agreement to maintain a U.S. registered agent.

Because each firm manages its internal risks differently, the Commission, in its review of the Notice of Intention, would use the information and documents provided with the Notice of Intention to assess each firm's business, financial condition, and internal risk management control systems. We have successfully used similar information in the past to evaluate and monitor risks to broker-dealers. In addition to the information and documentation described in the proposed rules, the IBHC would be required to furnish such other information and documents, including documents relating to its financial position, internal controls, and mathematical models, as the Commission may request to complete its review of the Notice of Intention. A Notice of Intention would not be complete until the IBHC has provided to the Commission all the information and documentation specified in the Rule and requested by the Commission.

Further, depending on the relationship or the geographic location of the SIBHC and its affiliates, the Commission could require that an SIBHC obtain additional agreements that may be necessary for the Commission to adequately assess any risks that affiliate may pose to the SIBHC and its subsidiary broker-dealers. For example, the Commission may have a greater concern regarding access to information if a broker-dealer's affiliate operates in a jurisdiction that limits the exchange of information through bank secrecy laws or other impediments. Paragraph (b)(xiv) of proposed Rule 17i–2 would address this issue by requiring that an SIBHC provide the Commission with an undertaking indicating that it agrees to cooperate with the Commission as needed, including by describing any secrecy laws or other impediments that could restrict the ability of the SIBHC to provide information on the operations or activities of the SIBHC. If any material impediments exist, we would require the SIBHC to describe the manner in which it proposes to provide the Commission with adequate assurances of access to information.

Pursuant to paragraph (c) of proposed Rule 17i–2, IBHCs and SIBHCs would have a continuing requirement to amend their Notices of Intention. If any of the information or documentation filed with the Commission as part of the Notice of Intention is found to be or becomes inaccurate prior to a Commission determination, the IBHC would be required to notify the Commission and provide the Commission with a description of the circumstances in which the information or documentation was found to be or became inaccurate along with updated, accurate information and documents. Whereas after a Commission determination, if an SIBHC materially changes a mathematical model or other method used to compute allowable capital or allowance for market, credit, or operational risk, or its internal risk management control systems as described in its Notice of Intention, prior to making the changes the SIBHC would be required to file an amended Notice of Intention describing the changes.

We request comment as to whether the information and documents required to be included in the Notice of Intention pursuant to paragraph (b) of proposed Rule 17i–2 are appropriate, or whether the Commission should receive other financial, operational, or other types of information. If so, please indicate what additional information or documentation the Commission should require, and how the additional information and documents may assist the Commission in evaluating the financial and operational position of an IBHC.

3. Process for Review of Notice of Intention

Pursuant to paragraph (d)(2) of proposed Rule 17i–2, an IBHC would become an SIBHC subject to Commission supervision pursuant to Section 17(i) of the Exchange Act 45 calendar days after the Commission receives a completed Notice of Intention,[39] unless the Commission issues an order determining either that (i) the Commission will begin to supervise the IBHC as an SIBHC prior to 45 calendar days after the Commission received the completed Notice of Intention to become supervised; or (ii) the Commission will not supervise the IBHC because supervision of the entity as an SIBHC is not necessary or appropriate in furtherance of the purposes of Section 17 of the Exchange Act.[40]

The Commission may begin supervising the IBHC as an SIBHC ''[u]nless the Commission finds that such supervision is not necessary or appropriate in furtherance of the purposes'' of Section 17.[41] The purposes of Section 17 are quite broad. Section 17 generally permits the Commission to carry out its regulatory oversight responsibilities regarding broker-dealers by establishing rules related to recordkeeping, reporting, and examination. In addition, Section 17(h) provides the Commission authority to require that a broker-dealer obtain information and make and keep such records and reports regarding the broker-dealer's affiliates and the financial and securities activities, capital and funding of certain of those affiliates[42] as the Commission prescribes to assess the financial and operational risks to a broker-dealer from those affiliates.

We believe that, consistent with the purposes of Section 17, the Commission's supervision of an IBHC as an SIBHC may be necessary and appropriate only when the IBHC is affiliated with a broker-dealer that has a

[39] Pursuant to paragraph (d)(1) of proposed Rule 17i–2, a Notice of Intention to be supervised by the Commission as an SIBHC would not be complete until the IBHC had filed all the documentation and information required pursuant to paragraphs (a) through (c) of that proposed Rule with the Commission.

[40] Exchange Act § 17(i)(1)(B) [15 U.S.C. 78q(i)(1)(B)].

[41] 15 U.S.C. 17(i)(1)(B).

[42] Those affiliates would include affiliates whose business activities are reasonably likely to have a ''material impact'' on the financial or operational condition of the broker-dealer.

''substantial presence'' in the securities business.[43] Supervision of an SIBHC that owns or controls a broker-dealer with a substantial presence in the securities business would permit the Commission to be better informed regarding the financial and operational conditions of broker-dealers and their holding companies whose failure could have a materially adverse impact on other securities market participants, thus reducing systemic risk and furthering the purposes of Section 17. Evidence that an IBHC owns or controls a broker-dealer that maintains $100 million in tentative net capital would be sufficient to demonstrate a substantial presence in the securities business.

Paragraph (d)(1) of proposed Rule 17i–2 states that all Notices of Intention, amendments, and other documentation and information filed pursuant to proposed Rule 17i–2 will be accorded confidential treatment. We believe it is important to accord confidential treatment to the information and documents an SIBHC would be required provide to the Commission as part of its Notice of Intention because the information and documents would generally be highly sensitive, non-public business information.

The Commission seeks comment on the requirement that an SIBHC own or control a broker-dealer that has a substantial presence in the securities business. In addition, we request comment as to whether maintenance by a broker-dealer of a specified dollar amount of tentative net capital (*e.g.,* $100 million) is an appropriate method to demonstrate whether a broker-dealer has a substantial presence in the securities business. If so, is $100 million in tentative net capital appropriate, or should the dollar amount be higher or lower?

C. Proposed Rule 17i–3: Withdrawal From Supervision as an SIBHC

Proposed Rule 17i–3 would permit an SIBHC to withdraw from Commission supervision by filing a notice of withdrawal with the Commission. Pursuant to the proposed Rule, a notice of withdrawal from supervision would take effect one year after it is filed with the Commission (or a shorter or longer period that the Commission deems necessary or appropriate to ensure effective supervision of the material risks to the SIBHC and any affiliated broker-dealer or to prevent evasion of the purposes of Section 17 of the Exchange Act).[44] The proposed Rule would also require that an SIBHC include in its notice of withdrawal a statement that it is in compliance with proposed Rule 17i–2(c) regarding amendments to its Notice of Intention to help to assure that the Commission has updated information when considering the SIBHC's withdrawal request.

Paragraph (c) of proposed Rule 17i–3 states that the Commission may discontinue supervising an SIBHC if the Commission finds that the SIBHC no longer exists or is no longer an IBHC, or that continued supervision of the SIBHC is not necessary or appropriate in furtherance of the purposes of Section 17. Among other things, if an SIBHC makes a material amendment to a mathematical model, its internal risk management control systems, or its corporate structure as described in its Notice of Intention (and as modified from time to time), the Commission would review whether the change would cause continued supervision of the SIBHC to no longer be necessary or appropriate in furtherance of the purposes of Section 17 of the Act.

In order to determine whether continued supervision of an SIBHC is necessary or appropriate in furtherance of the purposes of Section 17 of the Act, the Commission would consider the same criteria it initially considered to determine whether an IBHC will be supervised by the Commission as an SIBHC.

We request comment on all aspects of the withdrawal provisions included in proposed Rule 17i–3. Specifically, we request comment on whether the information the Commission intends to use to determine whether continued supervision of an SIBHC is necessary or appropriate in furtherance of the purposes of Section 17 of the Act is appropriate, and whether the Commission should consider any additional factors. In addition, we request comment as to whether the time frames for withdrawal included in the proposed Rule are appropriate, or whether they should be longer or shorter. If the time periods should be longer or shorter, under what circumstances?

D. Proposed Rule 17i–4: Internal Risk Management Control System Requirements for SIBHCs

Participants in the securities markets are exposed to various risks, including (i) market risk;[45] (ii) credit risk;[46] (iii) operational risk;[47] (iv) funding risk;[48] and (v) legal risk.[49] Large broker-dealers and IBHCs generally are more exposed to high levels of these types of risk due, in part, to their intricate corporate structures, the complexity of business activities in which they engage, and the diverse range of financial instruments they trade. Due to the level of risk exposures created by these types of business activities and products, it is important for firms to implement robust risk management control systems. A firm that has adopted and follows appropriate risk management controls reduces its risk of significant loss, which also reduces the risk that those losses will be spread to other market participants or throughout the financial markets as a whole.[50]

The specific elements of a risk management control system will vary depending on the size, complexity, and organization of a firm. Accordingly, the design and implementation of a system of internal controls for a particular firm or affiliate group may differ from other firms. An individual firm must have the flexibility to implement specific policies and procedures unique to its circumstances. However, as we have found before, well-developed risk management systems generally share certain core principles such as establishing clear responsibilities at each level of management, separation of certain key responsibilities, and effective monitoring and reporting.

Proposed Rule 17i–4 would require an SIBHC to establish, document and maintain a system of internal risk management controls to assist it in

[43] As set forth in paragraph (d)(2)(i)(B) of proposed Rule 17i–2.

[44] *See* paragraph (b) of proposed Rule 17i–3.

[45] Market risk involves the risk that prices or rates will adversely change due to economic forces. Such risks include adverse effects of movements in equity and interest rate markets, currency exchange rates, and commodity prices. Market risk can also include the risks associated with the cost of borrowing securities, dividend risk, and correlation risk.

[46] Credit risk comprises risk of loss resulting from counterparty default on loans, swaps, options, and during settlement.

[47] Operational risk encompasses the risk of loss due to the breakdown of controls within the firm including, but not limited to, unidentified limit excesses, unauthorized trading, fraud in trading or in back office functions, inexperienced personnel, and unstable and easily accessed computer systems.

[48] Funding risk includes the risk that a firm will not be able to raise sufficient cash to meet all its obligations that are due, which may occur even if the firm has positive net worth if some assets are not readily marketable.

[49] Legal risk arises from possible risk of loss due to an unenforceable contract or an *ultra vires* act of a counterparty.

[50] This is commonly referred to as systemic risk. Systemic risk includes the risk that the failure of one firm or within one market segment would trigger failures in other market segments or throughout the financial markets as a whole.

managing the risks associated with its business activities, including market, credit, operational, funding, and legal risks.

Proposed Rule 17i–4 would require an SIBHC to comply with present Exchange Act Rule 15c3–4 as though it were a broker-dealer.[51] Currently, Rule 15c3–4 applies to over-the-counter derivatives dealers [52] (''OTC derivatives dealers''). Based on the Commission's experience with OTC derivatives dealers, we believe this rule would require an SIBHC to develop strong internal controls that would reduce risk at the SIBHC and would require an SIBHC to adequately document those controls so the controls can be examined.

Paragraph (b) of proposed Rule 17i–4 would require that an SIBHC establish, document, and maintain procedures for the detection and prevention of money laundering and terrorist financing as part of its internal risk management control system. These procedures should include appropriate safeguards at the holding company level to prevent money laundering through affiliates.[53] This proposed requirement would allow us to adequately inspect members of the affiliate group as required by the statute.[54] We request comment on all aspects of the internal risk management control system requirements included in proposed Rule 17i–4. We also request comment on whether Rule 17i–4 should incorporate Rule 15c3–4 or should be fashioned as a stand-alone rule. In addition, we request comment as to whether any aspect of Rule 15c3–4 could be better tailored to reflect unique aspects of group risk management practices (as opposed to internal firm risk management practices).

Finally, we request comment on whether Rule 15c3–4 should be amended to require that results of the periodic reviews of the internal risk management control system conducted by an internal auditor and annual reviews of the internal risk management control system conducted by an accountant should be reported in writing to the SIBHC's Board of Directors. In addition, we request comment on whether results of these periodic reviews should be reported in writing to the Commission.

E. Proposed Rule 17i–5: Record Creation, Maintenance, and Access Requirements for SIBHCs

Pursuant to Section 17(i)(3)(A) of the Exchange Act, an SIBHC would be required to make and keep records, furnish copies thereof, and make such reports as the Commission may require by rule.[55] Proposed Rule 17i–5 would require that an SIBHC make and keep current certain records relating to its business. In addition, it would require that an SIBHC preserve those and other records for certain prescribed time periods. The purpose of this rule is to require an SIBHC to create and maintain records that would allow the Commission to remain informed as to the SIBHC's activities, financial condition, policies, systems for monitoring and controlling financial and operational risks, and transaction among members of the affiliate group, as well as determine whether the SIBHC is in compliance with the Exchange Act and rules to which it is subject.

1. Record Creation

Paragraph (a) of proposed Rule 17i–5 would require that the SIBHC make and keep current (i) a record reflecting the results of quarterly stress testing of the affiliate group's funding and liquidity with respect to certain specified events; (ii) a record of the SIBHC's contingency plans to respond to certain specified events affecting the affiliate group's funding and liquidity; and (iii) a record of the basis for credit risk weights for each counterparty.

The specified events concerning which an SIBHC would need to conduct stress tests and create a contingency plan would include, (i) a credit rating downgrade of the SIBHC; (ii) an inability of the SIBHC to access capital markets for short-term funding; (iii) an inability of the SIBHC to move liquid assets across international borders when (i) or (ii) occur; or (iv) an inability of the SIBHC to access credit or assets held at a particular institution when (i) or (ii) occur. These events are intended to identify possible liquidity and funding stress scenarios that would impose significant financial distress on the SIBHC. The Commission believes that records of the SIBHC's contingency plans to respond to those events would provide the Commission with important information during an examination that would be necessary to adequately assess the SIBHC's financial condition and financial and operational risks.

We request comment as to whether there are any other records that an SIBHC should be required to create. We also request comment as to whether it would be appropriate to expand the list of specified events described above.

2. Record Maintenance

Pursuant to paragraph (b) of proposed Rule 17i–5, the SIBHC would be required to preserve (i) the records required to be created pursuant to 17i–5(a); (ii) all Notices of Intention, amendments thereto, and other documentation and information filed with the Commission in accordance with proposed Rule 17i–2 and any responses thereto; (iii) reports and notices filed with the Commission in accordance with proposed Rules 17i–6 and 17i–8; and (iv) records documenting the internal risk management control system established in accordance with proposed Rule 17i–4 to manage the risks of the affiliate group.

Proposed Rule 17i–5 would require that an SIBHC maintain the specified records for a period of three years in an easily accessible place. Exchange Act Rule 17a–4 presently requires that broker-dealers maintain certain records for this time period, and we believe this time period is sufficient with relation to the records required pursuant to proposed Rule 17i–5 to allow effective examinations of SIBHCs. The proposed Rule would allow an SIBHC to maintain these records in any manner permitted pursuant to Rule 17a–4(f).[56]

Paragraph (c) of proposed Rule 17i–5 would allow an SIBHC to maintain the records required under the rule either at the SIBHC, at an affiliate, or at a records storage facility, provided that the records are located within the boundaries of the United States. If these records are maintained by an entity other than the SIBHC, the SIBHC would be required to file a written undertaking from the entity with the Commission. This is intended to allow the SIBHC the flexibility to maintain records, while permitting the Commission to obtain those records.

Proposed Rule 17i–5 would not require an SIBHC to maintain its required records in a prescribed standard form. To reduce the recordkeeping burden on SIBHCs, proposed Rule 17i–5 would instead allow the SIBHC to meet its

[51] In a separate release, we also proposed rules and rule amendments that would, among other things, establish optional alternative net capital requirements for certain broker-dealers. *See* Exchange Act Release No. 48690 (October 24, 2003). In connection with that proposal, we proposed amendments to Rule 15c3–4 that would apply to a broker or dealer that elects to compute its net capital under proposed Appendix E of Rule 15c3–1.

[52] *See* Exchange Act Release No. 40594 (Oct 23, 1998), 63 FR 59362 (Nov 3, 1998).

[53] This parallels requirements in the *New Basel Capital Accord* (*See infra,* note 67). *See also* Financial Action Task Force on Money Laundering (''FATF'') Recommendation 22 and *see generally* the FATF's *Special Recommendations on Terrorist Financing.* (The FATF's documents can be found at: *www.FATF–GAFI.org*).

[54] *See generally,* Exchange Act § 17(i)(3)(C)(i)(I) [15 U.S.C. 78q(i)(3)(C)(i)(I)].

[55] *See supra,* note 12.

[56] 17 CFR 240.17a–4(f).

recordkeeping requirements through records created for its own use so long as those records include the information required in the proposed rules.

We request comment on the record maintenance provisions of paragraph (b) to proposed Rule 17a–5. Specifically, are there other records that an SIBHC should preserve in order to provide the Commission with adequate information in reviewing the SIBHC's financial or operational condition or compliance with applicable rules? In addition, we request comment as to what reports an SIBHC should maintain with respect to its affiliates that may be regulated by another financial regulator (for each such report, please delineate the information contained in that report, as well as any information an SIBHC would be required to maintain pursuant to proposed Rule 17i–6 that may not be included in that report).

3. Access to Records

The Commission has authority to examine an SIBHC and its affiliates pursuant to Section 17(i)(3)(C) of the Exchange Act.[57] However, the Act limits the focus and scope of such examinations. The statutory provisions also require that the Commission use, to the fullest extent possible, examination reports regarding an examination of the SIBHC or certain regulated affiliates made by an appropriate regulator.[58]

Paragraph (d) of proposed Rule 17i–5 would specify that all information obtained by the Commission pursuant to this section from the SIBHC will be accorded confidential treatment pursuant to Section 24(b) of the Exchange Act. Section 17(j) of the Exchange Act[59] also provides for confidentiality of SIBHC documents. We believe it is important to accord confidential treatment to these documents because the information an SIBHC would be required to create, maintain, and grant the Commission access to pursuant to the proposed Rules would generally be highly sensitive, non-public business information.

We believe the requirements set forth in proposed Rule 17i–5 are necessary to keep the Commission informed as to the SIBHC's activities, financial condition, policies, systems for monitoring and controlling financial and operational risks, transactions and relationships between any broker or dealer affiliate of the SIBHC, and the extent to which the SIBHC has complied with the provisions of the Act and the regulations prescribed and orders issued under the Act.

We request comment as to whether the Commission should accord confidential treatment to the documents an SIBHC is required to create, maintain, and grant the Commission access to pursuant to proposed Rule 17i–5.

F. Proposed Rule 17i–6: Reporting Requirements for SIBHCs

Proposed Rule 17i–6 would require an SIBHC to file certain monthly and quarterly reports with the Commission, as well as an annual audit report. These reporting requirements are designed to inform the Commission about the activities of the SIBHC, as well as the financial condition, policies, systems for monitoring and controlling financial and operational risks, and transactions and relationships involving the affiliate group. In addition, these requirements are designed to keep the Commission informed of the extent to which the SIBHC or its affiliates have complied with the provisions of the Exchange Act, and regulations prescribed and orders issued under the Exchange Act.

1. Monthly Reports

Paragraph (a) of proposed Rule 17i–6 would require that the SIBHC file a monthly risk report with the Commission, within 17 business days after the end of each month that is not also the end of a quarter. This report would include consolidated financial statements for the affiliate group, computations of consolidated allowable capital and allowances for market, credit, and operational risk, a graph reflecting daily intra-month Value at Risk (''VaR'') for each business line, consolidated credit risk information, a summary report of the SIBHC's exposures on a consolidated basis for each of the top ten countries to which it is exposed, and certain regular risk reports the SIBHC generally provides to the persons responsible for managing risk for the affiliate group. These reports would be due within the same time frames as the monthly FOCUS reports broker-dealers are required to file pursuant to Rule 17a–5(a). These reports would allow the Commission to review and monitor the risk profile for the affiliate group. Further, they would alert the Commission to any deterioration in the affiliate group's financial or operational position and risk profile. Broker-dealers currently are required to file detailed financial information, which is used by the Commission and the broker-dealer's designated examining authority[60] to evaluate the broker-dealer's financial and operational condition.

We request comment on the timing of the monthly reporting requirements. Further, we request comment on whether any additional information should be included in the monthly reports to be filed with the Commission. We also request comment on whether the monthly reporting requirement should be modified for an SIBHC (or a member of the affiliate group) required to file information, documents, and reports pursuant to §§ 13(a) or 15(d) of the Exchange Act and, if so, how and why they should be modified.

2. Quarterly Reports

Paragraph (a)(2) of proposed Rule 17i–6 would require that an SIBHC file a quarterly risk report with the Commission within 35 calendar days after the end of each quarter. This report would include, in addition to all the information required to be filed on a monthly basis, (i) consolidating financial statements (that break out data regarding each material affiliate into separate columns); (ii) the results of backtesting of each of the models used to compute allowable capital and allowances for market and credit risk; (iii) a description of all material pending legal or arbitration proceedings involving any member of the affiliate group that are required to be disclosed under generally accepted accounting principles; and (iv) the aggregate debt scheduled to mature within twelve months from the most recent quarter by each affiliate that is a broker-dealer and any other material affiliate, together with the allowance for losses for such transactions. The information an SIBHC would be required to file on a quarterly basis would provide the Commission with valuable insight as to the financial and operational condition of the SIBHC.

Requiring reports to be filed within 35 calendar days after the end of each quarter provides time frames similar to those for quarterly reports due from companies required to file information, documents, and reports pursuant to §§ 13(a) or 15(d) of the Exchange Act.[61]

[57] 15 U.S.C. 78q(i)(3)(C).

[58] *See supra,* note 17.

[59] 15 U.S.C. 78q(j).

[60] Pursuant to Exchange Act Rule 17d–1 [17 CFR 240.17d–1], where a broker-dealer is a member of more than one self-regulatory organization (as defined in Exchange Act § 3(a)(26) [15 U.S.C. 78c(a)(26)]), the Commission shall ''designate'' one self-regulatory organization as responsible for examining the broker-dealer for compliance with applicable financial responsibility rules. The self-regulatory organization of a broker-dealer that has been so designated is commonly referred to as the broker-dealer's designated examining authority (or ''DEA'').

[61] *See* Release No. 33–8128 (Sep. 5, 2002), 67 FR 179 (Sep. 16, 2002).

We request comment as to whether this time period is appropriate for SIBHCs.

We request comment as to whether any additional information should be included in the quarterly reports to be filed with the Commission. We also request comment on whether the quarterly reporting requirement should be modified for an SIBHC (or member of the affiliate group) required to file information, documents, and reports pursuant to §§ 13(a) or 15(d) of the Exchange Act and, if so, how they should be modified.

3. Additional Reports

Paragraph (b) of proposed Rule 17i–6 would provide that, in addition to the monthly and quarterly reports specified in the proposed Rule, an SIBHC may be required, upon receiving written notice from the Commission, to provide the Commission with additional financial or operational information. As specified in the proposed Rule, the Commission may request additional reports in order to monitor the SIBHC's financial or operational condition, risk management system, any transactions and relationships among members of the affiliate group, and the extent to which the SIBHC has complied with the provisions of the Exchange Act and regulations and orders issued under the Exchange Act. This will allow the Commission the flexibility to obtain information, for instance, to more closely monitor the financial and operational condition of an SIBHC during periods of market stress.

In addition, if a broker-dealer affiliated with the SIBHC or the SIBHC were to file notice (pursuant to Rule 17a–11 or proposed Rule 17i–8, respectively), the Commission would be able to request additional reports from the SIBHC to fully assess the situation giving rise to the filing of the notice.

We request comment on our proposal to require that an SIBHC file such additional reports as the Commission may request.

4. Annual Audit Report

Pursuant to paragraph (c)(1) of proposed paragraph 17i–6, the SIBHC would be required to file an annual audit report containing consolidated financial statements. Paragraphs (c)(2) and (c)(3) of proposed Rule 17i–6 would require that the annual audit report be ''as of'' the same date as, and filed with the Commission concurrently with, the annual audit report of the SIBHC's subsidiary broker-dealers.

Paragraphs (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m) of proposed Rule 17i–6 are based on existing Rules 17a–5 and 17a–12 regarding (i) the nature and form or reports, (ii) accountants, (iii) audit objectives, (iv) the extent and timing of audit procedures, (v) the accountant's report, (vi) supplemental reports, (vii) notification of a change in fiscal year, (viii) extensions and exemptions, (ix) how the reports should be filed, and (x) confidentiality.

Paragraph (e) would require that the audit and supplemental reports be prepared by an accountant that is a ''registered public accounting firm'' as that term is defined in the Sarbanes-Oxley Act of 2002.[62] We are proposing that the review be conducted by a registered public accounting firm because such firms would be subject to PCAOB rules, examination, and discipline.

We believe the requirements set forth in proposed Rule 17i–6 are necessary to keep the Commission informed as to the SIBHC's activities, financial condition, policies, systems for monitoring and controlling financial and operational risks, and transactions and relationships between any broker or dealer affiliate of the SIBHC and the extent to which the SIBHC has complied with the provisions of the Act and the regulations prescribed and orders issued under the Act. In addition, paragraph (k) of proposed Rule 17i–6 regarding extensions and exemptions would provide the Commission with flexibility to address firm-specific issues as they arise. Finally, we believe it is important to accord confidential treatment to the reports and statements filed pursuant to proposed Rule 17i–6, as specified in paragraph (m), because these reports would include information that generally would be non-public and highly sensitive.

We request comment on the proposed timing of the annual audit reports and whether any additional information should be included in that report. We also request comment on whether the annual audit requirements should be modified for an SIBHC (or member of the affiliate group) required to file information, documents, and reports pursuant to sections 13(a) or 15(d) of the Exchange Act and, if so, how they should be modified. In addition, we request comment as to whether the Commission should accord confidential treatment to the reports filed with the Commission by the SIBHC pursuant to proposed Rule 17i–6.

We also request comment on our proposal to require that an SIBHC use a registered public accounting firm to perform its annual audit.

5. Accountant's Report on Management Controls—Paragraph (i)(2) of Proposed Rule 17i–6 and Amendment to Paragraph (*l*) of Existing Rule 17a–12

Paragraph (i)(2) of proposed Rule 17i–6 would require that the SIBHC submit a supplemental report, prepared by the accountant, regarding the accountant's review of the internal risk management control system established and documented in accordance with proposed Rule 17i–4. This review would have to be accomplished using procedures agreed-upon by the accountant and the SIBHC. The Rule also specifies that the agreed-upon procedures would be required to be performed and the report to be prepared in accordance with the rules promulgated by the PCAOB. Pursuant to paragraph (i)(4) of proposed Rule 17i–6, the SIBHC would be required to submit the agreed-upon procedures to the Commission prior to the review.

Paragraph (i)(4) of proposed Rule 17i–6 differs from present Rule 17a–12(*l*), which requires that an accountant provide an opinion regarding an OTC derivatives dealer's compliance with its internal risk management control system. Auditors of OTC derivatives dealers have stated that the lack of standards for evaluating compliance with internal risk management control systems prevents them from issuing an opinion. For this reason, the Commission is proposing to amend present Rule 17a–12(*l*) so that, similar to the requirements of paragraph (i)(2) of proposed Rule 17i–6, an OTC derivatives dealer would be required to submit a supplemental report, prepared by the accountant using agreed-upon procedures, regarding the accountant's review of the internal risk management control system established and documented in accordance with Rule 15c3–4.

Paragraph (i)(2) of proposed Rule 17i–6 and this proposed amendment to Rule 17a–12(*l*) would allow an accountant to review an SIBHC's or OTC derivatives dealer's internal risk management control systems and provide a report regarding whether the risk management control systems comply with the requirements of proposed Rule 17i–4 or Rule 15c3–4, respectively, and that the SIBHC or OTC derivatives dealer is, in fact, following its risk management system.

We request comment as to whether the proposed amendment to Rule 17a–12(*l*) would adequately resolve the lack of standards for conducting an audit of a firm's internal risk management

[62] 15 U.S.C. 7201(a)(12). The term ''registered public accounting firm'' means a public accounting firm registered with the Public Company Accounting Oversight Board (''PCAOB'') in accordance with the Sarbanes-Oxley Act of 2002.

control systems and its compliance with those systems.

G. Exemption From Risk Assessment Rules for Broker-Dealer Affiliates of SIBHCs

The Commission presently receives financial and risk information about holding companies and certain affiliates of broker-dealers, and certain off-balance sheet items of broker-dealers, their holding companies, and their affiliates pursuant to the risk assessment rules (Rules 17h–1T and 17h–2T) and through meetings with and reports from members of the Derivatives Policy Group.[63] These supervisory tools generally have performed well by assisting the Commission in identifying, at an early stage, firms that are experiencing financial problems.

As part of this rulemaking, the Commission is proposing to amend Rules 17h–1T and 17h–2T [64] to exempt broker-dealers that are affiliated with an SIBHC from those rules. Rule 17h–1T requires that a broker-dealer maintain and preserve records and other information concerning the broker-dealer's holding companies, affiliates, or subsidiaries that are likely to have a material impact on the financial or operational condition of the broker-dealer. Rule 17h–2T requires that broker-dealers file quarterly reports with the Commission concerning the information required to be maintained and preserved under Rule 17h–1T. We believe that exempting a broker-dealer that is affiliated with an SIBHC is appropriate because, pursuant to proposed Rule 17i–5, the SIBHC would be required to make and retain documents substantially similar to those the broker-dealer is required to make and retain pursuant to Rule 17h–1T. Further, pursuant to proposed Rule 17i–6, the SIBHC would be required to make reports that are substantially similar to those the broker-dealer is required to make pursuant to 17h–2T. We request comment on the proposed exemptions from Rules 17h–1T and 17h–2T for broker-dealers affiliated with an SIBHC.

H. Proposed Rule 17i–7: Calculations of Allowable Capital and Risk Allowances or Alternative Capital Assessment

Proposed Rule 17i–7 would require an SIBHC to calculate the affiliate group's allowable capital and allowances for certain types of risk. Proposed Rule 17i–7 would not set minimum group-wide capital levels for SIBHCs; rather, it would require the SIBHC to perform certain calculations that the Commission could review to gain an understanding of the financial position of the affiliate group and identify any risks it poses to the broker-dealer.

The Basel Committee on Banking Supervision [65] (''Basel Committee'') has developed international regulatory standards that aim to align economic capital calculations with regulatory capital requirements for large internationally active banking institutions (''Basel Standards'').[66] The Basel Committee has proposed to modify the Basel Standards.[67] Our proposal incorporates a capital computation for the SIBHC that is consistent with the Basel Standards. The Basel Standards have been used by many other financial regulators for many years as a method to assess capital adequacy at the holding company level.

We are proposing what we believe are prudent parameters for measuring allowable capital and allowances for risk for the SIBHC that are consistent with the Basel Standards. In some cases these parameters may be more conservative than some firms believe are necessary to account for risk. For example, the proposal would place limits on the amount of subordinated debt that may be included in allowable capital, require that the VaR model used to calculate the allowance market risk be based on a ten business-day movement in rates and prices and that a 99% confidence level be used, and require that the VaR measure be multiplied by a factor of at least three. Requiring that an SIBHC calculate its allowable capital and allowances for market, credit and operational risk based on the Basel Standards would provide the Commission with a useful measure of the SIBHC's financial position and allow for greater comparability of an SIBHC's financial condition to that of other international securities firms and banking institutions.

1. Calculation of Consolidated Allowable Capital

Consistent with the Basel Standards,[68] proposed Rule 17i–7 would require that an SIBHC calculate ''allowable capital'' for the affiliate group that would include common shareholders' equity (less goodwill, deferred tax assets, other intangible assets, and certain other deductions), certain cumulative and non-cumulative preferred stock,[69] and certain properly subordinated debt. As set forth in

[63] Pursuant to the ''risk-assessment rules,'' adopted under Exchange Act Section 17(h), broker-dealers also submit consolidated and consolidating financial statements, organizational charts of the holding company, descriptions of material legal exposures, and risk management policies and procedures to the Commission. [17 CFR 240.17h–1T and 17 CFR 240.17h–2T]. Member firms of the Derivatives Policy Group (''DPG'') also voluntarily supply us with additional information regarding derivative financial instruments, off balance sheet obligations, and the concentration of credit risk. The DPG was formed in March 1995 by the industry and the Commission to provide a voluntary oversight framework for monitoring derivatives activities of broker-dealer affiliates.

[64] 17 CFR 240.17h–1T and 240.17h–2T.

[65] The central bank governors of the Group of Ten countries (''G–10 countries'') established the Basel Committee in 1974 to provide a forum for ongoing cooperation among member countries on banking supervisory matters.

[66] The basic consultative papers developed by the Basel Committee are: the Basel Capital Accord (1988), the Core Principles for Effective Banking Supervision (1997), and the Core Principles Methodology (1999). The Basel Standards establish a common measurement system, a framework for supervision, and a minimum standard for capital adequacy for international banks in the G–10 countries. It is intended to increase the transparency and consistency of the supervision of financial companies across borders. The Basel Standards generally have been implemented for internationally active, large banking institutions by U.S. bank regulators. *See* Office of the Comptroller of the Currency, Federal Reserve System, Federal Deposit Insurance Corporation, ''Risk Based Capital Standards; Market Risk,'' 61 FR 47358 (Sept. 6, 1996).

[67] In April 2003, the Basel Committee released for public comment a document entitled ''The New Basel Capital Accord'' (the ''New Basel Capital Accord'') to modify the Basel Standards. This paper can presently be found at: *http://www.bis.org/bcbs/cp3full.pdf.* Comments were accepted through July 31, 2003. On October 11, 2003, the Committee announced that it had received over 200 comment letters, that there is continued broad support for the structure of the new accord and agreement on the need to adopt a more risk-sensitive capital framework. The Committee requested comment by December 31, 2003, on an amendment to its proposed treatment of expected and unexpected losses. The Basel Committee expects to issue a final revision of the proposed *New Basel Capital Accord* by the middle of 2004, with an effective date for implementation of December 31, 2006. Currently, U.S. banking regulators have released an Advanced Notice of Proposed Rulemaking to seek comment on their preliminary views regarding the implementation of the proposed *New Basel Capital Accord* (68 FR 45900 (August 4, 2003)). Comments are due by November 3, 2003.

[68] Proposed Rule 17i–7 is generally consistent with U.S. banking regulators' interpretations of the Basel Standards and incorporates the quantitative and qualitative conditions imposed on banking institutions. However, one difference is our proposal to use maximum potential exposure as opposed to notional add-ons to calculate credit risk for OTC derivatives instruments, and our interpretation as to what instruments should be subject to market risk, as opposed to credit risk, treatment. These differences, and the reasons for them, are described more specifically in the sections relating to the calculations of allowance for market and credit risk.

[69] The cumulative and non-cumulative preferred stock could not (i) have a maturity date, (ii) be redeemed at the option of the holder, or (iii) contain any other provisions that would require future redemption of the issue. In addition, the issuer would have to be able to defer or eliminate dividends. Finally, the cumulative and non-cumulative preferred stock would be subject to certain limits (*see* paragraphs (a)(2) and (a)(3)(i) of proposed Rule 17i–7).

further detail in the proposed rule, the cumulative and non-cumulative preferred stock and the subordinated debt would be subject to additional limitations based on comparisons of the individual components of allowable capital.

When first implemented, the Basel Standards allowed national bank supervisors discretion in counting goodwill as capital during a transition period. Thus, we solicit comment on whether goodwill should be included in allowable capital for a particular transition period and, if so, the length of the transition period.

An entity's debt is not ordinarily includible in its regulatory capital. However, because debt can provide a long-term source of working capital to the entity and may have many of the characteristics of capital, the Basel Standards permit unrestricted long-term subordinated debt [70] to count as regulatory capital. Under paragraph (a)(3)(ii) of proposed Rule 17i–7, consistent with the Basel Standards, subordinated debt could be included in allowable capital if it meets four criteria. First, the original weighted average maturity of the SIBHC's subordinated debt must be at least five years. Second, the subordinated debt instrument must state clearly on its face that repayment of the debt is not protected by the Securities Investor Protection Corporation (''SIPC'') or any Federal agency. Third, the debt must be unsecured and subordinated in right of payment to all senior indebtedness of the SIBHC. Fourth, the terms of the subordinated debt agreement may permit acceleration only in the event of bankruptcy or reorganization of the SIBHC under Chapters 7 (liquidation) or 11 (reorganization) of the U.S. Bankruptcy Code.

The four criteria subordinated debt would have to satisfy to be included in allowable capital are necessary to help assure permanency of capital and to inform subordinated lenders of the risks associated with being a subordinated lender. Funds lent under a subordinated debt agreement necessarily are subject to the risks of the SIBHC's business and must be available to pay other creditors if the SIBHC defaults on other obligations. Although the customers of certain of the SIBHC's affiliates may be entitled to the protection of SIPC under specific circumstances, subordinated lenders of the SIBHC would not be entitled to that protection.

[70] By contract, subordinated debt is debt that is subordinated in right of payment to all senior indebtedness of the company.

Under the proposal, to be included in allowable capital, subordinated debt would be required to be unsecured and subordinated in right of payment to all of the SIBHC's senior debt. Debt that, upon default, can be repaid by conversion of collateral or before other debt could not be considered subordinated in right of repayment to all senior indebtedness of the SIBHC because the debt effectively would have priority over at least some other debt.

Subordinated debt instruments that permit acceleration of payment upon events other than bankruptcy or reorganization of the SIBHC would not qualify for inclusion in allowable capital under the proposed rules.[71] Acceleration clauses raise significant supervisory concerns because repayment of the debt could be accelerated at a time when an SIBHC is experiencing financial difficulties. Acceleration, therefore, could inhibit an SIBHC's ability to resolve its financial problems in the normal course of business and force the company into involuntary bankruptcy.

We request comment on the inclusion of subordinated debt in allowable capital generally and on the following questions in particular:

- Is five years the appropriate maturity for subordinated debt to be included in allowable capital? Would another term, whether longer or shorter, be more appropriate?
- To be included in allowable capital, should subordinated debt be subject to negative pledge provisions that, for example, would restrict an SIBHC's ability to pledge the equity securities of a subsidiary to secure the debt or to sell a subsidiary unless the buyer agreed to assume liability for some portion of the debt?
- Should subordinated debt that is subject to acceleration events other than bankruptcy or reorganization of the SIBHC under the Bankruptcy Code be included in allowable capital?
- What should be the maximum amount of subordinated debt that is includible in allowable capital?
- What are the additional costs of issuing subordinated debt versus long-term debt of the same maturity?

[71] The prohibition on acceleration of payment also would prohibit inclusion of credit sensitive subordinated debt in allowable capital. Credit sensitive subordinated debt ties payments to the financial condition of a borrower/holding company or its affiliates. This feature of the debt forces a holding company to make increased payments as its financial condition deteriorates and, therefore, acts as a de facto acceleration clause that may deplete the holding company's resources and increase the likelihood of default on debt. Furthermore, a credit requirement clause potentially would allow a subordinated lender to obtain payment before senior creditors.

Some industry participants have suggested that certain long-term debt that cannot be accelerated should be included in allowable capital because at the SIBHC level there is no protected class of creditors, and therefore there is no significant difference between that type of long-term debt and subordinated debt. In addition, they assert that subordinated debt is more costly to an entity than long-term debt that cannot be accelerated because of the restrictive provisions associated with, and the lack of an active trading market for, subordinated debt.

We solicit comment on whether long-term debt, subject to appropriate limitations, should be included in allowable capital. Specifically, we request comment on the following issues:

- If long-term debt is included in allowable capital, what restrictions should apply?
- Would trading in its long-term debt provide a more reliable indication of the credit quality of the SIBHC than subordinated debt and, if so, why?
- Does a holder of its subordinated debt have a greater incentive to monitor the financial condition of the SIBHC than a holder of its long-term debt because its claim is more junior?
- Are there debt instruments other than subordinated debt that provide an equivalent market signal about the credit quality of the issuer?
- Is there a material difference between the depth of the market for the long-term debt of an SIBHC and the depth of the market for its subordinated debt and, if so, how would any such difference impact the cost of financing for the SIBHC?
- Would there be any other adverse effects if the SIBHC were permitted to include long-term debt in allowable capital?
- If long-term debt could be included in allowable capital, what, if any, requirements should apply to the maturity date of the long-term debt? What events of acceleration should be permissible?
- Should long-term debt be subject to a negative pledge, that, for example, would restrict an SIBHC's ability to pledge the equity securities of a subsidiary to secure the debt or to sell a subsidiary unless the pledgor or buyer agreed to assume liability for some portion of the debt?
- What other provisions concerning the inclusion of long-term debt in allowable capital should be considered?

2. Calculation of Consolidated Allowance for Market Risk

Paragraph (b) of proposed Rule 17i–7 would require that an SIBHC calculate a consolidated allowance for market risk daily for all proprietary positions. The SIBHC would calculate an allowance for market risk for each position using either a VaR model or, if there is not adequate historical data to support a VaR model, an alternative method. Generally, the allowance for market risk would constitute three times [72] the largest amount the SIBHC could lose over a ten-day period with a 99% confidence level (as determined using the VaR model or alternative method).[73] An SIBHC would need to provide the Commission with information regarding any alternative method for computing allowance for market risk for particular positions during the Commission's review of its Notice of Intention so that the Commission could evaluate the method to determine whether it adequately measured the risks of those positions.

Paragraph (b)(1) of proposed Rule 17i–7 would require that each VaR model used to calculate allowance for market risk must meet the qualitative and quantitative requirements set forth in rules the Commission is also proposing today in a separate release, proposed Rule 15c3–1e(e).[74] The qualitative and quantitative standards set forth in proposed Rule 15c3–1e(e) are similar to the requirements for models used by OTC derivatives dealers and are consistent with the Basel Standards. The qualitative requirements would address three aspects of an SIBHC's risk management system: (i) The model would have to be integrated into, and thus relied upon, in the SIBHC's daily risk management process; (ii) the model would be required to undergo periodic reviews by the SIBHC's internal audit staff and annual reviews by an accountant; and (iii) the SIBHC would need to conduct backtesting of the model (the results of the backtests would be used by the SIBHC to determine the multiplication factors to be used when calculating market and credit risk).[75] The quantitative requirements would set forth basic standards for each model including, (i) it must use a 99 percent, one-tailed confidence level and with price changes equivalent to a ten business-day movement in rates and prices for purposes of determining market risk, (ii) it must use an effective historical observation period that must be at least one year in length and include periods of market stress, and (iii) it must take into account and incorporate all significant identifiable market risk factors applicable to the affiliate group's positions.

Consistent with the Basel Standards, paragraph (b)(1) of proposed Rule 17i–7 would require that each VaR model used to calculate allowance for market risk also must be one that can be disaggregated by each line of business exposed to market risk and by each legal entity.

We request comment on all aspects of the proposed methods for calculating market risk, including whether any other quantitative or qualitative requirements should be applied to VaR models. In addition, we request that commenters address any perceived differences between the proposed methodology for calculating market risk and the Basel Standards. Further, we request comment on alternative methods for computing allowance for market risk, and the appropriateness of those methods.

3. Calculation of Consolidated Allowance for Credit Risk

Paragraph (c) of proposed Rule 17i–7 would require that an SIBHC calculate a consolidated allowance for credit risk daily using either a calculation consistent with the Basel Standards or the methodology set forth in paragraph (c)(1) of proposed Rule 17i–7, which is similar to the proposed New Basel Capital Accord. This choice would provide SIBHCs with some flexibility while the Basel Standards are under review. The methodology set forth in paragraph (c)(1) of proposed Rule 17i–7 would require that an SIBHC multiply the credit equivalent amount of certain asset and off-balance sheet items by the appropriate credit risk weight of the asset or off-balance sheet item, and then multiply the result by 8%.[76] In general, the asset and off-balance sheet items subject to this allowance are loans and loan commitments receivable, receivables arising from derivatives contracts, repurchase and reverse repurchase agreements, structured financial products, credit substitutes, and other extensions of credit.

Consistent with the proposed *New Basel Capital Accord*, Paragraph (c)(1)(i) of proposed Rule 17i–7 would establish the manner in which the ''credit equivalent amount'' of a balance sheet item should be calculated. The credit equivalent amounts for receivables relating to (i) derivatives contracts, repurchase agreements, reverse repurchase agreements, stock loans, stock borrows, and other similar collateralized transactions; (ii) loans and loan commitments receivable; and (iii) other assets would be calculated differently, and are set forth in paragraphs (c)(1)(i)(A), (B), and (C) of proposed Rule 17i–7, respectively. Paragraph (c)(1)(i)(D) of proposed Rule 17i–7 would define the term ''current exposure'' to be the current replacement value of the counterparty's positions with the member of the affiliate group including the effect of netting agreements with that counterparty,[77] and taking into account the value of collateral from that counterparty [78] pledged to and held by any member of the affiliate group and the fair market value of any credit derivatives that specifically change the exposure to the counterparty (as long as the credit derivatives are not used to change the

[72] Paragraph (b)(1) of proposed Rule 17i–7 would establish the initial multiplication factor (three); however the multiplication factor would subsequently be set based on the number of backtesting errors generated through use of the model. The initial multiplication factor was derived from the minimum requirement set forth in 17 CFR 240.15c3–1f(e)(1)(iv)(C) (the rule used by OTC derivatives dealers to calculate market risk capital charges). This initial multiplication factor would be used until sufficient backtesting results has been collected to use the Table set forth in 17 CFR 240.15c3–1e(e)(1)(iii)(C).

[73] *See supra,* note 51. Specifically, *see* proposed 17 CFR 240.15c3–1e(e)(2)(i).

[74] *See supra,* note 51.

[75] *See supra,* note 51. Specifically, *see* proposed 17 CFR 240.15c3–1e(e)(1).

[76] This is consistent with the calculation of credit risk used by OTC derivatives dealers (*See* 17 CFR 240.15c3–1f(d)(2)). In addition, the 8% basic multiplier to calculate credit risk capital charges is consistent with the Basel Standards.

[77] Only netting agreements that meet the requirements set forth in paragraph (d)(5) of proposed Rule 15c3–1e could be used to reduce current or maximum potential exposures. *See supra* note 51. Generally, the SIBHC could use a netting agreement that allows the SIBHC to net gross receivables and gross payables with a counterparty upon default of the counterparty if (i) the netting agreement is legally enforceable in each relevant jurisdiction, including in insolvency proceedings; (ii) the gross receivables and gross payables subject to the netting agreement with a counterparty can be determined at any time; and (iii) for internal risk management purposes, the SIBHC monitors and controls its exposure to the counterparty on a net basis.

[78] Only collateral that meets the requirements set forth in paragraph (d)(6) of proposed Rule 15c3–1e could be used to reduce current or maximum potential exposures. *See supra* note 51. Generally, the SIBHC could take the fair market value of collateral pledged to and held by the SIBHC into account, provided (i) the collateral is marked to market each day and is subject to a daily margin maintenance requirement; (ii) the collateral has a ready market or consists of major market foreign currency as defined in § 240.15c3–1a(b)(1)(i)(C) or U.S. currency; (iii) the collateral agreement is legally enforceable by the SIBHC against the counterparty and any other parties to the agreement; (iv) the collateral does not consist of securities issued by the counterparty or a party related to the SIBHC or to the counterparty; and (v) the collateral is not used in determining the credit rating of the counterparty.

credit risk weight of the counterparty as provided in paragraph (c)(1)(ii)(E).[79] Finally, paragraph (c)(1)(i)(E) of proposed Rule 17i–7 defines the term ''maximum potential exposure'' to be the increase in the net replacement value of the counterparty's positions with the member of the affiliate group, including the effect of netting agreements with that counterparty,[80] and taking into account the value of collateral from that counterparty [81] pledged to and held by any member of the affiliate group and the fair market value of any credit derivatives that specifically change the exposure to the counterparty (as long as the credit derivatives are not used to change the credit risk weight of the counterparty as provided in paragraph (c)(1)(ii)(E)).[82] Paragraph (c)(1)(i)(E) of proposed Rule 17i–7 also states that maximum potential exposure would be required to be calculated daily using a VaR model that meets the same qualitative and quantitative standards as required for models used to compute the allowance for market risk.[83]

We request comment on whether the proposed method of calculating the credit equivalent amount is appropriate, or whether it should be changed. In addition we request comment on whether the definitions of ''current exposure'' and ''maximum potential exposure'' are appropriate, or if they should be changed. If the proposed method for calculating credit equivalent amount or the definitions of ''current exposure'' or ''maximum potential exposure'' should be changed, please elaborate as to how they should be changed.

Paragraph (c)(1)(ii) of proposed Rule 17i–7 provides that credit risk weights would generally be determined according to the standards published by the Basel Committee, as modified from time to time.[84] An SIBHC may also use internal credit ratings [85] or calculate credit risk weights using internal calculations [86] when calculating its allowance for credit risk.

In addition, paragraph (c)(1)(ii)(D) of proposed Rule 17i–7 would allow SIBHCs to adjust credit risk weights of receivables covered by certain types of guarantees,[87] and paragraph (c)(1)(ii)(E) of proposed Rule 17i–7 would allow SIBHCs to adjust credit risk weights of receivables covered by certain credit derivatives (such as credit default swaps, total return swaps, and similar instruments used to manage credit risk)[88] in recognition of the benefits these instruments provide.

The Commission requests comment on the determination of credit risk weights. In particular, the Commission requests comment on whether an additional method of calculating credit risk weights, based on internal estimates of annual probabilities of default, should be included in proposed Rule 17i–7. If such a method should be used, the Commission requests comment on whether the following table appropriately matches credit risk weights to annual probabilities of default:

CREDIT RISK WEIGHT OF COUNTERPARTY BASED ON ANNUAL PROBABILITY OF DEFAULT

Annual probability of default	Credit risk weight (in percent)
Less than .003%	2
0.05%	17
0.11%	30
3.80%	200
5.30% or higher	230
Event of default has occurred	1250

These credit risk weights are based on the formulas provided in the Advanced Internal Ratings-based Approach to credit risk proposed by the Basel Committee.[89] We have derived the credit risk weights using a loss given default (the percentage of the amount owed by the counterparty the firm expects to lose if the counterparty defaults) of 75%. We believe 75% to be a conservative number for use in determining credit risk weights. We request comment as to whether 75% is appropriate, or whether it should be increased or decreased.

The Commission believes that calculating a credit risk capital charge on exposures arising from transactions in OTC derivatives instruments using a VaR model that meets that qualitative and quantitative requirements set forth in proposed § 240.15c3–1e(e)[90] to calculate maximum potential exposure is a more precise method than using a ''notional add-on'' to approximate maximum potential exposure. In addition, Commission reviews of risk management systems of large U.S. broker-dealers indicate that these broker-dealers generally use maximum potential exposure to measure and manage the credit risk of their portfolios. These broker-dealers would therefore incur little, if any, additional cost to calculate credit risk using maximum potential exposure as opposed to ''notional add-ons.''

We request comment on this approach to the calculation of credit risk on OTC derivatives, repurchase agreements, reverse repurchase agreements, stock lending and borrowing, and similar collateralized transactions. In addition, we request comment on the proposed requirements for guarantees used to reduce an SIBHC's allowance for credit risk. We also request comment on the appropriate treatment of credit derivatives in this context. Credit derivatives could enter into the calculation of credit risk in two ways. The first would be to substitute the credit risk weight of the writer of the

[79] The fair market value of any credit derivatives that specifically change the SIBHC's exposure to the counterparty may be used to calculate ''current exposure'' and ''maximum potential exposure'' only to the extent that the credit derivative is not used to change the credit risk weight of the counterparty as set forth in paragraph (c)(1)(ii)(E).

[80] *See supra,* note 77.

[81] *See supra,* note 78.

[82] *See supra,* note 79.

[83] However, the quantitative requirements for a VaR model intended to calculate maximum potential exposure would be required to use a 99 percent, one-tailed confidence level and with price changes equivalent to a *five-day* movement in rates and prices for repurchase agreements, reverse repurchase agreements, stock lending and borrowing, and similar collateralized transactions (*See* paragraph (c)(1)(i)(E) of proposed Rule 17i–7) and to a *one-year* movement in rates and prices for other positions (*See* proposed 17 CFR 240.15c3–1e(e)(2)(ii)) (as opposed to a *ten business-day* movement for VaR models used to calculate the allowance for market risk (*See* proposed § 17 CFR 240.15c3–1e(e)(2)(i)).

[84] *See* paragraph (c)(1)(ii)(A) of proposed Rule 17i–7.

[85] *See* paragraph (c)(1)(ii)(B) of proposed Rule 17i–7.

[86] *See* paragraph (c)(1)(ii)(C) of proposed Rule 17i–7.

[87] The guarantee would be required to be an unconditional and irrevocable guarantee of the due and punctual payment and performance of the obligation and the SIBHC or member of the affiliate group can demand payment after any payment is missed without having to make collection efforts. Further, the guarantee would be required to be evidenced by a written obligation of the guarantor that allows the SIBHC or member of the affiliate group to substitute the guarantor for the counterparty upon default or nonpayment by the counterparty. These proposed requirements are designed to allow an SIBHC to reduce its allowance for credit risk only if the guarantee contains features that make it more reliable.

[88] The credit derivative would be required to be one that (i) provides credit protection equivalent to a guarantee, (ii) is used for bona fide hedging purposes to reduce the credit risk weight of a counterparty, (iii) is not incorporated into the VaR model used for deriving potential exposures, and (iv) is not held for market-making purposes.

[89] *See* the *New Basel Capital Accord* (April, 2003).

[90] *See supra,* note .

credit derivative for the credit risk weight of the counterparty. The second would be to adjust the current exposure and the maximum potential exposure by the value of the credit derivative.

Certain accounting differences may cause differences in application of the Basel Committee's recommendations when applied to securities firms rather than banking firms. For instance, the broker-dealers must mark all positions to market, whereas banks may use cost as a basis to value securities held for investment purposes. These differences may require the Commission to apply adjustments to the Basel Committee's recommendations, or not to apply adjustments that are in the Basel Committee's recommendations. The Commission solicits comments on how the differences in accounting standards might affect the allowance for credit risk, and what modifications the Commission should make to the proposed rules to address those differences.

The Commission seeks comment on all aspects of the proposed method of calculating the allowance for credit risk. Because the Basel Standards have been implemented by many financial regulators, we request comment as to whether the proposed rule is consistent with the Basel Standards as they have been implemented. In addition, we request comment as to whether the proposed rule is consistent with the present version of the proposed *New Basel Capital Accord* and how various financial regulators have proposed to implement the proposed *New Basel Capital Accord.* Should an SIBHC have other alternative methods for calculating the allowance for credit risk?

4. Calculation of Consolidated Allowance for Operational Risk

Under proposed Rule 17i–7, an SIBHC would be required to calculate an allowance for operational risk consistent with the appropriate standards published by the Basel Committee. The Basel Committee has proposed three methods for the calculation of an allowance for operational risk (i) the basic approach; (ii) the standardized approach; and (iv) the advanced measurement approach. For a complete discussion of the proposed operational risk calculation, please refer to the proposed *New Basel Capital Accord.*[91] The basic and standardized approach calculations are based on fixed percentages. Under the basic approach, the allowance is 15% of consolidated annual revenues net of interest expense averaged over the past three years. The standardized approach maps these revenues to eight business lines. The allowance for operational risk is then a percentage of revenues net of interest expense, ranging from 12% to 18%, attributed to each business line. The advanced measurement approach requires a system for tracking and controlling operational risk and provides that the allowance for operational risk is the largest operational loss that might be expected over a one-year period with 99.9% confidence.

We solicit comment on all aspects of these three methods for calculating consolidated allowance for operational risk. In addition, we request that commenters address whether any of the three methods is preferable and, if so, explain why. Further, could any changes be made to these methods that would better accommodate the broker-dealer business? Finally, should we allow an SIBHC to choose one of the three methods, or should the proposed Rule require that SIBHCs use the advanced measurement approach?

5. Alternative Capital Assessment

Under paragraph (e) of proposed Rule 17i–7, an SIBHC would be permitted to compute a capital assessment using the Basel Standards that the SIBHC already is required to submit to a financial regulator or supervisor in lieu of the computations described in paragraphs (a) through (d). This proposed Rule is intended to allow an entity that may already be subject to certain consolidated supervision requirements to continue to use its present systems and methodologies to compute a capital assessment for reporting purposes for the affiliate group so long as that computation is consistent with the Basel Standards.

6. General Questions Regarding Proposed Rule 17i–7

We believe the requirements set forth in proposed Rule 17i–7 are necessary to keep the Commission informed as to the SIBHC's financial condition.

We request comment on whether we should allow this alternative standard or whether some other approach may be warranted.

We are proposing what we believe are prudent parameters for computing an SIBHC's risk allowances, although in some cases these parameters may be more conservative than some firms may believe are necessary to account for risk. For example, the proposal requires that the VaR model used to calculate market risk be based on a ten business-day movement in rates and prices and that a 99% confidence level be used, and that the VaR measure be multiplied by a factor of at least three. These parameters are based on our experience and existing Commission rules (*e.g.*, Appendix F of Rule 15c3–1) and rules of other regulatory agencies where there are similar risk factors in the regulated entities. We ask for comment on all these parameters.

7. Other Questions Regarding Capital Calculation

Proposed Rules 17i–6 and 17i–7 would apply a capital reporting requirement consistent with the Basel Standards to the SIBHC. The Basel Committee is currently developing a new international agreement, the proposed *New Basel Capital Accord.* The proposed *New Basel Capital Accord* specifies three ''pillars'' for the group-wide supervision of internationally active banks and financial enterprises. The first pillar, ''minimum regulatory capital'' requirements, requires calculations for credit and operational risk and, for firms with significant trading activity, market risk. The second pillar, ''supervisory review,'' requires that capital be assessed relative to overall risks and that supervisors review and take action in response to those assessments.

The third pillar requires certain disclosures which will allow market participants to assess key pieces of information concerning, for example, the capital, risk exposures, and risk assessment processes of the institution. The purpose of the third pillar is to complement the minimum capital requirements and the supervisory review process by encouraging market discipline.

The third pillar is discussed in the U.S. banking agencies' Advanced Notice of Proposed Rulemaking on the proposed *New Basel Capital Accord.*[92] As the banking agencies noted, an integral part of the advanced approaches is enhanced public disclosure practices. Specific disclosure requirements would be applicable to all institutions using the advanced approaches and would encompass capital, credit risk, credit risk mitigation, securitization, market risk, operational risk, and interest rate risk.

We request comment on whether any additional disclosures by U.S. broker-dealer firms, their holding companies, and affiliates should be required to meet the requirements of the third pillar of the proposed *New Basel Capital Accord.*

[91] *See* the *New Basel Capital Accord* (April, 2003).

[92] *See Risk-Based Capital Guidelines; Implementation of New Basel Capital Accord,* 68 FR 45900 (August 4, 2003), beginning at 45943.

If additional, specific disclosure is warranted, commenters are asked to address where that disclosure should be made as well as whether disclosures should be made on a quarterly, annual, or other periodic basis. In addition, we request comment on whether additional required disclosures should depend on whether a firm is privately held or is a public reporting company.

We also request comment on whether the regulatory regime outlined in this proposal together with existing Commission regulation of broker-dealers would meet the requirements of the first and second pillars of the proposed *New Basel Capital Accord* or whether changes or enhancements should be made.

We request comment on whether, if the proposed *New Basel Capital Accord* is adopted, there should be a transition period before the Commission requires its use by SIBHCs.

I. Proposed Rule 17i–8: Notification Requirements for SIBHCs

A broker-dealer that is part of a large holding company structure may be vulnerable to increased risks from the activities of its affiliates and may face difficulty in continuing its operations if a major affiliate ceased operations or encountered financial difficulties. Proposed Rule 17i–8 would require the SIBHC to notify the Commission upon the occurrence of certain events. The proposed early warning system is designed to provide the Commission with information so that it can identify these potential risks to the broker-dealer and its customers.

Paragraph (a) of proposed Rule 17i–8 would require the SIBHC to immediately notify the Commission upon the occurrence of certain events. These events include (i) the occurrence of certain backtesting exceptions; (ii) the SIBHC's computation reflects that consolidated allowable capital is less than 110% of the sum of consolidated allowances for market, credit and operational risk; (iii) an affiliate declares bankruptcy or otherwise becomes insolvent; (iv) the SIBHC becomes aware that a credit rating agency intends to decrease its evaluation of the creditworthiness of an affiliate or the credit rating assigned to one or more outstanding short or long-term obligations of an affiliate; (v) the SIBHC becomes aware that a financial regulatory agency or self-regulatory organization has taken certain regulatory actions against an affiliate; or (vi) the SIBHC becomes ineligible to be supervised by the Commission as a SIBHC (*e.g.,* the SIBHC purchases an insured bank, or the SIBHC's affiliated broker-dealer's tentative net capital falls below $100 million).[93] We believe that these events would indicate a decline in the financial and operational well-being of the firm. Were an SIBHC to file a notification as required by proposed Rule 17i–8, the Commission may be prompted to request additional reports, as contemplated by proposed Rule 17i–6(b), and otherwise begin to monitor the firm's condition more closely.

In addition, proposed Rule 17i–8 would require that an SIBHC notify the Commission if there were a material change (along with a description of that change) in the ownership or organization of the affiliate group, the status of any affiliate that is material, or the major business functions of any material affiliate.[94]

Paragraph (c) of proposed Rule 17i–8 would specify the manner in which these notices and reports should be provided to the Commission. In addition, paragraph (c) of proposed Rule 17i–8 would specify that the notices and reports filed with the Commission pursuant to Rule 17i–8 would be accorded confidential treatment. We believe it is important to accord confidential treatment to the notices and reports an SIBHC would be required provide pursuant to proposed Rule 17i–8 because the information contained in those notices and reports would generally be highly sensitive, non-public business information.

We believe the requirements set forth in proposed Rule 17i–8 are necessary to keep the Commission informed as to the SIBHC's activities, financial condition, policies, systems for monitoring and controlling financial and operational risks, and transactions and relationships between any broker or dealer affiliate of the SIBHC and the extent to which the SIBHC has complied with the provisions of the Act and the regulations prescribed and orders issued under the Act.

We request comment on all aspects of these notification requirements. In addition, we request comment as to whether the events that would trigger the notification requirement are appropriate, and whether other triggering events should be included.

III. General Request for Comment Regarding Proposed Rules

The Commission solicits comment on its proposal to supervise IBHCs as SIBHCs. The Commission solicits comments on whether this proposal would provide adequate Commission oversight on a group-wide basis of IBHCs that file a Notice of Intent to become supervised by the Commission as an SIBHCs.

We note that on September 12, 2003, the Federal Reserve Board, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Federal Deposit Insurance Commission requested public comment on an interim final rule and a notice of proposed rulemaking to amend their risk-based capital standards for the treatment of assets in asset-backed commercial paper programs consolidated under the recently issued Financial Accounting Standards Board Interpretation No. 46, Consolidation of Variable Interest Entities.[95] The rule would also modify the risk-based capital treatment of certain securitizations with early amortization provisions. In addition, the treatment of securitization exposures is discussed in the banking agencies Advanced Notice of Proposed Rulemaking on the proposed *New Basel Capital Accord*.[96]

Should the Commission consider any modifications to the calculations of allowances for market and credit risk for asset-backed securitization programs as contemplated by proposed Rule 17i–7? If so, how and why should the Commission modify these calculations for asset-backed securitization programs? Should the Commission consider any other issues related to the capital treatment of securitization exposures?

Commenters may also wish to discuss whether the Commission should consider a different approach, and if so, what that approach should be.

Commenters should provide empirical data to support their views. Comments should be submitted by February 4, 2004.

IV. Paperwork Reduction Act

Certain provisions of proposed new Rules 17i–1 through 17i–8 and the amendments to Rules 17h1–T and 17h–2T contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995.[97] The Commission has submitted them to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 C.F.R. 1320.11. The titles for the collections of information are (i) Rules 17h–1T and

[93] *See* paragraph (a) of proposed Rule 17i–8.

[94] *See* paragraph (b) of proposed Rule 17i–8.

[95] *See Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Asset-Backed Commercial Paper Programs and Early Amortization Provisions,* 68 FR 56568 (Oct. 1, 2003).

[96] *See Risk-Based Capital Guidelines; Implementation of New Basel Capital Accord,* 68 FR 45900 (August 4, 2003), beginning at 45932.

[97] 44 U.S.C. 3501, *et seq.*

17h–2T Risk Assessment Rules; (ii) Rule 17i–2 Notice of Intention to be Supervised by the Commission as a Supervised Investment Bank Holding Company; (iii) Rule 17i–3 Withdrawal from Supervision as an Supervised Investment Bank Holding Company; (iv) Rule 17i–4 Internal Risk Management Control Systems Requirements for Supervised Investment Bank Holding Companies; (v) Rule 17i–5 Record Creation, Maintenance, and Access Requirements for Supervised Investment Bank Holding Companies; (vi) Rule 17i–6 Reporting Requirements for Supervised Investment Bank Holding Companies; and (vii) Rule 17i–8 Notification Requirements for Supervised Investment Bank Holding Companies. An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid OMB control number.

A. Collection of Information Under the Amendments to Rules 17h–1T and 17h–2T and New Rules 17i–1 Through 17i–8

Proposed Rule 17i–1 through 17i–8 would create a framework for Commission supervision of SIBHCs. The collections of information included in these proposed rules are necessary to allow the Commission to effectively determine whether SIBHC supervision is necessary or appropriate in furtherance of the purposes of § 17 of the Act and allow the Commission to supervise the activities of these SIBHCs. These rules also would enhance the Commission's supervision of the SIBHCs' subsidiary broker-dealers through collection of additional information and inspections of affiliates of those broker-dealers. Regulatory oversight pursuant to this system is voluntary, and eligible IBHCs would not be required to be supervised in this manner. This framework would include procedures through which an IBHC could file a Notice of Intention to become supervised by the Commission as an SIBHC, as well as recordkeeping and reporting requirements for SIBHCs.

The amendments to Rules 17h–1T and 17h–2T [98] would exempt broker-dealers that are affiliated with an SIBHC from those rules and thus reduce their ''collection of information'' requirements. This exemption is designed to eliminate duplicative recordkeeping and reporting requirements.

[98] *See supra,* note 64.

B. Proposed Use of Information

The Commission would use the information collected under the proposed new Rules to determine whether SIBHC supervision is necessary or appropriate in furtherance of the purposes of § 17 of the Act and to monitor the financial condition, risk management, and activities of SIBHCs on a group-wide basis. In particular, it would allow the Commission access to important information regarding activities of a broker-dealer's affiliates that could impair the financial and operational stability of the broker-dealer or the SIBHC.

C. Respondents

An IBHC can file a Notice of Intention to be supervised by the Commission as an SIBHC only if it: (1) Has a subsidiary broker or dealer that can evidence that it has a substantial presence in the securities business; and (2) is not (i) affiliated with an insured bank (with certain exceptions) or a savings association, (ii) a foreign bank, foreign company, or a company that is described in section 8(a) of the International Banking Act of 1978, or (iii) a foreign bank that controls a corporation chartered under section 25A of the Federal Reserve Act.[99] Paragraph (d)(2)(i)(B) of proposed Rule 17i–2 would indicate that the Commission would not consider it to be necessary or appropriate to supervise an IBHC unless it can demonstrate that it owns or controls a broker-dealer that has a substantial presence in the securities business (which may be demonstrated by a showing that the broker-dealer maintains tentative net capital of at least $100 million).

As of March 31, 2003, approximately 100 registered broker-dealers reported their tentative net capital as being between $100 million and $1 billion.[100] Many of these broker-dealers are affiliated with another broker-dealer that reported its tentative net capital as being more than $100 million.

[99] Federal Reserve Act section 25A [12 U.S.C. 611].

[100] Per March 31, 2003, FOCUS Report filings. Broker-dealers are required to file monthly and/or quarterly reports on Form X–17A–5 pursuant to Rule 17a–5(a) (17 CFR 240.17a–5(a)), commonly referred to as FOCUS Reports. In addition, *see supra,* note, wherein we propose rules and rule amendments that would allow a holding company that owns or controls a broker-dealer that maintains more than $1 billion in tentative net capital. The supervisory framework provided by those proposed rules and rule amendments would allow the broker-dealers of those entities to calculate market and credit risk capital charges using mathematical modeling techniques, thus we believe those firms will elect that supervisory framework and will not elect to be supervised pursuant to these proposed new rules.

Approximately 35 could not be supervised by the Commission as an SIBHC due to the fact that each is either: (i) affiliated with an insured bank (with certain exceptions) or a savings association,[101] (ii) a foreign bank, foreign company, or a company that is described in section 8(a) of the International Banking Act of 1978, or (iii) a foreign bank that controls a corporation chartered under section 25A of the Federal Reserve Act.[102] In addition, some broker-dealers may not be active in jurisdictions that require securities firms to demonstrate that they have consolidated supervision at the holding company level that is equivalent to EU consolidated supervision, or may not find it to be cost-effective to register as an SIBHC for other reasons. Thus, the Commission estimates that six IBHCs will file notices of intent to be supervised by the Commission as SIBHCs.

D. Reporting and Recordkeeping Burdens

1. Amendments to Rules 17h–1T and 17h–2T

The amendments to Rules 17h–1T and 17h–2T [103] would exempt broker-dealers that are affiliated with an SIBHC from those rules and thus reduce their ''collection of information'' requirements. Rule 17h–1T requires that a broker-dealer maintain and preserve records and other information concerning the broker-dealer's holding companies, affiliates, or subsidiaries that are likely to have a material impact on the financial or operational condition of the broker-dealer. Rule 17h–2T requires broker-dealers to file with the Commission quarterly reports concerning the information required to be maintained and preserved under Rule 17h–1T. The present PRA burden for broker-dealers that are presently reporting pursuant to Rules 17h–1T and 17h–2T is 24 hours per year for each broker-dealer respondent. The estimated six firms therefore would have their annual burden reduced by an aggregate of 144 hours per year.

2. Proposed Rule 17i–2

Proposed Rule 17i–2 would require that an IBHC file a Notice of Intention to become supervised by the Commission as an SIBHC. The Notice of Intention would have to set forth certain information and include a number of documents. The SIBHC would also have

[101] *See* Exchange Act section 17(i)(1)(A)(i) [15 U.S.C. 78q(i)(1)(A)(i)].

[102] Federal Reserve Act section 25A [12 U.S.C. 611].

[103] *See supra,* note 64.

to submit amendments to its Notice of Intention if certain information became incorrect or if it made certain material changes. The Commission designed Rule 17i–2 so an IBHC could compile and submit existing documents with its Notice of Intention (as opposed to requiring that an IBHC create additional documents) in order to decrease any costs or burdens involved with this proposed rule.

As stated previously in section IV.C., we estimate that approximately six IBHCs will file Notices of Intention to become SIBHCs. We estimate that each IBHC that files a Notice of Intention to become supervised by the Commission would take approximately 900 hours to draft a Notice of Intention, compile the various documents to be included with the Notice of Intention, and work with the Commission staff. Further, we believe that an IBHC would have an attorney review its Notice of Intention, and we estimate that it would take the attorney approximately 100 hours to complete such a review. Consequently, we estimate the total burden for all six firms to be approximately 6,000 hours.[104] We believe this would be a one-time burden.

The estimates of the initial burden for proposed Rule 17i–2 are based on the estimates the Commission made in adopting Rule 17c3–1f, which contained similar requirements.[105] Our burden estimates for proposed Rule 17i–2 are lower than our burden estimates relating to the application provisions of Rule 15c3–1f because our estimates relating to the creation of mathematical models have been removed from the estimate. Proposed Rule 17i–2 does not require that mathematical models be created. In addition, the requirement to create a model is not a paperwork burden. Accordingly, the costs associated with creation of mathematical models are included in the Cost-Benefit discussion regarding proposed Rule 17i–7 (which would require that an SIBHC calculate allowances for market and credit risk using mathematical models). The estimates we used here were also adjusted based on the staff's experience in implementing the OTC derivatives dealer rules. We based our burden estimates for proposed Rule 17i–2 on our burden estimates for Rule 15c3–1f because the application provisions of Rule 15c3–1f and proposed Rule 17i–2 are substantially similar and because no comments were received regarding the burden estimates for Rule 15c3–1f.

[104] (900 hours + 100 hours) × 6 IBHCs/SIBHCs = 6,000 hours.

[105] *See* 17 CFR 240.15c3–1f(a).

Rule 17i–2 also requires that an IBHC/SIBHC[106] update its Notice of Intention on an ongoing basis. We estimate, based on the staff's experience, that an IBHC/SIBHC will take approximately 2 hours each month to update its Notice of Intention, as necessary. Thus, we estimate that it will take the six IBHC/SIBHCs, in the aggregate, about 144 hours each year[107] to update their Notices of Intention.

3. Proposed Rule 17i–3

Proposed Rule 17i–3 would provide a method by which an SIBHC could withdraw from Commission supervision as an SIBHC. The proposed rule would require that an SIBHC file a notice of withdrawal with the Commission stating that the SIBHC wished to withdraw from Commission supervision.

Due to the benefits and costs associated with becoming supervised by the Commission as an SIBHC, we believe that an IBHC would carefully consider filing a Notice of Intention. For PRA purposes only, we estimate that one SIBHC may wish to withdraw from Commission supervision as an SIBHC over a ten-year period.

We estimate, based on the staff's experience, that an SIBHC that withdraws from Commission supervision as an SIBHC would take one attorney approximately 24 hours to draft a withdrawal notice and submit it to the Commission. Further, we believe the SIBHC would have a senior attorney or executive officer review the notice of withdrawal before submitting it to the Commission, and that it would take such person 8 hours to conduct such a review. Thus, we estimate that the annual, aggregate burden of withdrawing from Commission supervision as an SIBHC would be approximately 3.2 hours each year.[108]

4. Proposed Rule 17i–4

Proposed Rule 17i–4 would require an SIBHC to have in place a risk management control system appropriate for its business and organization. An SIBHC would need to consider, among other things, the sophistication and experience of its operations, risk management, and audit personnel, as well as the separation of duties among these personnel, when designing and implementing its internal control system's guidelines, policies, and procedures. These requirements are designed to result in control systems that would adequately address the risks posed by the firm's business and the environment in which it is being conducted. In addition, this would enable an SIBHC to implement specific policies and procedures unique to its circumstances.

[106] An IBHC would be required to review and update its Notice of Intention to the extent it becomes inaccurate prior to a Commission determination, and an SIBHC would be required to update its Notice of Intention if it changes a mathematical model used to calculate its risk allowances pursuant to proposed Rule 17i–7 after a Commission determination was made.

[107] (2 hours × 12 months each year) × 6 SIBHCs = 144.

[108] (1 SIBHC / every 10 years) × (24 hours to draft + 8 hours to review) = 3.2 hours.

Proposed Rule 17i–4 also would require that an SIBHC periodically review its internal risk management control system for integrity of the risk measurement, monitoring, and management process, and accountability, at the appropriate organizational level, for defining the permitted scope of activity and level of risk.

In implementing its policies and procedures, an SIBHC would be required to document and record its system of internal risk management controls. In particular, an SIBHC would be required to document its consideration of certain issues affecting its business when designing its internal controls. An SIBHC would also be required to prepare and maintain written guidelines that discuss its internal control system.

The information to be collected under proposed Rule 17i–4 would be essential to the supervision of SIBHCs and their compliance with the Commission's proposed rules. More specifically, the requirement that an SIBHC document the planning, implementation, and periodic review of its risk management controls is designed to assure that all pertinent issues are considered, that the risk management controls are implemented properly, and that they continue to adequately address the risks faced by SIBHCs.

As stated previously in section IV.C., we estimate that approximately six IBHCs will file Notices of Intention to be supervised by the Commission as SIBHCs. We further estimate that the average amount of time an SIBHC would spend assessing its present structure, businesses, and controls, and establishing and documenting its risk management control system would be about 3,600 hours, and that this would be a one-time burden. In addition, we estimate that an SIBHC would spend approximately 250 hours each year maintaining its risk management control system. Thus, we estimate that the total initial burden for all SIBHCs would be approximately 21,600 hours [109] and the continuing annual burden would be about 1,500 hours.[110]

The estimates of the initial and annual burdens for proposed Rule 17i–4 are based on the estimates the Commission made in adopting Rule 15c3–4. Proposed Rule 17i–4 makes Rule 15c3–4 applicable to SIBHCs. Our burden estimates for proposed Rule 17i–4 are higher than our burden estimates for Rule 15c3–4 because an SIBHC would be establishing, documenting, and maintaining a system of internal risk management controls for the affiliate group, and not just for one firm. We based our burden estimates for proposed Rule 17i–4 on our burden estimates for Rule 15c3–4 because Rule 15c3–4 and proposed Rule 17i–4 are substantially similar and because no comments were received regarding the burden estimates for Rule 15c3–4.

Internationally active firms generally already have in place risk management practices, and will generally review and improve their risk management practices in the near future despite these rules. However, we recognize that, to the extent an IBHC presently has a group-wide internal risk management control system, those systems may not take into account all of the elements and issues required by proposed Rule 17i–4. In addition, these firms may not have documented their consideration of these elements and issues, or other aspects of their internal risk management control systems.

5. Proposed Rule 17i–5

Pursuant to proposed Rule 17i–5, an SIBHC would be required to make and keep current certain records relating to its business. In addition, it would be required to preserve those and other records for certain prescribed time periods. The purpose of this rule is to require that the SIBHC create and maintain records that would allow the Commission to evaluate SIBHC compliance with the rules to which it is subject. We expect that any additional burden under the proposed rule would be minimal because the information that would be called for under the proposed rule is information a prudent IBHC that manages risk on a group-wide basis would maintain in the ordinary course of its business.

Pursuant to proposed Rule 17i–5, an SIBHC would be required to make and keep records reflecting (i) the results of quarterly stress tests; (ii) that the firm had created a contingency plan to respond to certain possible funding and liquidity difficulties; and (iii) the basis for credit risk weights. We estimate that the average amount of time an SIBHC would spend to create a record regarding stress tests is about 64 hours each quarter, or approximately 256 hours each year. This estimate is based on the staff's experience working with models and dealing with firms that use models through implementation of the OTC derivatives dealers rules, as well as informal discussions with potential respondents. We further estimate that the average amount of time an SIBHC would spend to create and document a contingency plan regarding funding and liquidity of the affiliate group (which we believe an SIBHC would do only once, not on an ongoing basis) would be about 40 hours. This estimate is based on the staff's experience. In addition, we estimate that the average amount of time an SIBHC would spend to create a record regarding the basis for credit risk weights would be about 30 minutes for each counterparty, and that on average, an SIBHC will establish approximately 20 new counterparty arrangements each year.[111] This estimate is based on informal discussions the staff has had with potential respondents.

Pursuant to proposed Rule 17i–5, an SIBHC would be required to maintain these and other records for at least three years in an easily accessible place. We estimate that the average amount of time an SIBHC would spend to maintain these and other, specified records for three years would be about 24 hours per year per SIBHC. This estimate is based on our present estimates for Rule 17a–4, which previously have been subject to notice and comment and have been approved by OMB.

As stated previously in section IV.C., we estimate that approximately six IBHCs will file Notices of Intention to be supervised by the Commission as SIBHCs. Thus, the total initial burden relating to proposed new Rule 17i–5 for all SIBHCs would be approximately 240 hours [112] and the continuing annual burden would be approximately 1,740 hours.[113]

6. Proposed Rule 17i–6

Proposed Rule 17i–6 would require an SIBHC to file certain monthly and quarterly reports with the Commission, as well as an annual audit report. These reporting requirements are necessary to keep the Commission informed as to the activities of the SIBHC, as well as the financial condition, transactions and relationships involving the affiliate group, and policies, systems for monitoring and controlling financial and operational risks. In addition, these requirements are essential to keeping the Commission informed of the extent to which the SIBHC or its affiliates have complied with Section 17(i) of the Exchange Act and the rules promulgated thereunder. Finally, these reports could also be used to evaluate the activities conducted by these SIBHCs and to anticipate, where possible, how they might be affected by significant economic events.

As stated previously in section IV.C., we anticipate that the proposed rule would affect approximately six SIBHCs. We estimate that, on average, it would take an SIBHC about 8 hours each month to prepare and file the monthly reports required by this rule (or approximately 96 hours per year).[114] We estimate that, on average, it would take an SIBHC about 16 hours each quarter (or 64 hours each year) [115] to prepare and file the quarterly reports required by this rule. We estimate that, on average, it would take an SIBHC about 200 hours to prepare and file the annual audit reports required by this rule. Thus, we estimate that the total annual burden of proposed Rule 17i–6 on all SIBHCs would be approximately 2,160 hours.[116]

These estimates are based on our present estimates for 17a–12, which were previously subject to notice and comment and have been approved by OMB. However the estimates for the monthly and quarterly reports were reduced somewhat due to the fact that an SIBHC would not be required to complete specified forms, but instead could provide the required information to the Commission in its existing format. We believe that our use of existing internal reports will decrease the burden on SIBHCs because an SIBHC may compile existing documents and submit them to the Commission.

[109] (3,600 hours × 6 SIBHCs) = 21,600 hours.

[110] (250 hours per year × 6 SIBHCs) = 1,500 hours per year.

[111] We estimate that, on average, each firm presently maintains relationships with approximately 1,000 counterparties. Further, it is our understanding that firms generally already maintain documentation regarding their credit decisions, including their determination of credit risk weights, for those counterparties.

[112] (40 hours to create and document a contingency plan regarding funding and liquidity of the affiliate group) × 6 SIBHCs.

[113] ((256 hours to create a record regarding stress tests) + ((30 minutes × 20 counterparties) to create a record regarding the basis for credit risk weights) + (24 hours per year to maintain records)) × 6 SIBHCs.

[114] (8 hours × 12 months in a year) = 96 hours/year.

[115] (16 hours × 4 quarters in a year) = 64 hours/year.

[116] (96 hours per year to prepare and file monthly reports + 64 hours each year to prepare and file quarterly reports + 200 hours each year to prepare and file annual audit reports) × 6 SIBHCs = 2,160 hours.

Further, the time burden relating to the annual audit was increased in recognition of the fact that the audit of a holding company is generally more time consuming than the audit of one entity (for both the accountants and the firm employees working with them). However, many of these holding companies are already audited at the holding company level, so, aside from the special supplemental reports, no additional burden should be imposed by proposed Rule 17i–6. We believe that most well-managed SIBHCs already report to their senior management much of the information required to be provided to the Commission pursuant to proposed Rule 17i–6.

7. Proposed Rule 17i–8

Proposed Rule 17i–8 would require SIBHCs to report on the occurrence of certain events that may have a material adverse affect on the SIBHC. The proposed early warning system is modeled after the early warning system used with respect to broker-dealers in Exchange Act Rule 17a–11. Like Exchange Act Rule 17a–11, proposed Rule 17i–8 is designed to give the Commission advance warning of problems that may pose material risks to the financial and operational capability of an SIBHC and its affiliated broker-dealers. The proposed rule would be integral to the supervision of SIBHCs and their affiliated broker-dealers.

We estimate that it would take an SIBHC approximately one hour to create a notice required to be submitted to the Commission pursuant to proposed Rule 17i–8. This estimate is based on our present estimates for Rule 17a–11, which were previously subject to notice and comment and have been approved by OMB. The Commission received 692 Rule 17a–11 Notices from 627 broker-dealers during the year ending December 2001. At that time, there were approximately 7,217 active broker-dealers registered with the Commission.[117] Thus, 9% of active, registered broker-dealers had a situation arise which caused them to file a notice pursuant to Rule 17a–11. Using this 9% figure, we estimate that of the approximately six IBHCs that we believe will register to be supervised as SIBHCs, one may be required to file notice pursuant to proposed Rule every other year.[118] Thus, we estimate that the annual burden of proposed Rule 17i–8 for all SIBHCs would be about 30 minutes.

E. Collection of Information Is Mandatory

The collections of information requirements in proposed new Rules 17i–1 through 17i–8 would be mandatory for every IBHC that files a Notice of Intention to be supervised by the Commission as an SIBHC and every SIBHC that is supervised by the Commission.

F. Confidentiality

The information and documents collected, retained, and/or filed pursuant to Proposed new Rules 17i–1 through 17i–8 would be accorded confidential treatment.

G. Record Retention Period

Proposed Rule 17i–5(b) would require that an IBHC preserve for three years in an easily accessible place information relating to (i) its Notice of Intention; (ii) its group-wide system of internal risk management controls; (iii) the records it is required to make and keep current; (iv) the reports it is required to make; and (v) its calculations of allowable capital and allowances for market, credit, and operational risk.

H. Request for Comments Regarding Paperwork Burden Estimates

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

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information;
- Ways in which we might enhance the quality, utility, and clarity of the information to be collected; and
- Ways in which we might minimize the burden of the collection of information on those required to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements should address them to The Office of Management and Budget, Room 3208, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, New Executive Office Building, Washington, DC 20503; and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. The submission should reference File No. S7–22–03. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**; therefore, comments to OMB are best assured of having full effect if OMB receives them within 30 days of this publication.

The Commission has submitted the proposed collections of information to OMB for approval. Requests for the materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–22–03, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549–0609.

V. Costs and Benefits of the Proposed Rules and Rule Amendments

The Commission has identified certain costs and benefits that would be associated with the proposed framework for supervising SIBHCs. Supervision pursuant to this system is voluntary, and eligible IBHCs would not be required to be supervised in this manner. This framework would include requirements for IBHCs that file Notices of Intention to be supervised by the Commission as SIBHCs, as well as recordkeeping and reporting requirements for SIBHCs, including a requirement that an SIBHC calculate and report a calculation of allowable capital and allowances for market, credit and operational risk.

A. Benefits

There are many quantifiable and non-quantifiable benefits that would be created by these rules. We have attempted to delineate those costs below.

U.S. securities firms that do business in the EU have indicated that they may need to demonstrate that they are subject to consolidated supervision at the holding company level that is "equivalent" to EU consolidated supervision. Generally, EU "consolidated supervision" would take the form of a series of rules, imposed at the holding company level, regarding firms' internal controls, capital adequacy, intra-group transactions, and risk concentration. Without a demonstration of "equivalent" supervision, securities firms located in the EU have stated that they may either be subject to additional capital charges or required to form a sub-holding

[117] Of approximately 7,739 broker-dealers registered with the Commission in 2001, approximately 341 were not yet active because their registration was pending SRO approval and approximately 181 were inactive because they had ceased doing a securities business and had filed a Form BDW with the Commission. Of those, 7217 active, registered broker-dealers, three were registered OTC derivatives dealers.

[118] (6 SIBHCs × 9%) = 0.54.

company in the EU.[119] The regulatory framework for SIBHCs set forth in the proposed rules is intended to provide a basis for non-U.S. financial regulators to treat the Commission as the principal U.S. consolidated, home-country supervisor [120] for SIBHCs and their affiliated broker-dealers. In response to a survey conducted during the rulemaking process to promulgate the OTC derivatives dealers rules, firms suggested that they would incur significant costs in creating a new, non-U.S. regulated affiliate. Based on that information, we estimate that it would cost an IBHC approximately $8 million to with create a new, non-U.S., regulated affiliate,[121] or about $48 million in the aggregate for the six IBHCs we believe will file Notices of Intention to become supervised by the Commission as SIBHCs. We do not have sufficient information to estimate what additional capital charges may be imposed on securities firms that do business in the EU if they are not subject to equivalent supervision.

Certain broker dealers must create records and file quarterly reports with the Commission regarding the financial condition, organization, and risk management practices of the affiliated group pursuant to Exchange Act Rules 17h–1T and 17h–2T.[122] Broker-dealers affiliated with IBHCs that meet the criteria set forth in proposed Rules 17i–1 through 17i–8 generally would be subject to Rules 17h–1T and 17h–2T. To the extent that the information collected or made and maintained pursuant to proposed Rule 17i–5 reports are made and filed pursuant to proposed Rule 17i–6 by the SIBHC of a broker-dealer that is subject to Rules 17h–1T and 17h–2T, that broker-dealer will be exempted from the provisions of Rules 17h–1T and 17h–2T. We estimate that, on average, a broker-dealer affiliated with one of the six SIBHCs would save about $1,215.12.[123] In the aggregate, the total cost savings associated with these amendments would be approximately $7,291.[124]

In addition, proposed Rules 17i–1 through 17i–8 would not only create a regulatory framework for the Commission to supervise SIBHCs, but they would improve the Commission's ability to supervise the financial condition and securities activities of SIBHCs' affiliated broker-dealers. The proposed requirement that an SIBHC establish, document and maintain an internal risk management control system reduces the risk of significant losses by the SIBHC's affiliated broker-dealers. The proposed internal risk management control system requirement would also reduce systemic risk. We have no way to quantify this benefit.

An additional benefit arises from the reduced borrowing costs, or increased stock price that would result from better risk management practices. Credit rating agencies analyze risk management practices, among many factors, in determining credit ratings. A firm that has better risk management systems may be rated better, and would therefore pay lower interest rates to borrow and realize higher stock prices. However it is unclear to what extent risk management factors into credit ratings. In addition, present internal risk management control systems vary widely from firm to firm. Therefore it is difficult to quantify this benefit.

However, evolving industry best practice for internationally active firms suggests that some of the firms already have group-wide internal risk management control systems in place, and some firms will implement the risk management practices in the near future.

B. Costs

IBHCs that file Notices of Intention to become supervised by the Commission as SIBHCs would incur various on-going costs and one-time costs.

1. Ongoing Costs

Proposed Rules 17i–1 through 17i–8 would cause an SIBHC to incur ongoing costs relating to: (i) Drafting and reviewing a Notice of Intention; (ii) drafting and reviewing a notice of withdrawal; (iii) updating its internal risk management control system; (iv) creating a record regarding stress tests; (v) creating a record regarding the basis for credit risk weights; (vi) maintaining its records in accordance with proposed Rule 17i–5; (vii) preparing and filing monthly and quarterly reports; (viii) preparing and filing its annual audit; (ix) calculating allowable capital and allowances for market, credit, and operational risk; (x) maintaining its models; (xi) conducting stress tests on its models; and (xii) filing notices pursuant to proposed Rule 17i–8.

Proposed Rule 17i–2 would require that an SIBHC update its Notice of Intention on an ongoing basis. We estimate, that each SIBHC will incur a cost of approximately $1,358 each year to make any necessary updates to its Notice of Intention.[125] Thus, we estimate that the total annual cost to make any updates to the notice would be, in aggregate, about $8,150 each year for all SIBHCs.[126]

Proposed Rule 17i–3 would require that an SIBHC file a notice of withdrawal with the Commission if it wished to withdraw from Commission supervision. We estimate that each SIBHC that withdraws from Commission supervision would incur a cost of about $2,130 to draft and review a notice or withdrawal to submit to the Commission.[127] However, we further estimate that one SIBHC may withdraw from Commission supervision only once every ten years. Thus, the annual cost of this rule would be approximately $213.[128]

Proposed Rule 17i–4 would require an SIBHC to maintain an internal risk management control system. We estimate that an SIBHC would incur a cost of approximately $14,150

[119] *See supra* note 3.

[120] *See supra* note 4.

[121] Five firms responded to the survey and estimated that their annual operating costs would increase by at least $36 million in the aggregate to conduct business as an OTC derivatives dealer. ($36 million / 5 firms) = $7.2 million each. ($7.2 million × an inflation factor of 1.12 (to account for inflation from 1998 to the present)) = approximately $8 million.

[122] *See supra,* note 64.

[123] We estimate, based on the present burden for 17h–1T and 17h–2T (which has been subject to notice and comment and has been approved by OMB), that each broker-dealer affiliated with an SIBHC that will no longer have to maintain records or file reports will spend 24 hours less each year to perform these tasks. The staff believes that a broker-dealer would have a financial reporting manager perform these tasks. According to the Securities Industry Association's (''SIA'') *Report on Management and Professional Earnings in the Securities Industry—2002,* the hourly cost of a financial reporting manager is $50.63. (($50.63 × 24 hours) = $1,215.12. Generally, to achieve an hourly cost using the SIA's *Report on Management and Professional Earnings in the Securities Industry—2002,* the staff will take the median (or, if no median is provided, the mean) salary provided in that Report for the position cited, divide that amount by 1,800 hours (in the average year), and then multiply the result by 135% (to account for employee overhead costs).

[124] ($1,215.12 × six affected broker-dealers) = $7,291.

[125] We estimate that an SIBHC will take about 24 hours each year to assure that its Notice of Intention is accurate and make any necessary updates. We believe an SIBHC will have a senior compliance person perform this task. According to the SIA's *Report on Management and Professional Earnings in the Securities Industry—2002*, the hourly cost of a senior compliance person is $56.60. (24 hours × $56.60) = $1,358.40.

[126] ($1,358.40 × 6 SIBHCs) = $8,150.

[127] We estimate, based on the staff's experience, that it would take one attorney approximately 24 hours to draft a withdrawal notice and that it would take a senior attorney or executive officer 8 hours to review the notice of withdrawal before submitting it to the Commission. According to the SIA's *Report on Management and Professional Earnings in the Securities Industry—2002*, the hourly cost of an attorney is $63.75, and the average hourly cost of a senior attorney and executive officer is $75.00. ((24 hours × $63.75) + (8 hours × $75.00)) = $2,130.

[128] ($2,130.00 × 10 years) = $213.

associated with maintaining its risk management control system each year.[129] Thus, the continuing annual burden would be, in aggregate, approximately $84,897 for all six SIBHCs.[130]

Pursuant to proposed Rule 17i–5, an SIBHC would be required to create records regarding stress tests and the basis for credit risk weights, and preserve those and other records relating to its business for certain prescribed time periods. We estimate that an SIBHC would incur an annual cost of about $17,280 to create a record regarding stress tests as required by proposed Rule 17i–5.[131] Further, we estimate that, on average, an SIBHC would incur an annual cost of approximately $371 to create a record regarding the basis for credit risk weights.[132] These estimates are based on informal discussions with potential respondents. Further, we estimate that, on average, an SIBHC would incur an annual cost of $1,413 to maintain records pursuant to proposed Rule 17i–5.[133] Thus, the aggregate annual cost relating to proposed new Rule 17i–5 for all SIBHCs would be approximately $114,382.[134]

Proposed Rule 17i–6 would require an SIBHC to file certain monthly and quarterly reports with the Commission, as well as an annual audit report. We estimate that the average cost for an SIBHC to prepare and file the monthly reports would be about $399 per month, and thus approximately $4,788 per year.[135] We estimate that, on average, an SIBHC would incur a quarterly cost of $798 to prepare and file the required quarterly reports, and thus would incur an annual cost of $3,192 to file these reports.[136] Finally, we estimate that, on average, an SIBHC would incur an annual cost of $9,750 to prepare and file an annual audit.[137] Thus, we estimate that the total cost that, in aggregate, SIBHCs would incur that are associated with proposed Rule 17i–6 would be approximately $106,385.[138]

Proposed Rule 17i–7 would require an SIBHC to calculate the affiliate group's allowable capital and allowances for certain types of risk. Once the appropriate systems and models are in place, we estimate that each SIBHC would incur a cost of about $52,374 to calculate its group-wide allowances for market, credit, and operational risk.[139] In addition, we estimate that each SIBHC will incur a cost of about $378,000 to maintain its models.[140] Finally, we estimate that each SIBHC will incur an annual cost of approximately $24,915 to perform stress tests on its models at least once each quarter.[141] Thus, we estimate that the annual cost that SIBHCs will incur, in aggregate, will be approximately $2.7 million.[142]

Proposed Rule 17i–8 would require SIBHCs to report to the Commission the occurrence of certain material risks. We estimate that it would cost an SIBHC approximately $64 to create a notice required to be submitted to the Commission pursuant to Proposed Rule 17i–8.[143] However, we estimate that

[129] We estimate that it would take each SIBHC 250 hours each year to maintain its internal risk management control system, and that an SIBHC would have a senior compliance person perform that task. According to the SIA's *Report on Management and Professional Earnings in the Securities Industry—2002,* the hourly cost of a senior compliance person is $56.60. (250 hours × $56.60) = $14,149.50.

The hourly burden estimates are roughly based on the estimates made in the Commission's OTC derivatives dealer releases, through which Rule 15c3–4 was promulgated. Proposed Rule 17i–4 states that an SIBHC must comply with Rule 15c3–4 as if it were a broker-dealer. No comments were received in response to the estimates proposed in the OTC derivatives dealers proposing release, and those burden estimates were not changed in the final rule release. Those estimates were increased to account for the fact that an SIBHC would be designing and implementing a system of internal risk management controls for the affiliate group, and not just for one firm.

[130] ($14,149.50 × 6 SIBHCs) = $84,897.

[131] Based on the staff's experience working with models and dealing with firms that use models through implementation of the OTC derivatives dealers rules, as well as informal discussions with potential respondents, we estimate that an SIBHC would spend approximately 256 hours each year to create a record regarding stress tests. We believe that an SIBHC would have a trading floor supervisor or equivalent create this record. According to the SIA's *Report on Management and Professional Earnings in the Securities Industry—2002*, the hourly cost of a trading floor supervisor is $67.50. ($67.50 × 256) = $17,280.

[132] Based on the staff's informal discussions with potential respondents, we estimate that an SIBHC would spend 30 minutes per counterparty to create a record regarding credit risk weights, and that, on average, each SIBHC would initiate relationships with 20 new counterparties each year. We believe that an SIBHC would have an intermediate accountant create this record. According to the SIA's *Report on Management and Professional Earnings in the Securities Industry—2002*, the hourly cost of an intermediate accountant is $37.05. ($37.05 × (30 minutes × 20 counterparties)) = $370.50.

[133] We estimate, based on our present estimates for Rule 17a–4, which previously have been subject to notice and comment and have been approved by OMB, that an SIBHC will spend about 24 hours per year to maintain records as required pursuant to proposed Rule 17i–5. The staff believes that an SIBHC would have a programmer analyst perform this task. According to the SIA's *Report on Management and Professional Earnings in the Securities Industry—2002*, the hourly cost of a programmer analyst is $58.88. ($58.88 × 24) = $1,413.12.

[134] (($17,280 + $370.50 + $1,413.12) × 6 SIBHCs) = $114,381.72.

[135] We estimate that an SIBHC would spend about 8 hours per month and 96 hours per year to prepare and file these monthly reports. We believe that an SIBHC would have a senior accountant prepare and file these reports. According to the SIA's *Report on Management and Professional Earnings in the Securities Industry—2002*, the hourly cost of a senior accountant is $49.88. ($49.88 × 8 hours) = $399.04. ($399.04 × 12 months) = $4,788.48.

[136] We estimate that an SIBHC would spend about 16 hours per quarter and 64 hours per year to prepare and file these quarterly reports. We believe that an SIBHC would have a senior accountant prepare and file these reports. According to the SIA's *Report on Management and Professional Earnings in the Securities Industry—2002*, the hourly cost of a senior accountant is $49.88. ($49.88 × 16 hours) = $798.08. ($798.08 × 4 quarters) = $3,192.32.

[137] We estimate that an SIBHC would spend about 200 hours per year to prepare and file an annual audit. We believe that an SIBHC would have a senior internal auditor work with accountants to prepare and file these reports. According to the SIA's *Report on Management and Professional Earnings in the Securities Industry—2002*, the hourly cost of a senior internal auditor is $48.75. ($48.75 × 200 hours) = $9,750.

[138] (($4,788.48 + $3,192.32 + $9750) × 6 SIBHCs) = $106,385. The hourly burden estimates relating to proposed Rule 17i–6 are based on the present estimates for Rule 17a–12, which were previously subject to notice and comment and have been approved by OMB. However, those estimates were reduced somewhat due to the fact that SIBHCs would not be required to create any special report, but instead could provide the required information to the Commission in its existing format.

[139] We estimate, based on staff experience and discussions with industry participants, that, on average, each SIBHC will take approximately 1,050 hours per year to calculate allowable capital and allowances for market, credit, and operational risk and to verify and review that data. We believe that an SIBHC would have a senior accountant perform these calculations and verifications. According to the SIA's *Report on Management and Professional Earnings in the Securities Industry—2002*, the hourly cost of a senior accountant is $49.88. ($49.88 × 1,050 hours) = $52,374.

[140] We estimate, based on staff experience and discussions with industry participants, that each SIBHC will spend an average of approximately 5,600 hours per year maintaining its models. We believe that an SIBHC would have a senior programmer and a senior research analyst spend approximately 2,800 hours each maintaining its models. According to the SIA's *Report on Management and Professional Earnings in the Securities Industry—2002*, the hourly cost of a senior programmer is $63.75 and the hourly cost of a senior research analyst is $71.25. (($63.75 × 2,800 hours) + ($71.25 × 2,800 hours) = $378,000.

[141] We estimate, based on staff experience and discussions with industry participants, that each SIBHC will spend about 640 hours each year to conduct stress tests on its models. We believe that an SIBHC would have a junior research analyst conduct stress tests on its models. According to the SIA's *Report on Management and Professional Earnings in the Securities Industry—2002*, the hourly cost of a junior research analyst is $38.93. ($38.93 × 640 hours) = $24,915.20.

[142] (($52,374 + $378,000 + $24,915.20) × 6 SIBHCs = $2,731,735.20.

[143] We estimate that it would take an SIBHC approximately one hour to create a notice required to be submitted to the Commission pursuant to proposed Rule 17i–8. However, we further estimate that only one SIBHC may be required to submit such notice every other year. We believe that an SIBHC would have an attorney create a notice required to be submitted to the Commission pursuant to proposed Rule 17i–8. According to the SIA's *Report on Management and Professional Earnings in the Securities Industry—2002*, the

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only one SIBHC may be required to send a notice as required by proposed Rule 17i–8 every other year. Thus, we estimate that the annual cost of proposed Rule 17i–8 for all SIBHCs would be about $32.[144]

2. One-time Costs

We believe that an SIBHC would incur five types of one-time costs associated with becoming an SIBHC: (i) Costs associated with drafting a Notice of Intention to submit to the Commission; (ii) costs associated with assessing its present structure, businesses, and controls, and designing and implementing a risk management control system in order to comply with proposed Rule 17i–4; (iii) costs associated with creating and documenting a contingency plan regarding funding and liquidity of the affiliate group; (iv) costs associated with upgrading the information technology (''IT'') systems it uses to manage group-wide risk, make and retain records and reports, and calculate group-wide capital; and (v) costs associated with developing mathematical models to calculate its group-wide allowances for market and credit risk as required by proposed Rule 17i–7.

Proposed Rule 17i–2 would require that an IBHC file a Notice of Intention to become supervised by the Commission that includes certain information and documents. We estimate that each IBHC that files a Notice of Intention to become supervised by the Commission as an SIBHC would incur a cost of approximately $50,940 to draft a Notice of Intention, compile the various documents to be included with the Notice of Intention, and work with the Commission staff.[145] Further, we believe that an IBHC would have an attorney review the Notice of Intention, and that it would incur a cost of approximately $6,375 relating to this review.[146] Consequently, we estimate that the total costs that would be incurred by the six IBHCs we believe will file Notices of Intention to become supervised by the Commission as SIBHCs is about $343,890.[147]

Each SIBHC would incur a one-time cost to assess its present structure, businesses, and controls, and establish, document and maintain a risk management control system in order to comply with proposed Rule 17i–4. We estimate that the one-time cost for an SIBHC to assess its present structure, businesses, and controls, and establish, document and maintain a risk management control system will cost approximately $203,760.[148] Thus, we anticipate the total aggregate cost for all SIBHCs would be about $1.2 million.[149]

Pursuant to proposed Rule 17i–5, an SIBHC would be required to document a contingency plan regarding funding and liquidity of the affiliate group. We estimate that it would cost each SIBHC about $1,958 to document such a contingency plan.[150] Consequently, it would cost the six SIBHCs we expect to file Notices of Intention to be supervised by the Commission, in aggregate, approximately $11,746.[151]

The IT systems used by IBHCs to manage risk, make and retain records and reports, and calculate capital differ widely based on the types of business and the size of the IBHC. In addition, these IT systems may be in varying stages of readiness to meet the requirements of the proposed rules. We estimate that it will cost an IBHC that has well-developed IT systems to manage group-wide risk, make and retain their records, provide reports, and calculate group-wide capital about $1 million to upgrade its IT systems. We estimate that it will cost an IBHC that has less well-developed IT systems approximately $10 million to upgrade its IT systems. Thus, we estimate that, on average, it will cost each of the six SIBHCs about $5.5 million to upgrade their IT systems, or approximately $33 million in total. We believe that the costs for an SIBHC to update information technology systems in order to comply with proposed Rules 17i–1 through 17i–8 would be an initial, one-time cost. These estimates are based on the experience of Commission staff, as well as informal discussions with potential respondents.

Pursuant to proposed Rule 17i–7 an SIBHC would be required to calculate its group-wide allowances for market, credit, and operational risk on a monthly basis. SIBHCs would generally use mathematical models to calculate market and credit risk. The SIBHC's size, the types of business in which it engages, and the complexity of its portfolio will all factor into the cost of model development. We estimate, based on staff experience, our experience with OTC derivatives dealers, and discussions with industry participants, that it will cost an SIBHC between $6,750 (if the firm already manages risks using mathematical models and simply needs to adjust those models to assure they comply with the qualitative and quantitative requirements set forth in

hourly cost of an attorney is $63.75. ($63.75 × 1 hour) = $63.75. The hourly burden estimate for proposed Rule 17i–8 is based on our present estimates for Rule 17a–11, which were previously subject to notice and comment and have been approved by OMB. The Commission received 692 Rule 17a–11 Notices from 627 broker-dealers during the year ending December 2001. At that time, there were approximately 7,217 active broker-dealers that are registered with the Commission. Thus, 9% (692/7,217) of active, registered broker-dealers had a situation arise which caused them to file a notice pursuant to Rule 17a–11. Using this 9% figure, we estimate that of the approximately 6 IBHCs that we believe will register to be supervised as SIBHCs, one may be required to file notice pursuant to proposed Rule 17i–8 every other year ((6 SIBHCs × 9%) = 0.54).

[144] ($63.75 × (30 minutes/one hour)) = $31.88.

[145] We estimate that an SIBHC will spend 900 hours to perform this task. Further, we believe that an SIBHC would have a senior compliance person perform this task. According to the SIA's *Report on Management and Professional Earnings in the Securities Industry—2002*, the hourly cost of a senior compliance person is $56.60. ($56.60 × 900 hours) = $50,940.

[146] We believe that an SIBHC will have an attorney review the Notice of Intention and that it would take an attorney 100 hours to complete this review. According to SIA's *Report on Management and Professional Earnings in the Securities Industry—2002*, the hourly cost of an attorney is $63.75. ($63.75 × 100 hours) = $6,375.

[147] ($50,940 + $6,375) × 6 SIBHCs = $343,890. The hourly burden estimates used to derive these cost estimates are based on the estimates made in the Commission's OTC derivatives dealer releases, which contained a similar requirement. No comments were received in response to the estimates proposed in the OTC derivatives dealers proposing release, and those burden estimates were not changed in the final rule release. We adjusted those estimates such that the burden hours associated with creation of VaR models was moved to the burden estimates for proposed Rule 17i–7. We also adjusted the estimates based on the staff's experience in implementing the OTC derivatives dealer rules.

[148] We estimate that the average amount of time an SIBHC would spend assessing its present structure, businesses, and controls, and designing and implementing a risk management control system would be about 3,600 hours. We believe that an SIBHC would have a senior compliance person performing this task. According to the SIA's *Report on Management and Professional Earnings in the Securities Industry—2002,* the hourly cost of a senior compliance person is $56.60. ($56.60 × 3,600 hours) = $203,760.

[149] ($203,760.00 per SIBHC × 6 SIBHCs expected to apply) = $1,222,560. The estimates of the initial and annual burdens for proposed Rule 17i–4 are based on the estimates the Commission made in adopting Rule 15c3–4. Proposed Rule 17i–4 makes Rule 15c3–4 applicable to SIBHCs. Our burden estimates for proposed Rule 17i–4 are higher than our burden estimates for Rule 15c3–4 because an SIBHC would be establishing, documenting, and maintaining a system of internal risk management controls for the affiliate group, and not just for one firm. We based our burden estimates for proposed Rule 17i–4 on our burden estimates for Rule 15c3–4 because Rule 15c3–4 and proposed Rule 17i–4 are substantially similar and because no comments were received regarding the burden estimates for Rule 15c3–4.

[150] We estimate that, on average, an SIBHC would spend about 40 hours to create and document a contingency plan regarding funding and liquidity of the affiliate group. This estimate is based on the staff's experience. Further, we believe that an SIBHC would have a senior treasury manager perform this task. According to the SIA's *Report on Management and Professional Earnings in the Securities Industry—2002,* the hourly cost of a senior treasury manager is $48.94. ($48.94 × 40 hours) = $1,957.60.

[151] ($1,957.60 × 6 SIBHCs) = $11,746.

the proposed rules) and $675,000 (if the firm is complex and does not presently use mathematical models to manage risk) to update or create mathematical models.[152] Thus, we estimate that the additional cost to create new models would be, in aggregate, between about $40,500 and about $4.1 million for all six firms.[153]

The Commission notes that broker-dealers with tentative net capital of between $100 million and $1 billion that are not affiliated with banks generally do not report a VaR figure in their market risk disclosure of their holding companies' annual reports. However, some firms of this size do report a VaR figure in their market risk disclosure of their holding companies' annual reports. IBHCs that do not presently use VaR to manage group-wide risk may not find it to be cost effective to file a Notice of Intention to be supervised by the Commission as an SIBHC. However, this regulatory framework is available to a wide range of firms as an alternative, and may allow some of them to compete more effectively.

As stated previously, there are approximately one hundred applicants who qualify based on the minimum tentative net capital requirements. In addition, it is unclear to what extent IBHCs have made these investments already in the ordinary course of business. Evolving industry best practice for internationally active firms suggests that some IBHCs will have already made some or all the investments required by the proposed rules, and some IBHCs have plans to make those investments in the near future. As stated previously in section IV.C., we believe that the six IBHCs that qualify will file a Notice of Intention to become supervised by the Commission as SIBHCs because it is cost effective and because they have made or plan to make the necessary investments regardless of Commission rule making. To the extent that a firm that becomes subject to this rule will not incur additional costs to establish, document and maintain a risk management control system, upgrade its IT, or create mathematical models, our estimates with regard to the proposed rules may be reduced. We seek specific comment on the degree to which potential applicants under this rule have already made, or are making, the necessary investments in risk management control systems, IT, and mathematical modeling.

C. Request for Comment Regarding Analysis of Costs and Benefits

To assist the Commission in evaluating the costs and benefits that may result from the proposed supervisory framework for SIBHCs, the Commission requests comments on the potential costs and benefits identified in this release, as well as any other costs or benefits that may result from the proposed rules and rule amendments. In addition, we invite commenters to provide views and data comparing the costs and benefits discussed above with the costs and benefits of the current regulatory framework. Commenters should provide analysis and data relating to the costs and benefits associated with each of the proposed Rules. In particular, we solicit comments on the potential costs for any necessary modifications to accounting, information and recordkeeping systems, and risk management control systems required to implement the proposed rules, and the potential benefits arising from participation in this optional regulatory framework.

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

Section 3(f) of the Exchange Act[154] requires the Commission, whenever it engages in rulemaking and is required to consider or determine if an action is necessary or appropriate in the public interest, to consider if the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act[155] requires the Commission, in adopting rules under the Exchange Act, to consider the impact that any such rule would have on competition. Exchange Act Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission's preliminary view is that proposed Rules 17i–1 through 17i–8 would promote both efficiency and capital formation. The proposed rules should provide qualifying IBHCs an opportunity to increase operational efficiency by continuing to compete effectively outside of the United States in countries that require consolidated supervision as a condition of doing business. Although the proposed rules would impose new costs relating to: (i) Creation and implementation of a group-wide system of internal management controls; (ii) recordkeeping; and (iii) reporting, an IBHC filing a Notice of Intention to be supervised by the Commission as an SIBHC would not be subject to consolidated supervision in non-U.S. marketplaces. Further, as this framework for oversight is voluntary, we do not believe IBHCs will file Notices of Intention to be supervised by the Commission as an SIBHC unless the benefits of such an election outweigh the costs with respect to the applying firm.

The Commission notes that broker-dealers with tentative net capital of between $100 million and $1 billion that are not affiliated with banks generally do not report a VaR figure in their market risk disclosure of their holding companies' annual reports. However, some firms of this size do report a VaR figure in their market risk disclosure of their holding companies' annual reports. IBHCs that do not presently use VaR to manage group-wide risk may not find it to be cost effective to file a Notice of Intention to be supervised by the Commission as an SIBHC. However, this regulatory framework is available to a wide range of firms as an alternative, and may allow some of them to compete more effectively.

The Commission's preliminary view is that the proposed rules would not have anti-competitive effects on smaller broker-dealers because smaller broker-dealers are generally not interested in consolidated supervision.[156] These rules

[152] We estimate that an SIBHC that already manages risk using mathematical models may need to spend 100 hours to review its models and adjust them to assure they comply with the qualitative and quantitative requirements set forth in the proposed rules. We believe that an SIBHC would have a senior programmer and a senior research analyst spend approximately 50 hours each to perform this task. According to the SIA's *Report on Management and Professional Earnings in the Securities Industry—2002,* the hourly cost of a senior programmer is $63.75 and the hourly cost of a senior research analyst is $71.25. (($63.75 × 50 hours) + ($71.25 × 50 hours) = $6,750. Further, we estimate that a complex SIBHC that does not presently use mathematical models to manage risk would spend approximately 10,000 hours to create mathematical models to use in calculating market and credit risk as required by the proposed rules. We believe that an SIBHC would have a senior programmer and a senior research analyst spend approximately 5,000 hours each to perform this task. According to the SIA's *Report on Management and Professional Earnings in the Securities Industry—2002,* the hourly cost of a senior programmer is $63.75 and the hourly cost of a senior research analyst is $71.25. (($63.75 × 5,000 hours) + ($71.25 × 5,000 hours) = $675,000. These hourly burden estimates are based on staff experience and discussions with industry participants.

[153] ($6,750 × 6 SIBHCs) = $40,500. ($675,000 × 6 SIBHCs) = $4,050,000.

[154] 15 U.S.C. 78c(f).

[155] 15 U.S.C. 78w(a)(2).

[156] Generally, smaller broker-dealers are organized in a simpler manner, and they do not

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implement Section 17(i) of the Exchange Act. These rules are intended, in part, to allow U.S. broker-dealers to compete more effectively in the global securities markets.

- We solicit comment on whether the proposal would promote both efficiency and capital formation.
- We request comment on the competitive benefits to broker-dealers that may result under the proposed rules.
- We also request comment on any anticompetitive effects that may result under the proposed rules.

VII. Regulatory Flexibility Act Certification

The Commission hereby certifies, pursuant to 5 U.S.C. 605(b), that proposed new Rules 17i–1 through 17i–8, and proposed amendments to Rules 17h–1T, 17h–2T, and 17a–12(l) under the Exchange Act, if adopted, would not have a significant economic impact on a substantial number of small entities.

Proposed new Rules 17i–1 through 17i–8 would create a framework for the Commission to supervise SIBHCs. These rules also would enhance the Commission's supervision of the SIBHC's subsidiary broker-dealers through collection of additional information and examinations of affiliates of those broker-dealers. This framework would include qualification criteria for IBHCs that file Notices of Intention to be supervised by the Commission, as well as recordkeeping and reporting requirements for SIBHCs. An IBHC that meets the criteria set forth in the proposed rules would not be required to become an SIBHC; supervision as an SIBHC is voluntary. Taken as a whole, the proposed framework would permit the Commission to better monitor the financial condition, risk management, and activities of a broker-dealer's parent and affiliates on a group-wide basis. In particular, it would create a formal process through which the Commission could access important information regarding activities of a broker-dealer's affiliates that could impair the financial and operational stability of the broker-dealer or the SIBHC. Further, as this framework for oversight is voluntary, we do not believe IBHCs will file Notices of Intention to be supervised by the Commission as SIBHCs unless the benefits of such supervision outweigh the costs with respect to the applying firm. The Commission is also proposing to add an exemption to the risk assessment rules to exempt a broker-dealer that is affiliated with an SIBHC because the SIBHC will be maintaining records and reporting to the Commission regarding the financial and operational condition of members of the affiliate group. Finally, the Commission is proposing to adjust the audit requirements for OTC derivative dealers to allow accountants to use agreed-upon procedures when conducting audits of risk management control systems.

An IBHC can apply to become an SIBHC only if it is not affiliated with an insured bank (with certain exceptions) or a savings association,[157] (ii) a foreign bank, foreign company, or a company that is described in section 8(a) of the International Banking Act of 1978, or (iii) a foreign bank that controls a corporation chartered under section 25A of the Federal Reserve Act.[158] In addition, pursuant to paragraph (d)(2)(i)(B) of proposed Rule 17i–2, the Commission would not consider such supervision necessary or appropriate unless the investment bank holding company demonstrates that it owns or controls a broker or dealer that has a substantial presence in the securities business, which may be demonstrated by a showing that the broker or dealer maintains tentative net capital of $100 million or more. Accordingly, an IBHC could not be a small entity.[159]

The proposed changes to Rules 17h–1T and 17h–2T would apply only to broker-dealers that are affiliated with an IBHC that becomes supervised by the Commission as an SIBHC. In addition, Rules 17h–1T and 17h–2T only require that one broker-dealer within a holding company structure obtain and maintain the required records and file the required reports. Generally, a broker-dealer would be exempt from Rules 17h–1T and 17h–2T if it (i) maintains less than $250,000 in net capital, (ii) is exempt from Rule 15c3–3 pursuant to § 240.15c3–3(k)(1), (iii) maintains less than $20 million in net capital and is either exempt from Rule 15c3–3 pursuant to § 240.15c3–3(k)(2) or is not exempt from Rule 15c3–3 but does not hold funds or securities for, nor owe money or securities to customers. Thus, no small broker-dealers are subject to Rules 17h–1T and 17h–2T.

Rule 17a–12 is only applicable to OTC derivatives dealers. As stated previously, a broker-dealer generally would be considered a small entity if (i) it has total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d) or, if not required to file such statements, a broker-dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (ii) it is not affiliated with any person (other than a natural person) that is not a small business or small organization.[160] An OTC derivatives dealer is a ''dealer'' under the Exchange Act.[161] The minimum capital requirements for an OTC derivatives dealer are tentative net capital of at least $100 million and net capital of at least $20 million. Thus, no small broker-dealers are subject to Rule 17a–12.

Accordingly, proposed new Rules 17i–1 through 17i–8, and the proposed amendments to Rules 17h–1T, 17h–2T, and 17a–12(l), if adopted, would not have a significant economic impact on a substantial number of small entities.

We encourage written comments regarding this certification. We solicit comment as to whether the proposed rules and rule amendments could have an effect that we have not considered. We request that commenter describe the nature of any effect on small entities and provide empirical data to support the extent of the effect.

VIII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,'' [162] we must advise OMB as to whether the proposed regulation constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effect on competition, investment or innovation.

If a rule is ''major,'' its effectiveness will generally be delayed for 60 days pending Congressional review. We request comment on the potential impact of the proposed regulation on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their view to the extent possible.

engage in international transactions that could cause them to be subject to regulation by international securities regulatory agencies.

[157] *See supra,* note 6.

[158] Federal Reserve Act § 25A [12 U.S.C. 611].

[159] *See* 17 CFR 240.0–10(c).

[160] Exchange Act Rule 0–10 [17 CFR 240.0–10].

[161] *See* Section 3(a)(5) of the Exchange Act [15 U.S.C. 78c(a)(5)].

[162] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C., and as a note to 5 U.S.C. 601).

IX. Statutory Authority

The amendments are proposed pursuant to the authority conferred on the Securities and Exchange Commission by the Exchange Act (15 U.S.C. 78a, *et seq.*) (particularly sections 17, 23, and 24(b) thereof (15 U.S.C. 78q, 78w, and 78x(b))).

List of Subjects in 17 CFR Part 240

Brokers, OTC derivatives dealers, Reporting and recordkeeping requirements, Securities, Supervised investment bank holding companies.

Text of Proposed Rules and Rule Amendments

In accordance with the foregoing, the Securities and Exchange Commission hereby proposes to amend Title 17 Chapter II of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7202, 7241, 7262, and 7263; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

4. Section 240.17a–12, paragraph (l) is revised to read as follows:

§ 240.17a–12 Reports to be made by certain OTC derivatives dealers.

* * * * *

(l) *Accountant's report on management controls.* (1) The OTC derivatives dealer shall file concurrently with the annual audit report a supplemental report by the certified public accountant indicating the results of the certified public accountant's review of the OTC derivatives dealer's internal risk management control system with respect to the requirements of § 240.15c3–4. This review shall be conducted in accordance with procedures agreed to by the OTC derivatives dealer and the certified public accountant conducting the review. The purpose of the review is to confirm that the OTC derivatives dealer has established, documented, and maintained an internal risk management control system in accordance with § 240.15c3–4, and is in compliance with that internal risk management control system.

(2) The agreed-upon procedures are to be performed, and the report is to be prepared, in accordance with U.S. Generally Accepted Attestation Standards.

(3) Prior to the commencement of the review, every OTC derivatives dealer shall file the procedures to be performed pursuant to paragraph (l)(1) of this section with the Commission's principal office in Washington, DC. Prior to the commencement of any subsequent review, every OTC derivatives dealer shall file with the Commission's principal office in Washington, DC a notice of changes in the agreed-upon procedures. If there are no changes, the OTC derivatives dealer should indicate in the notice that no changes have been made to those procedures.

* * * * *

5. Section 240.17h–1T is amended by:

a. Redesignating paragraph (d)(5) as paragraph (d)(6); and

b. Adding new paragraph (d)(5).

The addition reads as follows:

§ 240.17h–1T Risk assessment recordkeeping requirements for associated persons of brokers and dealers.

* * * * *

(d) * * *

(5) The provisions of this section shall not apply to a broker or dealer affiliated with a supervised investment bank holding company, as defined in § 240.17i–1(a).

* * * * *

6. Section 240.17h–2T is amended by:

a. Redesignating paragraph (b)(5) as paragraph (b)(6); and

b. Adding new paragraph (b)(5).

The addition reads as follows:

§ 240.17h–2T Risk assessment reporting requirements for brokers and dealers.

* * * * *

(b) * * *

(5) The provisions of this section shall not apply to a broker or dealer affiliated with a supervised investment bank holding company, as defined in § 240.17i–1(a).

* * * * *

7. Sections 240.17i–1 through 240.17i–8 are added to read as follows:

Supervised Investment Bank Holding Company Rules

§ 240.17i–1. Definitions.

(a) For purposes of §§ 240.17i–1 through 240.17i–8, the terms *investment bank holding company, supervised investment bank holding company, affiliate, bank, bank holding company, company, control, savings association, insured bank, foreign bank, person associated with an investment bank holding company* and *associated person of an investment bank holding company* shall be defined as set forth in section 17(i)(5) of the Act.

(b) For purposes of §§ 240.17i–2 through 240.17i–8, the term *affiliate group* shall include the supervised investment bank holding company and every affiliate of the supervised investment bank holding company.

(c) For purposes of §§ 240.17i–1 through 240.17i–8, the term *material affiliate* shall mean any member of the affiliate group that is material to the supervised investment bank holding company.

§ 240.17i–2. Notice of intention to be supervised by the Commission as a supervised investment bank holding company.

(a) An investment bank holding company that owns or controls a broker or dealer may file with the Commission a written notice of intention to become supervised by the Commission pursuant to section 17(i) of the Act (15 U.S.C. 78q(i)), provided that the investment bank holding company is not:

(1) An affiliate of an insured bank (other than an institution described in paragraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956) (12 U.S.C. 1841(c)(2)(D), (F), or (G) and 12 U.S.C. 1843(f)) or a savings association;

(2) A foreign bank, foreign company, or company that is described in section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)); or

(3) A foreign bank that controls, directly or indirectly, a corporation chartered under section 25A of the Federal Reserve Act (12 U.S.C. 611).

(b) To become supervised as a supervised investment bank holding company an investment bank holding company shall file a notice of intention that includes the following:

(1) A request to become supervised as a supervised investment bank holding company;

(2) A statement certifying that the investment bank holding company is not an entity described in section 17(i)(1)(A)(i)—(iii) of the Act (15 U.S.C. 78q(i)(1)(A)(i)—(iii));

(3) Documentation demonstrating that the investment bank holding company owns or controls a broker or dealer that maintains a substantial presence in the securities business as evidenced either by its holding $100 million or more in tentative net capital as calculated pursuant to § 240.15c3–1 or by any other information and documentation as the Commission determines is appropriate; and

(4) Supplemental documents including:

(i) A narrative describing the business and organization of the investment bank holding company;

(ii) An alphabetical list of each member of the affiliate group, an indication of which affiliates the investment bank holding company regards as material to the holding company, and the financial regulator(s), if any, with which the affiliate is registered;

(iii) An organizational chart that identifies the investment bank holding company, each broker or dealer owned or controlled by the investment bank holding company, and each material affiliate;

(iv) Consolidated and consolidating financial statements of the affiliate group as of the end of the quarter preceding the filing of the notice of intention;

(v) The following computations for the affiliate group:

(A) Allowable capital and allowances for market risk, credit risk, and operational risk; or

(B) A computation made pursuant to § 240.17i–7(e);

(vi) A list of the positions that the affiliate group holds in any proprietary accounts and a brief description of the method that the investment bank holding company will use to calculate allowances for market and credit risk on those positions pursuant to § 240.17i–7(b) and (c);

(vii) A description of each mathematical model that the investment bank holding company intends to use to price positions and to calculate allowances for market and credit risk (as specified in § 240.17i–7(b) and (c)), including:

(A) A statement of whether the model was developed by the investment bank holding company, one of its affiliates or subsidiaries, or another person;

(B) If the mathematical model incorporates correlations across risk factors, a description of the process used to measure these correlations;

(C) A description of the tests performed on the mathematical model and the results of those tests, including a description of back tests and alternative tests to estimate risk, such as stress tests and scenario tests, and procedures instituted to respond to test results (including a schedule of multiplication factors to apply to the credit equivalent amount based on backtesting results);

(D) A description of how the mathematical model satisfies the qualitative and quantitative requirements listed in § 240.15c3–1e(e);

(E) A description of the internal controls relating to the creation, use and maintenance of the mathematical model, including a description of who may input data into the model, who has access to any or all of the model's outputs, and what outputs are accessible to whom; and

(F) A statement that the model is used to analyze and report risk to senior management;

(viii) A description of any positions for which the investment bank holding company proposes to use an alternative method for computing an allowance for market risk and a description of how that allowance would be determined;

(ix) A description of how the investment bank holding company proposes to calculate current exposure (as defined in § 240.17i–7(c)(1)(i)(E));

(x) A description of how the investment bank holding company proposes to determine or calculate credit risk weights and internal credit ratings;

(xi) A description of the method the investment bank holding company proposes to use to calculate its allowance for operational risk pursuant to § 240.17i–7(e);

(xii) A comprehensive description of the internal risk management control system of the investment bank holding company established to manage the risks of the affiliate group, including market, credit, liquidity and funding, legal and compliance, and operational risks, and how that system satisfies the requirements set forth in § 240.17i–4;

(xiii) Sample risk reports provided to the persons responsible for managing the risks of the affiliate group that the investment bank holding company proposes to provide to the Commission pursuant to § 240.17i–6(a)(1)(v);

(xiv) An undertaking that provides:

(A) If the disclosure of any information with regard to §§ 240.17i–1 through 240.17i–8 would be prohibited by law or otherwise, the supervised investment bank holding company will cooperate with the Commission as needed, including by describing any secrecy laws or other impediments that could restrict the ability of the supervised investment bank holding company or any material affiliate from providing information on its operations or activities and by discussing the manner in which the supervised investment bank holding company proposes to provide the Commission with adequate assurances of access to information; and

(B) For any non-U.S. affiliate of the supervised investment bank holding company, the supervised investment bank holding company will obtain consent to the jurisdiction of the Commission and an agreement to maintain a U.S. registered agent; and

(xv) Any other information and documents relating to the investment bank holding company's activities, financial condition, policies, systems for monitoring and controlling financial and operational risks, and transactions and relationships among members of the affiliate group that the Commission may request to complete its review of the notice of intention.

(c) *Amendments to the notice of intention.* (1) *Prior to Commission determination.* If any of the information or documentation filed with the Commission as part of the notice of intention to become a supervised investment bank holding company described in paragraph (b) of this section is found to be or becomes inaccurate prior to the Commission determination, the investment bank holding company shall promptly notify the Commission and provide the Commission with a description of the circumstances in which the information or documentation was found to be or has become inaccurate along with updated, accurate information and documents.

(2) *Subsequent to Commission determination.* If, subsequent to the Commission determination of a notice of intention to become a supervised investment bank holding company, the supervised investment bank holding company materially changes a mathematical model or other method used to compute allowable capital or allowance for market, credit, or operational risk, or its internal risk management control systems as described in its notice of intention (and as modified from time to time), prior to making the changes the supervised investment bank holding company shall file an amended notice of intention describing the changes.

(d) *Process for review of notice of intention.* (1) *When filed.* A notice of intention to be supervised by the Commission as a supervised investment bank holding company shall not be complete until the investment bank holding company has filed with the Commission all the documentation and information specified in this section. Any documentation and information submitted, and any amendments thereto, shall be considered filed when received at the Office of the Secretary at the Commission's principal office in Washington DC. All notices, amendments thereto, and other documentation and information filed pursuant to this section shall be accorded confidential treatment.

(2) *Commission determination.* (i) An investment bank holding company shall become a supervised investment bank holding company pursuant to section 17(i) of the Act (15 U.S.C. 78q(i)) 45

calendar days after the Commission receives a completed notice of intention to register as a supervised investment bank holding company pursuant to paragraph (a) of this section, unless the Commission issues an order determining either that:

(A) The Commission will begin to supervise the investment bank holding company prior to 45 calendar days after the Commission receives the completed notice of intention; or

(B) The Commission will not supervise the investment bank holding company because supervision of the investment bank holding company as a supervised investment bank holding company is not necessary or appropriate in furtherance of the purposes of section 17 of the Act (15 U.S.C. 78q). The Commission will not consider such supervision necessary or appropriate unless the investment bank holding company demonstrates that it owns or controls a broker or dealer that has a substantial presence in the securities business, which may be demonstrated by a showing that the broker or dealer maintains tentative net capital of $100 million or more.

(ii) The Commission will, upon the filing of an amendment to the notice of intention submitted by a supervised investment bank holding company pursuant to paragraph (c) of this section, determine whether continued supervision of the investment bank holding company is necessary or appropriate in furtherance of the purposes of section 17 of the Act (15 U.S.C. 78q) after reviewing the amended notice of intention to determine whether the supervised investment bank holding company and its subsidiary brokers or dealers are in compliance with the requirements of §§ 240.17i–1, 240.17i–2, 240.17i–3, 240.17i–4, 240.17i–5, 240.17i–6, 240.17i–7, and 240.17i–8 and other applicable rules promulgated under section 17 of the Act (15 U.S.C. 78q).

§ 240.17i–3. Withdrawal from supervision by the Commission as a supervised investment bank holding company.

(a) A supervised investment bank holding company may withdraw from supervision by the Commission as a supervised investment bank holding company by filing a notice of withdrawal with the Commission. The notice of withdrawal shall include a statement that the supervised investment bank holding company is in compliance with § 240.17i–2(c) regarding amendments to its notice of intention to be supervised by the Commission as a supervised investment bank holding company.

(b) A notice of withdrawal from supervision as a supervised investment bank holding company shall become effective one year after it is filed with the Commission, or within such shorter or longer period as the Commission determines to be necessary or appropriate to ensure effective supervision of the material risks to the supervised investment bank holding company and to any associated person of the supervised investment bank holding company that is a broker or dealer, or to prevent evasion of the purposes of section 17 of the Act (15 U.S.C. 78q).

(c) Notwithstanding paragraphs (a) and (b) of this section, the Commission, by order, may discontinue supervision of any supervised investment bank holding company if the Commission finds that:

(1) The supervised investment bank holding company is no longer in existence;

(2) The supervised investment bank holding company has ceased to be an investment bank holding company; or

(3) Continued supervision by the Commission of the supervised investment bank holding company is not necessary or appropriate in furtherance of the purposes of section 17 of the Act (15 U.S.C. 78q).

§ 240.17i–4. Internal risk management control system requirements for supervised investment bank holding companies.

(a) A supervised investment bank holding company shall comply with § 240.15c3–4 as though it were a broker or dealer.

(b) As part of its internal risk management control system, a supervised investment bank holding company shall establish, document, and maintain procedures for the detection and prevention of money laundering and terrorist financing.

§ 240.17i–5. Record creation, maintenance, and access requirements for supervised investment bank holding companies.

(a) A supervised investment bank holding company shall make and keep current the following records:

(1) A record reflecting the results of stress tests, conducted at least once each quarter, of the affiliate group's funding and liquidity with respect to the following events:

(i) A credit rating downgrade of the supervised investment bank holding company;

(ii) An inability of the supervised investment bank holding company to access capital markets for short-term funding;

(iii) An inability of the supervised investment bank holding company to move liquid assets across international borders when the events described in paragraphs (a)(1)(i) or (ii) of this section occur; or

(iv) An inability of the supervised investment bank holding company to access credit or assets held at a particular institution when the events described in paragraphs (a)(1)(i) or (ii) of this section occur;

(2) The supervised investment bank holding company's contingency plans to respond to the events outlined in paragraphs (a)(1)(i) through (iv) of this section; and

(3) A record of the basis for the determination of the credit risk weight for each counterparty.

(b) Except as provided in paragraphs (c) of this section, the supervised investment bank holding company shall preserve for a period of not less than three years in an easily accessible place using any storage media acceptable under § 240.17a–4(f):

(1) The documents created in accordance with paragraph (a) of this section;

(2) All notices of intention, amendments thereto, and other documentation and information filed with the Commission pursuant to § 240.17i–2, and any responses thereto;

(3) All reports and notices the supervised investment bank holding company shall file pursuant to § 240.17i–6;

(4) All notices the supervised investment bank holding company shall file pursuant to § 240.17i–8; and

(5) Records documenting the system of internal risk management controls for market, credit, leverage, funding, legal and operational risks required to be established pursuant to § 240.17i–4 to manage the risks of the affiliate group, including written guidelines, policies, and procedures.

(c) A supervised investment bank holding company may maintain the records specified in paragraph (b) of this section either at the supervised investment bank holding company, at an affiliate, or at a records storage facility, provided that the records are located within the boundaries of the United States. If the records are maintained by an entity other than the supervised investment bank holding company, the supervised investment bank holding company shall file with the Commission a written undertaking in a form acceptable to the Commission from the entity, signed by a duly authorized person at the entity maintaining the records, to the effect that the records will be treated as if the supervised investment bank holding company were maintaining the records pursuant to this section and that the entity maintaining the records undertakes to permit examination of those records at any time or from time to time during business hours by representatives or designees of the Commission and to promptly furnish the Commission or its designee a true, correct, complete and current copy of any or all or any part of those records in either paper, or electronically if the records are stored electronically. The election to store records pursuant to the provisions of this paragraph (c) shall not relieve the supervised investment bank holding company from any of its responsibilities under this section or § 240.17i–6.

(d) All information obtained by the Commission pursuant to this section from the supervised investment bank holding company shall be accorded confidential treatment.

§ 240.17i–6. Reporting requirements for supervised investment bank holding companies.

(a) *Filing of monthly reports.* The supervised investment bank holding company shall file:

(1) A monthly risk report not later than 17 business days after the end of each month that does not end a quarter, which shall include:

(i) A consolidated balance sheet, income statement, and computations of allowable capital and allowances for market, credit, and operational risk pursuant to § 240.17i–7 (including notes to the financial statements) for the affiliate group; and

(ii) A graph reflecting, for each business line, the daily intra-month VaR;

(iii) Consolidated credit risk information, including:

(A) Aggregate current exposure and current exposures (including commitments) listed by counterparty for:

(*1*) The 15 largest exposures; and

(*2*) The 5 largest exposures to regulated financial institutions;

(B) The 10 largest commitments by counterparty;

(C) Maximum potential exposure listed by counterparty for:

(*1*) The 15 largest exposures; and

(*2*) The 5 largest exposures to regulated financial institutions;

(D) The aggregate maximum potential exposure;

(iv) A summary report reflecting the geographic distribution of the supervised investment bank holding company's exposures on a consolidated basis for each of the top ten countries to which it is exposed (by residence of the main operating group of the counterparty); and

(v) Certain regular risk reports provided to the persons responsible for managing risk for the affiliate group as the Commission may request from time to time.

(2) A quarterly risk report, which may be unaudited, not later than 35 calendar days after the end of each quarter, including:

(i) The information described in paragraph (a)(1) of this section;

(ii) A consolidating balance sheet and income statement (including notes to the financial statements) for the affiliate group. The consolidating balance sheet shall break out information regarding each material affiliate into separate columns, but may consolidate information regarding affiliate group entities that are not material affiliates into one column;

(iii) The results of backtesting of all models used to compute allowable capital and allowances for market and credit risk indicating, for each model, the number of backtesting exceptions;

(iv) A description of all material pending legal or arbitration proceedings involving any member of the affiliate group that are required to be disclosed by the supervised investment bank holding company under generally accepted accounting principles; and

(v) The aggregate amount of commercial paper, secured and other unsecured borrowing, bank loans, lines of credit, or any other borrowings, and the principal installments of long-term or medium-term debt, scheduled to mature within twelve months from the most recent quarter by each affiliated broker or dealer and any other material affiliate, together with the allowance for losses for those transactions.

(b) *Additional reports.* In addition to the reports required by paragraph (a) of this section, upon receiving written notice from the Commission, the supervised investment bank holding company shall file other information as the Commission may request in order to monitor:

(1) The supervised investment bank holding company's financial or operational condition, risk management system, and transactions and relationships among members of the affiliate group; or

(2) The extent to which the supervised investment bank holding company has complied with the provisions of the Act and regulations prescribed and orders issued under the Act.

(c) *Annual filing of audited financial statements.*

(1) A supervised investment bank holding company shall file annually, on a calendar or fiscal year basis, an annual audit report containing a consolidated balance sheet, income statement, and computations of allowable capital and allowances for market, credit and operational risk computed in accordance with § 240.17i–7 (including notes to the financial statements).

(2) Annual audit reports prepared pursuant to this paragraph (c) shall be prepared as of the same date as the annual audit of the supervised investment bank holding company's subsidiary broker or dealer.

(3) Annual audit reports prepared pursuant to this paragraph (c) shall be filed concurrently with the annual audit of its affiliated broker or dealer (as required pursuant to § 240.17a–5(d)) as follows:

(i) Two copies shall be filed at the Commission's principal office in Washington, DC; and

(ii) One copy shall be filed at the regional office of the Commission for the region in which the supervised investment bank holding company's subsidiary broker or dealer is located.

(d) *Nature and form of reports.* A supervised investment bank holding company shall file the financial statements pursuant to paragraph (c) of this section in accordance with the following requirements:

(1) An accountant that meets the requirements of paragraph (e) of this section shall conduct an audit and give an opinion covering the statements filed pursuant to paragraph (c) of this section.

(2) The supervised investment bank holding company shall attach to the report required by paragraph (c)(1) of this section an oath or affirmation that to the best knowledge and belief of the individual making the oath or affirmation the information contained in the report is true and correct. The oath or affirmation shall be made before a person duly authorized to administer the oath or affirmation. If the supervised investment bank holding company is a partnership, the oath or affirmation shall be made by a general partner; if a corporation, the oath or affirmation shall be made by the chief executive officer, or, in the absence of a chief executive officer, by the person authorized to act in that officer's place.

(e) *Accountants.* (1) The provisions of § 240.17a–5(f) shall apply to a supervised investment bank holding company as though the supervised investment bank holding company were a broker or dealer, except that, a supervised investment bank holding company shall not be required to send notice to any designated examining authority as indicated in § 240.17a–5(d)(2)(i) and (d)(4).

(2) In addition to the qualification and independence requirements set forth in § 240.17a–5(f), an accountant shall be a registered public accounting firm as that term is defined in the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201(a)(12)).

(f) *Audit objectives.* The audit shall be conducted in accordance with the rules promulgated by the Public Company Accounting Oversight Board and shall include a review of the accounting system and the internal accounting controls (including appropriate tests thereof) for the period since the date of the prior audited financial statements. The audit shall include all procedures necessary under the circumstances to enable the accountant to express an opinion on the statement of financial condition, results of operations, cash flows, and the computations of allowable capital and allowances for market, credit, and operational risk under § 240.17i–7. The scope of the audit and review of the accounting system and the internal accounting controls shall be sufficient to provide reasonable assurance that any material inadequacies that exist at the date of the examination in the accounting system or internal accounting controls would be disclosed.

(g) *Extent and timing of audit procedures.* The extent and timing of audit procedures are matters for the accountant to determine on the basis of its review and evaluation of existing internal controls and other audit procedures performed in accordance with the rules promulgated by the Public Company Accounting Oversight Board and the audit objectives listed in paragraph (f) of this section.

(h) *Accountant's report, general provisions.* The provisions of § 240.17a–5(i) shall apply to a supervised investment bank holding company and its audit.

(i) *Supplemental reports.* The supervised investment bank holding company shall file, concurrently with the annual audit report, the following supplemental reports prepared by the accountant in accordance with the rules promulgated by the Public Company Accounting Oversight Board:

(1) A supplemental report entitled ''Accountant's Report on Reportable Conditions'' describing any matter that would be deemed to be a reportable condition under the rules promulgated by the Public Company Accounting Oversight Board that is unresolved as of the date of the accountant's report. The supplemental report shall indicate any corrective action taken or proposed by the supervised investment bank holding company with regard to any identified reportable conditions. If the audit did not disclose any reportable conditions, the supplemental report shall so state.

(2) A supplemental report entitled ''Accountant's Report on Internal Risk Management Control System'' indicating the results of the accountant's review of the internal risk management control system established and documented by the supervised investment bank holding company in accordance with § 240.17i–4 and utilized by the affiliate group. This review shall be conducted by the accountant in accordance with procedures agreed to by the supervised investment bank holding company and the accountant conducting the review. The agreed-upon procedures are to be performed in accordance with the rules promulgated by the Public Company Accounting Oversight Board. The purpose of the review is to confirm that the internal risk management control system complies with the requirements of § 240.17i–4 and that the supervised investment bank holding company and its affiliate group are adhering to the requirements of that internal risk management control system.

(3) A supplemental report entitled ''Accountant's Report on Inventory Pricing and Modeling'' indicating the results of the accountant's review of the procedures for pricing financial instrument inventory (including modeling procedures) established by the supervised investment bank holding company and utilized by the affiliate group. This review shall be conducted by the accountant in accordance with procedures agreed to by the supervised investment bank holding company and the accountant conducting the review. The agreed-upon procedures are to be performed in accordance with the rules promulgated by the Public Company Accounting Oversight Board. The purpose of the review is to confirm that the financial instrument pricing procedures relied upon by the affiliate group conform to the procedures established by the supervised investment bank holding company pursuant to § 240.17i–4 and comply with the qualitative and quantitative standards set forth in § 240.15c3–1e(e) (as required pursuant to § 240.17i–7(b)(1)).

(4) The supervised investment bank holding company shall file, prior to the commencement of the review and no later than December 10 of each year, a statement with the Commission's principal office in Washington, DC that includes:

(i) A description of the procedures for conducting the audit agreed to by the supervised investment bank holding company and the accountant (pursuant to paragraphs (i)(2) and (i)(3) of this section); and

(ii) A notice describing any changes in those agreed-upon procedures, if any. If there are no changes, the supervised investment bank holding company should indicate that no changes have been made to those procedures.

(j) *Notification of change of fiscal year.* If a supervised investment bank holding company changes its fiscal year, it must file a notice of the change (including a detailed explanation of the reason for the change) with the Commission.

(k) *Extensions and exemptions.* Upon the written request of the supervised investment bank holding company, or on its own motion, the Commission may grant an extension of time or an exemption from any of the requirements of paragraphs (a) through (j) of this section either unconditionally or on specified terms and conditions.

(l) *When filed.* The reports provided for in this section shall be considered filed when two copies are received at the Commission's principal office in Washington, DC, and one copy is received at the regional or district office of the Commission for the region or district in which the broker or dealer has its principal place of business. The copies sent to the Commission's principal office shall be addressed to the Division of Market Regulation.

(m) *Confidentiality.* All reports and statements filed by the supervised investment bank holding company with the Commission pursuant to this section shall be accorded confidential treatment.

§ 240.17i–7. Calculations of allowable capital and risk allowances or alternative capital assessment.

(a) *Computation of allowable capital.* The supervised investment bank holding company shall calculate allowable capital on a consolidated basis, which shall be the sum of:

(1) Common shareholders' equity on the consolidated balance sheet of the supervised investment bank holding company less:

(i) Goodwill;

(ii) Deferred tax assets;

(iii) Other intangible assets; and

(iv) Other deductions from common stockholders' equity as required by the Federal Reserve Board in calculating Tier 1 capital (as defined in 12 CFR 225, Appendix A).

(2) Cumulative and non-cumulative preferred stock, except that the amount of the cumulative preferred stock may not exceed 33% of the items included in allowable capital pursuant to paragraph (a)(1) of this section, provided that:

(i) The stock does not have a maturity date;

(ii) The stock cannot be redeemed at the option of the holder of the instrument;

(iii) The stock has no other provisions that will require future redemption of the issue; and

(iv) The issuer of the stock can defer or eliminate dividends; and

(3) The sum of the following items on the consolidated balance sheet, to the extent that sum does not exceed the sum of the items included in allowable capital pursuant to paragraphs (a)(1) and (a)(2) of this section:

(i) Cumulative preferred stock in excess of the 33% limit specified in paragraph (a)(2) of this section; and

(ii) Subordinated debt if:

(A) The original weighted average maturity of the subordinated debt is at least five years;

(B) Each subordinated debt instrument states clearly on its face that repayment of the debt is not protected by any Federal agency or the Securities Investor Protection Corporation;

(C) The subordinated debt is unsecured and subordinated in right of payment to all senior indebtedness of the holding company; and

(D) The subordinated debt instrument permits acceleration only in the event of bankruptcy or reorganization of the holding company under Chapters 7 (liquidation) and 11 (reorganization) of the U.S. Bankruptcy Code (11 U.S.C 7 and 11 U.S.C. 11, respectively).

(b) *Allowance for market risk.* The supervised investment bank holding company shall calculate its allowance for market risk on a consolidated basis daily for all proprietary positions, including debt instruments, equity instruments, commodity instruments, foreign exchange contracts, and derivative contracts, which shall be the sum of:

(1) *Value at risk.* The value at risk (''VaR'') measure obtained by applying one or more approved VaR models to each position and multiplying the result by the appropriate multiplication factor. Each VaR model shall meet the applicable qualitative and quantitative requirements set forth in § 240.15c3–1e(e). In addition, the model shall be one that can be disaggregated by each line of business and by each legal entity exposed to market risk. The initial multiplication factor shall be three, unless the Commission determines pursuant to § 240.17i–2(a) or (c), based on a review of the supervised investment bank holding company's internal risk management and control system and the VaR model, that another multiplication factor is appropriate. A supervised investment bank holding company may use a VaR model to determine its allowance for market risk only for positions for which there is adequate historical data to support a VaR model; and

(2) *Alternative method.* If there is not adequate historical data to support a VaR model for certain positions, the supervised investment bank holding company shall use the method described in its notice of intention to calculate the allowance for market risk.

(c) *Allowance for credit risk.* The supervised investment bank holding company shall compute an allowance for credit risk daily for certain assets on the consolidated balance sheet and certain off-balance sheet items, including loans and loan commitments, exposures due to derivatives contracts, structured financial products, other extensions of credit, and credit substitutes as follows:

(1) Multiplying the credit equivalent amount of the asset or off-balance sheet item by the appropriate credit risk weight of the asset or off-balance sheet item or counterparty as determined according to paragraph (c)(1)(ii) of this section, then multiplying the product by 8%, in accordance with the following:

(i) *Credit equivalent amount:*

(A) The *credit equivalent amount for receivables relating to derivative contracts, repurchase agreements, reverse repurchase agreements, stock loans, stock borrows, and other similar collateralized transactions* is the sum of;

(*1*) The supervised investment bank holding company's current exposure to the counterparty (as defined in paragraph (c)(1)(i)(E) of this section); and

(*2*) The supervised investment bank holding company's maximum potential exposure to the counterparty (as defined in paragraph (c)(1)(i)(F) of this section) multiplied by the appropriate multiplication factor. The initial multiplication factor shall be one, unless the Commission determines pursuant to § 240.17i–2(a) or (c), based on a review of the group-wide internal risk management control system, including a review of the VaR model used to determine maximum potential exposure, that another multiplication factor is appropriate;

(B) The *credit equivalent amount for certain loans and loan commitments receivable* shall be determined by multiplying the nominal amount of the contract by the following credit conversion factors:

(*1*) 0% credit conversion factor for loan commitments that:

(*i*) May be unconditionally cancelled by the lender; or

(*ii*) May be cancelled by the lender due to credit deterioration of the borrower;

(*2*) 5% credit conversion factor for margin loans extended by members of the affiliate group in compliance with applicable self-regulatory organization rules and Federal regulations;

(*3*) 20% credit conversion factor for:

(*i*) Loan commitments of less than one year; or

(*ii*) Short term self-liquidating trade related contingencies, including letters of credit;

(*4*) 50% credit conversion factor for loan commitments with an original maturity of greater than one year that contain transaction contingencies, including performance bonds, revolving underwriting facilities, note issuance facilities and bid bonds; and

(*5*) 100% credit conversion factor for bankers' acceptances, standby letters of credit, and forward purchases of assets, and similar direct credit substitutes;

(C) *Credit equivalent amount for other assets.* The credit equivalent amount for other assets shall be the asset's book value on the supervised investment bank holding company's consolidated balance sheet;

(D) The *current exposure* of a member of the affiliate group to a counterparty is the current replacement value of the counterparty's positions with the member of the affiliate group, including the effect of netting agreements with that counterparty meeting the requirements of § 240.15c3–1e(d)(5) and taking into account the value of collateral from the counterparty pledged to and held by any member of the affiliate group meeting the requirements of § 240.15c3–1e(d)(6), and the fair market value of any credit derivatives that specifically change the exposure to the counterparty (as long as the credit derivatives are not used to change the credit risk weight of the counterparty as provided in paragraph (c)(1)(ii)(E) of this section);

(E) The *maximum potential exposure* of a member of the affiliate group to a counterparty is the increase in the net replacement value of the counterparty's positions with the member of the affiliate group, including the effect of netting agreements with that counterparty meeting the requirements of § 240.15c3–1e(d)(5) and taking into account the value of collateral from the counterparty pledged to and held by any member of the affiliate group meeting the requirements of § 240.15c3–1e(d)(6), and the fair market value of any credit derivatives that specifically change the exposure to the counterparty (as long as the credit derivatives are not used to change the credit risk weight of the counterparty as provided in paragraph (c)(1)(ii)(E) of this section) calculated daily using a VaR model that meets the requirements of § 240.15c3–1e(e), except that for repurchase agreements, reverse repurchase agreements, stock lending and borrowing, and similar collateralized transactions, maximum potential exposure shall be calculated using a time horizon of five days;

(ii) *Credit risk weights.* (A) *General standard.* The credit risk weights that shall be applied to certain assets and counterparties shall be determined according to standards published by the Basel Committee on Banking Supervision, as modified from time to time;

(B) *Internal credit ratings.* The supervised investment bank holding company may, upon a determination by the Commission pursuant to § 240.17i–2(a) or (c), determine credit ratings for counterparties that are not rated using internal calculations, and the supervised investment bank holding company may use these internal credit ratings in lieu of ratings issued by a nationally recognized statistical rating organization for purposes of determining credit risk weights;

(C) *Internal calculations.* The supervised investment bank holding company may, upon a determination by the Commission pursuant to § 240.17i–2(a) or (c), determine credit risk weights of counterparties based on internal calculations;

(D) *Receivables covered by guarantees.* For the portion of a current exposure covered by a guarantee, where that guarantee is an unconditional and irrevocable guarantee of the due and punctual payment and performance of the obligation and the supervised investment bank holding company or member of the affiliate group can demand payment after any payment is missed without having to make collection efforts, the supervised investment bank holding company or member of the affiliate group may substitute the credit risk weight of the guarantor for the credit risk weight of the counterparty if the guarantee is evidenced by a written obligation of the guarantor that allows the holding company or member of the affiliate group to substitute the guarantor for the counterparty upon default or nonpayment by the counterparty;

(E) *Receivables covered by credit derivatives.* The supervised investment bank holding company may reduce the credit risk weight of a counterparty by using credit derivatives (such as credit default swaps, total return swaps, and similar instruments used to manage credit risk) that provide credit protection equivalent to guarantees, if the credit derivative is used for bona fide hedging purposes to reduce the credit risk weight of a counterparty, is not incorporated into the VaR model used for deriving potential exposures, and is not held for market-making purposes. The credit risk weight for the covered portion of the exposure shall be the credit risk weight of the writer of the derivative. The uncovered portion of the exposure shall be assigned the credit risk weight of the counterparty; or

(2) Upon a determination by the Commission pursuant to § 240.17i–2(a) or (c), using a calculation consistent with standards published by the Basel Committee on Banking Supervision, as modified from time to time.

(d) *Allowance for operational risk.* A supervised investment bank holding company shall compute an allowance for operational risk on a consolidated basis consistent with the appropriate standards published by the Basel Committee on Banking Supervision, as modified from time to time.

(e) *Alternative capital assessment.* If the Commission determines pursuant to § 240.17i–2(a) or (c), the supervised investment bank holding company may compute a capital assessment using the standards promulgated by the Basel Committee on Banking Supervision (as modified from time to time) that it is required to submit to a financial regulator or supervisor in lieu of the computations described in paragraphs (a) through (d) of this section.

§ 240.17i–8. Notification provisions for supervised investment bank holding companies.

(a) A supervised investment bank holding company shall send written notice promptly (but within 24 hours), in accordance with paragraph (c) of this section, after the occurrence of the following events:

(1) Any backtesting exception determined in accordance with § 240.15c3–1e(e)(1)(iii) and (iv) that would require that the supervised investment bank holding company use a higher multiplication factor in the calculation of its allowances for market or credit risk;

(2) If a computation shows that allowable capital (calculated in accordance with § 240.17i–7(a)) is less than 110% of the sum of the affiliate group's allowances for market, credit, and operational risk (calculated in accordance with § 240.17i–7(b), (c), and (d));

(3) An affiliate declares bankruptcy or otherwise becomes insolvent;

(4) The supervised investment bank holding company becomes aware that a nationally recognized statistical rating organization has determined to reduce its assessment of the creditworthiness of an affiliate or the credit rating(s) assigned to one or more outstanding short or long-term obligations of an affiliate;

(5) The supervised investment bank holding company becomes aware that any financial regulatory agency or self-regulatory organization has taken enforcement action or some other, similar formal regulatory action against an affiliate; or

(6) The supervised investment bank holding company becomes ineligible to be supervised by the Commission as a supervised investment bank holding company.

(b) The supervised investment bank holding company shall file a written report if there is a material change, along with a description of the reason for the change, in:

(1) The ownership or organization of the affiliate group;

(2) The material affiliate status of any affiliate group entity; or

(3) The major business functions of any material affiliate.

(c) Every notice or report required to be given or transmitted pursuant to this section shall be given or transmitted to the principal office of the Commission in Washington, DC, and the regional or district office of the Commission for the region or district in which the supervised investment bank holding company's subsidiary broker or dealer has its principal place of business. For the purposes of this section, ''notice'' shall be given or transmitted by telegraphic notice or facsimile transmission. The reports required by paragraph (b) of this section may be transmitted by overnight delivery. The notices and reports filed under this section shall be accorded confidential treatment.

Dated: October 24, 2003.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–27307 Filed 11–5–03; 8:45 am]

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November 6, 2003

Part IV

Department of Transportation

Federal Railroad Administration

49 CFR Part 224

Reflectorization of Rail Freight Rolling Stock; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 224

[Docket No. FRA–1999–6689, Notice No. 3]

RIN 2130–AB41

Reflectorization of Rail Freight Rolling Stock

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: FRA is proposing to require retroreflective material on the sides of freight rolling stock (freight cars and locomotives) to enhance the visibility of trains in order to reduce the number of accidents at highway-rail grade crossings in which train visibility is a contributing factor. This document proposes a rule establishing a schedule for the application of retroreflective material and prescribing standards for the application, inspection, and maintenance of the material.

DATES: *Written Comments:* Comments must be received by March 5, 2004. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

Public Hearing: FRA is planning to conduct a public hearing in Washington, DC, on Tuesday, January 27, 2004, at 9:30 a.m., in order to provide all interested parties the opportunity to comment on the provisions contained in this notice. Any person wishing to participate in the public hearing should notify the Docket Clerk by telephone (202–493–6030) or by mail at the address provided below at least five working days prior to the date of the hearing. The notification should identify the party the person represents, and the particular subject(s) the person plans to address. FRA reserves the right to limit participation in the hearing of persons who fail to provide such notification.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FRA–1999–6689 by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitted comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal e-Rulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

Public Hearing: The public hearing will be held at the Washington Plaza Hotel, 10 Thomas Circle, NW., Massachusetts Avenue at Fourteenth Street, Washington, DC 20005 (202–842–1300). Written notification of a party's intended participation should identify the docket number and must be submitted to Ms. Ivornette Lynch, Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, RCC–10, 1120 Vermont Ave., NW., Stop 10, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dr. Tom Blankenship, Mechanical Engineer, Office of Safety, FRA, 1120 Vermont Ave., NW., Mailstop 25, Washington, DC 20590 (telephone: 202–493–6446); Mary Plache, Industry Economist, Office of Safety, FRA, 1120 Vermont Ave., NW., Mailstop 21.1, Washington, DC 20590 (telephone: 202–493–6297); or Lucinda Henriksen, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Ave., NW., Mailstop 10, Washington, DC 20590 (telephone: 202–493–6038).

SUPPLEMENTARY INFORMATION:

Background

This proposed rule represents a partial solution to a safety problem that has long concerned FRA—the need to reduce the incidence and severity of collisions between motor vehicles and trains at highway-rail grade crossings throughout the United States. Approximately 4,000 times each year, a train and a highway vehicle collide at one of this country's 262,000 public and private highway-rail grade crossings. Approximately 23% of all highway-rail grade crossing accidents involve motor vehicles running into trains occupying grade crossings (''RIT'' accidents).[1] Almost 80% of these RIT accidents occur during nighttime conditions (dawn, dusk, and darkness) and involve a highway vehicle striking a train after the first two units of the consist. These statistics suggest that a contributing factor to many RIT accidents is the difficulty motorists have in seeing a train consist at a crossing in time to stop their vehicles before reaching the crossing, particularly during periods of limited visibility, such as dawn, dusk, darkness, or during adverse weather conditions.

The physical characteristics of trains, in combination with the characteristics of grade crossings (*e.g.*, grade crossing configuration, type of warning devices at a crossing, rural background environment with low level ambient light, or visually complex urban background environment, etc.), and the inherent limitations of human eyesight, make it difficult for motorists to detect a train's presence on highway-rail grade crossings, particularly during periods of limited visibility. Freight trains lack conspicuity (*i.e.*, the ability to be seen) in some of their different environmental settings. For example, trains are typically painted a dark color and are covered with dirt and grime which are inherent in the rail environment. With the exception of locomotives, trains are usually unlighted and are not equipped with reflective devices. Similarly, a large percentage of crossings are not lighted. Consequently, much of the light from a motor vehicle's headlights is absorbed by the freight cars, instead of being reflected back toward the motorist. The large size of freight cars, which are out of scale relative to a motorist's expectations, also make them difficult to detect. For instance, even if a motorist is looking for a train, if the locomotive has already passed, it is difficult to detect the freight cars because the cars often encompass the motorist's entire field of view and have the tendency to ''blend'' into the background environment, especially at night. In addition, because most drivers involved in grade crossing accidents are familiar with the crossings and with roadway features at the crossings, the

[1] Based on available data from 1992 through 2001.

drivers become habituated (or pre-conditioned) to the crossings. In other words, based on previous driving experiences and conditioning, a driver may not expect a train to be occupying a crossing, and without a clear auditory signal (because the locomotive has already cleared the crossing) or visual stimuli alerting the driver to a train traveling through the crossing, the driver may fail to perceive the train in time to stop. This condition is further exacerbated when a train is stopped on a crossing.

There is currently no requirement for lighting or reflective markings on freight rolling stock. However, in recognition that the transportation of people and goods is not restricted to daytime hours and pristine weather conditions, reflectorization has become an indispensable tool for enhancing visibility in virtually all other modes of transportation, including air, highway, maritime, and pedestrian travel. For example, airplanes and motor vehicles are equipped with high brightness retroreflective material at key locations on the exterior surfaces to increase their conspicuity. Mircoprismatic corner cube retroreflectors (which have the ability to direct light rays back to the light source) are typically used on roadway signs that warn of construction or other hazardous conditions. Federal regulations require retroreflective materials on the sides and rear of large trucks to increase their conspicuity and to aid motorists in judging their proximity to these vehicles. Even regulations addressing bicycle safety have specific requirements on the use of reflective materials. Lifesaving marine equipment, such as life vests and rafts, require reflectorization; and to enhance the conspicuity of pedestrians, especially at night, retroreflective material has been incorporated into clothing and similar items.

The everyday use of reflectors indicates their acceptance to delineate potential hazards and obstructions to a vehicle's path of travel. Research specific to the railroad industry has demonstrated that reflective materials can increase the conspicuity of freight cars, thereby enhancing motorists' ability to detect the presence of trains in highway-rail grade crossings. This greater visibility can help drivers avoid some accidents and reduce the severity of other accidents that are unavoidable. Accordingly, FRA, as the Federal agency responsible for ensuring that America's railroads are safe for the traveling public, and in direct response to a Congressional mandate, proposes to require use of reflective material on the sides of certain rail cars and locomotives to enhance the visibility of trains in order to reduce the number of accidents at highway-rail grade crossings where train visibility is a contributing factor.

A. History of Railroad Car Conspicuity Issue and Congressional Mandate

As applied to rail car visibility, the term ''conspicuity'' refers to the characteristic of a rail car in its roadway setting to command the attention of approaching motorists and be recognizable to reasonably prudent motorists at sufficient distance to allow the motorists to reduce their vehicles' speed and take action to avoid collisions. Research relating to the conspicuity of rail cars is not a new concept. Research dating back to the early 1950s has noted the potential viability of rail car conspicuity materials such as luminous sources (lights on rail cars), self-luminous sources (phosphorescent), and reflective sources. In the mid 1950's, researchers concluded that reflective material along the side sill of boxcars increased the visibility of the cars and aided in the perception of the cars' motion. The same study also found that the amount and distribution of reflectorized material proportionally affected the level of visibility and accuracy of perception of rail cars' motion. In other words, by using material with high coefficients of reflectivity (*i.e.*, high levels of reflected light) against a high contrast background (*e.g.*, dark and dirty rail cars), the amount of illumination was increased, and the motorists' ability to discriminate the movement of the rail cars across their line of vision was enhanced. In the early 1970's, a study concentrating on the conspicuity of trains at night found that although luminous and reflective sources both proved effective in enhancing the visibility of trains, reflectors provided conspicuity at a greater distance and field of vision than the other sources which were studied.

The general consensus of historical research was that reflective materials can increase the conspicuity of objects to which they are attached, but previous generations of reflective materials did not reflect enough light to be effective in the railroad environment and lacked the durability to survive the harsh railroad operating environment. For example, in 1959 a Canadian freight car reflectorization program was begun. In this program, high-intensity retroreflective sheeting in the shapes of circular discs and squares were applied to the sides of rail cars for the purpose of assessing their long term durability and performance. Reflective intensity measurements on the Canadian cars after six months, one year, and two years of service indicated rapid deterioration of the retroreflective material. Only 23% of the material's original reflectivity remained at the end of six months. This declined to 14% after one year and to 5% at the end of two years of service. Tests of similar high intensity retroreflective sheeting conducted by the Boston and Maine Railroad in 1981 yielded substantially the same results as the earlier Canadian tests.

FRA first evaluated the use of reflective material on rail rolling stock in the early 1980s, and supported a study completed in 1982 on the potential use of reflectorization to reduce nighttime accidents at highway-rail intersections. The study concluded that although the use of reflective material enhanced the visibility of trains, the reflective material was not durable enough to withstand the harsh railroad environment. It was decided that rulemaking action was not warranted at that time.

Since 1982, however, improvements in the brightness, durability, and adhesive properties of reflective materials have been achieved and a new material, microprismatic retroreflective material, is now available. Because of the technological advances in reflective materials and the creation of microprismatic retroreflective material, beginning in the early 1990's FRA funded renewed research through the John A. Volpe National Transportation Systems Center in Cambridge, Massachusetts (''Volpe'') to reexamine the issue of using reflective material to enhance railcar conspicuity.

In July 1999, FRA announced the results of its renewed research efforts with the release of the report *Safety of Highway-Railroad Grade Crossings: Freight Car Reflectorization* (DOT/FRA/ORD–98/11) (''1999 Volpe Report''). The 1999 Volpe Report provided significant information, including cost estimates and data on the performance of equipped rail car fleets in an actual service environment. Similar to earlier research, the 1999 Volpe Report concluded that reflective materials enhanced motorists' ability to detect the presence of a train in a highway-rail grade crossing and could therefore prevent collisions involving highway vehicles. Unlike earlier studies which utilized previous generations of reflective material, the 1999 Volpe Report concluded that the durability and adhesive properties of the new microprismatic retroreflective material could provide adequate luminance intensity levels which can be sustained for up to 10 years with minimum maintenance. A copy of the complete 1999 Volpe Report is in the docket of this proceeding (Document No. FRA–1999–6689–17).

Building upon the research detailed in the 1999 Volpe Report, and recognizing that the study's human factors tests did not provide a realistic environment in which to evaluate the detectability and recognition of freight cars equipped with microprismatic retroreflective material in a real-world environment, FRA subsequently investigated whether motorists, under real world driving conditions, would likely confuse reflectorized trains with other roadway hazards, particularly trucks which were already required by federal regulations to be equipped with retroreflective material. It is important for motorists to be able to distinguish rail cars from trucks because motorists' interaction with trains is different from trucks. Because trucks are shorter in length and pass through an intersection more quickly than the average train, a motorist approaching a truck in an intersection may only need to slow his or her vehicle to avoid a collision, while a motorist approaching a grade crossing occupied by a train more likely will need to stop at the crossing to avoid a collision. In July 2001, FRA released the results of this research in the report *Safety of Highway-Railroad Grade Crossings: Recognition of Rail Car Retroreflective Patterns for Improving Nighttime Conspicuity* (DOT/FRA/ORD–00/07) (''2001 Volpe Report''). The 2001 Volpe Report concluded that motorists had difficulty discriminating unreflectorized rail cars from trucks as illuminance levels declined, but motorists could discriminate between reflectorized freight cars and truck trailers for each of the four reflective patterns tested. In addition, the report concluded that vertically oriented patterns, as opposed to outline or horizontally oriented patterns, were preferable because they were less likely to be confused with the horizontally oriented truck reflectorization patterns. A copy of the complete 2001 Volpe Report is in the docket of this proceeding (Document No. FRA–1999–6689–48).

Meanwhile, in 1994 Congress passed the Federal Railroad Safety Authorization Act of 1994, Pub. L. 103–440 (''Act''). The Act added § 20148 to title 49 of the United States Code. Section 20148 required FRA to conduct a review of the Department of Transportation's (''Department'') rules with respect to the visibility of railroad cars and mandated that if the review established that enhanced railroad car visibility would likely improve safety in a cost-effective manner, the Secretary of Transportation (''Secretary'') must initiate a rulemaking proceeding to prescribe regulations requiring enhanced visibility standards for railroad cars. Section 20148 specifically directs the Secretary to examine the use of reflectors. Section 20148 of title 49 of the United States Code states as follows:

(a) REVIEW OF RULES.—The Secretary of Transportation shall conduct a review of the Department of Transportation's rules with respect to railroad car visibility. As part of this review, the Secretary shall collect relevant data from operational experience by railroads having enhanced visibility measures in service.

(b) REGULATIONS.—If the review conducted under subsection (a) establishes that enhanced railroad car visibility would likely improve safety in a cost-effective manner, the Secretary shall initiate a rulemaking proceeding to prescribe regulations requiring enhanced visibility standards for newly manufactured and remanufactured railroad cars. In such proceeding the Secretary shall consider, at a minimum—

(1) visibility of railroad cars from the perspective of nonrailroad traffic;

(2) whether certain railroad car paint colors should be prohibited or required;

(3) the use of reflective materials;

(4) the visibility of lettering on railroad cars;

(5) the effect of any enhanced visibility measures on the health and safety of train crew members; and

(6) the cost/benefit ratio of any new regulations.

(c) EXCLUSIONS.—In prescribing regulations under subsection (b), the Secretary may exclude from any specific visibility requirement any category of trains or railroad operations if the Secretary determines that such an exclusion is in the public interest and is consistent with railroad safety.

On July 28, 1999, FRA hosted a workshop on reflectorization of rail rolling stock. Attendees included representatives from the railroad industry, reflector manufacturing and supply companies, as well as representatives from the National Transportation Safety Board and the National Highway Traffic Safety Administration (NHTSA) and other interested parties. The workshop provided an opportunity for FRA and all interested parties to review and discuss the issue of rail car conspicuity and specifically, rail car reflectorization. During the workshop, representatives from Volpe provided a briefing on the 1999 Volpe Report and a representative of NHTSA provided a briefing on that agency's rule requiring the reflectorization of large truck trailers. The workshop also provided an opportunity for all interested parties to share their views, concerns, and experiences with regard to rail car reflectorization. Discussion during the workshop focused on the potential effectiveness of rail car reflectorization under a variety of circumstances (*e.g.*, at nighttime versus daytime, at passively protected crossings versus actively protected crossings, or when drivers are under the influence of alcohol or otherwise impaired), as well as more practical aspects of any rail car reflectorization program (*e.g.*, maintenance and cleaning requirements, when and where reflector installation would occur, and the costs involved in installing and maintaining the reflectors). Throughout the workshop FRA representatives acknowledged participants' concerns regarding reflectorization and invited interested parties to share further comments and relevant data as FRA continued its investigation into whether a rulemaking mandating reflectorization of rail cars was warranted. A copy of the transcript of this workshop is included in the docket of this proceeding. (Document No. FRA–1999–6689–7).

Recognizing that part of the review mandated by Congress included collecting relevant data from operational experience by railroads having enhanced visibility measures in service, on January 14, 2000, FRA established a public docket (Docket No. FRA–1999–6689) to provide all interested parties with a central location to both send and review relevant information concerning railroad car conspicuity and to provide a venue to gather and disseminate information and views on the issues. The docket contains several submissions from FRA (*e.g.*, transcript of the July 28, 1999 workshop, an analysis of signal detection theory, FRA's preliminary cost-benefit analysis on railcar reflectorization, and technical reports from the NHTSA and Volpe), as well as comments from numerous members of the public and the regulated community, which will be discussed in more detail below.

FRA regards the 1999 and 2001 Volpe Reports, as well as the 1999 workshop and establishment of the public docket as responsive to section 20148's directive to review the Department's rules with respect to rail car visibility. Further, because the 1999 and 2001 Volpe Reports concluded that reflectorization could enhance rail car visibility, FRA conducted a preliminary cost-benefit analysis (''Preliminary Analysis'') to determine whether reflectorization would provide a cost effective method of reducing the number of collisions at highway-rail grade crossings and the casualties and property damages which result from those collisions. FRA's Preliminary Analysis concluded that the benefits of a uniform, nationwide freight car reflectorization program would far outweigh the costs of such a program.

In the Preliminary Analysis, FRA identified the primary source of benefits to be gained from freight car reflectorization as the avoidance of a portion of the fatalities, injuries, and property damage that result from collisions between motor vehicles and freight trains at grade crossings. Statistics show that collisions between trains and motor vehicles often result in fatal or very serious injuries to the occupants of the motor vehicle involved, and the vehicle may be completely destroyed. In addition, collisions between trains and motor vehicles often result in damage to the rail equipment and significant delays and disruptions to rail operations. For example, FRA's Railroad Safety Advisory Committee estimates that collisions cause an average of a two-hour train delay at $250 per hour for freight trains. This estimate does not include the ripple effect of delays incurred by other trains, including passenger trains, awaiting use of the track where service has been interrupted.

FRA calculated the expected safety benefits of reflectorization in terms of the decline in the probability of RIT accidents. Recognizing that the effectiveness of retroreflectors (and therefore the benefits to be gained from their use) will vary by circumstance (*e.g.*, nighttime versus daytime conditions, clear versus cloudy weather conditions, presence of other warning devices at a crossing, train speed and length, etc.), FRA's Preliminary Analysis recognized that forecasting the benefits which would likely result from reflectorization necessitated a certain amount of subjective analysis and the exercise of judgment. Accordingly, based on the manufacturers' 10-year guaranteed useful life of retroreflective sheeting, FRA employed four different approaches to the estimation of benefits. Benefit estimates were based on varying effectiveness rates derived from (1) two previous studies analyzing the effectiveness of reflective material on large trucks, (2) subjective estimates of reflector effectiveness by internal FRA grade crossing experts, and (3) a signal detection model consisting of an analysis of the statistical probability of different potential severities of hazard or injury, based on laboratory experiments and accident/incident data from FRA's Rail Accident/Incident Reporting System database. FRA estimated the ten-year discounted benefits of a reflectorization program, in terms of avoided casualties and property damage, to be in the range of $57 million, $70 million, $100 million, or $105 million, depending on the methodology employed.

Taking into consideration material, installation and maintenance costs, FRA's Preliminary Analysis concluded that over a ten-year period (the estimated useful life of the retroreflective material), the discounted cost to reflectorize the entire freight railroad fleet would be approximately $40 million. Accordingly, FRA concluded that the reflectorization of railroad freight equipment is a viable and cost-effective method of reducing the number of collisions at highway-rail grade crossings and the casualties and property damages which result from those collisions. FRA published the results of its Preliminary Analysis on October 26, 2001. *See* 66 FR 54326. A copy of the Preliminary Analysis is in the docket of this proceeding. (Document No. FRA–1999–6689–25).

Because of the rail industry's continued interest in the issue of rail car reflectorization, FRA met with members of the regulated community on March 24, 2003, to again listen to their comments and concerns regarding reflectorization. During this meeting, the participating railroads and car owners reiterated their concerns regarding a potential rail car reflectorization rulemaking. Specifically, participants expressed concern that a federal rulemaking mandating reflectorization could have the effect of increasing their liability for grade crossing accidents. Participating railroads and car owners also raised important considerations regarding many practical aspects of a potential reflectorization program (*e.g.*, a feasible schedule for the application of reflectors to rail cars, what types of reflective material would be required, reflector cleaning and maintenance responsibilities, and when and where reflectors would be applied to cars).

B. Fundamentals of Reflectivity and Human Eyesight

Materials that have reflective properties can be classified into three general categories: direct reflectors, diffuse reflectors, and retroreflectors. Direct reflectors, such as mirrors, bounce light off the reflective material at an angle equal and opposite to the direction of the light source. Diffuse reflectors, such as license plates, bounce light off the reflective material at an angular spread of up to 180 degrees. Retroreflectors, however, direct the reflected light in the direction of the light source. As applied to motorists approaching grade crossings, retroreflective material on the sides of rail cars will reflect light from an approaching vehicle's headlights back to the motorist in a concentrated beam. If either a direct or diffuse reflective material was applied to the sides of rail cars, light from an approaching vehicle's headlights would be reflected in several different directions, thereby lessening the amount of light reflected back to the motorist.

Retroreflective material is rated in terms of the reflected light per unit area as contrasted with the light striking it (''specific intensity per unit area'' or SIA). The amount of reflected light reaching the driver's eyes will determine how bright that object appears to the driver. Therefore, retroreflective materials that are efficient in returning light to a driver's eyes may appear brighter to the driver than materials that are not as efficient. The newest, most durable, and most efficient retroreflective material available today, the prismatic type retroreflector, is made of microscopic prisms or corner cubes. Each of these prisms or corner cubes contains three surfaces oriented at 90 degrees to each other. The entering rays of light are reflected from each of the surfaces and are returned to the observer in a more concentrated and focused beam than direct or diffuse reflectors or even other types of retroreflective material.

The amount of light received by an observer from a retroreflector is affected by six factors: (1) Reflective intensity of the material (the SIA), (2) size of the retroreflector, (3) intensity of the light source (in the case of grade crossings, the intensity of approaching motor vehicles' headlights and the efficiency of those headlights), (4) atmospheric transmissivity (*e.g.,* clear, foggy, or hazy weather conditions), (5) windshield transmittance, and (6) the distance of the observer from the retroreflector. The relationship among these factors and the illuminance received by an observer is based on *Allard's Law* and is represented by the following equation:

$$E_e = \frac{I_s * A * B * t^{2d} * W * H}{d^4}$$

in which

E_e = Illuminance received by the observer (measured in footcandles (fc))

I_s = Intensity of the light beamed toward the reflector (measured in candela (cd))

A = Area of the reflector (measured in square feet)

B = Reflective intensity of reflector (*i.e.,* SIA, measured in candela/footcandle/square foot (cd/fc/ft^2))
t = Transmissivity of the atmosphere (per foot)
d = Distance between the observer and the reflector (measured in feet)
W = Windshield transmittance (percentage)
H = Headlight efficiency (percentage)

The above relationship assumes that the incident light from the light source is normal to (*i.e.,* perpendicular to) the surface of the retroreflector. At highway-rail crossings, however, light will often strike retroreflectors on rail cars at an angle other than 90 degrees, and as a result, the reflected light received by an approaching motorist will be reduced. This reduction is a function of three factors: the incidence (or entrance) angle, the divergence (or observation) angle, and the properties of the retroreflective material. The incidence angle is the angle formed between a line from the light source (*e.g.,* headlights of approaching motor vehicle) to the reflective surface and a line perpendicular to the reflective surface. The divergence angle is the angle between the line of sight of the observer to the reflective surface and the path of the light from the source to the reflective surface. A retroreflector's effectiveness is affected primarily by the divergence angle and secondarily by the incidence angle. The divergence angle is a function of the distance between the driver's eyes and the light source and the distance between the reflector and the light source. In the scenario of a motor vehicle approaching a highway-rail grade crossing, since the distance between the light source (*i.e.,* vehicle's headlights) and the motorist's eyes is a constant, the divergence angle decreases as the distance between the vehicle and the reflector increases. The retroreflector will produce maximum reflectivity for the motorist when both the incidence and divergence angles equal zero. This maximum reflectivity will not be achieved for highway-rail grade crossings, however, due to the fact that the divergence angle increases as the vehicle approaches the reflective material on the train. In other words, the reflective intensity of retroreflectors on the sides of rail cars will increase with distance since both the observation and entrance angles vary inversely with the distance between the reflector and the vehicle. Similarly, as a vehicle gets closer to a rail car, the entrance and observation angles get larger, and the retroreflective material's performance drops (*i.e.,* the intensity of the reflected light drops). Because illuminance is inversely proportional to the square of the distance, however, as a motorist gets closer, less performance is needed. In addition, the reduction in the material's reflectivity as a vehicle approaches a train can be partly compensated for by using reflective materials with the highest level of performance (*e.g.,* microprismatic retroreflective material).

In evaluating the performance of reflective materials in the railroad operating environment, the inherent limitations of human eyesight must also be taken into account. In general, an individual's visual attention orients toward areas that contain a great deal of information (such as concentrations of signs, lights, people, *etc.*) and toward objects that differ greatly from their background (such as contrasting color or brightness, or moving objects against a still background). Accordingly, although reflectorization will increase the visibility of trains in normal daytime conditions, it is expected that reflectorization will be most effective in reducing RIT accidents at nighttime or during other times of limited visibility when the reflective material contrasts the most with the background environment.

For human beings to see in darkness and other low-light conditions, sufficient light must illuminate their retinas. Two types of light sources affect a human's ability to see. The primary light source is one that is self-luminous (*e.g.*, a vehicle's headlights or crossing illumination). Secondary light sources (*e.g.*, reflective material) are not self-luminous and can be detected in darkness only if light is reflected from their surface. Non-luminous and non-reflecting objects are also visible under low light conditions based on available contrast with a lighter background against which they stand out. As applied to railroad crossings during periods of darkness or otherwise limited visibility, a motor vehicle's headlights and retroreflection can be used to partially compensate for the daylight that is not present.

The light that illuminates the retina stimulates two types of photoreceptor cells—cones and rods. The cones are sensitive to normal daylight conditions (photopic vision). Photopic vision requires higher levels of illumination and allows color perception and high visual acuity. The rods are sensitive to lower levels of illumination, do not allow color perception, and do not provide as high a level of visual acuity as the cones. This is called scotopic vision. At dusk and dawn both types of receptors are activated (mesopic vision). Mesopic vision is characterized by diminished color vision and reduced detail discrimination relative to photopic vision.

During normal daylight conditions, the human visual system operates at its highest level of visual acuity and has the greatest capability of distinguishing differences between objects in the visual field (good detail discrimination). At night, and in other conditions of low ambient light, contrast sensitivity is greatly diminished, colors cannot be discriminated, and details are not easily discernible. Thus, in order to be seen at night, objects must be sufficiently brighter (or darker) than their backgrounds. The perceived brightness of an object, including an object with reflective properties, is, at least in part, dependent on its color.

The visible spectrum of light, which lies between the nonvisible ultraviolet and infra-red radiation, contains all colors. Color is the property of an object reflecting the light of a particular wavelength. The colors range from the longest wavelength, red, to the shortest wavelength, violet. The various cones (red, green, and blue) of the human visual system are selectively sensitive to different wavelengths of light, resulting in the perception of color. The unaided human eye is able to detect light (visible radiation) within a narrow band of the electronmagnetic spectrum between approximately 400 nanometers (nm) (violet end) and 780 nm (red end). The eye is most sensitive, however, to light in the wavelengths that stimulate both the red and green cones (approximately 500 nm to 650 nm, with peak sensitivity at approximately 550 nm, the wavelength corresponding to the color yellow-green). The eye is least sensitive to red or violet light at either extreme of the spectrum. Wavelengths between 500 nm and 650 nm, and particularly at about 550 nm (yellow-green), contribute most to the perception of color, as well as the definition of visual detail. As such, reflective materials with a color falling within the range of yellow-green peak sensitivity would provide the most visible contrast with the normally dark and dirty background of freight cars.

C. FRA's Studies of Freight Car Reflectorization

FRA's study resulting in the 1999 Volpe Report consisted of a four-phase research program to determine the feasibility of reflectorization as a train conspicuity device. Specifically, the goals of the research were to: (1) Determine whether the new generation of reflective material (microprismatic retroreflective material) would provide adequate brightness in the railroad environment; (2) determine whether the new material could withstand the harsh environmental conditions of railroad operations; (3) establish the minimum intensity level required to attract a motorist's attention; and (4) assess the effectiveness of pattern placement on freight car detectability. After reviewing past and current transportation experiences with the use of reflectors, Volpe conducted a demonstration test to establish the durability of the newly developed microprismatic material, and to create a test pattern. Next, a nationwide in-service test was conducted to measure the microprismatic retroreflectors' performance, accident reduction potential, and costs. Finally, a human factors test was conducted to evaluate the detectability and recognition of several retroreflective designs.

First, Volpe reviewed past and current reflectorization experiences in the railroad environment. Specifically, Volpe surveyed the rail industry and identified several railroads and other industry participants, including the Burlington Northern Santa Fe (''BNSF''), the Soo Line, the Georgia Power Company, and Southern Company, that had already begun using retroreflective markings on at least some portion of their fleets. BNSF reported using a rail car marking system having retroreflective material on each end of freight cars and eleven 5x8 inch rectangular white diamond grade markings along the side sill of each side of its freight cars. Smaller 3x8 inch markings were reportedly used on car sides where surface space is limited, such as under boxcar doors. The Soo Line reported applying retroreflective material to its cars for advertisement purposes and to improve the safety of nighttime yard operations. The Georgia Power Company reported using twelve 3x12 inch yellow prismatic retroreflectors located at 42 inches above the top of the rail (''TOR'') on its coal hoppers since 1981, while the Southern Company reported using high intensity yellow retroreflective material on its open top hopper cars. Although none of railroads which responded to Volpe's survey conducted any formal evaluations of their marking systems, the Soo Line reported satisfaction with their program and that some of the retroreflective materials applied to cars in the mid 1960s still performed adequately.

Using information gleaned from previous studies of reflectorization, Volpe next established a minimum threshhold for reflector brightness (minimum SIA) to be used as a basis for evaluating reflector performance. For reflectorization to be effective in reducing RIT accidents, reflectors must be sufficiently bright to attract the attention of approaching motorists early enough in the approach path of the vehicles so that the drivers have time to react to avoid collisions. Accordingly, Volpe defined the minimum threshold of intensity as the lowest luminous value that allows a motorist to detect the presence of a retroreflector (and therefore a freight car equipped with a retroreflector) in a crossing, even if the motorist is not actively looking for a train. In developing this minimum threshold, Volpe took into account the effects of the harsh railroad operating environment, including the inherent dirt and grime that accumulates on rail cars and the effects of often severe weather conditions, as well as the aging of the retroreflective material and the orientation and configuration of rail cars. Utilizing visibility assumptions established by previous reflectorization studies (*i.e.*, a level approach grade, a 2.5 second driver reaction time, wet pavement, and a vehicle speed of 50 miles per hour), Volpe first concluded that a motorist must become aware of a train's presence when the vehicle is 500 feet from the crossing so that the vehicle can be brought to a safe stop.

Next, using the ''point source method'' upon which many guidelines for reflector intensity are built, Volpe determined that the minimum threshold illuminance level of 2.3×10^{-6} footcandles would be sufficient to make a reflector detectable to most drivers. The ''point source method'' is based on the fact that astronomical observations have determined that a star producing an luminance of 2.3×10^{-9} footcandles at the eye of an observer against an overcast moon sky illuminance, equal to 9.9×10^{-4} footlamberts, can be detected with a 98% probability when the observer is actively looking for the light and knows precisely where to look for it. This level must be increased five to ten times if the light is to be easily found. (The FAA detection level for pilots is almost eight times this minimum threshold). If the light signal is to attract the attention of an observer who is not actively looking for it, then increases of 100 to 1,000 times the threshold level are needed—which is equivalent to 2.3×10^{-6} footcandles. Accordingly, Volpe determined that an illumination level of 2.3×10^{-6} footcandles should be sufficient to make the reflector detectable to all but the few drivers who are completely oblivious to their driving environment.

Finally, using several additional visibility assumptions established by previous research, Volpe used *Allard's Law* to determine the minimum reflector intensity (SIA) required to enable approaching motorists to detect and recognize a train's presence in a crossing from a distance of 500 feet. These assumptions include:

E_e= Required level of illuminance to be received by an observer sufficient for detectability & recognition—2.3×10^{-6} fc
W = Windshield Transmittance—0.70
H = Headlight Efficiency—0.85
I_s= Headlight Intensity—3,000 cd (per headlight)
t^{2d} = Atmospheric Transmittance—0.945

Using these known assumptions and rearranging *Allard's Law* to solve for A, the area of the reflector, and B, the reflector's SIA (*i.e.*, $A*B = E_e*d^4/I_s*t^{2d}*W*H$), a range of values was determined. Specifically, assuming a vehicle is traveling 50 miles per hour on wet pavement, a 4x8 inch reflector (0.22 ft^2) must have a minimum reflector brightness (SIA) of 200 cd/fc/ft^2 for detection to occur in time for motorists to stop before entering the highway-rail grade crossing. A 4x36 inch (one square foot) reflector, however, must have an SIA of only approximately 45 cd/fc/ft^2 for detection to occur in time for motorists to stop before entering the crossing. These results demonstrate that for the same amount of illumination to attract the driver's attention, the smaller the area of the reflector (*e.g.*, 0.22 ft^2) the larger the required SIA of the reflector (*e.g.*, 200 cf/fc/ft^2). The same holds true for the opposite scenario, the larger the reflector area (*e.g.*, one square foot), the smaller the required SIA of the refector (*e.g.*, 45 cd/fc/ft^2).

The demonstration test was designed to evaluate the degradation in reflectivity of different reflective materials applied to freight cars under controlled conditions and to develop a test pattern. Three types of reflective materials (enclosed lens, bonded, and microprismatic retroreflective material) were tested. For the tests, nine open top hopper cars were treated with groups of three 4x4 inch diamond shaped markings placed near the side sill (at approximately 42 inches TOR). Each group of markings was comprised of the three types of materials being evaluated. Five more hopper cars had groups of two or three 4x2 inch rectangular markings attached to the wheels at 90, 120, or 180 degrees of separation. Only microprismatic material was used on the wheel application. One car had a 4x96 inch vertical strip applied to the corner post at each end of the car. All of the marking systems evaluated were either all white, all red, or a combination pattern of red and white.

Results of the demonstration test indicated that the white microprismatic material performed satisfactorily, while the enclosed lens and bonded materials did not. The microprismatic material had a much higher initial SIA value than the other two materials and was found to be ten times brighter than the material tested in 1982. In addition, after one year of service, the microprismatic retroreflective material maintained an SIA value that was 87% of the original measurement, which was well above the established minimum conspicuity threshold. The enclosed lens material lost approximately the same percentage of reflectivity as the microprismatic material, but due to its lower original SIA value, this loss was sufficient for it to fall below the minimum reflectivity required. The red microprismatic material degraded approximately the same as the white. However, none of the all red markings evaluated in the study met the minimum reflectivity requirements after one year. In addition, all of the materials placed on the wheels degraded very quickly and became ineffective in only a few months. Of the markings that were comprised of both red and white materials, only the performance of the vertical 4x96 inch strips of microprismatic material (applied to the corner posts of one car) was reported. The reflectivity of these markings decreased to about 67% of their initial value after one year. Because of the relatively large size of the markings, however, this amount of reflectivity was well above the conspicuity threshold level.

Based on the preliminary results of the demonstration test, larger scale trials, spanning approximately two years, were initiated in collaboration with Norfolk Southern Corporation and the Alaska Railroad Corporation. This in-service test allowed data collection of the retroreflective material's durability, performance, and accident reduction potential under in-service conditions. For these trials, two color combinations of microprismatic retroreflective material were selected based on the demonstration test and input from the railroads: A pattern of all white material and a pattern of alternating red and white material. The marking configuration selected consisted of three 4x8 inch white rectangular markings applied horizontally every nine feet just above the side sill (at approximately 42 inches TOR in most instances), and a 4x36 inch strip of red/white material applied vertically at the side sill on both ends of the cars. In 1991, the markings were applied to 29 tank cars carrying various petroleum products on the Alaska Railroad. Because of the curvature of the tank body, the markings were placed at 72 inches TOR. In January 1992, the markings were applied to 149 Norfolk Southern double-stack intermodal flat cars. Because of the limited surface area of these flat cars, the 4x8 inch markings were placed at 42 inches TOR, while the 4x36 inch markings were placed at 30 inches TOR. This was followed in March and April 1992 with 336 captive Norfolk Southern open top hopper cars and 74 boxcars in clay service, respectively, receiving the marking system.

Although the results of the in-service test showed that the harsh railroad operating environment could have a severe effect on the performance of the retroreflectors, Volpe identified a general correlation between reflector performance and height above TOR. Specifically, reflectors mounted highest on test cars performed the best, while reflectors mounted lower, and particularly below the side sill, did not perform as well. Finding little change in reflector performance due to dirt and grime accumulation above the side sill level (approximately 42 inches TOR), Volpe identified a minimum placement height as 42 inches TOR to allow maximum efficiency of reflector performance. The average performance of the vertical 4x36 inch reflective strips at the ends of the cars remained above the minimum threshold level for all car types for the entire testing period. The average performance of all 4x8 inch reflectors degraded more quickly, especially when mounted under the side sill or in mid-car locations where loading operations occur. Accordingly, Volpe concluded that any reflectorization pattern should minimize reflectors' location under the side sill and at loading points, and should utilize larger reflectors. Larger-size reflectors would lower the acceptable SIA level and would also degrade at a slower rate than the 4x8 inch reflectors.

Although the in-service test did not provide statistically valid results regarding the reflectors' accident reduction potential, the test did show a reduction in RIT accidents. During the three year period before the installation of the reflectors on the captive Norfolk Southern hopper cars, there were six accidents in which the motorist hit the side of the train after the first unit had passed through the crossing (*i.e.*, referred to as Category 1 RIT accidents). These accidents occurred during the hours of dawn, dusk, and darkness. During the three year period after the cars were reflectorized, no RIT accidents occurred.

The primary concern of the fourth phase of the research program, the human factors evaluation, was to develop a retroreflective pattern that is detectable in time for the motorist to recognize a train in the grade crossing and respond in time to avoid an accident. Specifically, the test was designed to determine the detection characteristics of the new microprismatic retroreflective material in various color and mounting configurations. Several potential placement patterns and color combinations were developed and analyzed to determine the most effective reflectorization configuration. Based on the outcome of both subjective and objective evaluation techniques, reflectorized freight cars were found to be significantly more detectable than non-reflectorized cars. Even the worst performing pattern and color configuration tested was several orders of magnitude better than an unreflectorized car. Generally, the results indicated that a uniform pattern of reflectorized material would facilitate motorists' detection of a hazard in his or her path and recognition of that hazard as a freight car. The results specifically indicated that a uniform vertical reflector pattern yielded the highest levels of detection and recognition and that a red/white color combination was preferable in order to facilitate motorists' recognition of a train as a hazard in the motorists' path and convey a sense of danger. In addition, distribution patterns that outlined the shape or that spaced the retroreflective material over a relatively large area of the rail car side were found to be superior to a distribution that concentrated the material along the bottom of the car. Accordingly, Volpe recommended the development of a standard pattern that: (1) Either outlined the shape of the freight car, or otherwise spaced the material over a large area of the rail car side; (2) could fit on all types of rail cars; and (3) would not likely be confused with other roadway hazards, particularly reflectorized trucks and trailers.

FRA addressed the issue of motorist confusion with the issuance of the 2001 Volpe Report. This study recognized that the previous study did not provide a realistic environment in which to evaluate the detectability and recognition of freight cars reflectorized with microprismatic retroreflective material. For example, in the 1999 study, observers did not see anything else in the scene that might be encountered in an actual driving environment (*e.g.*, signs, other vehicles, lights, foliage, buildings, *etc.*). In the real world, foliage, buildings, or other obstructions may block a motorist's view, or lights, signs, and other visual clutter may compete for a motorist's attention. In addition, with reflective materials in comon use on the nation's highways, the opportunity exists for motorists to confuse freight cars with other roadway hazards, particularly reflectorized truck trailers and respond inappropriately. NHTSA regulations require trucks more than 80 inches wide and weighing more than 10,000 pounds to be reflectorized (49 CFR 571.108). Specifically, the regulation requires the use of a strip (two to four inches wide) in alternating colors (red and white) and covering at least 50% of the length of the trailer. Because trucks are shorter in length and pass through an intersection more quickly than the average train, an approaching motorist may only need to slow the vehicle to avoid a collision instead of stopping prior to reaching the intersection. Conversely, because the average train is longer than the average truck, it spends a greater amount of time in the intersection. For motorists approaching a grade crossing, the greater amount of time the train spends in the intersection means it is more likely that the motorists will need to stop at the intersection. Accordingly, the 2001 study was designed to determine whether, at night when relying upon retroreflective patterns for identification, motorists are likely to confuse reflectorized trains with reflectorized trucks.

In the 2001 study, four patterns, each utilizing 144 square inches of reflective material, were evaluated: An outline, a horizontal strip, a vertical strip, and a variable height vertical strip. The outline pattern outlined the shape of the freight car. The horizontal strip pattern concentrated the retroreflective material along the side sill of the car. The vertical strip pattern (also known as the ''fence'' pattern), distributed the material in six equally-sized vertical strips over a relatively large area of the car sides. The variable height vertical strip pattern distributed the material in six varying-sized vertical strips over a relatively large area of the freight car sides. The patterns were placed on two types of freight cars, hopper cars and flat cars. The study measured the degree to which drivers recognized reflectorized freight cars in the grade crossing when both the motor vehicle and the train were in motion, and the driver's ability to discriminate reflectorized freight cars from other objects in the intersection.

The 2001 Volpe Report concluded that motorists could, at least to a certain extent, discriminate between reflectorized freight cars and reflectorized truck trailers for all of the patterns tested. The most effective patterns, in terms of detectability distance and recognition of the object as a freight car, however, were the fence pattern and the variable height vertical strip patterns. The report also concluded that using a vertically oriented pattern clearly distinguishable from the horizontally oriented patterns founds on truck trailers will minimize the likelihood that motorists will confuse a train in a grade crossing with a truck trailer.

D. Accident Reduction Potential of Reflective Markings and Alternative Approaches to Reducing Grade Crossing Accidents

FRA recognizes that the effectiveness of rail car reflectorization will, to a certain extent, vary by circumstance. As discussed earlier, various factors will influence the degree of effectiveness of reflectors and in turn, the resulting accident reduction and mitigation achieved. While all RIT accidents are potentially affected by reflectorization, those RIT accidents that result from a highway vehicle striking the train after the lead unit has entered the crossing (Category 1 RIT accidents) are the accidents most likely preventable by reflectorization. In particular, reflectorization is expected to be most effective in reducing nighttime Category 1 RIT accidents, which currently make up almost 70% of all Category 1 RIT accidents, despite the generally lower volume of highway traffic at night as compared to the daytime.

Although reflectorization of rail cars is expected to be most effective at nighttime, some daytime RIT accidents are also expected to be prevented, or at least mitigated, by reflectorization. Under conditions of reduced daytime visibility (*e.g.*, inclement weather), reflectors enhance the visibility of freight cars by providing an increased visible contrast with the freight car side wall, especially when an approaching motor vehicle's headlights are turned on. During the day, other light sources (*e.g.*, the sun), may be at an appropriate orientation to cause reflected light to be seen by the motorist.

The type of warning device at the crossing can also influence the effectiveness of reflectorization. Crossings with only passive devices, where almost 50% of all Category 1 RIT accidents occur, will benefit the most from reflectorization. Passive warning devices include signs (*e.g.*, crossbucks, stop signs, etc.) and other statically displayed information (*e.g.*, pavement markings) that warn motorists of the potential of a train at a crossing. Passive devices warn motorists that tracks are present; these devices do not indicate if a train is actually approaching or in the crossing. Reflectorization of rail cars improves the visual detection of the train by making its distance and relative state of motion more quickly and accurately gauged by drivers of other vehicles.

Crossings with active warning devices (*e.g.*, flashing lights, gates, etc.) will also receive some benefit from reflectorization. Each year over 200 accidents occur when motorists drive around lowered gates or past flashing lights and strike trains at highway-rail grade crossings. Under conditions of limited visibility, such as darkness or inclement weather, the added, unique visual signal offered by reflectors will augment the visual warning of flashing lights. The same rationale, although to a lesser extent, applies to crossings with gates. In many instances, a train standing in or passing through a crossing encompasses the motorist's entire field of view because of its size and proximity. The motorist may not see the train in the crossing because there is no contrast between the train and the surrounding environment. The motorist can look both ways, but because there is no detectable train movement, may still attempt to cross the track. Crossing warning devices, active or passive, only provide a warning to the motorist. The signal delivered by reflective material on the sides of rail cars is clear and indicates to approaching motorists the actual presence and current movement of a train in or through a crossing.

FRA also recognizes the existence of numerous other methods for reducing the occurrences of RIT accidents (*e.g.*, the elimination of highway-rail grade crossings, installation and upgrading of crossing warning devices, crossing illumination, etc.). FRA believes that a number of these alternatives used alone and in combination, are viable methods for mitigating collision risk at highway-rail grade crossings. However, FRA also believes that reflectorization of freight rolling stock is a feasible and cost-effective method of reducing and mitigating grade crossing accidents that provides unique safety benefits not obtainable with the other grade crossing warning devices and safety measures. Obviously, the most effective way to reduce highway-rail grade crossing accidents, RIT accidents or otherwise, is to eliminate highway-rail grade crossings. Closing access to highway-rail crossings where redundant or unnecessary crossings exist or constructing grade separating overpasses where necessary is an effective safety improvement. However, local opposition to closing crossings and the associated expenses with constructing grade separations or other alternatives to the crossings, often render these methods impractical, if not impossible. Efforts have also been underway in recent years to illuminate crossings with street lamps. It is generally believed that crossing illumination reduces the likelihood of RIT accidents (by enabling motorists to recognize a train in a crossing earlier), at a lower cost than that required to install active warning systems. To date, however, limited cost information is available and no specific effectiveness or accident reduction statistics have been developed. In addition, an obvious limit to crossing illumination is the unavailability of commercial power sources at some crossings, particularly rural, passively protected crossings. Without a commercial power source, a crossing illumination system may require its own energy generating and storage device and train detection equipment, often making it a cost-prohibitive measure.

E. Discussion of Comments

The public docket in this proceeding contains approximately 55 comments from interested parties, including members of the railroad industry, trade organizations, local governments, public interest organizations, reflective material manufacturing and supply companies, as well as members of the general public. Specifically, comments were received from the following organizations: The American Trucking Association (ATA), the Texas Motor Transportation Association, Niagara Bulk Service Limited, the Port of Woodland, the Conway Scenic Railroad, the Brotherhood of Maintenance of Way Employees (BMWE), the American Automobile Association (AAA), the City of Hudsonville in Michigan, Reidler Decal Corporation, 3M, Reflexite, the American Highway Users Alliance, the Tourist Railroad Association, the Association of American Railroads (AAR), Avery Dennison, Great Lakes Transportation LLC, the Railway Progress Institute (now known as the Railway Supply Institute (RSI)), the American Short Line and Regional Railroad Association (ASLRRA), the North American Freight Car Association (NAFCA), the National Industrial Transportation League, as well as TTX. Although the majority of comments submitted were in favor of reflectorization, some members of the railroad industry raised important considerations related to the implementation of a nationwide rail car reflectorization program.

Several individual members of the public and organizations of concerned citizens (including the Angels on the Track Foundation and Active People Against Railroad Tragedies), voiced strong support for a nationwide rail car reflectorization program. These commenters related stories of personal tragedy in which friends or loved ones were injured or killed as a result of grade crossing accidents—specifically, grade crossing collisions in which the motor-vehicle drivers apparently did not see a train in the path of their vehicles in time to react to avoid collisions. FRA has the greatest sympathy for the losses suffered by these commenters. The goal of this rulemaking is to reduce the number of RIT accidents, but rules must be based on consideration of evidence and data. Accordingly, this preamble focuses on the technical and economic aspects of rail car reflectorization. FRA, however, has not ignored the advice of those whose tragic personal experiences has led them to support this proposal addressing rail car conspicuity.

Other commenters expressing support for a nationwide freight car reflectorization program include municipalities, trade organizations such as the ATA and the Texas Motor Transportation Association, and other organizations concerned with safe and efficient highway transportation (including AAA and the American Highway Users Alliance). These commenters expressed the view that the issue of highway-rail grade crossing safety is an issue that affects not only the railroad industry, but the entire motoring public as well, including individual motorists and commercial motor carriers which traverse grade crossings on a daily basis. Specifically, the ATA expressed support for the December 1999 petition for rulemaking filed by the South Dakota Trucking Association, the Wyoming Farm Bureau Federation, the Wyoming Trucking Association, and the Mississippi Trucking Association which sought to require railcars to bear retroreflective sheeting. These commenters also pointed out the prevalence of unlighted, passively protected highway-rail grade crossings in rural communities and the particular vulnerability of these types of crossings to RIT accidents.

The BMWE, a rail labor organization, also submitted comments in support of rail car reflectorization. The BMWE cited the federal highway rule requiring reflectorization of large trucks as evidence of the benefits which could be derived from rail car reflectorization (*e.g.*, reduced property damage and reductions in injuries and deaths associated with RIT accidents). The BMWE also expressed its agreement with FRA's conclusion that reflectorization represents a cost-effective approach to mitigating the problem of RIT accidents. Another commenter, although acknowledging some of the inherent difficulties in implementing a nationwide reflectorization program (*e.g.*, catching up with specific rail cars to apply reflective material, reflector maintenance and cleanliness issues), expressed support for rail car reflectorization and suggested that FRA adopt NHTSA's standards for reflective material on commercial vehicles.

Railroad industry participants, such as the AAR, Great Lakes Transportation LLC (which submitted comments on behalf of two class II carriers, Bessemer and Lake Erie Railroad Company and the Duluth, Missabe and Iron Range Railway Company), RSI, the ASLRRA, as well as NAFCA, raised important considerations related to implementation of a nationwide rail car reflectorization program (*e.g.*, a feasible schedule for the application of reflectors to rail cars, reflector cleaning and maintenance requirements, the treatment of rail cars already equipped with reflective material pursuant to one of the many voluntary reflectorization programs already underway throughout the industry). These commenters also expressed the opinion that a federal regulation mandating reflectorization would not be a cost-effective safety measure given the costs railroads and car owners would incur implementing such a program (*e.g.*, the costs of initially installing the material, periodically inspecting, cleaning, and maintaining the material, and the potential for increased litigation exposure).

The ASLRRA and Great Lakes Transportation LLC (which submitted comments on behalf of two class II carriers, Bessemer and Lake Erie Railroad Company and the Duluth, Missabe and Iron Range Railway Company), additionally expressed the opinion that a Federal regulation mandating rail car reflectorization would be unduly burdensome and costly on small railroads. One commenting railroad, however, recognized that adopting a high visibility, common color scheme on rail equipment could reduce accidents at highway-rail grade crossings. A representative of another small railroad, the Conway Scenic Railroad in New Hampshire, suggested that railroads should make their locomotives and cars more visible and that reflectorization could be a practical method of doing so. This commenter, however, recognized the limits of any program designed to enhance the visibility of trains, including reflectorization, and explained that ''[t]he most visible train is only as safe as the motor vehicle operator who encounters it.'' FRA strongly agrees with this statement and recognizes that reflectorization will provide only a partial solution to the safety issues surrounding highway-rail grade crossings. FRA recognizes, and feels it worthy of emphasis, that nothing in this rule relieves motorists from the responsibility to be alert at highway-rail crossings and use due diligence in operating motor vehicles safely, even during times of limited visibility.

F. The Proposed Rule

Based upon the information currently available, FRA believes that reflectorization of rail freight rolling stock is a feasible method of enhancing rail car visibility that would likely improve safety in a cost-effective manner. Accordingly, as the Federal agency responsible for ensuring that America's railroads are safe for the traveling public and in direct response to the Congressional directive of 49 U.S.C. 20148, FRA is proposing to require the use of reflective material on the sides of certain rail cars and locomotives.

Generally, this rule proposes that all freight cars and locomotives that operate over a public or private highway-rail grade crossing in the United States in revenue or work train service be equipped with retroreflective sheeting on both sides. This rule contemplates that conforming retroreflective sheeting will be applied to freight cars on a fleet basis so that each segment of the freight car fleet is brought into compliance within ten years, and each segment of the locomotive fleet is brought into compliance within five years. To ensure the most efficient and cost-effective implementation of the rule, FRA proposes that retroreflective sheeting be applied to new freight rolling stock at the time of construction, and to existing stock when such stock is being repainted, rebuilt, or is undergoing other periodic maintenance.

This rule proposes specific color, construction, placement, and performance requirements for the required retroreflective sheeting and also sets forth a schedule for the application, inspection, and maintenance of the sheeting. The performance requirements set forth in this proposal are based on the material as it is initially applied. In other words, FRA has chosen to impose color, type, size, and placement requirements that ensure sufficient reflectivity will be retained over time, despite the harsh railroad operating environment. The amount and placement of retroreflective sheeting required to be applied to freight rolling stock pursuant to this part depends on the size of the freight car or locomotive, as well as the car type. Generally, however, this rule proposes a vertical pattern of retroreflective material along the entire side of freight rolling stock, as the physical configuration of various equipment types allows.

In drafting this rule, FRA has carefully considered the comments submitted to the docket of this proceeding and has attempted to devise a rule which will ensure the most efficient and cost-effective implementation of a nationwide reflectorization program which will provide valuable safety benefits to both the railroad industry and the motoring public. FRA anticipates that many constructive comments will result from public analysis of this proposal and that the proposed rule may be changed as a result of the public input. As such, FRA invites public comments on all aspects of this proposed rule.

Section-by-Section Analysis

Section 224.1 Purpose and Scope

This section contains a formal statement of the proposed rule's purpose and scope. FRA intends that the rule cover all aspects of reflectorization of freight rolling stock, including but not limited to, the size, color, placement, and performance standards of the reflective material, as well as the schedule for the application, inspection, and maintenance of the material.

Paragraph (a) states that the proposed rule is intended to reduce highway-rail grade crossing accidents, deaths, injuries, and property damage resulting from those accidents by enhancing the conspicuity of rail freight rolling stock as to increase its detectability by motor vehicle operators at night and under conditions of poor visibility. Paragraph (b) explains that the proposed rule establishes the duties of freight rolling stock owners and railroads to progressively apply retroreflective material to freight rolling stock, and to periodically inspect and maintain that material in order to achieve cost-effective mitigation of collision risk at highway-rail grade crossings. Paragraph (c) explains that the proposed rule establishes a schedule for the application of retroreflective material to rail freight rolling stock and prescribes standards for the application, inspection, and maintenance of retroreflective material to rail freight rolling stock for the purpose of enhancing its detectability at highway-rail grade crossings. This rule will not restrict freight rolling stock owners from applying retroreflective material to freight rolling stock on an accelerated schedule, nor will this rule restrict freight rolling stock owners from applying additional reflective material as long as any such additional material does not interfere with the recognizable pattern contemplated in proposed § 224.105. Freight rolling stock owners, however, are under no duty to install, maintain, or repair reflective material except as specified in this rule.

Section 224.3 Applicability

This section proposes that this rule apply to all freight cars and locomotives used for revenue or work train service that operate over a public or private highway-rail grade crossing and are used for revenue or work train service. FRA is aware that cars with Canadian reporting marks are used extensively within the United States. Transport Canada has previously administered a reflectorization program for Canadian cars, and FRA expects that Transport Canada will take actions in parallel with this proposal to handle the North American fleet.

This part will not apply to (1) freight railroads that operate only on track inside an installation that is not part of the general railroad system of transportation, (2) rapid transit operations within an urban area that are not connected to the general system of transportation, or (3) locomotives or passenger cars used exclusively in passenger service. Although FRA recognizes that both public and private grade crossings may be found on plant railroads and freight railroads that are not part of the general railroad system of transportation, these operations typically involve low speed vehicular traffic and FRA has not determined that reflectorization would be helpful in these areas. These reasons, together with the historical basis for not asserting jurisdiction over insular rail operations, leads FRA to propose not to exercise jurisdiction over public and private crossings at such plant and private railroads. FRA does, of course, retain the statutory right to assert jurisdiction in this area and will do so if circumstances warrant.

Paragraph (c) provides that this rule will not apply to locomotives and passenger cars used exclusively in passenger service. FRA proposes to exclude locomotives and passenger cars used exclusively in passenger service from this rule because the conspicuity issues attendant to passenger service are significantly different from those of freight service. For example, particularly in commuter service, the highway-rail grade crossings through which passenger trains operate are typically better protected than crossings used exclusively in freight service. Also, many passenger cars have bright stainless steel exteriors or are painted contrasting light colors and are maintained in a much cleaner condition than freight cars. Passenger cars typically have inside lights which are visible through side windows that run the entire length of the cars. Although FRA does not at this time propose to require the application of reflective material to locomotives and passenger cars used exclusively in passenger service, FRA may do so in a future rulemaking if it proves a cost-effective method of mitigating collision risk at highway-rail grade crossings.

As in all aspects of this proposed rule, FRA invites comments on the jurisdictional determinations proposed in this notice.

Section 224.5 Definitions

This proposed rule uses various terms, which for purposes of this rulemaking, have very specific meanings. FRA intends these definitions to clarify the meaning of important terms as they are used in the text of the proposed rule and several of these definitions warrant further discussion.

''*Freight rolling stock*'' includes any locomotive subject to 49 CFR part 229 used to haul or switch freight cars in revenue or work train service and any railroad freight car subject to 49 CFR part 215, including a car stenciled MW pursuant to § 215.305. Although FRA proposes to limit the definition of ''freight rolling stock'' to locomotives and freight cars, FRA requests comments on the potential utility and practicability of reflectorizing other rail equipment, such as specialized maintenance of way vehicles (particularly maintenance of way vehicles not falling within the purview of subpart D to 49 CFR part 214) or any other rail equipment used to haul freight cars. FRA specifically requests data demonstrating what, if any, other types of rail equipment (other than locomotives subject to 49 CFR part 229) are used to haul freight cars and the potential feasibility of reflectorizing such equipment and any data and/or relevant comments related to the conspicuity of maintenance of way equipment which is not subject to 49 CFR part 214 (*e.g.*, how often is this equipment involved in grade crossing accidents, what, if any, conspicuity devices are already utilized on this equipment, would it be practicable to equip these vehicles with retroreflective material, *etc.*).

''Freight rolling stock owner'' is defined to include any person who owns freight rolling stock, leases freight rolling stock, manages the maintenance or use of freight rolling stock on behalf of an owner or one or more lessors or lessees, or who otherwise controls the maintenance or use of freight rolling stock. This definition recognizes the practicalities of freight car ownership in the industry today. It is estimated that over one-half of all freight cars are privately owned. This number continues to increase. Because private freight car owners often contract with others to maintain their cars and may not even see their cars on a regular basis, this definition contemplates that those who control the maintenance or use of freight cars by contractual agreements or otherwise, will also be responsible for compliance with this part in conjunction with the actual owners of the cars.

''*Obscured*'' means, for purposes of this part, concealed or hidden. Specifically excluded from this definition are ordinary accumulations of dirt, grime, or ice resulting from the normal railroad operating environment. FRA recognizes that the harsh railroad operating environment inevitably results in dirt accumulating on the sides of freight rolling stock. The standards for retroreflective material set forth in this part take into account this ordinary accumulation. The term ''obscured,'' however, is intended to refer to situations where reflective material is covered by paint, a dense chemical residue, or any other foreign substance, such that the material no longer reflects light. For example, FRA understands that the sides of coal cars will accumulate coal dust and other dirt over time due to the nature of normal railroad operations. An accumulation of coal dust or other dirt, even if it significantly darkens and dirties the retroreflective material, will not cause the material to be ''obscured'' for purposes of this rule. The standards proposed in this rule account for the effects of accumulations of dirt and grime inherent in the railroad operating environment, the aging of the reflective material, and other adverse effects of the operating environment (*e.g.*, harsh weather conditions). FRA believes that reflective material meeting the requirements of this rule when initially applied will still provide adequate reflectivity throughout the manufacturers' stated useful life despite inevitable accumulations of dirt. If, however, retroreflective material is covered with paint (*e.g.*, graffiti), a dense chemical residue (*e.g.*, product spilled from a tank car), or any other foreign substance, other than dirt or grime, which effectively blocks all incoming light, that material would be considered ''obscured'' under this part.

In order to ensure that the requirements of this part would be practicable for each type of freight car to which they apply, FRA has included definitions for railroad freight car, flat car, and tank car. The proposed requirements for each type of car differ based on configurational differences between the vehicles in those groups. FRA believes that almost 99% of the freight car fleet that would be subject to this rule falls within one of these three definitions. The remaining 1% of the fleet that does not fall within one of these definitions is provided for in § 224.105(a)(4) addressing ''cars of special construction.'' FRA requests comments on the use of these definitions, specifically, whether these definitions are adequate to identify car types for purposes of this rule or whether commenters have other definitions that they would prefer.

Section 224.7 Waivers

This section explains the process for requesting a waiver from a provision of this rule. FRA has historically entertained waiver petitions from parties affected by an FRA regulation. In reviewing such requests, FRA conducts investigations to determine if a deviation from the general regulatory criteria can be made without compromising or diminishing safety.

The rules governing the FRA waiver process are found in 49 CFR part 211. In summary, after a petition for a waiver is received by FRA, a notice of the waiver request is published in the **Federal Register**, an opportunity for public comment is provided, and an opportunity for a hearing is afforded the petitioning or other interested party. FRA, after reviewing information from the petitioning party and others, will grant or deny the petition. In certain circumstances, conditions may be imposed on the grant of a waiver if FRA concludes that the conditions are necessary to assure safety or if they are in the public interest.

Section 224.9 Responsibility for Compliance

General compliance requirements are proposed in this section. Paragraph (a) states that freight rolling stock owners (as defined in § 224.5), railroads, and (with respect to certification of material) manufacturers of retroreflective material, are primarily responsible for compliance with the rule. The responsibility of manufacturers is discussed in more detail in the analysis of proposed § 224.103(a) below.

Paragraph (a) also clarifies FRA's position that the requirements contained in the rule are applicable to any ''person'' (as defined in the rule) that performs any function or task required by the proposed rule. Although various sections of the rule address the duties of freight rolling stock owners, railroads, and manufacturers of retroreflective material, FRA intends that any person who performs any action on behalf of any of these parties or any person who performs any action covered by the rule is required to perform that action in the same manner as required of the freight rolling stock owner, railroad, or manufacturer, or be subject to FRA enforcement action. For example, employees or agents of freight rolling stock owners, or railroad contractors that perform duties covered by these regulations would be required to perform those duties in the same manner as required of a freight rolling stock owner or railroad. Likewise, employees or agents of manufacturers of retroreflective sheeting being manufactured pursuant to this part, would be required to perform those duties in the same manner as the manufacturer.

Paragraph (b) states that any person performing any function or task required by this part will be deemed to have consented to FRA inspection of the person's facilities and records to the extent necessary to ensure that the function or task is being performed in accordance with the requirements of this part. This provision is intended to put freight rolling stock owners, railroads, manufacturers, and contractors performing functions or tasks required by this part on notice that they are consenting to FRA's inspection for rail safety purposes of that portion of their facilities and records relevant to the function or task required by this part. Pursuant to 49 U.S.C. 20107, FRA has the statutory authority to inspect any facilities and relevant records pertaining to the performance of functions or tasks required under this part, and this provision is merely intended to make that authority clear to all persons performing such tasks or functions.

Section 224.11 Civil Penalties

This section identifies the civil penalties that FRA may impose upon any person that violates any requirement of this part. These penalties are authorized by 49 U.S.C. 21301, 21302, and 21304. The penalty provision parallels penalty provisions included in numerous other safety regulations issued by FRA. Essentially, any person who violates any requirement of this part or causes the violation of any such requirement will be subject to a civil penalty of at least $500 and not more than $11,000 per violation. Civil penalties may be assessed against individuals only for willful violations, and where a grossly negligent violation or a pattern of repeated violations creates an imminent hazard of death or injury to persons, or causes death or injury, a penalty not to exceed $22,000 per violation may be assessed. In addition, each day a violation continues will constitute a separate offense. Maximum penalties of $11,000 and $22,000 are required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410) (28 U.S.C. 2461 note), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, 110 Stat. 1321–373) which requires each agency to regularly adjust certain civil monetary penalties in an effort to maintain their remedial impact and promote compliance with the law.

Section 224.13 Preemptive Effect

This section informs the public as to FRA's intention regarding the preemptive effect of the final rule. While the presence or absence of such a section does not conclusively establish the preemptive effect of a final rule, it informs the public concerning the statutory provisions which govern the preemptive effect of the rule.

This section points out that the preemptive effect of this rule is governed by 49 U.S.C. 20106 (''section 20106''). Section 20106 provides that all regulations prescribed by the Secretary relating to railroad safety preempt any State law, regulation, or order covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety hazard that is not incompatible with a Federal law, regulation, or order, and that does not unreasonably burden interstate commerce. With the exception of a provision directed at an essentially local safety hazard that is not inconsistent with a Federal law, regulation, or order, and that does not unreasonably burden interstate commerce, section 20106 will preempt any State or local law or regulatory agency rule covering the same subject matter as the regulation proposed today when issued as a final rule.

The Supreme Court has consistently interpreted section 20106 to confer on the Secretary the power to preempt not only State statutes, but State common law as well. *See CSX Transp.* v. *Easterwood,* 507 U.S. 658, 664 (1993) (''(L)egal duties imposed on railroads by the common law fall within the scope of (the) broad phrases' of section 20106.). *See also Norfolk Southern Ry. Co.* v. *Shanklin,* 529 U.S. 344 (2000). The Court has further held that Federal regulations under the Federal Railroad Safety Act will preempt common law where the regulations ''substantially subsume'' the subject matter of the relevant State law. *Easterwood,* 507 U.S. at 664.

As is evident in the language of proposed § 224.1, FRA intends to cover the subject matter of standards for the use of retroreflective materials on freight rolling stock and the specific duties of freight rolling stock owners in this regard. FRA intends this part to preempt any State law, rule, or regulation, or common law theory of liability that might attempt to impose a duty on freight rolling stock owners pertaining to the reflectorization of freight rolling stock that is not specifically set forth in this part. For example, FRA intends to preempt any State law or common law theory of liability which might attempt to impose a duty on freight rolling stock owners to apply additional retroreflective material other than that specified in this part, to apply retroreflective material on a different schedule than that specified in this part, or to inspect, or maintain retroreflective material on a more frequent basis than that specified in this part. Inference of any duties not specifically set forth in this part may cause the costs of the proposed rule to outweigh the safety benefits of the rule in direct conflict with the Congressional mandate of 49 U.S.C. 20148 (requiring that FRA initiate a rulemaking proceeding prescribing regulations requiring enhanced visibility standards for railroad cars if such regulations would likely improve safety in a cost-effective manner).

Section 224.15 Special Approval Procedures

This section contains the procedures to be followed when seeking to obtain FRA approval of alternative standards under proposed § 224.103(e). FRA anticipates continued technological improvements and product advances in the field of reflective materials. Accordingly, this section is intended to provide a relatively quick approval process to allow the incorporation of new technology into the standards of this part, thereby making the technology available to all car owners and railroads, while maintaining the same level of safety originally contemplated. FRA believes this proposed procedure will speed the process for taking advantage of new technologies over that which is currently available through the waiver process. However, in order to provide an opportunity for all interested parties to provide input for use by FRA in its decision making process, as required by the Administrative Procedure Act, 5 U.S.C. 553 *et seq.*, (APA), FRA believes that any special approval provision must, at a minimum, provide proper notice to the public of any significant change or action being considered by the agency with regard to the existing regulations.

Paragraph (b) sets forth the substantive and procedural requirements for petitions for special approval of alternative standards. For example, paragraph (b) states that each petition must contain (1) relevant identification and contact information of the primary person to be contacted with regard to the petition, (2) a detailed description of the alternative proposed, and (3) sufficient data and analysis establishing that the alternative will provide at least an equivalent level of safety and meet the requirements of § 224.103(e). Paragraphs (c) and (d) provide opportunity for notice and public comment on any petition for special approval of an alternative standard received by FRA, and paragraph (e) describes the process FRA will follow in acting on any such petitions.

Subpart B—Application, Inspection, and Maintenance of Retroreflective Material

Section 224.101 General Requirements

This section contains the general requirement that all rail freight rolling stock subject to this part be equipped with retroreflective sheeting conforming to the requirements of this rule and that the sheeting be applied, inspected, and maintained in accordance with subpart B or in accordance with an alternative standard approved under § 224.15. This general requirement reflects FRA's understanding that motorists need to be given as much visual information as possible to correctly decide whether a roadway hazard (*e.g.*, a train) exists in a vehicle's path. Specifically, devices intended to make a train conspicuous should: (1) Tell the motorist that something is there, (2) tell the motorist that what he or she sees is a train, (3) tell the motorist if the train is on or about to cross a road in the vehicle's path, (4) aid the motorist in estimating the distance he or she is from the train, and (5) aid the motorist in estimating the speed and direction of the train's motion. FRA believes that the retroreflective sheeting contemplated in this subpart B, applied and inspected in conformance with this part, effectively achieves these objectives.

Section 224.103 Characteristics of Retroreflective Sheeting

This section sets forth the proposed construction, color, and performance standards for the retroreflective sheeting required by § 224.101. Paragraph (a) states that retroreflective sheeting must be constructed of a smooth, flat, transparent exterior film with microprismatic elements embedded or suspended beneath the film so as to form a non-exposed retroreflective optical system. Paragraph (a) also provides that air encapsulated sheeting must be sealed around all edges. FRA understands that air encapsulated sheeting that is not sealed on all edges will allow water to seep between the layers of the product. Over time, due to the normal railroad operating environment, this water will freeze and expand, causing layers of the sheeting to peel.

Paragraphs (b) and (c) propose to require that the retroreflective sheeting meet the color and performance requirements, except for the photometric requirements, of the American Society of Testing and Measurements' (ASTM) standard D 4956–01, *Standard Specification for Retroreflective Sheeting for Traffic Control.* ASTM D 4956–01 has been chosen as the basis for the FRA specification because FRA understands it to be the specification that manufacturers of retroreflective sheeting are following in their current manufacturing process. NHTSA's rule requiring reflectorization of large truck trailers (49 CFR 571.108) is also based on this ASTM standard. Information provided by several retroreflective sheeting manufacturers indicates that the products of most manufacturers currently meet the performance requirements of this proposed rule, and FRA has no reason to believe that other manufacturers could not meet the performance standards if there was a market for the product. In addition, because FRA is requiring that retroreflective sheeting meet the requirements of ASTM D 4956–01 only as initially applied and does not propose to require specific minimum reflectivity for vehicles in service, FRA believes that highly durable sheeting meeting the performance tests of the ASTM standard is required. It is less costly to install durable material than it would be to install less durable material but be required to regularly test its performance relative to a performance standard.

Specifically, paragraph (b) requires that the retroreflective sheeting be yellow as specified by the chromaticity coordinates of ASTM D 4956–01. As explained above, the human eye is more sensitive to some colors than others. This color sensitivity can vary in different lighting situations, making some colors more noticeable at different times of the day. Although the 1999 Volpe Report concluded that a pattern of red-and-white reflectors was preferred to facilitate motorists' recognition of a hazard as a train and convey a sense of danger, FRA proposes to require yellow retroreflective material as specified by the chromaticity coordinates of ASTM D 4956–01. FRA proposes to require yellow retroreflective material because the spectral measurement of the color (approximately 550 nm) is within the peak sensitivity range of the human visual system and accordingly, it is one of the most easily detectable colors under varying ambient light and other environmental conditions (*e.g.*, darkness, fog, haze, etc.). In addition, the color yellow minimizes the risk of motorist confusion with the colors of other roadway hazards (*e.g.*, red and white reflectors on trucks) and is not a color prevalent in most background environments.

In comments submitted to the docket, 3M, a manufacturer of retroreflective materials, recommended the use of a high contrast colored corner cube retroreflective material with a spectral measurement within the peak sensitivty range of the human visual system (*e.g.*, yellow/green) and fluorescent properties. 3M explained that the efficient corner cube retroreflective material would aid nighttime visibility and the fluorescent properties would provide additional daytime luminance. Although FRA's own research found that fluorescent yellow retroreflective material had the highest SIA value of all materials tested and could be detected from a further distance than any of the other materials, because the duration of fluorescent pigments is substantially less than the ten-year reflector product guarantee, FRA is not proposing to require the use of fluorescent-colored retroreflective material at this time. However, if a fluorescent retroreflective material meets all of the requirements of this part, its use is acceptable.

Paragraph (c) requires that retroreflective sheeting applied in accordance with the rule meet all the performance requirements, except for the minimum photometric performance requirements, of ASTM D 4956–01. The minimum photometric performance requirements (*i.e.*, minimum SIA) of the FRA standard are set forth in Table 1 of the proposed rule. The proposed values were developed to perform above the minimum detection threshold of 45 cd/fc/ft^2 identified in the 1999 Volpe Report as necessary to enable most motorists to detect a train in time to avoid a collision. Recognizing that in the real world railroad operating environment, the effective SIA of retroreflective materials depends on various factors (*e.g.*, grade crossing configurations and angles, ambient light conditions, vehicle headlight type and lens cleanliness, weather, and the presence and working condition of illumination and other warning devices) and may be reduced because of accumulated dirt and grime, the proposed minimum photometric performance requirements take into account these varying factors. Specifically, extrapolating the test data detailed in the Volpe Report out ten years, the manufacturers' stated useful life of the material, FRA found that the forecasted SIA levels remained well above the minimum detection level established in the 1999 Volpe Report. In addition, although the primary degradation in the SIA of the material occurs during the first two years as a result of ultraviolet light exposure, after which the material maintains a relatively consistent intensity throughout its useful life, FRA forecasted SIA degradation of the material due to dirt and grime accumulation exponentially. As a result, FRA's analysis substantially overestimates the degradation rate of the material and even with this overestimation, the expected SIA values remain well above the minimum detection level identified in the 1999 Volpe Report.

Table 1 specifies the minimum photometric performance requirement (*i.e.*, minimum required SIA) for yellow retroreflective material at observation angles of 0.2° and 0.5° and light entrance angles of −4° and 30° based on ASTM D 4956–01. FRA's Grade Crossing Inventory identifies crossings into three categories of crossing angles: 60–90°, 30–59°, and 0–29°. Approximately 80% of all crossings have crossing angles between 60 and 90°, almost 17% have crossing angles between 30 and 59°, and only 4% have crossing angles less than 30°. Accordingly, the requirements of Table 1 ensures that the retroreflectors will perform above the minimum detection threshold for the average motor vehicle at approximately 97% of all crossings.

Although the minimum photometric performance requirements set forth in the proposal are specific to yellow microprismatic retroreflective material, FRA recognizes that many car owners who currently reflectorize their cars have used white microprismatic retroreflective material. If FRA alternatively required the use of white retroreflective material, the minimum photometric performance requirements (based on a required detection distance of 500 feet) for the retroreflective material would be as follows:

Entrance angle	Observation angle	
	0.2°	0.53°
−4°	600	160
30°	350	75

Minimum Photometric Performance (Coefficient of Retroreflection (R_A) in Candela/Lux/Meter^2) Requirement for White Retroreflective Sheeting.

FRA requests commenters' views as to the desirability of using white versus yellow retroreflective material and further solicits comments and alternative suggestions to the proposed construction, color, and performance requirements of this section.

The responsibility for compliance with the construction, color, and performance requirements of the retroreflective sheeting used to comply with this rule would rest upon the manufacturers of the sheeting. Thus, manufacturers who are providing retroreflective sheeting to the railroad industry would have to certify compliance with § 224.103. Paragraph (d) sets forth this certification requirement and would require that the characters ''FRA–224'' be permanently stamped, etched, molded, or printed, in characters at least 3 mm high, with each set of characters spaced no more than four inches apart, on each piece of retroreflective sheeting manufactured.

Although, the proposed rule generally requires application of retroreflective sheeting meeting the specific construction, color, and performance requirements of § 224.103(a) through (c), paragraph (e) of this section recognizes that under § 224.15, freight rolling stock owners and railroads may request FRA approval to use alternative standards. As discussed in the analysis of § 224.15 above, any alternative standard utilized must result in an equivalent level of safety as the sheeting described in 224.103(a) through (c) applied in accordance with the rule.

Section 224.105 Size and Location

This section proposes to make the amount and placement of retroreflective sheeting required to be applied to freight rolling stock pursuant to this part dependent on the size of the car or locomotive, as well as the car type. A primary concern in developing the proposed standards of this part was developing a retroreflective pattern that is detectable in time for an approaching motorist to recognize a train in the grade crossing and respond appropriately in time to avoid an accident. Another concern was the potential for motorist confusion as more potential roadway hazards (particularly truck trailers) benefit from the addition of reflectorization. Accordingly, recognizing that a unique, uniform pattern of application is necessary to facilitate recognition of rail cars and that the placement of retroreflectors affects their performance, this section proposes a specific pattern of application, striving to achieve as uniform a pattern as possible throughout the relevant fleet, while taking into consideration the configurational differences between various types of freight rolling stock. Although a vertical pattern of retroreflective material along the entire side of freight cars is proposed, FRA recognizes that the physical configuration of locomotives and the conspicuity issues surrounding locomotives are different. Accordingly, in paragraph (b) of this section, FRA proposes a more flexible approach to the reflectorization of locomotives.

As discussed earlier in the preamble, the general consensus of research pertaining to retroreflective materials is that retroreflective materials can increase the conspicuity of objects to which they are attached. FRA, however, found little existing research that suggested how retroreflective materials should be displayed on rail cars to maximize the conspicuity of the cars for approaching motorists. Early studies suggested that massed applications (concentrating retroreflective material in one or two locations) were more effective than those applications that were distributed over a wider area. More recent studies assessing the effectiveness of retroreflective markings on trucks used the newer prismatic materials and concluded that providing a design that outlined the shape of the vehicle increases conspicuity.

The recommendation to use an outline shape was based in part on the need of a motorist to estimate closing distance when following behind a truck. However, motorists' interaction with trains is different from trucks. Because trucks are shorter in length and pass through an intersection more quickly than the average train, the motorist may only need to slow his or her vehicle to avoid a collision instead of stopping prior to reaching the intersection. Conversely, because the average train is longer than the average truck, it spends a greater amount of time in the intersection. For a motorist approaching a grade crossing, the greater amount of time the train spends in the intersection means the more likely the motorist will need to stop at the intersection in order to avoid a collision.

FRA's own research concluded that either a pattern that outlined the shape of the railroad equipment, or a vertically-oriented pattern that spaced retroreflective material uniformly over a large area of the equipments' side, was most effective. Based on the results of studies investigating truck reflectorization, the specific findings of FRA's targeted research, as well as input from the railroad industry and manufacturers of retroreflective material, FRA is proposing in this section what it believes to be the optimum placement patterns of retroreflective material on freight rolling stock. The proposed placement patterns in this section are designed to maximize the effectiveness of the material, allow retroreflectorization of a variety of freight car types with the same generally recognizable pattern, and also minimize the degradation rate of the material. In addition, other practical advantages to a standardized reflectorization pattern include the potential for volume discounts on the costs of materials and minimizing labor costs by standardizing the repair and installation of the material.

This section proposes a vertical pattern of retroreflective sheeting on the sides of freight cars, where the physical configuration of the car allows, with strips of sheeting to be located as close to each end of the car as practicable and at equidistant intervals of not more than 10 feet. This pattern is intended to alert an approaching motorist to the approximate dimensions of the hazard (the freight car) in his or her path. In addition, because roadway lanes in the United States are typically 10 to 12 feet wide, applying strips of retroreflective sheeting at least every ten feet along the sides of freight cars, increases the likelihood of at least one reflector being in the sight path of an approaching motorist.

A vertically oriented pattern, as opposed to an outline pattern, is proposed because it contrasts with the horizontally oriented pattern of the retroreflective pattern required for truck trailers, thereby reducing the likelihood that motorists will confuse a train in a grade crossing with a truck trailer. In addition, because not all approaches to grade crossings are level, to the extent that a motor vehicle's headlights are aimed away from the retroreflective material, less light will reach the retroreflective material if it is applied horizontally and therefore less light will be returned to the driver and a train in a crossing will be more difficult to detect. Orienting the retroreflective material vertically increases the likelihood that the maximum available light from vehicle headlights will enter the retroreflective material and be returned to the motorist when the road grade is not level.

This section also proposes to require four square feet of retroreflective material on each side of the typical 50-foot freight car and provides that freight cars longer than 50 feet would require one additional foot of material for each additional ten feet in length. Although the optimum configuration of retroreflectors identified in the 1999 Volpe Report, required slightly less retroreflective material, this configuration assumed that the material would be periodically washed. Volpe found that periodic washing of the retroreflectors could recover the intensity of the prismatic material to nearly original levels. However, because of practical concerns expressed by many members of the railroad industry (*e.g.*, increased labor costs, environmental wastewater and water usage issues), FRA does not propose to require the periodic cleaning of the retroreflective sheeting. Instead, in order to compensate for the lack of cleaning, FRA is proposing to require approximately one additional square foot of material on each side of freight rolling stock, thereby lowering the level of luminance needed.

Paragraph (a) of this section generally explains that the amount of retroreflective sheeting required to be applied to freight cars under this part is dependent on the length of the car, measured from endsill to endsill, exclusive of the draft gear. Paragraph (a)(1) proposes to require that on freight cars other than tank cars and flat cars, retroreflective sheeting be applied vertically in 4x36 inch and 4x18 inch strips along the car sides, with the bottom edge of each strip no lower than 42 inches above the top of the rail. Further, this paragraph proposes to require that either a minimum of one 4x36 inch (one square foot) strip of retroreflective material or two 4x18 inch strips, directly above each other, be applied vertically as close to each end of the car as practicable and that a minimum of one 4x18 inch strip be applied vertically at intervals of no more than every 10 feet between each end (*i.e.*, for a typical 60 foot freight car, at 10 feet, 20 feet, 30 feet, 40 feet, and 50 feet). *See* Figure 1.

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Retroreflective Sheeting Pattern for Typical 60 Foot Freight Car

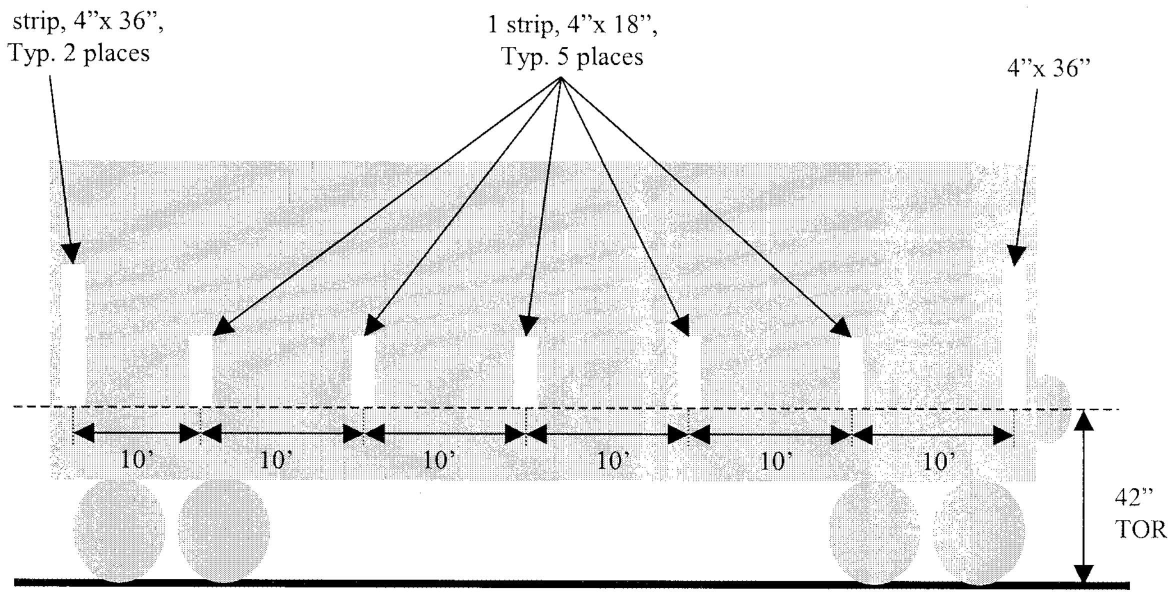

Figure 1

BILLING CODE 4910–06–C

Although paragraphs (a)(2) and (3) follow this same basic pattern, FRA has attempted to account for the configurational differences between various types of freight cars. Paragraph (a)(2) addresses tank cars specifically, while paragraph (a)(3) addresses flat cars. Paragraph (a)(2) proposes to require that on tank cars, retroreflective sheeting be applied vertically along the car sides and centered on the horizontal centerline of the tank, or as near as practicable. *See* Figure 2. If it is not practicable to safely apply the sheeting centered on the horizontal centerline of the tank, the sheeting may be applied vertically with its top edge no lower than 70″ above the top of the rail. *See* Figure 2(a). Similar to the pattern proposed in paragraph (a)(1), paragraph (a)(2) requires a minimum of one 4x36 inch (one square foot) strip of retroreflective material or two 4x18 inch strips, directly above each other, be applied vertically as close to each end of the tank as practicable and that a minimum of one 4x18 inch strip be applied vertically at intervals of no more than every 10 feet between each end of the tank. The intent of this configuration is that the retroreflective sheeting will be centered, as practicable, on the outermost curved area of the tank, thereby reflecting the most light. FRA recognizes that the material applied underneath the centerline of the tank may reflect a certain amount of light downward and not directly back to the motorist and that illumination from a vehicle's headlights may not even reach some of the material applied above the centerline.

BILLING CODE 4910–06–P

Retroreflective Sheeting Pattern for Typical 60 Foot Tank Car

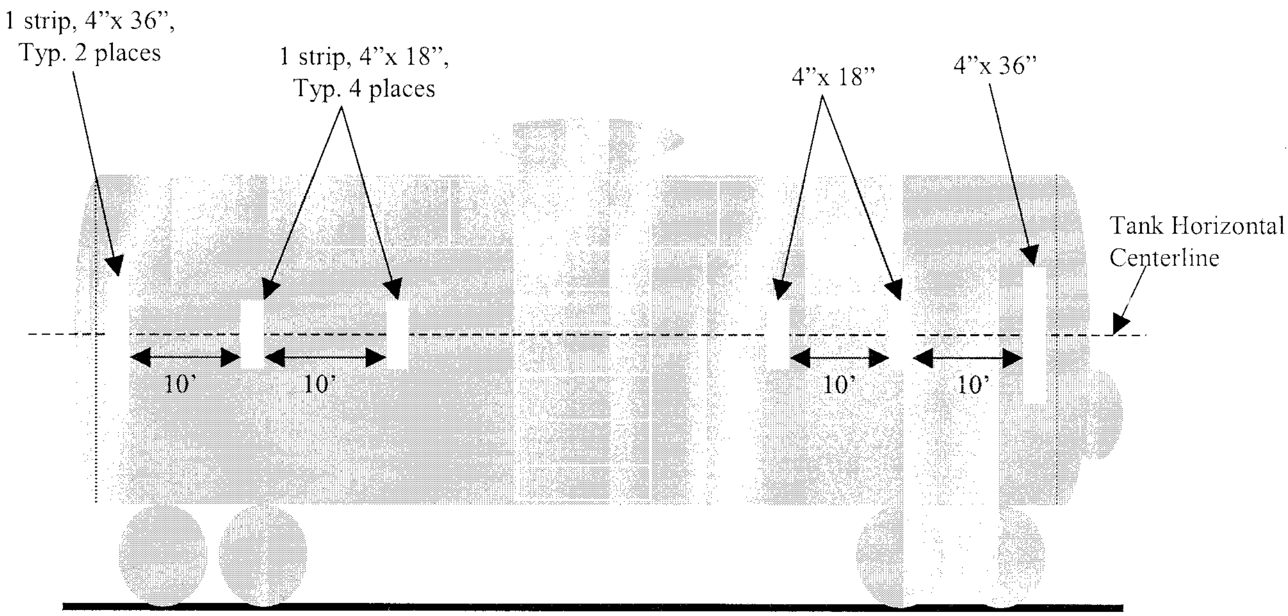

Figure 2

Alternative Retroreflective Sheeting Pattern for Typical 60 Foot Tank Car

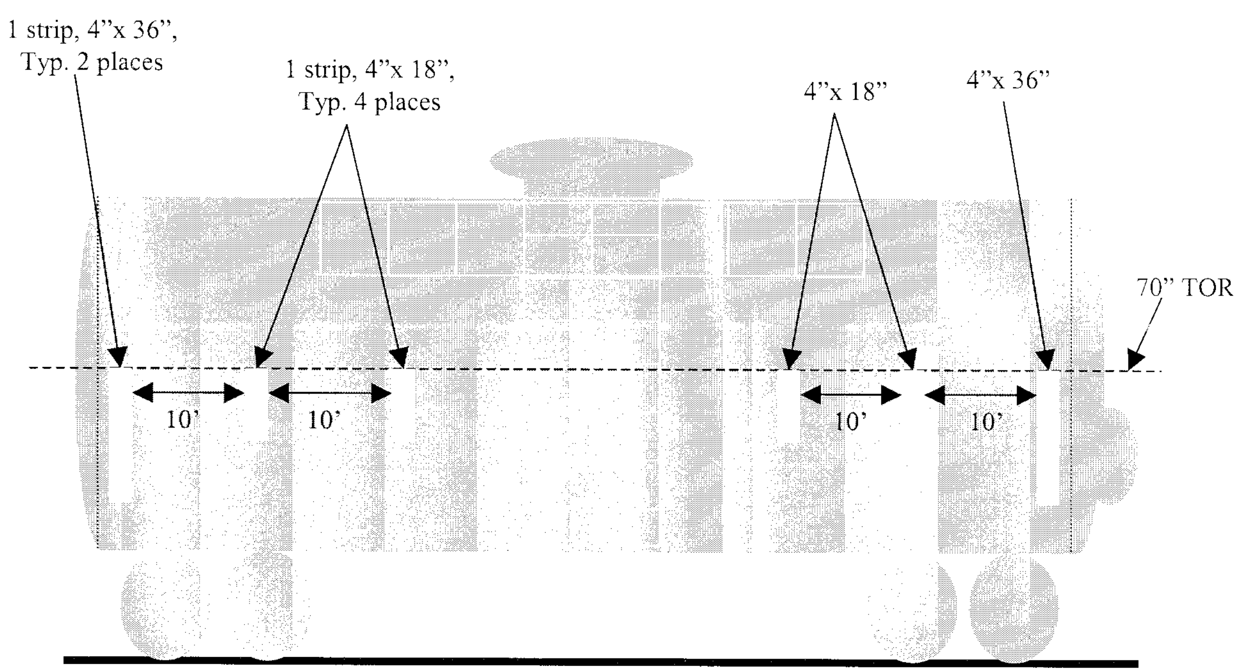

Figure 2(a)

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Recognizing the limited surface area of the sides of a typical flat car, paragraph (a)(3) proposes to require a minimum of two 4x18 inch strips, one next to the other, be applied vertically as close to each end of the car as practicable, with the bottom edge of each strip no lower than 30 inches above the top of the rail, as practicable. Consistent with the application pattern for other freight cars, paragraph (a)(3) requires that a minimum of one 4x18 inch strip be applied to the sides of flat cars vertically at intervals of no more than every ten feet (*i.e.*, at 10 feet, 20 feet, 30 feet, 40 feet, *etc.*), with the bottom edges of each strip no lower than 42 inches above the top of the rail, as practicable. *See* Figure 3. Because the surface area of a typical flat car is between 4 and 18 inches in height, if vertical application of 4x18 inch strips is not feasible, paragraph (a)(3) allows retroreflective sheeting on flat cars to be applied vertically in three 4x6 inch strips placed directly next to each other, or placed horizontally along the side sills of the cars.

BILLING CODE 4910–06–P

Retroreflective Sheeting Pattern for Typical 60 Foot Flat Car

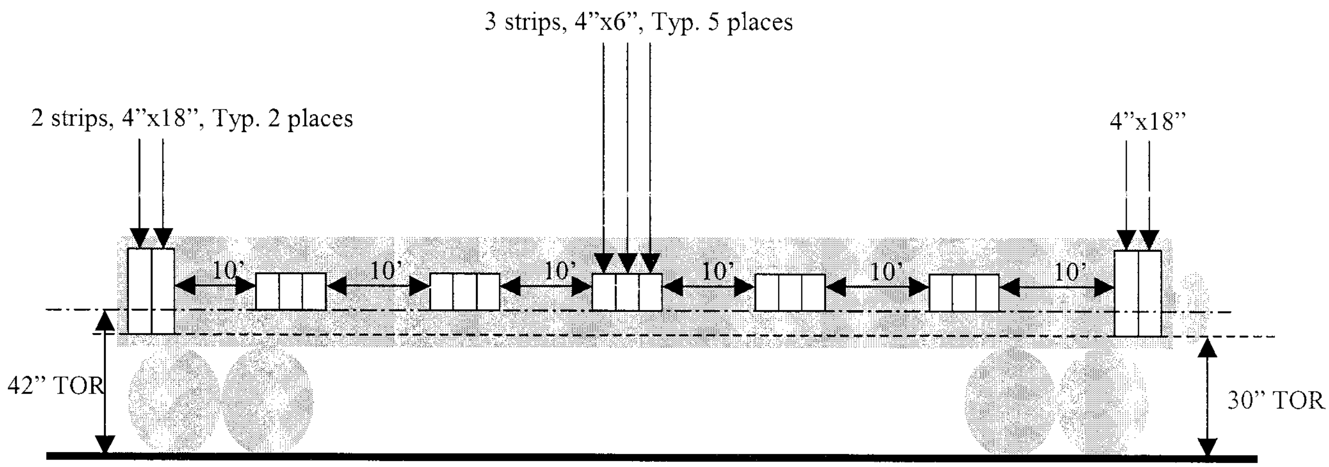

Figure 3

BILLING CODE 4910–06–C

Paragraph (a)(4) recognizes that not all freight cars will fit the standard configuration contemplated in paragraphs (a)(1) through (a)(3). FRA estimates that the patterns proposed for typical freight cars, tank cars, and flat cars would be impractical to apply to approximately 1% of the fleet (*e.g.*, schnabel cars, *etc.*) due to their unique physical configurations. Accordingly, this paragraph proposes a more flexible application pattern for these ''cars of special construction.'' Specifically, based on the length of a ''car of special construction,'' this paragraph specifies the required amount of retroreflective material and requires that the pattern of application for these cars conform as close as practicable to the standard patterns proposed in paragraphs (a)(1) through (a)(3).

Paragraph (b) contains the proposed requirements for the reflectorization of locomotives. The conspicuity issues surrounding locomotives differ from the issues surrounding freight cars in many respects. First, the physical configuration of locomotives is obviously quite different from the configuration of most freight cars. In some cases, locomotives are painted brighter colors than freight cars; and locomotives owned by major railroads and used in road service are cleaned on a more frequent basis. Often, company logos are displayed on the sides of locomotives in fluorescent or reflective materials and locomotives have a light source attached at the front and sides. However, in other cases, locomotives are painted in dark colors or are not repainted for several years, resulting in a very dark appearance.

FRA believes that some pattern of retroreflective material recognizable to motorists is necessary to facilitate motorists' recognition of locomotives in grade crossings. Most major railroads have already instituted programs to accomplish this. Application of retroreflective material to locomotives will enhance conspicuity under the following scenarios:

- Several locomotives are coupled in a multiple-unit consist pulling a train and the motorists' first view of the crossing occurs when the first locomotive is already on the crossing.
- The train is stopped with one or more locomotives on the crossing.
- A locomotive is embedded in the consist providing ''distributed power'' or is in ''helper service'' pushing from the rear.
- During switching operations, the locomotive is pushing the train.

Inclusion of locomotives in this program is further warranted by their high utilization. While many freight cars sit idle for days or weeks at a time, locomotives are generally used on a daily basis. Investments in improved conspicuity of locomotives should be amortized through safety benefits even more quickly than would be the case with freight cars.

Although requiring the same amount of retroreflective material on locomotives as comparably sized freight cars, paragraph (b) does not propose to mandate a specific pattern. Instead, this paragraph proposes to allow any pattern that divides the amount of retroreflective sheeting equally between both sides of a locomotive and is applied in a ''pattern recognizable to motorists,'' even a horizontal pattern along the sill or side walkway of a locomotive.

Although FRA believes that the patterns of application proposed in this

§ 224.105 represent the optimum configuration of retroreflective material on freight rolling stock, FRA solicits comments as to the feasibility and efficiency of these patterns and any recommendations for alternative patterns of application.

Section 224.107 Application of Retroreflective Sheeting

This section proposes to require that all freight cars subject to this part be equipped with retroreflective sheeting conforming to this part within ten years of the effective date of the final rule, and similarly, that all locomotives subject to this part be equipped within five years. Recognizing the voluntary efforts by many freight rolling stock owners who have already begun reflectorizing their fleets and the practical differences involved in applying reflective materials to freight rolling stock already in use versus newly manufactured stock, FRA has attempted to devise a schedule for the application of retroreflective material which assures the most efficient and cost-effective implementation of the rule. Generally, FRA proposes that retroreflective sheeting be applied to new freight rolling stock at the time of construction and to existing stock when such stock is being repainted, rebuilt, or undergoing other periodic maintenance. As an alternative to this schedule, FRA is also proposing the more flexible approach of allowing freight car owners to designate, in individualized reflectorization implementation plans, a schedule for the reflectorization of their freight car fleets.

Railroad Freight Cars

Newly constructed cars: Paragraph (a)(1) requires that retroreflective sheeting conforming to the rule be applied to cars manufactured after the effective date of the final rule at the time of construction.

Existing cars without retroreflective sheeting: As applied to cars that, as of the date of publication of the final rule, are not equipped with at least one square foot of retroreflective sheeting on each side, paragraph (a)(2) generally requires the application of retroreflective sheeting to the cars as they are repainted, rebuilt, or taken out of service for other scheduled maintenance and/or inspections. Specifically, paragraph (a)(2)(i) requires that conforming retroreflective sheeting be applied to existing freight cars when, after the effective date of the final rule, either (1) the car is repainted or rebuilt, or (2) the car first undergoes a single car air brake test required under 49 CFR 232.305, whichever occurs first. Paragraph (a)(2)(i)(B) also provides that the application of retroreflective sheeting to a freight car may be deferred until the second single car air brake test, if it is more practicable to apply the sheeting at that time. By allowing the flexibilty to defer application of the sheeting until the second single car air brake test, FRA recognizes that conditions at the time of the first single car air brake test may make it impractical to apply retroreflective sheeting at that time.

FRA understands that most rail cars are repainted, on average, every seven years and undergo a major overhaul or rebuild every ten years, depending upon mileage and condition. Similarly, the single car air brake test is required every eight years for new cars and every five years for other cars. *See* 49 CFR 232.305(c), (d). Accordingly, FRA believes that the schedule set forth in paragraph (a)(2)(i), providing for application of the retroreflective sheeting when cars are out of service for regularly scheduled maintenance, will allow the entire U.S. fleet of freight cars to be reflectorized well within the ten year implementation period and will not require cars to incur any additional downtime outside of the normal maintenance cycle for the purpose of reflectorization.

Although FRA believes the schedule set forth in § 224.107(a)(2)(i) is the most cost-effective and efficient method of reflectorizing freight cars, paragraph (a)(2)(ii) recognizes that some freight car owners may prefer to develop their own schedule for reflectorization. Paragraph (a)(2)(ii) provides that a freight car owner may elect not to follow paragraph (a)(2)(i)'s schedule, if within 60 days of the effective date of the final rule, the owner submits to FRA a Fleet Reflectorization Implementation Plan. This plan must set forth the car numbers constituting the fleet subject to this part and indicate when the identified cars will be reflectorized. The plan must also contain an affirmation that at least 20% of the total fleet will be equipped with retroreflective sheeting conforming to this part within 24 months after the effective date of the final rule and that not less than an additional ten percent of the total fleet will be completed each 12-month period thereafter for the duration of the 10-year implementation period. Absent identification of a car in a Fleet Reflectorization Implementation Plan, retroreflective sheeting conforming to this part will be applied to that car at the time of its first single car air brake test after the effective date of the final rule. *See* Appendix B for the standard form Fleet Reflectorization Implementation Plan anticipated by this section.

If a freight car owner elects the procedures of paragraph (a)(2)(ii) and submits a Fleet Reflectorization Implementation Plan to FRA, the owner is thereafter responsible for compliance with the plan. In keeping with the requirements of the Paperwork Reduction Act and the Government Paperwork Elimination Act, FRA anticipates providing car owners with the option of submitting this plan (and any required updates) to FRA electronically. If upon completion of the initial 24-month period an owner fails to reflectorize at least 20% of the freight car fleet, or if after any subsequent 12-month period an owner fails to reflectorize at least an additional 10% of the total fleet, the owner must notify FRA's Associate Administrator of such a failure. Thereafter, the owner will be required to comply with the schedule set forth in paragraph (a)(2)(i), the percentage requirements of paragraph (a)(2)(ii) will continue to apply, and the fleet owner must take any additional action necessary to bring cars under his ownership or control into compliance.

Existing cars already equipped with retroreflective sheeting as of publication date of final rule: Recognizing the voluntary efforts already underway by many railroads and car owners to reflectorize their freight car fleets, paragraph (a)(3) of this section addresses existing freight cars that, as of the publication date of the final rule, are already equipped with retroreflective material. FRA understands that approximately 25% of the domestically-owned freight car fleet is already equipped with some type of reflective material. However, many of the color schemes, the levels of reflectivity of the material, and the per car amount of material in use, differ from the standards proposed in this rule. If car owners are required to replace the retroreflective materials that they voluntarily installed to improve safety, it would have the effect of penalizing owners that demonstrated an extra level of safety consciousness. This would have the unintended effect of discouraging car owners from exploring innovative approaches to improving safety. With this in mind, FRA is proposing that freight cars equipped with at least one square foot of retroreflective material, uniformly distributed over the length of each car side, will be considered in compliance with this part for ten years from the effective date of the final rule, provided that the sheeting is not engineering grade, super engineering grade (enclosed lens), or glass bead encapsulated type sheeting. FRA intends to exclude all engineering grade and glass bead encapsulated type retroreflective sheeting because such sheeting does not meet the minimum photometric performance requirements of § 224.103. Accordingly, freight cars already equipped with engineering grade, super engineering grade, or glass bead encapsulated type retroreflective sheeting, or any other reflective material that is not retroreflective, must be brought into compliance with this part in accordance with § 224.107(a)(2). FRA proposes a minimum requirement of one square foot of retroreflective sheeting per car side under this section because based on the information provided to FRA to date, it appears that one square foot per side is the minimum amount currently utilized in existing voluntary reflectorization programs.

In order for previously equipped cars to be considered in compliance pursuant to this section, a car owner must, within 60 days of the effective date of the final rule, file a Fleet Reflectorization Implementation Plan with FRA identifying by car numbers the freight cars in the fleet already equipped with complying retroreflective sheeting and providing a description of the technical specifications of the retroreflective material already applied (*e.g.*, color of material, type of material, amount and placement pattern of material on each side of car). *See* Appendix B.

Locomotives

Newly constructed locomotives: Paragraph (b)(1) requires that retroreflective sheeting conforming to the rule be applied to locomotives manufactured after the effective date of the final rule at the time of construction.

Existing locomotives without retroreflective sheeting: As applied to locomotives that, as of the date of publication of the final rule, are not equipped with at least one square foot of retroreflective sheeting on each side, paragraph (b)(2) generally requires the application of retroreflective sheeting to the locomotives not later than the first biennial inspection performed pursuant to 49 CFR 229.29 occurring after the effective date of the final rule. Again, FRA's proposal to install the retroreflective sheeting on a locomotive while the locomotive is already out of service for the required biennial inspection ensures that reflectorization of the entire locomotive fleet can be completed well within the 5 years contemplated by this proposal without incurring any additional out of service time for the locomotives.

Existing locomotives already equipped with retroreflective sheeting as of publication date of final rule: Again, recognizing the voluntary reflectorization efforts already underway by many freight rolling stock owners, paragraph (b)(3) addresses existing locomotives that, as of the publication date of the final rule, are already equipped with retroreflective material. Specifically, paragraph (b)(3) provides that locomotives equipped with at least one square foot of retroreflective sheeting, uniformly distributed over the length of each side, will be considered in compliance with this part for a period of 5 years from the effective date of the final rule, provided that the sheeting is not engineering grade, super engineering grade (enclosed lens), or glass bead encapsulated type sheeting. Again, FRA proposes to exclude all engineering grade and glass bead encapsulated type retroreflective sheeting because such materials do not meet the minimum photometric requirements of the rule. Locomotives already equipped with engineering grade, super engineering grade, or glass bead encapsulated type retroreflective sheeting, or any other reflective material that is not retroreflective, must be brought into compliance with this part in accordance with § 224.107(b)(2). Similar to § 224.107(a)(3) addressing freight cars, in order for previously equipped locomotives to be considered in compliance pursuant to this part, the locomotive owner must, within 60 days of the effective date of the final rule, file with FRA a Fleet Reflectorization Implementation Plan identifying by locomotive reporting marks the locomotives in the fleet already equipped with complying retroreflective sheeting and providing a description of the technical specifications of the retroreflective material already applied (*e.g.*, color of material, type of material, amount and placement pattern of material on each side of locomotives). *See* Appendix B.

For ease in understanding the requirements of this section, the following table summarizes the schedules of application proposed in this section.

New	Freight Cars: At time of construction	Locomotives: At time of construction
Existing stock without retroreflective sheeting.	Earliest of: (a) when car is repainted, or rebuilt, or (b) when car first undergoes single car air brake test under 49 CFR 232.305, OR In accordance with Individual Reflectorization Plan filed with FRA per § 224.107(a)(2)(ii).	No later than first biennial inspection performed per 49 CFR 229.29.
Existing stock with retroreflective sheeting (not ASTM D 4956–01 Types I, II, or III).	10 years from date of final rule's publication.	5 years from date of final rule's publication.

Section 224.109 Inspection and Replacement

This section sets forth the proposed requirements for the periodic inspection and replacement of damaged retroreflective material on freight rolling stock. Although FRA is not proposing any specific maintenance requirements, paragraph (a) requires that retroreflective sheeting on freight cars subject to this part be visually inspected for presence and condition whenever a car undergoes a single car air brake test required under 49 CFR 232.305. Likewise, paragraph (b) requires that retroreflective sheeting on locomotives subject to this part be visually inspected for presence and condition whenever the locomotive receives the annual inspection required under 49 CFR 229.27. Upon inspection, if more than 20 percent of the amount of sheeting required on either side of the car or locomotive under § 224.105 is damaged, obscured, or missing, that damaged, obscured, or missing sheeting must be replaced. In other words, if a 4x36 inch end strip (or two 4x18 inch strips) of retroreflective sheeting is missing from one side of a typical 50 or 60 foot freight car, that sheeting must be replaced.

Section 224.111 Renewal

This section proposes to require that all retroreflective sheeting required under this part be replaced with new conforming sheeting, regardless of its condition, no later than ten years after the date of initial installation. This section is based on the manufacturers' stated useful life of retroreflective material. FRA, however, will monitor the retroreflective qualities of various fleet segments over time and may extend the ten year interval if warranted.

Appendix A—Schedule of Civil Penalties

This appendix is being reserved until the final rule. At that time it will include a schedule of civil penalties to be used in connection with this part. Because such penalty schedules are statements of policy, notice and comment are not required prior to their issuance. *See* 5 U.S.C. 553(b)(3)(A). Nevertheless, commenters are invited to submit suggestions to FRA describing the types of actions or omissions under each regulatory section that would subject a person to the assessment of a civil penalty. Commenters are also invited to recommend what penalties may be appropriate, based upon the relative seriousness of each type of violation.

G. Public Participation

When conducting a rulemaking, FRA must follow the APA. The APA generally requires that FRA allow all interested parties to review and comment on any proposed rule. Thus, by this notice, FRA is providing the public an opportunity to study the proposed rule and comment on it. Based on comments provided in response to this notice, FRA will, after the close of the comment period, determine what action to take.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and documents as indicated in this preamble will become a part of this docket and will be available for inspection or copying at Room PL–401 on the Plaza Level of the Nassif Building at the same address during regular business hours. You may also obtain access to this docket on the Internet at *http://dms.dot.gov.*

Regulatory Impact and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures, and determined to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; Feb. 26, 1979). FRA has prepared and placed in the docket a regulatory evaluation addressing the economic impact of this rule. Document inspection and copying facilities are available at 1120 Vermont Avenue, NW., 7th Floor, Washington, DC 20590. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at the Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590. Access to the docket may also be obtained electronically through the Web site for the DOT Docket Management System at *http://dms.dot.gov.* FRA invites comments on this regulatory evaluation.

The life expectancy of the proposed reflective material is 10 years, therefore, the potential costs and benefits are calculated for a ten-year period. Because most of the costs of the rule for a single car occur in the year material is applied while benefits are spread over subsequent years, and because the benefits are discounted to present value, use of this limitation on the study period is a very conservative approach. If a twenty-year period were used, the benefits would substantially increase relative to the costs. The total cost of reflectorizing locomotives, $194,512.08 (NPV), added to the cost of reflectorizing rail cars, $48,671,710.63 (NPV) equals the total costs of $48,866,222.71 (NPV).

Benefits of increased rail car visibility are measured in terms of grade crossing accidents averted. Safety benefits were calculated in terms of the decline in the probability of accidents. The magnitude of the reduction in the probability of accidents as a result of rail car reflectorization depends on the effectiveness of reflectors and the number of accidents expected absent reflectorization. The FRA employed three completely separate approaches to the estimation of benefits utilizing data from FRA's highway-rail grade crossing accident/incident reports (Form F 6180.57) from 1998–2001. In each method of benefits estimation, in order to ensure a realistic estimate, FRA took into account various factors that could influence the effectiveness of the retroreflective material (*e.g.*, active versus passive grade crossings, clear versus cloudy weather conditions, dark versus illuminated crossings). FRA accounted for these factors by developing ''effectiveness rates'' which varied depending on the circumstances of reported Category 1 RIT accidents. For example, the highest effectiveness rate employed was 60% for accidents where motor vehicles ran into the sides of trains at night at unlighted, passive crossings, while the lowest effectiveness rate employed was 15% for accidents where motor vehicles ran into the sides of trains at night at lighted crossings equipped with active warning devices (*i.e.*, flashing lights or gates).

Each approach appears to be reasonable, and the FRA suggests that together they provide a good idea of the order of magnitude of benefits likely to result from a rule requiring the reflectorization of rail freight equipment. The first approach employed the Delphi methodology based on the opinions of FRA's grade crossing experts. The discounted total ten-year benefit equals $87,517,527.50. Using the signal detection model, which is based on signal detection theory, the accident reduction potential of placing reflectors on rail cars is estimated, once discounted, to equal a total ten-year benefit of $69,304,986.61. Using results from a NHTSA report evaluating truck reflector effectiveness, the average benefit estimates are approximately $101 million. The following chart summarizes the three different benefit estimation techniques, unique subsets of the accident pool utilized, resulting values of collisions, and the resulting net present value of estimated benefits.

REFLECTORIZATION BENEFIT ESTIMATION TECHNIQUES

Alternative Approaches	Grade Crossing Experts	Signal Detection Model	NHTSA Technical Report.[2]
Methodology	Delphi Method	Risk and Uncertainty Analysis	Truck Reflector Effectiveness Rates.
Subset of RIT accident pool (1998–2001 data: 768 accidents, 84 fatalities, 347 injuries).	67.89 accidents (271.55 accidents/4 years × various scenario effectiveness rates).	53.76 accidents (768 accidents/4 years × effectiveness rate of 28%).	93.68, 76, 47.72 accidents (707 accidents/4 years. (176.75) × various effectiveness rates of 53%, 43%, and 27%).
Value of accident	$412,829	$412,829	$442,738.

REFLECTORIZATION BENEFIT ESTIMATION TECHNIQUES—Continued

Total Benefits (NPV)	$87,517,527.50	$69,304,986.61	$101,411,947.44 (AVG).

[2] "The Effectiveness of Retroreflective Tape on Heavy Trailers," National Highway Traffic Safety Administration (NHTSA) Technical Report, DOT HS 809 22, March 2001.

Estimated ten-year discounted benefits range from a low of $69 million based on the Signal Detection Model, to a high of more than $101 million (NHTSA's truck reflectorization follow-up study), with FRA subjective analysis coming in between at $87 million. While there is certainly a broad range in these estimates, the fact that they are as close as they are, given the vastly different approaches taken, gives FRA confidence that together they represent a reasonable indicator of the magnitude of benefits achievable for the reflectorization of railroad freight equipment. FRA believes that reflectorization of rail freight rolling stock is a feasible method of enhancing rail car visibility, that will likely improve safety in a cost effective manner. FRA expects that the measures called for in this proposal would prevent or mitigate the severity of casualties greater in value than the costs of complying with the proposed requirements.

B. Regulatory Flexibility Act of 1980 and Executive Order 13272

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) requires an assessment of the impacts of proposed rules on small entities. FRA has conducted a regulatory flexibility assessment of this rule's impact on small entities, and the assessment has been placed in the public docket for this rulemaking. This proposed rule affects railroad freight car and locomotive owners and may affect other entities as well.

Entities impacted by the proposed rule are companies and railroads that own freight cars and locomotives. Many companies that own freight cars are subsidiaries of larger companies that are not considered small businesses. FRA does not expect that smaller railroads will be affected disproportionately. The level of costs incurred by each organization should vary in proportion to car ownership.

Passenger railroads are excepted from the proposed rule. Visibility conditions for passenger rail cars are different than freight rail cars. FRA solicits comments to identify the impacts of these provisions to the extent that those affected by such provisions are small entities.

C. Paperwork Reduction Act of 1995

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR section—49 CFR	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
224.7—Waivers	289 Car Owners	20 petitions	1 hour	20 hours	$700
224.15—Special Approval Procedures:					
—Petitions For Special Approval.	289 Car Owners	10 petitions	40 hours	400 hours	$19,040
—Public Comments	Public/Railroads	None	NA	NA	NA
—Written Request For Hearing.	Interested Parties	None	N/A	N/A	N/A
224.103—Characteristics of Retroreflective Sheeting:					
—Certification	4 Manufacturer	NA	NA	NA	NA
—Alternative Standards	289 Car Owners	Cov. Under 224.15	Cov. Under 224.15	Cov. Under 224.15	Cov. Under 224.15
224.107—Application of Retroreflective Sheeting:	289 Car Owners	140 plans/forms	28 hours	3,920 hours	$137,200
—Reports of Failure Meet Percentage requirements.	289 Car Owners	15 reports	16 Hours	240 hours	$8,400
—Existing Cars with Retroreflective Sheeting—Forms.	289 Car Owners	Cov. Above	Cov. Above	Cov. Above	Cov. Above.
224.109—Inspection and Replacements: Locomotives—Records of Restriction.	289 Car Owners	2 records	3 minutes	.10 hour	$5

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Clearance Officer, at 202–493–6292.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan, Federal Railroad Administration, 1120 Vermont Avenue, NW, Mail Stop 17, Washington, DC 20590. Comments may also be submitted via e-mail to Mr. Brogan at the following address: *robert.brogan@fra.dot.gov.*

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of a final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Federalism Implications

Executive Order 13132, entitled ''Federalism,'' issued on August 4, 1999, requires that each agency ''in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provide to the Director of the Office of Management and Budget a federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met.'' FRA will adhere to Executive Order 13132 when issuing a final rule in this proceeding.

E. Environmental Impact

FRA has evaluated this rule in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this regulation is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28547, May 26, 1999. Section 4(c)(20) reads as follows:

(c) Actions categorically excluded. Certain classes of FRA actions have been determined to be categorically excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment. * * * The following classes of FRA actions are categorically excluded:

* * * * *

(20) Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions of air or water pollutants or noise or increased traffic congestion in any mode of transportation.

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this regulation is not a major Federal action significantly affecting the quality of the human environment.

F. Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. This proposed rule will not result in the expenditure, in the aggregate, of $100,000,000 or more in any one year, and thus preparation of such a statement is not required.

G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355, May 22, 2001. Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) that is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this NPRM in accordance with Executive Order 13211. FRA has determined that this NPRM is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

H. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

List of Subjects

Incorporation by reference, Penalties, Railroad locomotive safety, Railroad safety, and Reporting and recordkeeping requirements.

The Proposed Rule

In consideration of the foregoing, FRA proposes to amend chapter II, Subtitle B, of title 49, Code of Federal Regulations to add part 224 as follows:

PART 224—REFLECTORIZATION OF RAIL FREIGHT ROLLING STOCK

Subpart A—General

Sec.
224.1 Purpose and scope.
222.3 Applicability.
224.5 Definitions.
224.7 Waivers.
224.9 Responsibility for compliance.
224.11 Civil penalties.
224.13 Preemptive effect.
224.15 Special approval procedures.

Subpart B—Application, Inspection, and Maintenance of Retroreflective Material

224.101 General requirements.
224.103 Characteristics of retroreflective sheeting.
224.105 Size and location.
224.107 Application of retroreflective sheeting.

224.109 Inspection and replacement.
224.111 Renewal.
Appendix A to Part 224—Schedule of Civil Penalties [Reserved]
Appendix B to Part 224—Form Fleet Reflectorization Implementation Plan

Authority: 49 U.S.C. 20103, 20107 and 20148; 28 U.S.C. 2461; and 49 CFR 1.49.

Subpart A—General

§ 224.1 Purpose and scope.

(a) The purpose of this part is to reduce highway-rail grade crossing accidents and deaths, injuries, and property damage resulting from those accidents, by enhancing the conspicuity of rail freight rolling stock so as to increase its detectability by motor vehicle operators at night and under conditions of poor visibility.

(b) In order to achieve cost-effective mitigation of collision risk at highway-rail grade crossings, this part establishes the duties of freight rolling stock owners (including those who manage maintenance of freight rolling stock, supply freight rolling stock for transportation, or offer freight rolling stock in transportation) and railroads to progressively apply retroreflective material to freight rolling stock, and to periodically inspect and maintain that material. Freight rolling stock owners, however, are under no duty to install, maintain, or repair reflective material except as specified in this part.

(c) This part establishes a schedule for the application of retroreflective material to rail freight rolling stock and prescribes standards for the application, inspection, and maintenance of retroreflective material to rail freight rolling stock for the purpose of enhancing its detectability at highway-rail grade crossings. This part does not restrict a freight rolling stock owner or railroad from applying retroreflective material to freight rolling stock for other purposes if not inconsistent with the recognizable pattern required by this part.

§ 224.3 Applicability.

This part applies to all railroad freight cars and locomotives that operate over a public or private highway-rail grade crossing and are used for revenue or work train service, except:

(a) Freight rolling stock that operates only on track inside an installation that is not part of the general railroad system of transportation;

(b) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation; or

(c) Locomotives and passenger cars used exclusively in passenger service.

§ 224.5 Definitions.

As used in this part—

Administrator means the Administrator of the Federal Railroad Administration or the Administrator's delegate.

Associate Administrator means the Associate Administrator for Safety, Federal Railroad Administration, or the Associate Administrator's delegate.

Flat car means a car having a flat floor or deck on the underframe with no sides, ends or roof.

Freight rolling stock means:

(1) Any locomotive subject to part 229 of this chapter used to haul or switch freight cars (whether in revenue or work train service), and

(2) Any railroad freight car subject to part 215 of this chapter (including a car stenciled MW pursuant to § 215.305).

Freight rolling stock owner means any person who owns freight rolling stock, leases freight rolling stock, manages the maintenance or use of freight rolling stock on behalf of an owner or one or more lessors or lessees, or otherwise controls the maintenance or use of freight rolling stock.

Locomotive has the meaning assigned by § 229.5 of this chapter, but for purposes of this part applies only to a locomotive used in the transportation of freight or the operation of a work train.

Obscured means concealed or hidden (*i.e.*, covered up, as where a layer of paint or dense chemical residue blocks incoming light); this term does not refer to ordinary accumulations of dirt, grime, or ice resulting from the normal railroad operating environment.

Person means an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track or facilities; any independent contractor providing goods or services to a railroad; and any employee of such an owner, manufacturer, lessor, lessee, or independent contractor.

Railroad means all forms of non-highway ground transportation that run on rails or electromagnetic guideways, including high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads.

Railroad freight car has the meaning assigned by § 215.5 of this chapter.

Tank car means a rail car, the body of which consists of a tank for transporting liquids.

Work train means a non-revenue service train used for the administration and upkeep service of the railroad.

§ 224.7 Waivers.

(a) Any person subject to a requirement of this part may petition the Administrator for a waiver of compliance with such requirement. The filing of such a petition does not affect that person's responsibility for compliance with that requirement while the petition is being considered.

(b) Each petition for waiver under this section shall be filed in the manner and contain the information required by part 211 of this chapter.

(c) If the Administrator finds that a waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any conditions that the Administrator deems necessary.

§ 224.9 Responsibility for compliance.

(a) Freight rolling stock owners, railroads, and (with respect to certification of material) manufacturers of retroreflective material, are primarily responsible for compliance with this part. However, any person that performs any function or task required by this part (including any employee, agent, or contractor of the aforementioned), must perform that function in accordance with this part.

(b) Any person performing any function or task required by this part shall be deemed to have consented to FRA inspection of the person's facilities and records to the extent necessary to determine whether the function or task is being performed in accordance with the requirements of this part.

§ 224.11 Civil penalties.

Any person (including but not limited to a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any employee of such owner, manufacturer, lessor, lessee, or independent contractor) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $500, but not more than $11,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $22,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. Appendix A to this part contains a schedule of civil penalty amounts used in connection with this part.

§ 224.13 Preemptive effect.

Under 49 U.S.C. 20106, issuance of this part preempts any State law, rule, regulation, or order covering the same subject matter, except an additional or more stringent law, rule, regulation, or order that is necessary to eliminate or reduce an essentially local safety hazard; that is not incompatible with a law, rule, regulation, or order of the United States Government; and that does not unreasonably burden interstate commerce.

§ 224.15 Special approval procedures.

(a) *General.* The following procedures govern consideration and action upon requests for special approval of alternative standards under § 224.103(e).

(b) *Petitions.*

(1) Each petition for special approval of an alternative standard shall contain—

(i) The name, title, address, and telephone number of the primary person to be contacted with regard to the petition;

(ii) The alternative proposed, in detail, to be substituted for the particular requirements of this part; and

(iii) Appropriate data and analysis establishing that the alternative will provide at least an equivalent level of safety and meet the requirements of § 224.103(e).

(2) Three copies of each petition for special approval of an alternative standard shall be submitted to the Associate Administrator for Safety, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 25, Washington, DC 20590.

(c) *Notice.* FRA will publish a notice in the **Federal Register** concerning each petition under paragraph (b) of this section.

(d) *Public comment.* FRA will provide a period of not less than 30 days from the date of publication of the notice in the **Federal Register** during which any person may comment on the petition.

(1) Each comment shall set forth specifically the basis upon which it is made, and contain a concise statement of the interest of the commenter in the proceeding.

(2) Each comment shall be submitted to the DOT Central Docket Management System, Nassif Building, Room Pl-401, 400 Seventh Street, SW., Washington, DC 20590, and shall contain the assigned docket number which appears in the **Federal Register** for that proceeding. The form of such submission may be in written or electronic form consistent with the standards and requirements established by the Central Docket Management System and posted on its Web site at *http://dms.dot.gov.*

(3) Upon written request of an interested party, or in the event FRA requires additional information to appropriately consider the petition, FRA will conduct a hearing on the petition in accordance with the procedures provided in § 211.25 of this chapter.

(e) *Disposition of petitions.*

(1) If FRA finds that the petition complies with the requirements of this section and that the proposed alternative standard is acceptable or changes are justified, or both, the petition will be granted, normally within 90 days of its receipt. The Associate Administrator may determine the applicability of other technical requirements of this part when rendering a decision on the petition. If the petition is neither granted nor denied within 90 days, the petition remains pending for decision. FRA may attach special conditions to the approval of the petition. Following the approval of a petition, FRA may reopen consideration of the petition for cause stated.

(2) If FRA finds that the petition does not comply with the requirements of this section, or that the proposed alternative standard is not acceptable or that the proposed changes are not justified, or both, the petition will be denied, normally within 90 days of its receipt.

(3) When FRA grants or denies a petition, or reopens consideration of a petition, written notice is sent to the petitioner and other interested parties and a copy of the notice is placed in the electronic docket of the proceeding.

Subpart B—Application, Inspection, and Maintenance of Retroreflective Material

§ 224.101 General requirements.

All rail freight rolling stock shall be equipped with retroreflective sheeting that conforms to the requirements of this part. Notwithstanding any other provision of this chapter, the application, inspection, and maintenance of that sheeting shall be conducted in accordance with this subpart or in accordance with an alternative standard providing at least an equivalent level of safety after special approval of FRA under § 224.15.

§ 224.103 Characteristics of retroreflective sheeting.

(a) *Construction.* Retroreflective sheeting shall consist of a smooth, flat, transparent exterior film with microprismatic retroreflective elements embedded in or suspended beneath the film so as to form a non-exposed retroreflective optical system. Retroreflective sheeting construction that entraps air between laminations shall be sealed around all edges in the final application sufficiently to prevent water from penetrating the sheeting.

(b) *Color.* Retroreflective sheeting applied under this part must be yellow as specified by the chromaticity coordinates of the American Society for Testing and Materials' (ASTM) Standard D 4956–01, ''Standard Specification for Retroreflective Sheeting for Traffic Control.''

(c) *Performance.* Retroreflective sheeting applied pursuant to this part shall meet the requirements of ASTM D 4956–01, except for the photometric requirements, and shall, as initially applied, meet the minimum photometric performance requirements specified in Table 1 of this section.

TABLE 1.—MINIMUM PHOTOMETRIC PERFORMANCE (COEFFICIENT OF RETROREFLECTION (R_A) IN CANDELA/LUX/METER ^{2}) REQUIREMENT FOR YELLOW RETROREFLECTIVE SHEETING.

Entrance angle	Observation angle	
	0.2°	0.5°
–4°	400	100
30°	220	45

(d) *Certification.* The characters ''FRA–224'', constituting the manufacturer's certification that the retroreflective sheeting conforms to the requirements of paragraphs (a) through (c) of this section, shall appear at least once on the exposed surface of each sheeting in the final application. The characters shall be a minimum of 3 mm high, and shall be permanently stamped, etched, molded, or printed within the product and each certification shall be spaced no more than four inches apart.

(e) *Alternative standards.* Upon petition by a freight rolling stock owner or railroad under § 224.15, the Associate Administrator may qualify an alternative technology as providing equivalent safety. Any such petition shall provide data and analysis sufficient to establish that the technology will result in conspicuity and durability at least equal to sheeting described in paragraphs (a) through (c) of this section applied in accordance with this part and will present a recognizable visual target that is suitably consistent with freight rolling stock equipped with retroreflective sheeting meeting the technical requirements of this part.

§ 224.105 Size and location.

(a) *Railroad freight cars.* The amount of retroreflective sheeting to be applied to each car is dependent on the length of the car. For purposes of this part, the length of a car is measured from endsill to endsill, exclusive of the draft gear.

(1) *General rule.* On railroad freight cars other than tank cars, flat cars, and cars of special construction (as defined in paragraph (a)(4) of this section), retroreflective sheeting shall be applied vertically to each car side, with its bottom edge as close as practicable to 42 inches above the top of the rail. Either a minimum of one 4x36 inch strip or a minimum of two 4x18 inch strips, one above the other, shall be applied as close to each end of the car as practicable. Between the ends of the car, a minimum of one 4x18 inch strip shall be applied at equal intervals that shall not exceed 10 feet.

(2) *Tank cars.* On tank cars, retroreflective sheeting shall be applied vertically to each car side and centered on the horizontal centerline of the tank, or as near as practicable. If it is not practicable to safely apply the sheeting centered on the horizontal centerline of the tank, the sheeting may be applied vertically with its top edge no lower than 70 inches above the top of the rail, as practicable. A minimum of either one 4x36 inch strip or two 4x18 inch strips, one above the other, shall be applied as close to each end of the car as practicable. Between the ends of the car a minimum of one 4x18 inch strip shall be applied at equal intervals that shall not exceed 10 feet.

(3) *Flat cars.* On flat cars, a minimum of two 4x18 inch strips, one next to the other, shall be applied vertically to each car side as close to each end of the car as practicable. The bottom edges of these 4x18 inch strips shall be no lower than 30 inches above the top of the rail, as practicable. A minimum of one 4x18 inch strip shall be applied vertically as can be best fit at equidistant intervals between each end, with the bottom edge of each strip no lower than 42 inches from the top of the rail, as practicable. Between the ends of the car, a minimum of one 4x18 inch strip shall be applied at equal intervals that shall not exceed 10 feet. When vertical application of a 4x18 inch strip is not feasible, the sheeting may be applied vertically in three 4x6 inch strips placed directly next to each other or as close as practicable, or placed horizontally along the sill of the car.

(4) *Cars of special construction.* This paragraph applies to any car the design of which is not compatible with the patterns of application otherwise provided in this section. Retroreflective sheeting shall conform as close as practicable to the requirements of paragraphs (a)(1) through (a)(3) of this section and shall have the following amount of sheeting equally distributed between both sides of the car:

(i) For cars less than 50 feet long, a minimum of seven square feet of sheeting;

(ii) For cars that are 50 to 60 feet long, a minimum of eight square feet of sheeting; and

(iii) For cars greater than 60 feet long, one additional square foot of sheeting for every additional 10 feet of length.

(b) *Locomotives:*

(1) For locomotives that are less than 50 feet long, a minimum of seven square feet of sheeting must be equally distributed between both sides of the locomotive in a pattern recognizable to motorists.

(2) For locomotives 50 feet long or greater, an additional square foot of sheeting must be equally distributed between both sides of the locomotive for every additional 10 feet of length. The sheeting must be distributed in a pattern recognizable to motorists.

(3) For any locomotive, application of material horizontally along the sill or side walkway of the locomotive shall be considered a pattern recognizable to motorists.

§ 224.107 Application of retroreflective sheeting.

(a) *Railroad freight cars.* All railroad freight cars subject to this part must be equipped with retroreflective sheeting conforming to this part by 10 years after the effective date of the final rule. If a car already has reflective material applied that does not meet the standards of this part, it is not necessary to remove the material unless its placement interferes with the placement of the sheeting required by this part.

(1) *New cars.* Retroreflective sheeting conforming to this part must be applied to all new cars at the time of construction.

(2) *Existing cars without retroreflective sheeting.*

(i) If as of the date of publication of the final rule a car subject to this part is not equipped on each side with at least one square foot of retroreflective sheeting as specified in paragraph (a)(3) of this section, retroreflective sheeting conforming to this part must be applied to the car at the earliest of the following occasions occurring after the effective date of the rule or in accordance with paragraph (a)(2)(ii) of this section:

(A) When the car is repainted or rebuilt; or

(B) When the car first undergoes a single car air brake test as prescribed by 49 CFR 232.305. Application may be deferred until the second such test if it is more practicable to do so and the test will be made before 10 years after the effective date of the final rule.

(ii) A freight rolling stock owner may elect not to follow the schedule in paragraph (a)(2)(i) of this section if, not later than 60 days after the effective date of the final rule, the freight rolling stock owner submits to FRA a Fleet Reflectorization Implementation Plan designating the car numbers constituting the fleet subject to this part and affirming that the cars will be equipped with retroreflective sheeting as required by this part such that not less than 20 percent of the total fleet subject to this part shall be equipped within 24 months following the effective date of the final rule and not less than an additional 10 percent of the total fleet shall be completed each 12-month period thereafter for the duration of the 10-year period. *See* Appendix B of this part. Thereafter,

(A) The designated fleet shall be equipped with retroreflective sheeting according to the requirements of this paragraph (a)(2)(ii); and

(B) If, following the conclusion of the initial 24-month period or any 12-month period thereafter, the percentage requirements of this section have not been met—

(*1*) The freight rolling stock owner shall be considered in violation of this part;

(*2*) The freight rolling stock owner shall, within 60 days of the close of the period, report the failure to the Associate Administrator;

(*3*) The requirements of paragraph (a)(2)(i) of this section shall apply to all railroad freight cars subject to this part in the fleet;

(*4*) The percentage requirements of this paragraph (a)(2)(ii) shall continue to apply; and

(*5*) The fleet owner shall take such additional action as may be necessary to achieve future compliance.

(C) Cars to be retired shall be included in the fleet total until they are retired.

(3) *Existing cars with retroreflective sheeting.* If as of the date of publication of the final rule a car is equipped on each side with at least one square foot of retroreflective sheeting, uniformly distributed over the length of each side, that car shall be considered in compliance with this part for a period of 10 years from the effective date of the final rule, provided the sheeting is not engineering grade, super engineering grade (enclosed lens), or glass bead encapsulated type sheeting, and

provided the freight rolling stock owner files a Fleet Reflectorization Implementation Plan with FRA no later than 60 days after the effective date of the final rule identifying the cars already so equipped. *See* Appendix B of this part.

(b) *Locomotives.* All locomotives subject to this part must be equipped with conforming retroreflective sheeting by five years after the effective date of the final rule. If a locomotive already has reflective material applied that does not meet the standards of this part, it is not necessary to remove the material unless its placement interferes with the placement of the sheeting required by this part.

(1) *New locomotives.* Retroreflective sheeting conforming to this part must be applied to all new locomotives at the time of construction.

(2) *Existing locomotives without retroreflective sheeting.* If as of the date of publication of the final rule a locomotive subject to this part is not equipped on each side with at least one square foot of retroreflective sheeting as specified in paragraph (b)(3) of this section, retroreflective sheeting conforming to this part must be applied to the locomotive not later than the first biennial inspection performed pursuant to 49 CFR 229.29 occurring after the effective date of the final rule.

(3) *Existing locomotives with retroreflective sheeting.* If as of the date of publication of the final rule a locomotive is equipped on each side with at least one square foot of retroreflective sheeting, uniformly distributed over the length of the locomotive side, that locomotive shall be considered in compliance with this part for a period of 5 years from the effective date of the final rule, provided the existing material is not engineering grade, super engineering grade (enclosed lens), or glass bead encapsulated type sheeting, and provided the freight rolling stock owner files a Fleet Reflectorization Implementation Plan with FRA no later than 60 days after the effective date of the final rule identifying the cars already so equipped. *See* Appendix B of this part.

(4) Each railroad that has fewer than 400,000 annual employee work hours, and does not share locomotive power with a railroad with 400,000 or more annual employee work hours, may bring its locomotive fleet into compliance according to the following schedule: fifty percent of the railroad's locomotives must be retrofitted pursuant to § 224.105(b) within five years of the effective date of this part and one hundred percent must be retrofitted pursuant to § 224.105(b) within 10 years of the effective date of this part. If a railroad with fewer than 400,000 annual employee work hours shares locomotive power with a railroad with 400,000 or more annual employee work hours, the smaller railroad must comply with the requirements of paragraphs (b)(2) and (3) of this section.

§ 224.109 Inspection and replacement.

(a) *Railroad freight cars.* Retroreflective sheeting on railroad freight cars subject to this part must be visually inspected for presence and condition whenever a car undergoes a single car air brake test required under 49 CFR 232.305. If at the time of inspection more than 20 percent of the amount of sheeting required under § 224.105 on either side of a car is damaged, obscured, or missing, that damaged, obscured, or missing sheeting must be replaced. If conditions at the time of inspection are such that replacement material can not be applied, such application may be completed not later than the earliest of the following events: when the car next receives a required single car air brake test or when the car is taken out of service for repairs or other maintenance.

(b) *Locomotives.* Retroreflective sheeting must be visually inspected for presence and condition when the locomotive receives the annual inspection required under 49 CFR 229.27. If more than 20 percent of the amount of sheeting required under § 224.105 on either side of a locomotive is damaged, obscured, or missing, that damaged, obscured, or missing sheeting must be replaced. If conditions at the time of inspection are such that replacement material can not be applied or if sufficient replacement material is not available, such application can be completed at the next forward location where conditions permit, provided a record of the restriction is maintained in the locomotive cab or in a secure and accessible electronic database to which FRA is provided access on request.

§ 224.111 Renewal.

Regardless of condition, retroreflective sheeting required under this part must be replaced with new sheeting no later than 10 years after the date of initial installation.

Appendix A to Part 224—Schedule of Civil Penalties [Reserved]

Appendix B to Part 224—Form Fleet Reflectorization Implementation Plan

This appendix contains the standard form Fleet Reflectorization Implementation Plan referenced in §§ 224.107(a)(2) and (a)(3). Freight rolling stock owners electing not to follow the reflectorization schedule of § 224.107(a)(2)(i) and freight rolling stock owners seeking compliance with this part under § 224.107(a)(3) must file this form no later than 60 days after the effective date of the final rule.

Fleet Reflectorization Implementation Plan

Railroad or Car Owner Name

Prepared and Submitted By:

Name:
Title:
Address:

Phone:
Fax:
E-mail:

Instructions for completing form:

Report in this plan only the freight cars in your fleet subject to 49 CFR part 224 that will be reflectorized on a schedule other than that specified in 49 CFR 224.107(a)(2(i), and those cars that are already equipped with retroreflective material meeting the requirements of 49 CFR 224.107(a)(3).

I. *Column (a):* Insert the car number(s) identifying each freight car in fleet subject to 49 CFR part 224. A range(s) of car numbers may be inserted. Note: exclusions from range(s) may be listed in *column (b).*

II. *Column (b):* List the car number of each car subject to 49 CFR part 224 not included in range (a). (Such as cars sold, retired, or permanently removed from fleet as of the date of filing.)

III. *Column (c):* Indicate the status of each car identified in column (a) as follows:

1. Enter REFL 20XX (year) if the car(s) is scheduled to be reflectorized by owner or other authorized party at a time other than that specified in 49 CFR 224.107(a)(2)(i). REFL indicates that reflective material meeting the requirements of 49 CFR part 224 will be installed on the car specified in *column (a)* at a time other than when that car is being repainted, rebuilt, or undergoing the first single car air brake test pursuant to 49 CFR 232.305 after the effective date of the final rule. 20XX indicates the year that reflective material will be applied to that car. Example: REFL 2005 indicates that the car owner will reflectorize the car specified in *column (a)* by the end of the 2005 calendar year.

2. Enter RET XXXX (year) if the car indentified in column(a) is scheduled to be retired from service during the initial 10-year implementation period. RET indicates that the car will be retired, and 20XX indicates the year that the car is scheduled to be retired. Example: RET 2006 indicates that the car owner will retire the car specified in *column (a)* by the end of the 2006 calendar year.

3. Enter COM if the car indentified in *column (a)* is, as of the date of publication of the final rule, already equipped with retroreflective material meeting the requirements of 49 CFR 224.107(a)(3).

4. Enter REPT XXXX (year) if the car identified in *column (a)* is to be repainted or rebuilt during the initial 10-year implementation period of 49 CFR part 224, and not to be reflectorized during the first single car air-brake test (49 CFR 232.305) after the effective date of the final rule. 20XX

indicates the year that the car will be rebuilt or repainted. Example: REPT 2008 indicates that the car owner will repaint the car specified in *column (a)* by the end of the 2006 calendar year.

IV. If for any car listed in *column (a),* COM is entered in *column (c),* please describe the technical specifications of the retroreflective material with which the cars are presently equipped (*e.g.*, color of material, type of material, amount and placement pattern of material on each side of car).

(a) Car no. and identification no. (or range)	(b) Subtractions from range	(c) Status (REFL XXXX, RET XXXX, COM, REPT XXXX)

By filing this FLEET REFLECTORIZATION IMPLEMENTATION PLAN and any accompanying documents or electronic files with FRA, the Railroad or Car Owner agrees to equip the cars identified in column (a) with retroreflective material conforming to 49 CFR part 224 in accordance with this plan. By filing this plan, the Railroad or Car Owner also agrees to update, at least annually, the American Association of Railroad's UMLER file to reflect the current reflectorization status of each freight car in its fleet subject to Part 224. If the Railroad or Car Owner is not able, or chooses not to update UMLER at least annually, the Railroad or Car Owner shall annually file an updated FLEET REFLECTORIZATION IMPLEMENTATION PLAN with FRA.

(signature of Corporate Officer/Car Owner)

Name:

Title:

Date

Issued in Washington, DC on October 29, 2003.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 03–27649 Filed 11–5–03; 8:45 am]

BILLING CODE 4910–06–P

Federal Register

Thursday,
November 6, 2003

Part V

Securities and Exchange Commission

17 CFR Parts 240 and 242
Short Sales; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 242

[Release No. 34–48709; File No. S7–23–03]

RIN 3235–AJ00

Short Sales

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (Commission) is publishing for public comment new Regulation SHO, under the Securities Exchange Act of 1934 (Exchange Act), which would replace Rules 3b–3, 10a–1, and 10a–2. The Commission is also proposing amendments to Rule 105 of Regulation M. Proposed Regulation SHO would, among other things, require short sellers in all equity securities to locate securities to borrow before selling, and would also impose strict delivery requirements on securities where many sellers have failed to deliver the securities. In part, this action is designed to address the problem of ''naked'' short selling. Proposed Regulation SHO would also institute a new uniform bid test allowing short sales to be effected at a price one cent above the consolidated best bid. This test would apply to all exchange-listed securities and Nasdaq National Market System Securities (NMS Securities), wherever traded.

We are also seeking comment on a temporary rule that would suspend the operation of the proposed bid test for specified liquid securities during a two-year pilot period. The temporary suspension would allow the Commission to study the effects of relatively unrestricted short selling on market volatility, price efficiency, and liquidity.

DATES: Comments must be received on or before January 5, 2004.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by hard copy or e-mail, but not by both methods. Comments sent by hard copy should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–23–03. Comments submitted by E-mail should include this file number in the subject line. Comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: Any of the following attorneys in the Office of Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001, at (202) 942–0772: James Brigagliano, Assistant Director, or Gregory Dumark, Kevin Campion, Lillian Hagen, Elizabeth Sandoe and Marla Chidsey, Special Counsels.

SUPPLEMENTARY INFORMATION: The Commission is publishing for comment proposed Regulation SHO and a proposed temporary rule, Rule 202[2], and proposed amendments to Regulation M, Rule 105[3] under the Exchange Act.

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I. Introduction

Congress, in 1934, directed the Commission to ''purge the market'' of short selling abuses, and in response, the Commission adopted restrictions that have remained essentially unchanged for over 60 years. Originally adopted in 1938, the Commission's short sale rule, Rule 10a–1, is designed to restrict short sellers from effecting short sales in an exchange-traded security when the price of that security is declining.[4]

Since its adoption, the Commission has engaged in studies, investigations, and reviews of the efficacy of the Rule.[5]

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[1] Personal identifying information, such as names or e-mail addresses, will not be edited from electronic submission. Submit only information that you wish to make publicly available.

[2] 17 CFR 242.202.

[3] 17 CFR 242.105.

[4] 17 CFR 240.10a–1.

[5] *See* 2 Securities and Exchange Commission, Report of Special Study of Securities Markets, H.R. Doc. No. 95, 88th Cong., 1st Sess. 247 (1963) (study to determine the relationships between changes in short positions and subsequent price trends); *see also* Short-Selling Activity in the Stock Market: Market Effects and the Need for Regulation (Part I)(House Report), H.R., Rep. No. 102–414 (1991), reprinted in CCH Federal Securities Law Reports Number 1483 Part II (1992).

Most recently, in 1999, the Commission issued a release requesting public comment on the regulation of short sales of securities (Concept Release).[6] The Concept Release examined ways to modernize our approach to short sale regulation. We received 2778 comment letters in response to the Release.[7]

Since the Concept Release was published, we have reviewed the comment letters and reexamined the structure and operation of Rule 10a–1, and related Rules 10a–2 [8] and 3b–3.[9] We also considered the status of short sale regulation in the context of requests for relief from Rule 10a–1 submitted to the Commission for a wide range of short selling activities. Finally, we considered recent market changes, including increased instances of ''naked'' short selling, *i.e.*, selling short without borrowing the necessary securities to make delivery; decimalization; the advent of security futures trading; and an increasing amount of Nasdaq securities being traded away from the Nasdaq market, and thus not subject to any short sale price test. As a result of this assessment, we are seeking comment on proposed Regulation SHO, which would replace Rules 3b–3, 10a–1, and 10a–2, and that would temporarily suspend the short sale price test for specified liquid stocks. We also propose to amend Rule 105 of Regulation M to eliminate the shelf offering exception. The comments we receive will assist us in determining whether to adopt the proposed changes to these rules and the nature and scope of such changes.

A. Background and Current Short Sale Regulation

A short sale is the sale of a security that the seller does not own or any sale that is consummated by the delivery of a security borrowed by, or for the account of, the seller.[10] In order to deliver the security to the purchaser, the short seller will borrow the security, typically from a broker-dealer or an institutional investor. The short seller later closes out the position by purchasing equivalent securities on the open market, or by using an equivalent security it already owned, and returning the security to the lender. In general, short selling is used to profit from an expected downward price movement, to provide liquidity in response to unanticipated demand, or to hedge the risk of a long position in the same security or in a related security.

The following example illustrates a typical short sale transaction:

XYZ stock is currently selling at $50 per share. An investor anticipates that the price of XYZ stock will decline and wants to sell short 100 shares. The investor's broker borrows 100 shares for the investor and executes the short sale. The $5,000 proceeds from the sale (plus, usually, an additional 2%) are posted as collateral with the lender and the investor must also post margin equal to 50% of the purchase price with his broker.[11] At some point in the future the investor must purchase 100 shares to return to the lender. If the investor can purchase the XYZ shares at a price below $50, the investor can cover the short position at a profit. If the price of XYZ shares rises above $50, the investor may have to cover the short position at a loss.[12]

Section 10(a) of the Exchange Act gives the Commission plenary authority to regulate short sales of securities registered on a national securities exchange (listed securities), as necessary to protect investors. After conducting an inquiry into the effects of concentrated short selling during the market break of 1937, the Commission adopted Rule 10a–1 in 1938 in order to restrict short selling in a declining market.[13] The core provisions of the Rule are largely the same today as when they were adopted.

Paragraph (a) of Rule 10a–1 generally covers short sales in listed securities if trades of the security are reported pursuant to an ''effective transaction reporting plan'' and information as to such trades is made available in accordance with such plan on a real-time basis to vendors of market transaction information.[14] Paragraph (b) applies to short sales on national exchanges in securities that are not covered by paragraph (a).

Rule 10a–1(a)(1) provides that, subject to certain exceptions, a listed security may be sold short (A) at a price above the price at which the immediately preceding sale was effected (plus tick), or (B) at the last sale price if it is higher than the last different price (zero-plus tick).[15] Short sales are not permitted on minus ticks or zero-minus ticks, subject to narrow exceptions. The operation of these provisions, commonly described as the ''tick test,'' determines the minimum shortable price (MSP) [16] at which a security can be sold short. The following transactions illustrate the operation of the tick test: [17]

[6] Securities Exchange Act Release No. 42037 (October 20, 1999), 64 FR 57996 (October 28,1999).

[7] The comment letters and a comprehensive summary of the comments are available for inspection in the Commission's Public Reference Room in File No. S7–24–99.

[8] 17 CFR 240.10a–2.

[9] 17 CFR 240.3b–3.

[10] *See* Rule 3b–3 under the Exchange Act, 17 CFR 240.3b–3.

[11] *See, e.g.*, 12 CFR 220.12(c)(1) of Regulation T of the Board of Governors of the Federal Reserve System, which requires margin for a short sale of a nonexempted equity security of 150 percent of the current market value of the security. An investor may be required to deposit additional ''maintenance margin'' for transactions in short sales under margin requirements imposed by self regulatory organizations (SROs). *See, e.g.*, NASD Rule 2520(c) and NYSE Rule 431(c). Further, broker-dealers may institute higher short sale margin requirements than those imposed by self-regulatory organization rules. *See, e.g.*, NASD Rule 2520(d) and NYSE Rule 431(d).

[12] This simple example does not include transaction and carrying costs. For a more complete discussion of equity lending and costs of borrowing equity *see Securities Lending Transactions: Market Developments and Implications,* Technical Committee of the International Organization of Securities Commissions (IOSCO) Committee on Payment and Settlement Systems (CPSS) (July, 1999). This paper can be accessed at *www.iosco.org/pubdocs/pdf/IOSCOPD96.pdf. See also* Geczy, Musto, and Reed, 2002, *Stocks Are Special Too: An Analysis of the Equity Lending Market,* Journal of Financial Economics, 66, 241–269.

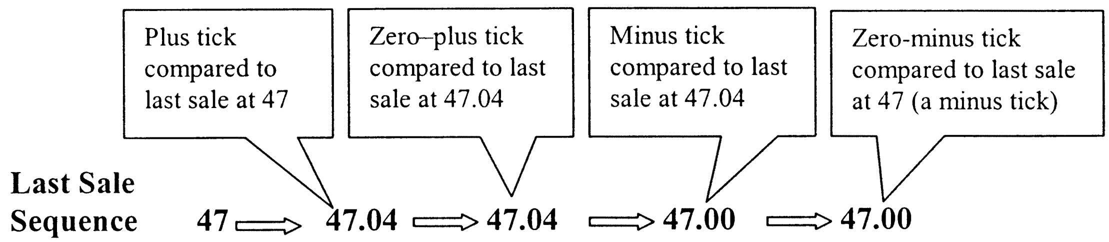
[13] Securities Exchange Act Release No. 1548 (January 24, 1938), 3 FR 213 (January 26, 1938).

[14] Rule 10a–1 uses the term ''effective transaction reporting plan'' as defined in Rule 11Aa3–1 (17 CFR 240.11Aa3–1) under the Exchange Act. *See* 17 CFR 240.10a–1(a)(1)(i).

[15] The last sale price is the price reported pursuant to an effective transaction reporting plan, *i.e.*, the Consolidated Tape Association, also generally referred to as the ''Tape.''

[16] The MSP is the lowest price that a stock can be sold short under current short sale regulation. If a stock is trading on a minus or zero-minus tick, a short sell order must be executed at a price higher than the last trade.

[17] The first execution at 47.04 is a plus tick since it is higher than the previous last trade price of 47.00. The next transaction at 47.04 is a zero-plus tick since there is no change in trade price but the last change was a plus tick. Short sales could be executed at 47.04 or above. The final two transactions at 47.00 are minus and zero-minus transactions, respectively. Short sales would have to be effected at the next higher increment above 47.00 in order to comply with Rule 10a–1.



In adopting the tick test, the Commission sought to achieve three objectives:

(i) allowing relatively unrestricted short selling in an advancing market;

(ii) preventing short selling at successively lower prices, thus eliminating short selling as a tool for driving the market down; and

(iii) preventing short sellers from accelerating a declining market by exhausting all remaining bids at one price level, causing successively lower prices to be established by long sellers.[18]

In 1994, the Commission granted temporary approval to the NASD to apply its own short sale rule to Nasdaq NMS securities.[19] NASD Rule 3350 prohibits short sales by NASD members in Nasdaq NMS Securities[20] at or below the current best (inside) bid when that bid is lower than the previous best (inside) bid (commonly referred to as the bid test).

The operation of the bid test in NASD Rule 3350 is illustrated as follows:

Bid Sequence	47	47.04	47.04	47	47
Current Bid Compared to the previous bid.	....	plus bid (compared to last bid at 47).	zero-plus bid (compared to last bid at 47.04).	minus bid (compared to last bid at 47.04).	zero-minus bid (compared to last bid at 47)
MSP	....	any price	any price	47.01	47.01

B. Market Effects of Short Selling

Short selling provides the market with at least two important benefits: market liquidity and pricing efficiency.[21] Market liquidity is generally provided through short selling by market professionals, such as market makers (including specialists) and block positioners, who offset temporary imbalances in the buying and selling interest for securities. Short sales effected in the market add to the selling interest of stock available to purchasers and reduce the risk that the price paid by investors is artificially high because of a temporary contraction of selling interest. Short sellers covering their sales also may add to the buying interest of stock available to sellers.

Short selling also can contribute to the pricing efficiency of the equities markets. Efficient markets require that prices fully reflect all buy and sell interest. When a short seller speculates or hedges against a downward movement in a security, his transaction is a mirror image of the person who purchases the security based upon speculation that the security's price will rise or to hedge against such an increase. Both the purchaser and the short seller hope to profit, or hedge against loss, by buying the security at one price and selling at a higher price. The strategies primarily differ in the sequence of transactions. Market participants who believe a stock is overvalued may engage in short sales in an attempt to profit from a perceived divergence of prices from true economic values. Such short sellers add to stock pricing efficiency because their transactions inform the market of their evaluation of future stock price performance. This evaluation is reflected in the resulting market price of the security.[22]

Although short selling serves useful market purposes, it also may be used to illegally manipulate stock prices.[23] One example is the ''bear raid'' where an equity security is sold short in an effort to drive down the price of the security by creating an imbalance of sell-side interest.[24] Further, unrestricted short selling can exacerbate a declining market in a security by increasing pressure from the sell-side, eliminating bids, and causing a further reduction in the price of a security by creating an appearance that the security price is falling for fundamental reasons.

Short selling was one of the central issues studied by Congress before enacting the Exchange Act, but Congress did not directly prohibit short selling.[25] Instead, Congress gave the Commission broad authority to regulate short sales in order to stop short selling abuses.[26]

C. Market Developments

Several significant developments in the securities markets, including, but not limited to, instances of abusive naked short selling, the increasing

[18] *See* Securities Exchange Act Release No. 13091 (December 21, 1976), 41 FR 56530 (December 28, 1976).

[19] *See* Securities Exchange Act Release No. 34277 (June 29, 1994), 59 FR 34885 (July 7, 1994).

[20] Rule 11Aa2–1 under the Act sets forth the criteria and procedures by which certain over-the-counter (OTC) securities are designated as NMS Securities. 17 CFR 240.11Aa2–1.

[21] *See* Lamont, Owen A. and Thaler, Richard H, 2003, *Can the Market Add and Subtract? Mispricing in Tech Stocks Carve-outs,* University of Chicago and NBER.

[22] Arbitrageurs also contribute to pricing efficiency by utilizing short sales to profit from price disparities between a stock and a derivative security, such as a convertible security or an option on that stock. For example, an arbitrageur may purchase a convertible security and sell the underlying stock short to profit from a current price differential between two economically similar positions.

[23] *See, e.g., S.E.C.* v. *Gardiner,* 48 S.E.C. Docket 811, No. 91 Civ. 2091 (S.D.N.Y. March 27, 1991) (alleged manipulation by sales representative by directing or inducing customers to sell stock short in order to depress its price); *U.S.* v. *Russo,* 74 F.3d 1383, 1392 (2nd Cir. 1996) (short sales were sufficiently connected to the manipulation scheme as to constitute a violation of Exchange Act Section 10(b) and Rule 10b–5).

[24] Many people blamed ''bear raids'' for the 1929 stock market crash and the market's prolonged inability to recover from the crash. *See* 7 Louis Loss and Joel Seligman, *Securities Regulation* 3203–04, note 213 (3d ed. 1989).

[25] *See* 2 Securities and Exchange Commission, Report of Special Study of Securities Markets, H.R. Doc. No. 95, 88th Cong., 1st Sess. 247 (1963) (Special Study).

[26] *Id.*

number of Nasdaq securities trading away from the Nasdaq market (and thus not subject to any price test), the advent of security futures trading, and decimalization have caused the Commission to reexamine short sale regulation. At a minimum, the Commission believes that adjustments to short sale regulation are required to keep pace with these market developments.

II. Naked Short Selling

A. Background

Many issuers and investors have complained about alleged ''naked short selling,'' especially in thinly-capitalized securities trading over-the-counter.[27] Naked short selling is selling short without borrowing the necessary securities to make delivery, thus potentially resulting in a ''fail to deliver'' securities to the buyer.

Naked short selling can have a number of negative effects on the market, particularly when the fails to deliver persist for an extended period of time and result in a significantly large unfulfilled delivery obligation at the clearing agency where trades are settled.[28] At times, the amount of fails to deliver may be greater than the total public float. In effect the naked short seller unilaterally converts a securities contract (which should settle in three days after the trade date) into an undated futures-type contract, which the buyer might not have agreed to or that would have been priced differently. The seller's failure to deliver securities may also adversely affect certain rights of the buyer, such as the right to vote. More significantly, naked short sellers enjoy greater leverage than if they were required to borrow securities and deliver within a reasonable time period, and they may use this additional leverage to engage in trading activities that deliberately depress the price of a security.[29]

The Commission recently brought an enforcement action against certain parties, alleging manipulative naked short selling, in a scheme sometimes termed as a ''death spiral.'' These schemes generally involve parties arranging financings in public companies that are unable to obtain more conventional financing in the capital markets due to their precarious financial condition. The party providing financing receives from a public company debentures that are later convertible into the stock of the issuer. The terms typically provide that the conversion ratio will be tied to a fixed value of the aggregate underlying shares (typically a discount from the market price of the security at the time of the conversion rather than a conversion price per share).[30] In some cases the parties providing financing have engaged in extensive naked short selling designed to lower the price of the issuer's stock, thus realizing profits when the debentures are converted to cover the short sales.[31]

Naked short selling has sparked defensive actions by some issuers designed to combat the potentially negative effects on shareholders, broker-dealers, and the clearance and settlement system.[32] Some issuers have taken actions to attempt to make transfer of their securities ''custody only,'' thus preventing transfer of their stock to or from securities intermediaries such as the Depository Trust Company (DTC) or broker-dealers. A number of issuers have attempted to withdraw their issued securities on deposit at DTC, which makes the securities ineligible for book-entry transfer at a securities depository.[33] Withdrawing securities from DTC or requiring custody-only transfers undermine the goal of a national clearance and settlement system, designed to reduce the physical movement of certificates in the trading markets.[34]

B. Current Regulatory Requirements

The SROs have adopted rules generally requiring that, prior to effecting short sales, members must ''locate'' stock available for borrowing.[35] For example, NYSE Rule 440C.10 states that no NYSE member or member organization should ''fail to deliver'' against a short sale of a security on a national securities exchange until a diligent effort has been made by such member or member organization to borrow the necessary securities to make delivery.[36] An NYSE interpretation to the rule further states that member organizations effecting short sales for their own account or the accounts of customers must be in a position to complete the transaction. The interpretation states that no orders to sell short should be accepted or entered unless prior arrangements to borrow the stock have been made or other acceptable assurances that delivery can

[27] For example, *see* comment letters from John Henry Austin (2675), Bridget Thomas (2297), James McCaffery (492), Richard Ballard (507), and Ken Klaser (596).

[28] ''Clearing agency'' is defined in Section 3(a)(23)(A) of the Exchange Act, 15 U.S.C. 78c(a)(23)(a).

[29] The Commission issued a prior statement cautioning broker-dealers that where the broker-dealer has sold short, but did not, for a substantial period of time, effect the offsetting purchase transactions for purpose of delivery, this could generally involve violations of the anti-fraud provisions of the Federal securities laws. *See* Securities Exchange Act Release No. 6778 (April 16, 1962).

[30] For more information, *see* ''Convertible Securities'' on the Commission's Web site at *www.sec.gov/answers/convertibles.htm*

[31] The Commission recently settled a case against parties relating to allegations of manipulative short selling in the stock of Sedona Corporation, a Nasdaq Small Cap company. The action alleged that the defendants engaged in massive naked short selling that flooded the market with Sedona stock, and thus depressed its price. The defendants thereby profited by subsequently exercising the conversion rights under the debenture. *See* Rhino Advisors, Inc. and Thomas Badian, Lit. Rel. No. 18003 (February 27, 2003); *see also SEC* v. *Rhino Advisors, Inc. and Thomas Badian*, Civ. Action No. 03 civ 1310 (RO) (Southern District of New York).

[32] There have been press reports concerning the actions of some issuers, and questioning whether the cause of declines in their stock prices can be attributed to naked short selling, or to fundamental problems with the company. *See, e.g.*, Carol S. Remond, *Universal Blames Shorts, But What of Dilution?, Dow Jones Newswires* (October 6, 2003); Rob Wherry, *Wall Street's Next Nightmare?*, Forbes.com (October 6, 2003); *see also* Gretchen Morgenson, *If Short Sellers Take Heat, Maybe It's Time to Bail Out*, NY Times (January 26, 2003) (citing a study by Professor Owen A. Lamont that analyzed returns at companies that waged public battles with short sellers, and found that their stocks lagged the market by 2.34 percent in each of the twelve months after the battles began). As a matter of practice, the Commission does not opine on the content or accuracy of such reports.

[33] The Commission recently approved a DTC rule change clarifying that its rules provide that only its participants may withdraw securities from their accounts at DTC, and establishing a procedure to process issuer withdrawal requests. *See* Securities Exchange Act Release No. 47978 (June 4, 2003), 68 FR 35037 (June 11, 2003) (File No. SR–DTC–2003–02).

[34] *See* Section 17A(e) of the Exchange Act. 15 U.S.C. 78q–1(e). The Commission noted in the order approving the DTC rule change that the use of certificates can result in significant delays and expenses in processing securities transactions and can raise safety concerns associated with lost, stolen, and forged certificates. *See, supra* n. 33.

[35] In 1976 the Commission proposed the adoption of Rule 10b–11. Rule 10b–11 would have prohibited any person from effecting a short sale in any equity security (*i.e.*, not just exchange-traded securities) for his own account or the account of any other person unless he, or the person for whose account the short sale is effected (i) borrowed the security, or entered into an arrangement for the borrowing of the security, or (ii) had reasonable grounds to believe that he could borrow the security so that, in either event, he would be capable of delivering the securities on the date delivery is due. Securities Exchange Act Release No. 13091 (December 21, 1976), 41 FR 56530 (December 28, 1976). In 1988, the Commission withdrew proposed Rule 10b–11, noting that since the time the rule was proposed, the NYSE and the NASD had adopted interpretations specifying that members should not accept or enter a short sale order unless prior arrangements to borrow the stock have been made, or other acceptable assurances that delivery can be made on settlement date have been obtained. The Commission also stated that it believed the general antifraud provisions of the federal securities laws were applicable to activity addressed by proposed Rule 10b–11. Securities Exchange Act Release No. 26182 (October 14, 1988), 53 FR 41206.

[36] *See* NYSE Rule 440C.10.

be made on settlement date.[37] These provisions apply to all NYSE member organizations, whether effecting transactions in exchange-listed securities on the NYSE, another national securities exchange, or in the over-the-counter market. Exceptions from the rule are provided for short sales by specialists, market makers, and odd lot dealers in fulfilling their market responsibilities.[38]

The comparable NASD Rule 3370 generally provides that no member, or person associated with a member, shall effect a short sale for a customer or for its own account unless the member makes an ''affirmative determination'' that the member can borrow the securities or otherwise provide for delivery of the securities by settlement date.[39] The affirmative determination must be annotated in writing, evidencing that the member firm will receive delivery of the security from the customer or, if the member firm locates the stock, the identity of the individual and firm contacted who offered assurance that the shares would be delivered or were available for borrowing.[40] This requirement applies regardless of how a short sale order is received, *e.g.*, by the telephone, an electronic transmission, the Internet, or otherwise.[41] This requirement does not apply to transactions in corporate debt securities, to bona fide market making transactions by Nasdaq market makers,[42] or to transactions that result in fully hedged or arbitraged positions.[43]

The NASD has also adopted several rules addressing failures to deliver. NASD Rule 3210 prevents a member, or person associated with a member, from selling a security for his own account, or buying a security as a broker for a customer if, with respect to domestic securities,[44] he has a fail to deliver in that security that is 60 days or older. NASD Rule 11830 imposes a mandatory close-out requirement for Nasdaq securities that have a clearing short position of 10,000 shares or more per security and that are equal to at least one-half of one percent of the issue's total shares outstanding. NASD Rule 11830 generally requires that a contract involving a short sale in these securities, for the account of a customer or for an NASD member's own account, which has not resulted in delivery by the broker-dealer representing the seller within 10 business days after the normal settlement date (currently transaction date + 3 business days), must be closed by the broker-dealer representing the seller by purchasing for cash or guaranteed delivery of securities of like kind and quality. This mandatory close-out requirement does not apply to bona-fide market making transactions and transactions that result in fully hedged or arbitraged positions.

C. Proposed Amendments

1. Short Sales

The Commission believes that these SRO requirements have not fully addressed the problems of naked short selling and extended fails to deliver. We believe it would be beneficial to establish a uniform standard specifying the procedures for all short sellers to locate securities for borrowing.[45] This would further the goals of regulatory simplification and avoidance of regulatory arbitrage, as well as address some areas not currently covered. We are therefore proposing to incorporate in proposed Regulation SHO a uniform ''locate'' rule applicable to all equity securities, wherever they are traded.[46] Proposed Rule 203 would prohibit a broker-dealer from executing a short sale order for its own account or the account of another person, unless the broker-dealer, or the person for whose account the short sale is executed (1) borrowed the security, or entered into an arrangement for the borrowing of the security, or (2) had reasonable grounds to believe that it could borrow the security so that it would be capable of delivering the securities on the date delivery is due.[47] Consistent with the current SRO requirements, the proposed rule would require that the locate be made and annotated in writing prior to effecting any short sale, regardless of the fact that the seller's short position may

[37] Such assurances include knowledge that the security is available for borrowing, conversion privileges, rights exercise, and the like. One test of reasonableness in short sales against convertible securities, rights and merger securities is whether the security needed for delivery can be exchanged in normal transfer time. A firm that normally relies on the stock loan market without advance borrowing can demonstrate compliance by switching to prior borrowing whenever the stock borrowing market in a particular security becomes tight.'' NYSE Rule 440C.10 Interp. /01. *See also* NYSE Information Memo 91–41 (providing further information regarding compliance with Rule 440C.10).

[38] *Id.*

[39] *See* NASD Rule 3370.

[40] According to the rule, the manner by which a member or person associated with a member annotates compliance with the affirmative determination requirement is to be decided by each member. Members may rely on ''blanket'' or standing assurances (*i.e.*, ''Easy to Borrow'' lists) that securities will be available for borrowing on settlement date. For any short sales executed in Nasdaq National Market (''NNM'') or exchange-listed securities, members also may rely on ''Hard to Borrow'' lists indicating NNM or listed securities that are difficult to borrow or unavailable for borrowing on settlement date provided that: (i) Any securities restricted pursuant to NASD Rule 11830 must be included on such a list; and (ii) the creator of the list attests in writing on the document or otherwise that any NNM or listed securities not included on the list are easy to borrow or are available for borrowing. Members are permitted to use Easy to Borrow or Hard to Borrow lists provided: (i) The information used to generate the list is no less than 24 hours old; and (ii) the member delivers the security on settlement date. Should a member relying on an Easy to Borrow or Hard to Borrow fail to deliver the security on settlement date, the NASD deems such conduct inconsistent with the terms of Rule 3370, absent mitigating circumstances adequately documented by the member. *See* NASD Rule 3370(b)(4)(C).

[41] *See* NASD Notice to Members 99–98.

[42] NASD IM–3350 contains language specifying what type of activity does not constitute bona fide market making: ''Bona fide market making activity does not include activity that is unrelated to market making functions, such as index arbitrage and risk arbitrage that is independent from a member's market making functions. * * *'' IM–3350(a)(2). ''Similarly, bona fide market making would exclude activity that is related to speculative selling strategies of the member or investment decisions of the firm and is disproportionate to the usual market making patterns or practices of the member in that security. The Association does not anticipate that a firm could properly take advantage of its market maker exemption to effectuate such speculative or investment short selling decisions. Disproportionate short selling in a market making account to effectuate such strategies will be viewed by the Association as inappropriate activity that does not represent bona fide market making and would therefore be in violation of Rule 3350.'' IM–3350(a)(3).

The NASD has instituted disciplinary actions against broker-dealers that the NASD found were abusing the exemption provided for bona-fide market making transactions. *See, e.g.*, Hearing Panel Decision as to Respondents John Fiero and Fiero Brothers, Inc. (December 6, 2000) (decision affirmed by the National Adjudicatory Council on October 28, 2002); *see also* John Emshwiller, *NASD Moves to Bar Short Seller Fiero, Citing Alleged Manipulation of Stocks*, WSJ (January 9, 2001).

[43] NASD Rule 3370(b)(5) provides guidelines in determining the availability of the exemption for ''bona-fide fully hedged'' and ''bona-fide fully arbitraged'' positions.

[44] With respect to foreign securities, if the member has a fail to deliver in that security 90 days or older (except American Depositary Receipt and Canadian securities, which shall be subject to the 60 day provision).

[45] Some commenters to the Concept Release supported a single, workable approach to locating securities for borrowing before effecting short sales. *See* letter from Wilkie, Farr & Gallagher (488) (writing on behalf of Bear, Stearns & Co., Inc.; Credit Suisse First Boston Corp.; Deutsche Bank Securities, Inc.; JP Morgan Securities Inc.; PaineWebber Inc.; Prudential Securities Inc.; and Warburg Dillon Read LLC.).

[46] *See* paragraph (b), Rule 203 of proposed Regulation SHO.

[47] We are interested in receiving comment on the manner in which persons could satisfy the ''reasonable grounds'' determination in the proposed rule. As noted above, the current SRO rules generally defer to members to decide the manner of compliance, and permit members to rely on blanket assurances that stock is available for borrowing, *i.e.*, ''hard to borrow'' or ''easy to borrow'' lists. *See, supra* n. 40. We specifically request comment on whether this present method of compliance provides an accurate assessment of the current lending market in a manner that would not impede liquidity and the ability of market participants to establish short positions, while at the same time guarding against the noted problems inherent with large extended settlement failures.

be closed out by purchasing securities the same day.[48] The Commission is proposing an exception from these requirements for short sales executed by specialists or market makers but only in connection with bona-fide market making activities.[49] We believe a narrow exception for market makers and specialists engaged in bona fide market making activities is necessary because they may need to facilitate customer orders in a fast moving market without possible delays associated with complying with the proposed ''locate'' rule. Moreover, we believe that most specialists and market makers seek a net ''flat'' position in a security at the end of each day and often ''offset'' short sales with purchases such that they are not required to make delivery under the security settlement system.

As an additional safeguard against some of the problems associated with naked short selling, we are proposing a delivery requirement targeted at securities where there is evidence of significant settlement failures. We are incorporating the same threshold currently used in NASD Rule 11830,[50] *i.e.,* any security where there are fails to deliver at a clearing agency registered with the Commission of 10,000 shares or more per security, and that is equal to at least one-half of one percent of the issue's total shares outstanding.[51] We are incorporating this standard into proposed Rule 203 because we believe that the levels set in NASD Rule 11830 characterize situations where the ratio of unfulfilled delivery obligations at the clearing agency where trades are settled represents a significant number of shares relative to the company's total shares outstanding, thus requiring remedial action designed to address potential negative effects. The proposed rule would specify that for short sales of any security meeting this threshold, the selling broker-dealer must deliver the security no later than two days after the settlement date.[52] We believe a two-day grace period is appropriate to allow for transfer delays or delays due to a variety of circumstances that prevent timely delivery.[53] If for any reason such security was not delivered within two days after the settlement date, the rule would restrict the broker-dealer, including market makers, from executing future short sales in such security for the person for whose account the failure to deliver occurred unless the broker-dealer or the person for whose account the short sale is executed borrowed the security, or entered into a bona fide arrangement to borrow the security, prior to executing the short sale and delivered on settlement date. This restriction would be in effect for a period of 90 calendar days.[54] In addition, the rule would require the rules of the registered clearing agency that processed the transaction to include the following provisions: (A) A broker or dealer failing to deliver such securities shall be referred to the NASD and the designated examining authority for such broker-dealer for appropriate action; [55] and (B) The registered clearing agency shall withhold a benefit of any mark-to-market amounts or payments that otherwise would be made to the party failing to deliver,[56] and take other appropriate action, including assessing appropriate charges against the party failing to deliver. Both of these requirements should assist the Commission in preventing abuses and promote the prompt and accurate clearance and settlement of securities transactions.

These proposed requirements in Rule 203 would differ from the current SRO rules in several respects. First, the proposals require action two days after settlement, as opposed to the current ten days after settlement provided in Rule 11830.[57] Further, the mandatory close-out provision in NASD Rule 11830 currently only applies to Nasdaq securities. We believe that securities with lower market capitalization may be more susceptible to abuse, and therefore believe that these additional delivery requirements should be extended to all equity securities registered under Section 12 of the Exchange Act. Finally, although market makers engaged in bona fide market making are currently exempted from NASD Rule 11830, we believe that extended failures to deliver appear characteristic of an investment or trading strategy, rather than being related to market making. We believe it is questionable whether a market maker carrying a short position in a heavily shorted security for an extended period of time is in fact engaged in providing liquidity for customers, or rather is engaged in a speculative trading strategy. Therefore, we are not proposing an exception from these additional delivery requirements for short sales in connection with market making.

In our view, these delivery requirements would protect and enhance the operation, integrity and stability of the markets and the clearance and settlement system. In

[48] *See, e.g., Ko Securities, Inc. and Terrance Y. Yoshikawa*, Securities Exchange Act Release No. 48550 (September 26, 2003) (holding that an affirmative determination must be made before the securities are sold short regardless of whether the short seller repurchases securities on the same day).

[49] The exemption for bona-fide market making activities would exclude activity that is related to speculative selling strategies or investment decisions of the broker-dealer or associated person and is disproportionate to the usual market making patterns or practices of the broker-dealer in that security.

[50] The National Securities Clearing Corporation (NSCC) currently tracks this information on fails to deliver and provides it to Nasdaq for purposes of administering NASD Rule 11830. Thus, we do not believe that the threshold proposed here would impose unduly burdensome data collection requirements.

[51] For example, if an issuer had 1,000,000 shares outstanding, one-half of one percent (.005) would be 5,000 shares. An aggregate fail to deliver position at a clearing agency of 10,000 shares or more would thus meet the threshold. If an issuer had 10,000,000 shares outstanding, one-half of one percent would be 50,000 shares. An aggregate fail to deliver position at a clearing agency of 50,000 shares or greater would meet the threshold.

[52] When the trade fails to settle on normal settlement date (*i.e.*, T+3), the broker-dealer would have to take actions, such as borrowing the security or effecting a purchase in the cash market, so that actual delivery is made by T+5.

[53] Unlike NASD Rule 11830, which provides for delivery of securities meeting this threshold to be delivered within 10 business days after the normal settlement date, we propose a two-day period because we believe it is reasonable period to allow for transfer delays or delays due to some other characteristic of the security while preventing unfulfilled delivery obligations from extending for a period that we believe is characteristic of a more significant problem.

[54] In this context, we believe that a 90-day restricted period is an appropriate consequence for a failure to deliver and a deterrent to prevent failures to deliver in the future. The Federal Reserve Board has taken this approach with respect to transactions in cash accounts where the securities are sold before they have been fully paid for. *See*, 12 CFR 220.8(c), Regulation T.

[55] Referral to the designated examining authority would allow for monitoring of broker or dealers not complying with proposed Rule 203 and allow for possible disciplinary action. In the case of any fail to deliver occurring at the Canadian Depository for Securities (CDS), the registered clearing agency would refer CDS to the Ontario Securities Commission for appropriate action.

[56] As part of its Continuous Net Settlement system (CNS) NSCC marks-to-market each day positions for which participants failed to make delivery. In situations where the value of a security that is the subject of a failure to deliver is increasing, NSCC collects the mark from the party that failed to deliver and passes it on to the party that failed to receive the securities. Conversely, in a situation where the value of the security is decreasing, NSCC collects the mark from the party that failed to receive the securities and passes it on to the party that failed to deliver. Under the CNS system, a participant does not receive the actual contract value of the securities (*i.e.*, the proceeds from their sale) until actual delivery of securities is made. *See* National Securities Clearing Corporation Rules of Procedures Rule 11. Nevertheless, we believe that withholding the benefit of mark-to-market amounts from the party failing to deliver in a security meeting the specified threshold would serve as a financial incentive to comply with the borrow and delivery requirements during the 90-day restricted period.

[57] We solicit comment on any legitimate reasons why a short seller may be unable to deliver securities by at least T+5. We may then choose to except particular types of transactions, or add a specified grace period.

particular, we believe that they will protect buyers of securities by substantially curtailing naked short selling. We request comment on the extent to which the proposed rules will achieve these objectives.

Q. What harms result from naked short selling? Conversely, what benefits accrue from naked short selling?

Q. Are there negative tax consequences associated with naked short selling, in terms of dividends paid or otherwise?

Q. What is the appropriate manner by which short sellers can comply with the requirement to have ''reasonable grounds'' to believe that securities sold short could be borrowed? Should short sellers be permitted to rely on blanket assurances that stock is available for borrowing, *i.e.*, ''hard to borrow'' or ''easy to borrow'' lists? Is the equity lending market transparent enough to allow an efficient means of creating these lists?

Q. Should short sales effected by a market maker in connection with bona fide market making be excepted from the proposed ''locate'' requirements? Should the exception be tied to certain qualifications or conditions? If so, what should these qualifications or conditions be?

Q. Should the proposed additional delivery requirements be limited to securities in which there are significant failures to deliver? If so, is the proposed threshold an accurate indication of securities with excessive fails to deliver? Should it be higher or lower? Should additional criteria be used?

Q. Are the proposed consequences for failing to deliver securities appropriate and effective measures to address the abuses in naked short selling? If not, why not? What other measures would be effective? Should broker-dealers buying on behalf of customers be obligated to effect a buy-in for aged fails?

Q. Is the restriction preventing a broker-dealer, for a period of 90 calendar days, from executing short sales in the particular security for his own account or the account of the person for whose account the failure to deliver occurred without having pre-borrowed the securities an appropriate and effective measure to address the abuses in naked short selling? Should this restriction apply to all short sales by the broker-dealer in this particular security? Should the restriction also apply to all further short sales by the person for whose account the failure to deliver occurred, effected by any broker-dealer?

Q. Should short sales effected by a market maker in connection with bona-fide market making be exempted from the proposed delivery requirements targeted at securities in which there are significant failures to deliver? If so, what reasons support such an exemption, and how should bona-fide market making be identified?

Q. Under what circumstances might a market maker need to maintain a fail to deliver on a short sale longer than two days past settlement date in the course of bona fide market making? Is two days the appropriate time period to use?

Q. Are there any circumstances in which a party not engaging in bona-fide market making might need to maintain a fail to deliver on a short sale longer than two days past settlement? If so, can such positions be identified? Should they be excepted from the proposed borrow and delivery requirements, and if so, why, and for how long?

2. Long Sales

Current Rule 10a–2 covers delivery requirements applicable to long sales of securities registered or admitted to unlisted trading privileges on a national securities exchange. We are proposing to adopt subparagraph (a) of Rule 203 in proposed Regulation SHO, which would replace and modify Rule 10a–2 to make it consistent with the new delivery requirements in the proposed short sale rule.

Generally, Rule 10a–2 provides that if a broker-dealer knows or should know that a sale is marked long, the broker-dealer must make delivery when due and cannot lend securities to do so. If the broker-dealer does not have the securities, it must make delivery with securities purchased for cash, *i.e.*, effect a ''buy in,'' unless it knows that the seller either is in the process of forwarding the securities to the broker-dealer or will do so as soon as possible without undue inconvenience or expense. Broker-dealers are excused from the buy-in requirement in two cases. In sales between broker-dealers, loans are permitted in lieu of a buy-in. The rule also allows a broker-dealer to fail to deliver, or to borrow securities in lieu of buying-in, if, despite the broker-dealer's efforts to ensure that the sale was long, it was in fact short. This exemption is available only if the exchange or national securities association in whose market the sale was effected finds that the sale resulted from a good-faith mistake, the broker-dealer exercised due diligence, and either that requiring a buy-in would result in undue hardship or that the sale had been effected at a permissible price.

Subparagraph (a) of Rule 203 of proposed Regulation SHO preserves the substance of current Rule 10a–2 regarding delivery of securities sold pursuant to orders marked ''long.'' Only two substantive changes have been made. First, Regulation SHO would extend the delivery requirements of Rule 10a–2 to all securities, including those traded over-the-counter. As with our proposal to apply borrow and delivery requirements for short sales in all equity securities, we believe it is equally important to apply long delivery requirements to securities with lower market capitalization that may be more susceptible to abuse.

Second, proposed Regulation SHO would provide that a loan or failure to deliver is permitted if the seller has informed the broker-dealer that the seller owns the security and will deliver it to the broker-dealer prior to settlement of the transaction, but fails to do so. The proposed modification tracks the proposed amendments to the order marking requirements, which would permit an order to be marked long if the seller owns the securities and the seller's broker-dealer will have physical possession or control of the security prior to settlement.[58] The proposed rule would permit a broker-dealer to fail to deliver, or to deliver borrowed securities, if an exchange or national securities association found that the broker-dealer used due diligence in obtaining the seller's confirmation that the security would be in the broker-dealer's possession prior to settlement, and that either compelling a buy-in would result in undue hardship, or that the mistake was made by the seller's broker-dealer and the sale was at a permissible price under Proposed Rule 201(b) of Regulation SHO.[59] We believe that this change would facilitate the process of clearance and settlement, while still achieving the goals of short sale regulation.

Q. Are the delivery requirements in proposed Rule 203(a) appropriate?

III. Current Market Structure and the Tick Test

The tick test was part of short sale regulation implemented in 1938. The tick test has provided the markets with a generally effective means of regulating short sales for more than 60 years. Nonetheless, arguments have been made to allow greater flexibility in short selling. Indeed, substantial economic arguments have been made that short selling should be deregulated, at least in the case of the tick test.[60] Some

[58] *See, infra* part IX for a further discussion of the proposed order marking requirements.

[59] This exception shall not apply where a broker-dealer knows or has reason to know that an order is incorrectly marked long. Knowledge may be inferred where a broker-dealer repeatedly accepts orders marked long from the same customer that requires borrowed shares for delivery or results in a ''fail to deliver'' on several occasions.

[60] *See, e.g.*, Albert, Smaby, and Robison, 1997, *Short Selling and Trading Abuses on Nasdaq,* Financial Services Review, 6(1), 27–39; Alexander and Peterson, 1999, *Short Selling and the New York Stock Exchange and the Effects of the Uptick Rule,* Journal of Financial Intermediation, 8, 90–116; Alexander and Peterson, 2002, *Implications of a Reduction in Tick Size on Short-Sale Order Execution,* Journal of Financial Intermediation, 11, 37–60; Angel, 1997, *Short Selling on the NYSE,* working paper, Georgetown University; Jones, 2002, *Shorting Restrictions, Liquidity, and Returns,* working paper, Columbia University; Lamont, Owen A., 2003, *Go Down Fighting: Short Sellers* vs. *Firms,* working paper, University of Chicago and NBER.

commenters to the Concept Release took that position.[61] A substantial number of other commenters disagreed and expressed support for a price test.[62] We do not believe that proposing complete rescission of the short sale price test would be appropriate at this time, although we request comment about that approach. Instead, we propose a new, uniform price test that would apply to today's markets, and a pilot that would permit us to gather data about trading activity in the absence of a short sale price restriction.

IV. Proposed Bid Test

Current short sale regulation applies different price tests to securities trading in different markets. Rule 10a–1 applies only to short sale transactions in securities listed on a national securities exchange, whether the transaction is effected on an exchange or otherwise. The NASD's bid test applies to short sale transactions in Nasdaq NMS securities effected on either SuperMontage or the NASD's Alternative Display Facility (ADF), but not to Nasdaq SmallCap, OTCBB, and other securities traded over-the-counter. Moreover, no short sale price test applies to short sales of Nasdaq NMS securities executed away from SuperMontage and the ADF, unless the market on which the securities are being traded has adopted its own price test.[63] The end result is disparate short sale regulation of Nasdaq securities, depending on the market where the securities are trading. This situation may lend itself to regulatory arbitrage.[64]

We note that Nasdaq has also applied to become a national securities exchange.[65] If Nasdaq becomes an exchange, Rule 10a–1 would apply to Nasdaq securities because they would be exchange-listed securities reported pursuant to an ''effective transaction reporting plan.'' Nasdaq has applied for relief from Rule 10a–1 in conjuction with the exchange registration.[66] The Commission has not yet acted upon the application. If the Commission were to grant an exemption from Rule 10a–1 to allow Nasdaq to apply Rule 3350 to Nasdaq exchange-listed securities, the same securities quoted and traded on Nasdaq and other exchanges would be subject to two different short sale rules. This has the potential for confusion and compliance difficulties. We believe that these considerations, along with the other market developments discussed previously, make this an appropriate time to propose amendments that would provide for a more consistent approach to short sale regulation.

A. Operation of the Uniform Bid Test

The current tick test uses the last trade price in a security as a reference point for determining permissible short sale prices under Rule 10a–1. The effectiveness of this test for exchange-listed securities depends on the centralized auction nature of most exchanges and the historical concentration on exchanges of transactions in exchange-listed securities, which helps produce a consistent sequence of trade reports. In 2002, for example, the NYSE accounted for 87.9% of share volume in NYSE listed equities.[67]

The tick test, however, may not be as effective a means of regulating dealer markets. Nasdaq, in contrast to the auction markets, has no single market center that concentrates trading in Nasdaq securities. During regular trading hours, order flow in Nasdaq securities is divided among many different market makers, ECNs, and regional exchanges.[68] Trade reporting for Nasdaq securities involves multiple market makers reporting trades in the same stock from different locations using different means of reporting. Although trades are required to be reported within 90 seconds after execution, they are published in reporting sequence, not trade sequence.[69] This reporting may create upticks and downticks that may not accurately reflect price movements in the security for the purposes of the tick test. To a lesser degree, this phenomenon occurs in exchange-listed securities that are traded in multiple venues.

We are proposing Rule 201 of Regulation SHO, which would replace Rule 10a–1's tick test with a test using the consolidated best bid as the reference point for permissible short sales. Specifically, subparagraph (b) of proposed Rule 201 would require that all short sales in exchange-listed and Nasdaq NMS securities, wherever traded, be effected at a price at least one cent above the consolidated best bid at the time of execution.[70] A bid test would apply a uniform rule to trades in the same securities that occur in multiple, dispersed, and diverse markets. Moreover, a bid test would provide greater flexibility in effecting short sales in a decimals environment, as discussed below. Finally, a bid test would better accommodate increasingly popular automated trading systems that utilize passive pricing and trading systems that offer price improvement based on the consolidated best bid and offer.[71]

The proposed bid test in Rule 201 would require that a short sale be effected at a price at least one cent above the best consolidated bid at the

[61] *See, e.g.*, letters from The Chicago Board Options Exchange (32), Cornerstone Securities Corporation (324), Electronic Traders Association (ETA) (327), Interactive Brokers; The Timber Hill Group (329), Island ECN (Island) (431), Managed Funds Association (MFA) (427), Charles Schwab (Schwab) (310), Sierra Trading Group, L.P. (39), Trimark Securities (330).

[62] *See, e.g.*, letters from the NASD (480), NYSE (467), Sherman and Sterling (424), North American Securities Administrators Association (NASAA)(321), Specialist Association (426).

[63] Transactions in these securities are not subject to short sale regulation under Rule 10a–1. *See* Securities Exchange Act Release No. 22975 (March 6, 1986), 51 FR 8801 (March 14, 1986) (the Commission adopted amendments to Exchange Act Rule 10a–1 to exclude from application of the rule transactions in NMS securities that are traded on an exchange on a listed or unlisted trading privileges basis).

[64] The Commission recently issued a Concept Release seeking comment on this and other issues presented in a petition submitted by Nasdaq. Securities Exchange Act Release No. 47849 (May 14, 2003), 68 FR 27722 (May 20, 2003).

[65] *See* Securities Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 (June 13, 2001).

[66] *See* Letter to Jonathan G. Katz, Secretary, Commission, from Edward S. Knight, Executive Vice President and Chief Legal Officer, NASD (August 7, 2000).

[67] *See* 2002 NYSE Annual Report.

[68] For example, in May 2003, there were an average of 73 market makers per issue in the top 1% of Nasdaq stocks by trading volume, 40.5 market makers per issue in the next 9% of stocks, and an overall average of 15.4 market makers per issue. The majority of Nasdaq trading occurs primarily at dealer market centers. The agency markets operated by the seven ECNs in May 2003 accounted for 23.3% of Nasdaq share volume. In addition, the Archipelago Exchange and the Cincinnati Stock Exchange each account for 12.8% of the Nasdaq Share Volume for a total of 25.6% of Nasdaq Share Volume. *See www.marketdata.nasdaq.com.*

[69] NASD Rule 4632, Transaction Reporting, requires market makers to transmit through the Automated Confirmation Transaction Service or ''ACT'' all last sale reports of transactions in designated securities executed during normal market hours within 90 seconds after execution. *See* NASD Rule 4632 (NMS securities) and Rule 4642 (Nasdaq SmallCap securities), and Rule 6420 (exchange-listed securities).

[70] To address the problem of locked and crossed markets, we have proposed an exception from the proposed bid test allowing a responsible broker or dealer, as defined in 17 CFR 240.11Ac1–1(a)(21), to effect a short sale at a price equal to the consolidated best offer when the market for the covered security is locked or crossed, provided however, that the exception shall not apply to any broker or dealer who initiated the locked or crossed market. *See, infra* Part VI.A.7 for a further discussion of this exception.

[71] Passive pricing systems often effect trades at an independently-derived price, such as the midpoint of the bid-offer spread. Such pricing would often not satisfy the current tick test. However, midpoint pricing would generally satisfy a test requiring a short sale to be priced above the current best bid. We generally do not believe that such passive pricing systems present significant opportunities for short selling abuse. *See infra*, part IV.D, for a further discussion of passive pricing.

time of execution.[72] This would be a significant change from the current tick test, which is based on last sale prices. The bid test also would operate differently from the current rule for Nasdaq securities. NASD's Rule 3350 prohibits NASD members from effecting short sales in NMS securities at or below the best bid when the best bid displayed is below the preceding best bid in a security. However, if there is an ''upbid'' in a security, *i.e.*, the best bid displayed is above the preceding best bid, there is no restriction on the price that a NASD member can sell an NMS security short.[73]

Under the proposed uniform bid test, the price at which a short sale could be effected would move contemporaneously with the movement of the consolidated best bid.[74] In contrast, compliance with the current short sale price tests require a comparison of the previous last sale in relation to the most recent last sale in listed securities or a comparison of the current bid with the previous bid for Nasdaq securities.

We recognize that a quotation only proposes a transaction, whereas the last trade price reflects an actual trade. However, pursuant to Commission and SRO rules, quotations for all covered securities must be firm. Further, we believe that bids generally are a more accurate reflection of current prices for a security because last trade prices can be reported out-of-sequence within a 90 second window.

We believe the proposed bid test would promote the fundamental goals of short sale regulation. First, the proposed bid test would facilitate relatively unrestricted short selling in an advancing market, because the short selling reference price would move with the current interest of the market.

The proposed bid test also is designed to achieve the second and third objectives of the short sale rule, preventing short selling at successively lower prices and preventing short sellers from accelerating a decline in the market by exhausting all remaining bids at one price level. One of the negative uses of short selling is attempting to establish lower transaction prices in a security, hoping to induce others to liquidate their positions and lower prices further.[75] A short seller may attempt to accomplish this by exhausting higher priced bids in a security, thus creating the appearance of a declining market.[76] Barring short sales at prices equal to or below the consolidated best bid would prevent short sellers from exhausting the bids in a security and thus prevent short sellers from inducing a price decline. Since only long sellers could sell at the consolidated best bid, it is unlikely that short sellers could directly cause short selling at successively lower prices.[77]

While we believe the uniform bid test is the most flexible approach to modernizing the short sale rule while continuing to promote the goals of short sale regulation, we understand that some market participants may desire an even greater range of prices at which to effect short sales. One alternative would be a bid test allowing short selling at a price equal to or above the consolidated best bid if the current best bid is above the previous bid (*i.e.*, an upbid). However, in this alternative, short selling would be restricted to a price at least one cent above the consolidated best bid (not equal to the best bid) if the current best bid is below the previous bid (*i.e.*, a downbid).[78] This alternative test would apply to the same securities as our uniform bid test.[79] While we are not proposing this alternative test as part of Regulation SHO, we seek comment on this test as another possible approach to regulating short sales.

We are aware that these proposals represent significant changes in the operation of Rule 10a–1. We request comment about the appropriateness of the proposed bid test and the alternative bid test.

Q. Should short sales continue to be limited by a price test? If the Commission did not adopt a price test under Regulation SHO, should it also preclude the ability of the SROs to have price tests?

Q. Would there be any benefits in eliminating a short sale price test? Would the elimination of a price test benefit the markets by allowing investors to more freely short sell potentially overvalued securities so that their price more accurately reflects their fundamental value? Are there other benefits to the removal of a price test, such as elimination of systems and surveillance costs?

Q. Would the proposed ''bid test'' in Rule 201, allowing short sales above the best consolidated bid, effectively prevent short selling being used as a tool for driving the market down?

Q. Would short sale regulation using the proposed bid test operate effectively in an auction market? If not, why not?

Q. Would short sale regulation using the proposed bid test operate effectively in a dealer market? If not, why not?

Q. Would there ever be a circumstance where there would not be a consolidated bid in an exchange-listed or Nasdaq NMS security? If so, please describe.

Q. The proposed bid test likely would inhibit short sales in a declining market because there would be few execution opportunities above the best bid. Is this appropriate?

Q. Is a one-cent increment an appropriate standard for allowing short sales above the best consolidated bid? If not, what is an appropriate increment?

Q. Would short sale regulation using the proposed bid test present any automated systems problems for market participants?

Q. Would the proposed bid test operate effectively in the current decimal environment, *i.e.*, would bid flickering inhibit the operation of the test?

[72] As stated in the Commission's approval of Nasdaq's penny short sale pilot, a $0.01 increment for a short sale price test is a reasonable increment in a decimals environment. *See* Securities Exchange Act Release No. 44030 (March 2, 2001), 66 FR 14235 (March 8, 2001). However, the Commission may revisit this requirement upon the completion of its analysis of statistical data relating to quoting and trading activity in a decimals environment.

[73] Should the Commission adopt changes to existing short sale regulations, the SROs would need to update their rules to reflect our modifications.

[74] Under the proposed bid test, if the best bid in a security is $47.00, short selling would be allowed at $47.01 or higher, regardless of whether the immediately preceding bid was $46.99 or $47.01 (*i.e.*, it does not matter whether the current bid is an upbid or downbid from the immediately preceding bid). Also, if the best bid in a security is $47.00, and the last trade price in the security was $47.05, short selling would be allowed at $47.01 or higher (*i.e.*, the last sale price is irrelevant).

[75] *See* Securities Exchange Act Release No. 10668 (March 6, 1974), 39 FR 10604 (March 21, 1974).

[76] *Id.*

[77] The Commission would view activity by market participants to alter the consolidated best bid solely for the purpose of facilitating short sales as a violation of proposed Regulation SHO, as well as potentially the anti-fraud and anti-manipulation provisions of the federal securities laws, including Sections 9(a), 10(b), and 15(c) of the Exchange Act, and Rules 10b–5 and 15c1–2 thereunder. For example, a broker-dealer may attempt to circumvent the rule by entering into an arrangement with a customer in which the customer would sell short to the dealer one cent above the bid, and the dealer would charge a higher commission to cover the price. The dealer would then sell ''long'' at the bid. An example of this is as follows: Assume that the best bid is $20.35. A broker-dealer could arrange with a customer to execute a short sale at $20.36, and include a mark-up or commission of 6 cents. The net to the customer would thus be $20.30. The broker-dealer could then sell long into the bid at $20.35, thus earning a profit on the transaction. Not only may such activity violate reporting rules (*see* NASD Rule 6130(d)(3)), such activity could be viewed as fraudulent and/or manipulative by the Commission.

[78] The following example demonstrates the operation of this alternative uniform short sale rule: If the consolidated best bid in a security is $47.00, and the immediately preceding bid was $46.99, short selling would be allowed at $47.00 or higher. If the consolidated best bid in a security is $47.00, and the immediately preceding bid was $47.01, short selling would only be allowed at $47.01 or higher.

[79] We note that, unlike the proposed bid test, this alternative test would incorporate the preceding bid into the calculation of the price at which a short sale could be executed. This would add a layer of complexity to the rule and could impose additional programming costs.

Q. Would the proposed bid test fulfill the fundamental goals of short sale regulation?

Q. Would the alternative test allowing short selling at a price equal to or above the consolidated best bid if it is an upbid better fulfill the goals of short sale regulation?

B. Scope of the Uniform Bid Test

1. Securities Subject to the Price Test

The proposed bid test would apply to all securities currently subject to short sale price tests, *i.e.*, exchange-listed and Nasdaq NMS securities, wherever they are traded. Specifically, the proposed bid test would apply to all national market system securities as defined in § 240.11Aa2–1 of this chapter, but shall exclude Nasdaq Small Cap securities, as determined by NASD rules.

Market information for securities, including quotes, is disseminated pursuant to a variety of different national market system plans. Generally, the SROs have developed networks or systems that disseminate market information.[80] The NYSE, Amex, Nasdaq, and the regional exchanges are all required to make available to vendors the best bids in any common stock, long-term warrant, or preferred stock.[81] This information is disseminated as a part of an effective transaction reporting plan pursuant to the Consolidated Tape Association Plan (CTA Plan) and the Consolidated Quotation Plan (CQ Plan). The NYSE, Amex, Nasdaq, and the regional exchanges all participate in the CTA Plan and CQ Plan.[82] Finally, Nasdaq disseminates market information for securities in the two tiers of the Nasdaq market, *i.e.*, NMS and SmallCap stocks, as well as certain other securities traded OTC. Information for NMS securities is collected and disseminated pursuant to NASD's rules and the Nasdaq/UTP plan.[83]

These networks are designed to ensure that consolidated bids from the various market centers that trade exchange-listed and Nasdaq NMS securities are continually collected and disseminated on a real-time basis, in a single stream of information. Thus, all market participants would have access to the consolidated bids for all the securities that would be subject to the proposed uniform bid test.

2. Securities Not Subject to the Price Test

We are not proposing at this time to extend the uniform bid test to securities not currently covered by a short sale price test (*i.e.*, Nasdaq SmallCap, OTCBB, and Pink Sheet securities) in part because these markets have not been subject to the rule in the past. More significantly, we believe that the proposed locate and deliver requirements may address many of the concerns regarding abusive short selling in thinly-capitalized securities trading over-the-counter. In particular, these proposals should significantly discourage efforts to deliberately depress the price of these securities by removing the leverage abusive short sellers enjoy through short selling without incurring the costs of borrowing and delivering. We recognize, however, that issuers of less actively traded securities believe that they are particularly vulnerable to ''abusive'' short selling, and we seek specific comment on whether the proposed bid test or other price test should be extended to these securities.

Q. Should the proposed uniform bid test be extended to Nasdaq SmallCap and OTCBB Securities? Do these securities need the protection of the proposed uniform bid test?

Q. Should the proposed uniform bid test be extended to other OTC securities, *e.g.*, those quoted in the Pink Sheets? If so, are quotes in these securities disseminated in a manner that would allow for the use of the proposed uniform bid test? In addition, would the proposed bid test be workable due to the fact that the best bid in these securities could be outstanding for long periods of time? If not, could a last sale test or some other test be applied to these securities?

C. Bid Test Flexibility in a Decimals Environment

The Commission is aware of concerns about the ability to effect short sales using the tick test in a decimals environment. In particular, with the increase in the number of price points from 16 to 100 per dollar as a result of pricing in decimals, there has been an increase in price flickering, *i.e.*, an increase in the number of times the last trade price in a security changes rapidly.

As a result market participants have sought relief from the tick test provisions of Rule 10a–1. For example, some third market makers in exchange-listed securities offer trade execution for eligible customer orders at a price equal to or better than the consolidated best offer. However, if the consolidated best offer is below the previous last reported sale in a security and the third market maker or specialist has a short position, sales at the consolidated best offer would violate the tick test of Rule 10a–1. The Commission has granted an exemption from Rule 10a–1 to permit registered market makers and exchange specialists publishing two-sided quotes in a security to sell short to facilitate customer market and marketable limit orders at the consolidated best offer, regardless of the last trade price.[84] The exemption provided relief in a decimals environment to market makers and specialists in instances where they would be providing liquidity in response to customer buy orders. Such relief would not be necessary with a bid test, since such sales (by any market participant) would always be effectuated above the best bid, specifically at the consolidated best offer or better.

Permitting short sales above the best bid should alleviate other difficulties complying with the tick test in a decimals environment. The Commission's Office of Economic Analysis (OEA) conducted a study that found that the proposed bid test is considerably less restrictive than the current tick test.[85] Specifically, OEA

[80] In relevant part, these networks can be categorized as follows: (1) Network A—securities listed on the NYSE; (2) Network B—securities listed on Amex or the regional exchanges; and (3) Nasdaq system—securities qualified for inclusion in the Nasdaq system and certain other securities traded in the OTC market.

[81] *See* Exchange Act Rule 11Ac1–1, 17 CFR 240.11Ac1–1; Exchange Act Rule 11Ac1–4, 17 CFR 240.11Ac1–4.

[82] CTA Plan, Sections I(q) and VII(a)(i) for NYSE securities (Network A), CTA Plan, Sections I(q) and VII(a) for Amex and the regional exchanges (Network B). These plans were adopted pursuant to Rule 11Aa3–1, 17 CFR 240.11Aa3–1, which governs the dissemination of transaction reports and last trade price information in national market system securities (equity securities listed on national securities exchanges or included in the national market tier of Nasdaq). In general, this rule requires an SRO to file a transaction reporting plan for such securities, and it requires SRO members to transmit information required by the plans to the SROs.

[83] See Securities Exchange Act Release No. 42208 (December 9, 1999) 64 FR 70613 (December 17, 1999) (concept release requesting comment on the regulation of market information fees and revenues).

[84] *See* Letter re: Bernard L. Madoff Investment Securities LLC (February 9, 2001) (exemption from Rule 10a–1 to allowing registered market makers and specialists to sell short to facilitate customer market and marketable limit orders at the consolidated best offer regardless of the last trade price). All such short sales effected pursuant to the exemption are required to be reported as ''sell short exempt.'' This relief is strictly limited to the facilitation of customer market and marketable limit orders and is not available as a means of soliciting customer orders. Moreover, the exemption letter notes that whether an execution at the consolidated best offer constitutes best execution of a customer's trade will depend on all the facts and circumstances.

[85] The study was conducted using stocks listed on the NYSE during the month of July, 2003. The study did not examine the proposed bid test relative to the current Nasdaq bid test. The study is available in the Commission's Public Reference Room. *See also* Alexander and Peterson, 1999, *Short Selling on the New York Stock Exchange and the Effects of the Uptick Rule,* Journal of Financial Intermediation (a study of, among other things, short selling opportunities under the current tick test in a declining market).

compared the minimum shortable price (MSP) using the proposed bid test and the current tick test. Under the proposed bid test, the MSP is always a minimum increment above the bid. Under the tick test, if the last transaction was on an uptick or zero-plus uptick, the MSP is equal to the latest transaction price. If the latest transaction price was on a minus tick or a zero-minus tick, the MSP is equal to the latest transaction price plus one tick.[86] OEA found that the tick test was more restrictive (the MSP was higher for the tick test than it was for the proposed bid test) 60.4% of the time, the proposed bid test and tick test were equally restrictive (the MSP for the tick test and the proposed bid test were the same) 15.5% of the time, and the proposed bid test was more restrictive (the MSP was at or below the bid) 24.1% of the time. As this study indicates, the proposed bid test should offer more short selling opportunities than the current tick test.

D. Bid Test Flexibility for Passive Pricing Systems

We have granted limited exemptive relief from the tick test provisions of Rule 10a–1 in connection with short sale transactions executed on a volume-weighted average price (VWAP) basis.[87] The relief is limited to VWAP transactions that are arranged or ''matched'' before the market opens at 9:30 a.m. but are not assigned a price until after the close of trading when the VWAP value is calculated.[88] We granted the exemption based, in part, on the fact that these VWAP short sale transactions appear to pose little risk of facilitating the type of market effects that Rule 10a–1 was designed to prevent. In particular, the pre-opening VWAP short sale transactions do not participate in or affect the determination of the VWAP for a particular security. Moreover, the Commission stated that all trades used to calculate the day's VWAP would continue to be subject to Rule 10a–1.[89]

There are also electronic trading systems that match and execute trades at other independently-derived prices, such as the midpoint of the consolidated best bid and offer. Limited short sale relief has been granted to certain systems that match customer orders at random times within specific time intervals.[90] These systems had requested relief from Rule 10a–1 because matches could potentially occur at a price below the last reported sale price. Due to the passive nature of pricing and the lack of price discovery, trades executed through the systems generally do not appear to involve the types of abuses that 10a–1 was designed to prevent.[91]

We believe that the proposed bid test would accommodate the recent growth of matching systems that execute trades at an independently derived price above the consolidated best bid. Such executions would generally comply with the proposed bid test, while also enabling customer orders to seek executions that would provide price, and possibly size, improvement.

We note, however, that there may be instances where the final execution price of VWAP short sale transactions could be at or below the closing best bid for that security, and thus would violate the proposed bid test. Nevertheless, we propose codifying an exception to the bid test provisions of proposed Rule 201 to permit short sales at the VWAP, subject to the same conditions included in the above exemptions.[92] These would be the following: (1) All short sale orders will be received and matched before the regular trading session opens and the execution price of VWAP matched trades will be determined after the close of the regular trading session; (2) the VWAP for the covered security is calculated by: calculating the values for every regular way trade reported in the consolidated system, or on a primary market that accounts for 75% or more of the covered security's average daily trading volume for the security during the regular trading session, by multiplying each such price by the total number of shares traded at that price; compiling an aggregate sum of all values; and dividing the aggregate sum by the total number of reported shares for that day in the security; (3) the transactions are reported using a special VWAP trade modifier; (4) short sales used to calculate the VWAP will themselves be subject to the bid test; (5) the VWAP matched security qualifies as an ''actively-traded security'' (as defined under Rules 101(c)(1) and 102(d)(1) of Regulation M).[93] Where the subject listed security is not an ''actively-traded security'' or a S&P 500 Index security, the proposed short sale transaction would be permitted only if it is conducted as part of a basket transaction of 20 or more securities in which the subject security does not comprise more than 5% of the value of the basket traded; (6) the transaction is not effected for the purpose of creating actual, or apparent, active trading in or otherwise affecting the price of any security; (7) a broker or dealer shall be permitted to act as principal on the contra-side to fill customer short sale orders only if the broker or dealer's position in the subject security, as committed by the broker-dealer during the pre-opening period of a trading day and aggregated across all of its customers who propose to sell short the same security on a VWAP basis, does not exceed 10% of the subject security's relevant average daily trading volume, as defined in Regulation M.[94] Any VWAP short sale transaction that does not meet these conditions would need to comply with the bid test. In addition, all other provisions of Regulation SHO, including the marking requirements in Rule 201 and the locate and deliver requirements in Rule 203, would apply. We request comment on whether the proposed exception for VWAP executions, subject to these conditions, is appropriate.

[86] In OEA's analysis, if the tick test MSP was greater than the MSP from the proposed bid test, then the tick test was more restrictive than the proposed bid test because the bid test allows lower execution prices, and, of course, the converse conclusion would be reached if the opposite was true.

[87] *See e.g.* Letter re: VWAP Trading System (March 24, 1999); Letter re: Jeffries and Company, Inc. (Jeffco) (December 7, 2000); Letter re: POSIT (March 30, 2001); Letter re: Morgan, Stanley & Co., Inc. (May 11, 2001); Letter re: Vie Institutional Services (February 12, 2003).

[88] The VWAP for each security is generally determined by: (1) Calculating raw values for regular session trades reported by the Consolidated Tape during the regular trading day by multiplying each such price by the total number of shares traded at that price; (2) compiling an aggregate sum by adding each calculated raw value from step one above; and (3) dividing the aggregate sum by the total number of reported shares for that day in the security. *See, e.g.,* Letter re: POSIT (March 30, 2001).

[89] The relief is subject to a number of conditions, including: limiting it to only those securities which would qualify as ''actively-traded securities'' as defined in Regulation M (unless the security is part of a ''basket'') 17 CFR 242.100; that there be no pre-arranged matching sale and purchase orders; a 10% average daily volume limitation when acting as principal on the contra-side of a VWAP short sale transaction; and that no transactions are made for the purpose of creating actual, or apparent, active trading in or otherwise affecting the price of any security. *See, supra* n. 87.

[90] *See e.g.* Letter re: POSIT (April 23, 2003).

[91] The relief was also conditioned on the fact that none of the persons relying on the exemption would be represented in, or otherwise influence the primary market bid or offer, and that none of the transactions effected on the electronic system would be made for the purpose of depressing or manipulating the price of the security. *Id.*

[92] We believe that these conditions have worked well in restricting the exemptive relief to situations that do not appear to raise the abuses that the short sale price test is designed to prevent, and should be incorporated in the proposed exception. We also note that market participants that have been granted these exceptions have designed their programming and surveillance systems in accordance with these conditions.

[93] At this time, securities that qualify as ''actively traded securities'' under Rule 101 of Regulation M and securities that comprise the S&P 500 index would qualify as ''actively traded securities'' for purposes of this exception.

[94] 17 CFR 242.100(b).

Q. Do VWAP transactions create perverse incentives for broker-dealers, such that they should not be granted an exception? If an exception is included, are there ways to detect and limit the effects of these perverse incentives?

Q. Are the proposed conditions for the VWAP exception appropriate? If not, why not? Should there be any additional conditions?

V. Pilot Program

As a part of the Commission's review of short sale regulation, we are also proposing temporary Rule 202 of Regulation SHO that would suspend, on a pilot basis, the operation of the proposed bid test of proposed Rule 201 for specified liquid securities. We believe that the pilot is appropriate for several reasons. The pilot would enable us to study the effects of relatively unrestricted short selling on, among other things, market volatility, price efficiency, and liquidity. This would thus allow us to obtain empirical data to assess whether short sale regulation should be removed, in part or in whole, for actively traded securities. The pilot would also allow the Commission to determine the extent to which the proposed bid test achieves the three objectives of short sale regulation through the comparison of trading activity of similar stocks subject to the test and those not subject to the test.

In 1976 the Commission proposed a suspension of the tick test as a part of a comprehensive review of short sale regulation that was designed to obtain statistical data regarding short selling.[95] The pilot was never implemented due to concerns expressed by trading markets and listed companies.[96] However, there have been significant developments in market surveillance since 1976 that now make a pilot more appropriate. Further, the Commission and SROs now have access to a wide range of trading data on potentially manipulative trading behavior.[97] Access to this information greatly enhances the ability of the Commission and the SROs to monitor trading behavior during the proposed suspension of the bid test and surveil for manipulative short selling.

We also believe that a pilot may be appropriate in light of the Commodity Futures Modernization Act of 2000 (CFMA) lifting the ban on security futures.[98] Among other things, investors are now allowed to enter into futures contracts for the sale of individual securities at a fixed point in the future and at a set price. In authorizing single stock futures trading, Congress exempted transactions in security futures products from short sale regulation. Short security futures, *i.e.*, obligating a person to make a future delivery of the underlying securities, may function as a substitute for short selling the underlying stock.[99] We believe that to the extent possible, consistent with investor protection, one market should not benefit over another because of regulatory differences. Thus, we intend to include liquid securities subject to futures trading in our proposed pilot.

As a result, we believe it is appropriate to propose a rule that would establish procedures for a temporary suspension of the trading restrictions of the price test of the Commission's short sale rule, and any short sale price test of any exchange or national securities association, for a limited number of securities. The securities that could be included in the pilot could be comprised of a subset of the Russell 1000 index, or such other securities as the Commission designates by order as necessary or appropriate in the public interest and consistent with the protection of investors after giving due consideration to the security's liquidity, volatility, market depth and trading market. The relative weight given to these factors would vary. In particular, the Commission would consider including in the pilot one-third of the securities in the Russell 1000 Index.[100] To select the stocks for the pilot if we were to use the Russell 1000, we would sort the Russell 1000 by average daily dollar volume over the calendar year prior to the start of the pilot and use an objective method that would create two samples that should be approximately similar in average market value and average volume.[101] Of course, as noted above, the Commission might include different stocks in the pilot or base the pilot on a different broad-based index if it were necessary or appropriate in the public interest and consistent with the protection of investors.

While we recognize that the price of any security can be manipulated, we believe that as trading volume increases, it becomes less likely that a trader would be able to cost-effectively

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[95] *See* Securities Exchange Act Release No. 13091 (December 21, 1976), 41 FR 56530. We proposed three alternative temporary rules that would have suspended the tick test to varying degrees in order for critical data to be collected. The three alternative temporary rules would have: (1) Suspended the operation of the short sale rule for all securities registered, or admitted to unlisted trading privileges on a national securities exchange; (2) suspended the operation of the tick test only for equity securities (other than warrants, rights, or options) that are registered, or admitted to unlisted trading privileges, on more than one national securities exchange and for which transactions were reported in the consolidated system; and (3) suspended the operation of the tick test only for the fifty most active equity securities (other than warrants, rights, or options) during the 12 calendar months preceding the effective date of the rule. However, the Commission withdrew this and other short sale rule proposals largely because commenters did not support the changes. Securities Exchange Act Release No. 17347 (December 1, 1980), 45 FR 80834 (December 8, 1980).

[96] One commenter expressed concern that removal of the tick test might accelerate market declines and increase volatility as well as create distortions in the market for secondary or tertiary stocks. *See* Letter from James E. Buck, Secretary, NYSE, to George A. Fitzsimmons, Secretary, SEC (March 17, 1977). Another commenter stated that the tick test should be retained to prevent manipulative short selling even though some arguments could be made that short selling helps adjust markets to their proper levels more quickly. The commenter stated that it was beneficial to retain Rule 10a–1 until such time a rule could be devised that distinguished between manipulative and non-manipulative short sales. *See* Letter from Frank A. Hutson, Jr., Chairman, Securities Law Committee, American Society of Corporate Secretaries, Inc., to George A. Fitzsimmons, Secretary, SEC (May 3, 1977).

[97] For example, the NYSE has since implemented both on-line and off-line automated surveillance capability, and monitors trading on both a real-time and next day basis. Further, the NYSE also utilizes an audit trail through its Intermarket Surveillance Information System (ISIS) data base. Securities Exchange Act Release No. 22183 (June 28, 1985) 50 FR 27875 (July 8, 1985). Further, NYSE adopted a rule requiring all transactions in NYSE-listed stocks that are not reported to the Consolidated Tape to be reported to the Exchange in order to provide an accurate record of overall trading activity. In its filing with the Commission, NYSE stated that the information obtained pursuant to the rule will ''augment and enhance its ability to surveil for and investigate, among other matters, insider trading, frontrunning, and manipulative activities, * * *'' Securities Exchange Act Release No. 31358 (October 26, 1992) 57 FR 49736 (November 3, 1992) (order approving NYSE Rule 410B).

[98] Pub. L. 106–554, 114 Stat. 2763 (2000). Futures involving single stocks are generally defined as futures contracts (or options thereon) on single non-exempt securities and narrow based groups or indices of non-exempt securities.

[99] We note that the CFMA exception was a departure from traditional short sale regulation, which is security-based rather than market-based (*i.e.*, the tick test applies to a security irrespective of the market in which the short sale occurs.)

[100] The Russell 1000 Index comprises the 1,000 largest companies in the Russell 3000 Index (approximately 92% of the total market capitalization of the Russell 3000 Index). Inclusion in the Russell 1000 index is based completely on objective criteria, *i.e.*, market capitalization. A pilot containing stocks from the Russell 1000 index would allow us to analyze the effects of removing price restrictions on a broad range of liquid securities. A narrower index of liquid securities might not provide the breadth of information necessary to make an accurate determination of these effects. Conversely, broader indexes may contain certain securities that could be considered less liquid, which may not be appropriate for a pilot that focuses on short selling in liquid securities.

[101] In addition, both samples should also contain Nasdaq and NYSE stocks, optionable stocks, stocks with associated security futures, and both value and growth stocks. We hope that both samples would have similar average short interest and similar expected volatility. Even if the two samples differ slightly along these dimensions, researchers can control for the variations using regression techniques.

manipulate the price of a security.[102] Further, the high levels of transparency and surveillance for actively-traded securities on exchanges and other regulated markets make it more likely that any manipulation would be detected and pursued.[103]

The proposed temporary Rule 202 would remain in effect for two years. We anticipate that a partial, two-year suspension of the short sale rule would allow the Commission to gather and analyze the data necessary to reach conclusions regarding trading behavior in the absence of short sale price restrictions. The sample period should provide data on advancing and declining markets, high volume and low volume, and different stages of volatility so that the suspension can be studied fully.[104]

The Commission notes that the general anti-fraud and anti-manipulation provisions of the federal securities laws would continue to apply to trading activity in these securities, thus prohibiting trading activity designed to improperly influence the price of a security.[105] Further, the pilot would only suspend the operation of the proposed bid test. All other provisions of proposed Regulation SHO, including the marking requirements of Rule 201 and the locate and deliver requirements of Rule 203, would continue in effect. Finally, the Commission could terminate the operation of the pilot, in whole or in part, prior to the end of the proposed two-year period as it determines necessary or appropriate in the public interest or to protect investors by removing all securities selected for inclusion in the pilot.

Q. Is the proposed rule temporarily suspending the short sale price test for liquid stocks appropriate? Are liquid stocks more difficult to manipulate through short selling?

Q. Is a two-year temporary suspension of the short sale price test a sufficient period to fully study the impact? If not, what time period should be selected? Commenters should provide specific reasons to support their view in favor of establishing another time period.

Q. Is the proposed selection method for the pilot, including our contemplated use of the Russell 1000, appropriate? If not, what other selection method should be considered? Is it possible that one market could benefit over another market depending on the selection of stocks for the pilot?

Q. Should the short sale price test be automatically reinstituted in extraordinary market conditions, for instance, if, on an intraday basis, the price of a security falls more than a certain percentage based on the day's opening price (*e.g.*, if the price of a security falls 10% from the day's opening price short sale restrictions would be reinstituted)?

Q. The pilot, in part, would allow the Commission to obtain data to assess whether the price test should be removed for some types of securities and to study trading behavior in the absence of the proposed bid test. After analyzing the results of the pilot, the Commission may propose that the bid test be removed for certain exchange-listed and NMS securities. Should the Commission await the results of the pilot before applying the uniform bid test to exchange-listed and Nasdaq NMS securities that may later have the bid test removed?

Q. Should the pilot apply to existing short sale rules even if we do not adopt the new uniform bid test?

Q. The securities included in the pilot would still be marked and specialists and market makers can observe this mark prior to executing the short sale. How would this affect the outcome and reliability of the pilot, if at all?

VI. Rule 10a–1 Exceptions

Paragraph (e) of Rule 10a–1 currently contains 13 exceptions to the tick test designed to permit certain types of trading activities that were intended to benefit the markets or that were believed to carry little risk of the kind of manipulative or destabilizing trading that the Rule was designed to address. We have reviewed these exceptions in light of proposed Rule 201, and we propose modifying some exceptions for inclusion in Rule 201 and excluding other exceptions from the Rule.

A. Exceptions Proposed To Be Retained

1. Long Seller's Delay in Delivery

Subsection (e)(1) of Rule 10a–1 has existed since the inception of the short sale rule in 1938. This exception allows short sales to be effected without regard to the current tick test if the seller owns the security sold and intends to deliver such security as soon as is possible without undue inconvenience or expense. It was created so that sellers who actually own a security will not be penalized in the event they are unable to deliver the security to their broker prior to settlement, despite every intention of doing so, or in the event the certificate turned in by the seller is not in a form appropriate for transferring.

In the event that the seller's shares are not delivered to the broker-dealer prior to settlement, borrowed shares may be used to consummate the sale. By definition, when borrowed shares are delivered, the sale is a short sale. We believe that this exception continues to be necessary to facilitate those limited circumstances where the seller owned the securities at the time of sale, however delivery may be briefly delayed, as when an option, right or warrant has been exercised but the underlying security has not yet been received by the seller. We propose to retain this exception from the proposed bid test substantially unchanged.[106]

Q. Should this exception be retained in its current form?

Q. Is this exception outdated?

2. Error in Marking a Short Sale

Subsection (e)(2) of Rule 10a–1 has also existed since the inception of the Rule. This exception protects brokers in the event they execute a sale already marked long by another broker-dealer, but the sale turns out to be a short sale. The broker-dealer that marks the order long must abide by the provisions of the marking requirement that dictates when an order may be marked long and the executing broker-dealer may rely on this marking when executing the sell order. This exemption was created to avoid implicating a broker that has unknowingly participated in a violation of the Rule, and we believe the basis for including the exception still makes sense in the current environment.[107] We propose to retain this exception substantially unchanged.[108]

Q. Should this exception be retained in its current form?

3. Odd Lot Transactions

An exception for certain odd-lot transactions was created in an effort to reduce the burden and inconvenience that short sale restrictions would place on odd-lot transactions. In 1938, the Commission found that odd-lot transactions played a very minor role in potential manipulation by short selling. Initially, sales of odd-lots were not subject to the restrictions of Rule 10a–1.[109] However, the Commission became

[102] *See* Securities Exchange Act Release No. 37094 (April 11, 1996), 61 FR 17108 (April 18, 1996) (proposing anti-manipulation rules including an exception to the rules for trading activity in high ADTV securities).

[103] *Id.*

[104] The Commission would study data from the pilot to determine the effect that the removal of the proposed bid test has on trading in the pilot securities. By the end of the two year period, we would consider extending the pilot in light of trading data and whether to pursue rulemaking to permanently remove the proposed bid test for a segment of securities.

[105] *See, e.g.*, Securities Act Section 17(a), Exchange Act Sections 9(a), 10(b), and 15(c) and Rules 10b–5 and 15c1–2 thereunder.

[106] *See* subparagraph (d)(1) of proposed Rule 201 of Regulation SHO.

[107] This exception does not apply where a broker-dealer knows or has reason to know that an order is incorrectly marked long. Knowledge may be inferred where a broker-dealer repeatedly accepts orders marked long from the same counterparty but requires borrowed shares for delivery or results in a ''fail to deliver'' on several occasions.

[108] *See* subparagraph (d)(2) of proposed Rule 201 of Regulation SHO.

[109] The Commission initially adopted three exceptions for odd-lot transactions. While the first

concerned over the volume of odd-lot transactions, which possibly indicated that the exception was being used to circumvent the Rule. As a result, the exception was changed to the present two exceptions.[110]

Subparagraph (e)(3) is limited to odd-lot dealers registered in the security and third-market makers. The exception allows short sales by odd-lot dealers registered in the security and by third market-makers (of covered securities) to fill customer odd-lot orders. Subparagraph (e)(4) provides relief for any sale to liquidate an odd-lot position by a single round lot sell order that changes such broker-dealer's position by no more than a unit of trading. We understand the odd lot exception to still be of utility and not in conflict with the goals of the proposed bid test. We propose combining the two exceptions into one odd-lot exception under subparagraph (d)(3) of Rule 201 of proposed Regulation SHO.

In addition, we propose extending these exceptions to all market makers acting in the capacity of an odd-lot dealer. When the Rule was adopted, odd-lot dealers dealt exclusively with odd-lot transactions, and were so registered. Today, specialists assigned to a security are typically the odd-lot dealer in that security. We propose to broaden the use of this exception to all brokers or dealers acting as ''market makers'' in odd-lots.[111]

Odd-lot transactions by market makers to facilitate customer trades are generally not of a size that could facilitate a downward movement in the market. Therefore, those acting in the capacity of a ''market maker'' should be able to off-set customer odd-lot orders and liquidate an odd-lot position by a single round lot sell order that changes such broker-dealer's position by no more than a unit of trading without regard to the restrictions of the current tick test or proposed bid test.

Q. Are these exceptions relating to odd-lots appropriate in today's markets?

Q. Should these exceptions apply to all market makers in odd-lots or should the exception be more limited?

Q. Are these odd-lot exceptions susceptible to abuse?

Q. Should all odd-lot transactions have an exception from the Rule? Would providing an exception for all odd-lot transactions pose a risk of increased short sale manipulation, *e.g.*, would traders break up trades into 99 share odd-lots in order to avoid the price test?

4. Domestic Arbitrage

Current subsection (e)(7) of Rule 10a-1 was adopted in 1938 to allow short selling associated with certain bona fide domestic arbitrage transactions.[112] In adopting this exception, we stated that it ''applies only to bona fide arbitrage transactions in a security effected, under certain circumstances described in the exception, by persons who own rights or privileges entitling them to acquire that security.'' [113] The exception has remained unchanged since its adoption.

The term ''bona fide arbitrage'' generally describes an activity undertaken by market professionals in which essentially contemporaneous purchases and sales are effected in order to lock in a gross profit or spread resulting from a current differential in pricing of two related securities.[114] The Commission continues to believe that bona fide arbitrage activities are beneficial to the markets because they tend to reduce pricing disparities between securities.[115] These activities also carry limited risk of the kind of manipulative or destabilizing trading that Rule 10a–1 was designed to address.

We therefore propose that proposed Rule 201 of Regulation SHO would retain the general exception contained in (e)(7). Subparagraph (d)(5) of Rule 201 would continue to except short sales effected in bona fide arbitrage transactions involving convertible, exchangeable, and other rights to acquire the securities sold short, where such rights of acquisition were originally attached to or represented by another security, or were issued to all the holders of any such class of securities of the issuer. In addition, we have proposed adding language to the exception to require a person relying on the exception to subsequently acquire or purchase the security upon which the arbitrage is based.[116] For example, if a person sells short securities to profit from a current price differential based upon a convertible security that entitles him to acquire an equivalent number of securities of the securities sold short, he must subsequently tender the instrument for conversion to obtain the underlying securities and complete the arbitrage in order to satisfy the terms of the exception. We have also proposed minor amendments to the language of the exception to make it more understandable.

Q. Should the exception be retained for purposes of the proposed Rule 201? If not, state specific reasons why the exception should be removed from the Rule.

Q. Minor changes have been made to the text of existing exception (e)(7) in the proposed rule to simplify its language. Are these changes helpful? Does the proposed amendment to the exception alter its meaning in a way that would affect its substance?

Q. Is the proposed amended exception too narrow or too broad? If so, state specifically why, and how it should be restructured in relation to the purposes of Regulation SHO.

Q. Should the requirement that the transactions be made in a separate domestic arbitrage account be eliminated? If so, should the exception permit domestic arbitrage to be effected in an arbitrage account in which international arbitrage could also be effected?

Q. Should exception (e)(7) be combined with (e)(8), the international arbitrage exception? Would such a combination create compliance problems or other issues?

Recently, Commission staff has received inquiries regarding the operation of (e)(7) in the context of a corporate merger. In particular, market participants have sought advice whether upon finalization of a merger agreement, wherein a date certain is determined for the merger, a party who is entitled to receive stock of the acquiring company under the terms of the merger agreement is entitled to sell short this stock without regard to the tick test pursuant to the domestic arbitrage exception. Unlike the arbitrage contemplated in (e)(7), the right to acquire another security in a merger scenario arises only by the terms of the merger agreement and not through a right vested in the security itself. We believe that this type of arbitrage is not within the scope of paragraph (e)(7), and therefore we are not proposing to include it.

Q. Should short sales effected in connection with a merger be excepted from the provisions of Rule 201? If so, at what point in the merger process should a party be deemed entitled to acquire the acquiring company's stock?

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one, excepting all odd-lot transactions, seemed to make other odd-lot exceptions unnecessary, the 1938 adopting release included all three exceptions without discussion. Securities Exchange Act Release No. 1548 (January 24, 1938), 3 FR 213 (January 26, 1938).

[110] *See* Securities Exchange Act Release No. 11030 (September 27, 1974), 39 FR 35570.

[111] The definition of a ''market maker'' is found in Section 3(a)(38) of the Exchange Act, and includes specialists. 15 U.S.C. 78c(a)(38).

[112] Securities Exchange Act Release No. 1645 (April 8, 1938).

[113] *Id.*

[114] *See* Securities Exchange Act Release No. 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) (interpretation concerning the application of Section 11(a)(1) to bona fide arbitrage).

[115] *Id.*

[116] As discussed, the Commission has interpreted the term ''bona fide arbitrage'' to involve the contemporaneous purchase and sale of securities effected to ''lock in'' a gross profit or spread from a current differential in pricing. *Id.* We believe requiring a person relying on the exception to subsequently acquire or purchase the security upon which the arbitrage is based is consistent with this interpretation.

5. International Arbitrage

The international arbitrage exception in Rule 10a–1 (e)(8) has also remained unchanged since its adoption in 1939.[117] The international arbitrage exception was added following an extended study of international arbitrage operations in their relation to short selling.[118] The Commission concluded that the exception was necessary to facilitate ''transactions which are of a true arbitrage nature, namely, transactions in which a position is taken on one exchange which is to be immediately covered on a foreign market.'' [119]

The Commission proposes to retain the international arbitrage exception because we understand that the exception is still being used and does not conflict with the goals of the proposed bid test. As with the domestic arbitrage exception, we have proposed amendments to the language in the exception in order to make it more understandable. In addition, we have incorporated language from current exception (e)(12) of Rule 10a–1 that provides that, for the operation of the international arbitrage exception, a depositary receipt for a security shall be deemed to be the same as the security represented by the receipt. This language was originally included in the Commission's 1939 release adopting the international arbitrage exception, but was incorporated separately in subparagraph (e)(12). We believe this provision should be moved from its current location to the international arbitrage exception because it directly pertains to the operation of that exception.

Q. Should the international arbitrage exception be retained for purposes of the proposed Rule 201? If not, state specific reasons why the exception should be removed from the Rule.

Q. Minor changes have been made to the proposed rule to simplify the language of the existing exception. Are these changes helpful? Do they alter the meaning of the exception in a way that diminishes its value or prohibits bona fide international arbitrage activity in relation to Rule 201?

Q. Is the proposed amended exception too narrow? If so, state specifically why it is too narrow and how it should be restructured to allow beneficial international arbitrage activity that does not carry the kind of manipulative or destabilizing trading that proposed Rule 201 is designed to address.

Q. Should the requirement that the transactions be made in a separate international arbitrage account be eliminated? If so, should the exception permit international arbitrage to be effected in an arbitrage account in which domestic arbitrage could also be effected, rather than in a separate international arbitrage account?

Q. Should exception (e)(8) be combined with (e)(7), the domestic arbitrage exception? Would such a combination create compliance problems or other issues?

6. Distribution Over-Allotment

Subsection (e)(10) generally excepts from Rule 10a–1 sales of securities by underwriters or syndicate members participating in a distribution in connection with an over-allotment, and any lay-off sales by such a person in connection with a distribution of securities through rights or a standby underwriting commitment.[120] Proposed Rule 201 would retain the over-allotment exception in substance, although minor changes have been made to simplify its language.[121] Under the proposed bid test, the exception would permit short sales in connection with an over-allotment at or below the bid, thus enabling an underwriter to price an offering at or below the last bid. We propose including this exception in Rule 201 of Regulation SHO because these sales are all at the offering price and, therefore, do not implicate one of the goals of short sale regulation, *i.e.*, preventing short sellers from accelerating a declining market by exhausting all remaining bids at one price level.

Q. Is this exception necessary? Under what circumstances would an underwriter or syndicate member price an offering below the best bid? Would extending the exception to short sales below the bid have any negative market impact?

7. Equalizing Short Sales and Trade-Throughs

Exceptions (e)(5)(ii) and (e)(11) were adopted in order to eliminate a potential conflict between Rule 10a–1 and Rule 11Ac1–1 under the Exchange Act (Quote Rule).[122] The (e)(5) equalizing exception, as discussed in further detail below, permits market makers to effect short sales on a zero-minus tick (*i.e.*, at the same price as the last trade price), but does not permit short sales, either as a dealer or agent, at a price lower than the last trade price reported in the consolidated system (*i.e.*, on a minus tick). As a result, there arose a potential conflict between the operation of Rule 10a–1 and the ''firmness requirement'' [123] of the Quote Rule in situations where execution of an offer quotation by a broker or dealer would be rendered unlawful because of a trade-through [124] even though the offer had been at a price permitted under Rule 10a–1 at the time that broker or dealer had communicated it to its exchange or association for inclusion in the consolidated quotation system.[125]

In order to resolve this potential conflict, the Commission adopted (e)(5)(ii) to permit market makers to execute transactions at their offer following a trade-through, and (e)(11) to permit non-market makers to effect a short sale at a price equal to the price associated with their most recently communicated offer up to the size of that offer [126] so long as the offer was at

[117] Securities Exchange Act Release No. 2039 (March 10, 1939).

[118] *Id.*

[119] *Id.* We believe that the provision necessitating that the transaction be ''immediately'' covered on a foreign market requires the foreign market to be open for trading at the time of the transaction in order to qualify for this exception.

[120] *See* Securities Exchange Act Release No. 11030 (September 27, 1974), 39 FR 35570 (October 2, 1974). Although the exception was not adopted until 1974, the Commission's approval of the concept of excepting over-allotments from the short sale rule is long-standing. *See, e.g.*, Securities Exchange Act Release No. 3454 (July 6, 1946), in which the Commission approved the NYSE's special offering plan, which permitted short sales in the form of over-allotments to facilitate market stabilization.

[121] *See* subparagraph (d)(7) of proposed Rule 201 of Regulation SHO.

[122] *See* Securities Exchange Act Release No. 17314 (November 20, 1980), 45 FR 231 (November 28, 1980).

[123] 17 CFR 240.11Ac1–1(c)(1). The Quote Rule requires that, subject to certain exceptions, the broker or dealer responsible for communicating a quotation shall be obligated to execute any order to buy or sell presented to him, other than an odd lot order, at a price comprising the responsible broker or dealer's published bid or offer in any amount up to his published quotation size.

[124] A trade-through generally occurs when an Intermarket Trading System (ITS) participant purchases an ITS security at a price that is higher than the displayed price at which the security is being offered at another ITS participating market, or sells an ITS security at a price that is lower than the displayed price at which the security is being bid at another ITS participant.

[125] The following example from the release adopting the exception illustrates the potential conflict: A market maker who currently has a short position in XYZ stock communicates an offer which, if executed against at that time, would be in compliance with Rule 10a–1, *e.g.*, at a price of 20⅛ when the last trade price reported in the consolidated system is also 20⅛. There is a ''trade through'' of the market maker's offer on another market center that causes an up-tick to be reported in the consolidated system at 20¼. Finally, a buy order is sent to the market maker after the trade through at 20¼ has been reported. In order to ensure compliance with 10a–1, the market maker must refuse to execute the order at his offer of 20⅛ because doing so would result in a short sale being effected on an impermissible minus tick, however, in refusing to effect the trade, he would arguably violate the ''firmness requirement'' of the Quote Rule. In addition, when a market maker ''backs away'' from an order, he may, in effect be revealing that he had a short position in the security, thus making it more difficult to liquidate that position at favorable prices. *See, supra* n. 122.

[126] The Commission explained in the release that the scope of the exception in Rule 10a–1(e)(11) was limited to the size of the broker or dealer's displayed offer because the need for the exception only arises to the extent that the broker or dealer's

a price, when communicated, that was permissible under Rule 10a–1. The (e)(11) exception was added in response to several comments that, in addition to orders for their own account, specialists and other floor members also often represent as part of their displayed quotation orders of other market participants (*e.g.*, public agency orders or proprietary orders of non-market makers) that also might be ineligible for execution under Rule 10a–1 following a trade-through in another market.[127]

We believe that the rationale for adopting exceptions (e)(5)(ii) and (e)(11), namely resolving a conflict between the short sale rule and the quote rule arising from a trade-through, would not exist under the proposed bid test. Under the proposed rule, the reference point for a market participant seeking to execute a short sale would not be the last trade price, which could be a down tick created by a trade through, but rather the current consolidated best bid.

It appears that under the proposed bid test, a comparable situation as that envisioned under (e)(5)(ii) and (e)(11) would result in a locked or crossed market.[128] Locking or crossing a quote temporarily frustrates trading in a particular security, and there are various rules and regulations that guard against such practices.[129] We have stated in prior releases that continued locking and crossing of the market can negatively impact market quality, and have approved SRO rules aimed at reducing the frequency of locked and crossed markets and providing more informative quotation information, facilitating price discovery, and contributing to the maintenance of a fair and orderly market.[130]

However, we recognize that locked and crossed markets have not been eliminated entirely, and thus the same conflict between the firm quote rule and the short sale rule could arise under the proposed bid test. We believe that this situation would exist where a market participant posts an offer to sell short at a valid price, *i.e.*, above the best bid, but the bid subsequently moves up and either locks or crosses the market participant's posted offer. A market participant in this situation could still be required to execute buy orders directed to its posted offer, which would be at or below the best bid.[131] The Commission thus proposes to include an exception to Rule 201 of Regulation SHO permitting a responsible broker-dealer, as defined in Rule 11Ac1–1 under the Exchange Act[132] to effect a short sale at a price equal to its posted offer when the market is locked or crossed, when consistent with best execution obligations, provided however, that the exception would not apply to any broker-dealer who initiated the locked or crossed market.

Q. Would an exception from the proposed bid test permitting a short sale to be effected at the consolidated best offer if the market is locked or crossed be useful or necessary to remedy problems associated with locked and crossed markets? If so, describe such circumstances and the market participants to whom the exception should apply.

Q. Would such an exception be used appropriately to remedy the problem of locked and crossed markets, or could such an exception be susceptible to abuse? Is there another way to design an exception for locked and crossed markets?

Q. Some market participants that provide their customers with guaranteed executions of their buy orders at a price equal to the consolidated best offer would be prevented from selling short to fill customer buy orders in a locked or crossed market, due to the fact that the short sale would be executed at a price equal to or below the best bid. Should there be an exception to allow these market participants to execute short sales at their offer to facilitate customer buy orders in locked or crossed markets?

B. Exception Proposed To Be Eliminated

Exception (e)(6) of Rule 10a–1, the original ''equalizing exception,'' was adopted by the Commission in 1938 to allow a short sale of a security on a regional exchange at the same price as the then current price for the same security on the principal exchange, even though the short sale on the regional exchange would constitute a zero-minus or minus tick in relation to the last preceding trade price on the principal exchange.[133] The exception, limited to short sales effected on an exchange, permitted regional specialists to guarantee execution at a price at least as favorable to the customer as he would have obtained had his order been exposed to the principal exchange market.[134] The Commission believed that unless the regional exchanges were

obligations under the Quote Rule may conflict with Rule 10a–1. Because the firmness requirement of the Quote Rule only applies to a broker or dealer's displayed offer, it was deemed appropriate to limit the exception to the size of the displayed offer. *See, supra* n. 122 at n.20.

[127] This concern was illustrated with the following example: A specialist who is short XYZ stock quotes an offer for 1,000 shares at 20⅛ at a time when the last sale reported in the consolidated system was such that the offer, if executed at that time, would be in compliance with Rule 10a–1. This offer for 1,000 shares consists of 300 shares offered by the specialist, a 400-share limit order in the specialist's book, and an offer from the crowd at the specialist's post for 300 shares, all at 20⅛. A trade through of this offer occurs on another exchange and an up-tick is reported in the consolidated system at 20¼. A buy order for 1,000 shares at 20⅛ is then sent to the exchange—after the trade through at 20¼ is reported. Without (e)(11), filling the complete order for 1,000 shares would not be permissible, since (e)(5)(ii), by its terms, applies only to a sale by a market maker for its own account. *Id* at n.18.

[128] In a locked market, the best bid price equals the best ask price; in a crossed market, the best bid price exceeds the best ask price. For example, assume that the current consolidated best bid for a security is 10.00. A market participant who has a short position in a security posts an offer to sell at 10.05. The market participant would be able to execute its short sale so long as it was above the consolidated best bid. Any bid that was posted at 10.05 would lock the market, and any bid posted above 10.05 would cross the market.

[129] *See, e.g.* NASD Rule 4613(e). NASD Rule 4613(e)(2) states that ''A market maker shall, prior to entering a quotation that locks or crosses another quotation, make reasonable efforts to avoid such locked and crossed market by executing transactions with all market makers whose quotations would be locked or crossed. Pursuant to the provisions of paragraph (b) of this Rule 4613, a market maker whose quotations are causing a locked or crossed market is required to execute transactions at its quotations as displayed through Nasdaq at the time of receipt of any order.''

[130] *See* Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020, 8046 (January 26, 2001); Securities Exchange Act Release No. 46410 (August 23, 2002), 67 FR 55897 (August 30, 2002) (File No. SR–NASD–2002–56). *See also* Securities Exchange Act Release No. 47735 (April 24, 2003), 68 FR 23787 (May 5, 2003) (File No. NASD–2003–38).

[131] *See* 17 CFR 240.11Ac1–1; *see also supra* n. 129. Paragraph (b) of Rule 4613 is the NASD Firm Quote Rule.

[132] Rule 11Ac1–1(a)(21) defines the term *responsible broker or dealer* to mean: (i) When used with respect to bids or offers communicated on an exchange, any member of such exchange who communicates to another member on such exchange, at the location (or locations) designated by such exchange for trading in a covered security, a bid or offer for such covered security, as either principal or agent; *provided, however,* That, in the event two or more members of an exchange have communicated on such exchange bids or offers for a covered security at the same price, each such member shall be considered a ''responsible broker or dealer'' for that bid or offer, subject to the rules of priority and precedence then in effect on that exchange; and *further provided,* That for a bid or offer which is transmitted from one member of an exchange to another member who undertakes to represent such bid or offer on such exchange as agent, only the last such member who undertakes to represent such bid or offer as agent shall be considered the ''responsible broker or dealer'' with respect to that bid or offer; and (2) when used with respect to bids and offers communicated by a member of an association to another broker or dealer or to a customer otherwise than on an exchange, the member communicating the bid or offer (regardless of whether such bid or offer is for its own account or on behalf of another person).

[133] Securities Exchange Act Release No. 1579 (February 10, 1938), 3 FR 382 (1938). At the time the exception was adopted (and until April 30, 1976) the permissibility of short sales under Rule 10a–1 was determined for each particular exchange by comparing the price of the proposed short sale to the immediately preceding last trade price in the security to be sold short on that exchange.

[134] Pursuant to the Rule, such sales are excepted only with the approval of the exchange, and only if (1) trades in the security are not reported pursuant to an effective transaction reporting plan and (2) information as to such trades is not made available on a real-time basis.

allowed to fill purchase orders at prices that would have been obtained on the principal exchanges, regional exchanges would be unable to attract sufficient order flow to remain viable.[135]

In 1975 the Commission adopted amendments to Rule 10a–1 in conjunction with the full implementation of the consolidated transaction reporting system (''consolidated system'').[136] As amended, Rule 10a–1 applies a tick test referencing the last trade price reported in the consolidated system, however permits an exchange to make an election to use a tick test that references the last trade price reported in that exchange market.[137]

In addition to altering the reference point for determining the permissibility of short sales, the amendments also altered the reference point for the permissibility of equalizing short sales. Subsection (e)(5)(i) was added to provide an exception for short sales of certain securities effected by a registered specialist, exchange market maker, or third market maker at a price equal to the last price reported in the consolidated system.[138] The exception applies to short sales of securities registered or admitted to unlisted trading privileges on an exchange, whether effected on an exchange or over-the-counter, if transactions in the security are reported pursuant to an effective transaction reporting plan and made available on a real time basis to vendors of market transaction information.

The exception is intended to permit market professionals to protect customer orders against transactions in other markets in the consolidated system by allowing them to sell short at a price equal to the last trade price reported in the consolidated system, even if that sale was on a minus tick (a so-called ''zero-minus tick'').[139] Concurrent with the adoption of subsection (e)(5)(i), exception (e)(6) was amended to apply only to short sales of securities covered by Rule 10a–1(b), *i.e.*, to short sales of exchange-listed securities that are not reported to the consolidated system or made available on a real-time basis.[140]

We do not believe that the equalizing exceptions should be retained as part of proposed Regulation SHO. The rationale for exceptions (e)(6) and (e)(5)(i), *i.e.*, allowing short selling at a price that matches a given security's last trade price on another market center, would not exist under our proposed short sale rule. The proposed rule would reference the real-time consolidated best bid rather than the last trade price, and would not depend on prices in individual markets.[141] We therefore do not believe that a registered specialist or exchange market maker would need to ''equalize'' their price with a price on another market center.

Q. Is there any reason why exception (e)(6) should be retained?

Q. Is there any reason why exception (e)(5)(i) should be retained? For example, would broker-dealers that provide customers with executions at a price equal to transaction prices on a primary exchange require an exception to facilitate customer buy orders?

VII. Prior Exemption Letters Under Rule 10a–1

A. Exchange Traded Funds

Exchange Traded Funds (ETFs) are designed to provide investment results that correspond generally to price and yield performance of securities included in a particular index or securities portfolio. In light of the composite and derivative nature of ETFs, the Commission found that trading in ETFs would not be susceptible to the practices that Rule 10a–1 is designed to prevent and granted an exemption from Rule 10a–1 for transactions in these securities.[142] In particular, the Commission found that ETFs should rise or fall based on changes in the net asset value of the component stocks of the particular index and supply and demand.[143]

The relief is subject to a number of specified conditions. In particular, the corresponding index or portfolio represented by the ETF must consist of a ''basket'' of twenty or more different component stocks, in which the most heavily weighted component stock cannot exceed 25% of the weight of the index or portfolio. Moreover, the component stocks that in the aggregate account for a least 85% of the weight of the underlying index or portfolio must have a minimum public float value of at least $150 million and, with certain exceptions, a minimum ADTV with a value of at least $1 million during each of the previous 2 months of trading prior to the formation of the ETF series. We believe that these conditions continue to be necessary to ensure the composition of the ETFs is such that short selling in the ETFs does not implicate the type of trading activity that short sale regulation was designed to prevent.

The relief previously granted under Rule 10a–1 would continue to apply to cover exemptions from the price test provisions of Rule 201 of Regulation SHO.

Q. Should the Commission provide relief from proposed Rule 201 of Regulation SHO for transactions in ETFs? If so, are the conditions for relief appropriate? If not, please explain why.

Q. Should the relief be codified as an exception to proposed Rule 201 of Regulation SHO?

B. Short Sales Executed at the Closing Price

The Commission has granted conditional relief from the price test provisions of Rule 10a–1 to allow requesting exchanges[144] and broker-dealers[145] to execute short sales in after-hours crossing sessions at a price equal

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[135] *See* Securities Exchange Act Release No. 11468 (June 12, 1975), 40 FR 25442 (June 16, 1975) (adopting amendments to Rule 10a–1 and discussing the operation of Rule 10a–1(e)(6) as in effect prior to and after amendment).

[136] *Id.*

[137] 17 CFR 240.10a–1(a)(2). This aspect of the short sale rule, as amended, was designed to ameliorate potential regulatory and operational problems perceived by certain exchanges with a uniform short sale rule employing a tick test referenced to the consolidated system. Id.

[138] Rule 10a–1(e)(5)(i) exempts: Any sale of a security covered by paragraph (a) of this section (except a sale to a stabilizing bid complying with § 242.104 of this chapter) by a registered specialist or registered exchange market maker for its own account on any exchange with which it is registered for such security, or by a third market maker for its own account over-the-counter, (i) Effected at a price equal to or above the last sale, regular way, reported for such security pursuant to an effective transaction reporting plan.

[139] Securities Exchange Act Release No. 11030 (September 27, 1974), 39 FR 35570.

[140] Paragraph (b) of Rule 10a–1 applies to any short sale effected on a national exchange of any security not covered by paragraph (a) of Rule 10a–1. Paragraph (a), in turn, covers any short sale effected on a national exchange of any security registered or admitted to unlisted trading privileges on a national exchange, if trades in the security are reported pursuant to an ''effective transaction reporting plan'' and if information as to such trades is made available on a real-time basis to vendors of market transaction information.

[141] We have proposed eliminating Rule 10a–1(a)(2), and thus any market center would be prevented from relying on its own bid as a reference point for compliance with the rule. *See, infra* part XII.

[142] *See, e.g.*, Letter re: SPDRs (January 27, 1993); Letter re: MidCap SPDRs (April 21. 1995); Letter re: Select Sector SPDRs (December 14, 1998); Letter re: Units of the Nasdaq-100 Trust (March 3, 1999); Letter re: ETFs (August 17, 2001) (class letter).

[143] The Commission, however, did not provide any relief from the tick test for short selling of the individual component stocks underlying an ETF.

[144] *See, e.g.*, Letter re: Off-Hours Trading by the Amex, [1991] Fed. Sec. L. Rep. (CCH) ¶ 79,802 (August 5, 1991); Letter re: Operation of Off-Hours Trading by the NYSE, [1991] Fed. Sec. L. Rep. (CCH) ¶ 79,736 (June 13, 1991).

[145] *See, e.g.*, Letter re: Burlington Capital Markets (July 1, 2003); Letter re: Bear, Stearns & Co., Inc. (January 19, 1996); Letter re: AZX, Inc. (November 15, 1995); Letter re: Instinet Corporation Crossing Network, [1992] Fed. Sec. L. Rep. (CCH) ¶ 76,290 (July 1, 1992); Letter re: Portfolio System for Institutional Trading, [1991–1992] Fed. Sec. L. Rep. (CCH) ¶ 76,097 (December 31, 1991).

to the closing price of the security.[146] Absent relief, such short sales could violate Rule 10a–1, in that the matching price (the closing price) of a security could be on a minus or zero-minus tick with respect to the last sale in the consolidated transaction reporting system. In granting this conditional relief, we have noted that short sale transactions executed at the closing price generally do not represent the type of abusive practices that Rule 10a–1 is designed to prevent. In particular, short sale orders entered in the after-hours crossing sessions cannot influence the matching price, but rather are priced by unrelated order flow and transactions occurring during the primary trading session, which are subject to the tick test. The relief previously granted under 10a–1 would continue to apply to cover exemptions from the price test provisions of Rule 201 of Regulation SHO.

Q. Do closing price transactions create perverse incentives for broker-dealers, such that they should not be granted an exception?

Q. Should the relief be codified as an exception to proposed Rule 201 of Regulation SHO?

VIII. Market Maker Exception From Proposed Uniform Bid Test

It has been argued that short selling by market makers helps offset imbalances in the supply and demand or gaps in the flow of buy and sell orders.[147] NASD Rule 3350 exempts from operation of the NASD's bid test short sales executed by qualified market makers in connection with bona fide market making.[148] There is currently no similar exception in Rule 10a–1, however, for the bona fide market making activities of specialists and third market makers in exchange-listed securities.

The chief reason advanced in support of the NASD market maker exception is that it enhances liquidity by permitting market makers to adjust inventory positions quickly.[149] If market makers were required to wait for an upbid to make a short sale, it is asserted that their ability to satisfy their market making functions would be impaired. The NASD has also argued that market makers perform an important market stabilizing function. According to a 1997 study by NASD Economic Research, market makers provide immediate, stabilizing liquidity.[150] If there is heavy selling pressure by investors and the market is moving down, market makers provide stability by standing ready to buy stock. According to the study, application of a short sale rule to market makers could reduce a market maker's ability to adjust inventory positions quickly, thereby reducing its supply of immediate liquidity to the marketplace.[151] The NASD study also states that application of the short sale rule to market makers could increase market makers' costs, which would be passed on to investors in the form of wider spreads.[152]

We do not find these arguments persuasive in the context of the proposed uniform bid test. In providing liquidity to customers, a market maker primarily buys at the bid and sells at the offer, or in between the bid and offer. We believe that a market maker should rarely need to sell short at or below the bid in its market making capacity.[153] The proposed rule permits unrestricted short sales at the offer or at any other price that is one cent or more above the bid, and thus the need for an exception to allow market makers to sell at or below the best bid seems limited.[154]

We are also concerned that the exception may be being used by entities that are not actually engaged in bona-fide market making.[155] For example, some issuers and investors have argued that some market makers are relying on the exception to continuously sell short into the bid—an activity that, as mentioned above, we find inconsistent with bona fide market making. The Commission believes that for the rule to have its intended positive effect on the market, all market participants, including market makers, should be subject to the rule.[156]

A market maker that is positioning inventory to profit from market moves would find it advantageous to be able to short into the bid, like any speculator. One of the historical goals of short sale regulation is to prevent short sellers from accelerating a declining market by exhausting all remaining bids at one price level, and causing successively lower prices to be established by long sellers.[157] If such a seller is able to exhaust the existing bids in a security with short sales, and is able to attract long sellers to the market, the goal of accelerating the price decline of a particular security would be accomplished. Another goal of short sale regulation is that long sellers should have the right to sell first in a declining market.

Nevertheless, we believe that the proposed exception that would allow broker-dealers to execute customer sales on a riskless principal basis by looking to the customer's position would provide broker-dealers with additional flexibility to facilitate customer

[146] The relief is generally subject to the conditions that: (1) short sales of a security in the after-hours matching session shall not be effected a prices lower than the closing price of the security on its primary exchange; (2) persons relying on these exemptions shall not directly or indirectly effect any transactions designed to affect the closing price on the primary exchange for any security traded in the after-hours matching session; and (3) transactions effected in the after-hours matching session shall not be made for the purpose of creating actual, or apparent, active trading in or otherwise affecting the price of any security.

[147] *See, e.g.*, Irving M. Pollack, *Short Sale Regulation of NASDAQ Securities* (1986), at 12.

[148] Rule 3350 (c) provides further 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 bona fide market-making activity.'' *See* NASD Rule 3350. NASD IM–3350 also contains language specifying what type of activity does not constitute bona fide market making. *See, supra* n. 42.

[149] *See* Securities Exchange Act Release No. 34277 (July 7, 1994), 59 FR 34885 (July 29, 1994) (order granting temporary approval of Rule 3350 for an eighteen-month period (Temporary Approval Order)).

[150] *See* D. Timothy McCormick and Bram Zeigler, *The Nasdaq Short Sale Rule: Analysis of Market Quality Effects and The Market Maker Exemption, NASD Economic Research*, (August 7, 1997) at 22–23.

[151] *Id.* at 20.

[152] *Id.*

[153] The NASD's 1997 study indicates that during a sample month in 1997, market maker short sales at or below the inside bid accounted for only 2.41% of their total share volume. *Id.* at 27.

[154] In approving the market maker exception, the Commission noted that we would review the exception to determine whether the bid-test and exceptions are practicable and necessary on an ongoing basis. *See* Temporary Approval Order, supra, n. 149. Most recently, we extended the Rule 3350 pilot, including the market maker exemption, until December 15, 2003. *See* Securities Exchange Act Release No. 48035 (June 16, 2003), 68 FR 37183 (June 23, 2003). We noted that the extension was subject to modification or revocation should the Commission amend Rule 10a–1 in such a manner as to deem the extension unnecessary or in conflict with any adopted amendments.

[155] As initially approved, only market makers that met the Primary Market Maker (PMM) standards set forth in NASD Rule 4612 were eligible for an exception from the short sale rule. These PMM standards were subsequently suspended for all National Market Securities due to the potential impact of the Order Handling Rules. *See* Securities Exchange Act Release No. 38294 (February 14, 1997), 62 FR 8289 (February 24, 1997). As such, all market makers are currently eligible to rely on the exception.

[156] When we first approved the NASD's bid test and market maker exception in 1994, we recognized that the exception could result in problems of the type that have been reported by commenters. The Commission stressed the importance of monitoring the need for and effect of the exception on an ongoing basis, stating that experience with the test ''may raise issues that require reconsideration of some or all elements of the proposal.'' *See* Temporary Approval Order, *supra,* note 149. In particular, the Commission noted concerns that the market maker exception could create opportunities for abusive short selling. *Id.*

[157] Securities and Exchange Commission, Special Study of Securities Markets, H.R. Doc. No. 95, 88th Cong., 1st Sess., at 251 (1963).

orders.[158] In addition, we are proposing an exception from Rule 201 to allow broker-dealers to sell short at a price equal to the consolidated best bid, when consistent with best execution obligations, in order to fill customer orders it is required to execute pursuant to federal securities laws or SRO rules, such as NASD IM–2110–2 and the related interpretation of IM–2110–2 (Manning Interpretation). According to Nasdaq, the Manning Interpretation is designed to ensure that customer limit orders are executed in a fair manner and at similar prices at which a firm has traded for its own account.[159] If a broker-dealer executed an incoming market sell order at the consolidated best bid, it would then be obligated to fill other customer limit orders it held at that price.[160] However, if the broker-dealer had a net short position, it would be prohibited by proposed Rule 201 from filling the customer buy order at a price equal to the bid. We believe the proposed exception would remedy this conflict.

We seek comment on the importance of a market maker exception in the context of a market maker's role in providing liquidity. We also seek comment on the extent to which market makers might need to be able to short at the bid in order to facilitate a customer buy order, and inquire whether an exception limited to those situations would be necessary or appropriate.

Q. Should the proposed uniform bid test include a *bona-fide* market making exception? If so, why? How important is it for a market maker to be able to profit from position trading? Could there potentially be negative consequences to the market if there is not an exception for *bona-fide* market making transactions? Please describe.

Q. If a market making exception from the bid test is necessary, what should be done to limit its use to those engaged in *bona-fide* market making? Should the exception be tied to certain qualifications or conditions? If so, what should these qualifications or conditions be?

Q. If inclusion of a *bona-fide* market making exception is necessary, would there be any circumstances where a market maker acting in his market making capacity would need to sell short below the bid?

Q. How often do market makers or other broker-dealers sell short at the bid in response to customer buy orders? Would it be feasible to allow market makers or other broker-dealers to sell short at the bid to facilitate customer buy orders without undermining the purposes of the price test? If so, should there be limits on such short sales, for example to prevent a dominant market maker from filling customer orders at the bid in order to place downward pressure on the security's price?

Q. What other type of transactions should qualify for a bona fide market making exception?

IX. Proposed Changes to the Order Marking Requirement

A. Marking Orders

We propose combining current marking requirements in subsections (c) and (d) of Rule 10a–1 into new subsection (c) of Rule 201. New subsection (c) generally would differentiate between ''long,'' ''short,'' and ''short exempt'' orders. The marking requirement would apply to all exchange-listed securities and over-the-counter securities. An order could only be marked ''long'' when the seller owns the security being sold and the security either is in the physical possession or control of the broker-dealer or will be prior to the settlement of the transaction. A sell order would be required to be marked ''short exempt'' if it were a short sale effected pursuant to an exception in Rule 201.

We believe that the proposed change would eliminate the current discrepancy between how Rule 3b–3 defines a short sale and the marking provisions found in Rule 10a–1. There are circumstances where an order can be marked ''long,'' but is a short sale executed without regard to the current tick test. For example, a person placing a sell order may be deemed to own a security under current Rule 3b–3(b)–(e),[161] but must borrow securities to consummate the delivery (*e.g.*, because the securities due upon a conversion of a security have not been received). While borrowing to settle a sale constitutes a short sale under Rule 3b–3, the seller would not be subject to the current tick test if at the time of the trade the seller owns the security and intends to deliver such security ''as soon as possible without undue inconvenience or expense.'' [162] This sale would be marked ''long'' under the current marking provisions of Rule 10a–1(d).

Under our proposed amendment, the sell order described above would not be marked ''long'' because, while the above seller may own the security, the security is neither in the physical possession or control of the broker-dealer nor is it reasonably expected to be prior to the settlement of the transaction. The seller would thus have to borrow the stock in order to effectuate delivery to the buyer. Instead the seller, availing themselves of exception (d)(1) of Rule 201, would mark the order ''short exempt.'' Requiring the order to be marked ''short exempt'' promotes consistency among related rules and uniformity among markets and market participants in the manner in which short sales are marked.

We believe that the proposed amendments would provide several benefits. The current marking requirements can lead to undetected violations of Rule 10a–1 because once the order is marked ''long,'' it is processed and executed as such, even though borrowed shares consummate the delivery on the sale. This complicates surveillance for violations of Rule 10a–1, as short sales executed under an exception from the rule can be masked as ''long'' sales. Further, under the current marking requirements there is no record of how short sellers are availing themselves of the various exceptions to Rule 10a–1. We believe that surveillance for compliance with proposed Rule 201 would be facilitated with accurate indications of when and under what circumstances the exceptions are utilized.

The practice of designating an order as ''short exempt,'' as proposed, has already developed. Many broker-dealers are already required to mark short sales as short exempt if they are effected under one of the exceptions from Rule 10a–1. For example, ITS participants [163] are required to designate commitment orders as ''short exempt'' when the short sale falls under an exception to the

[158] *See, infra* part IX.B for a further discussion of the proposal regarding riskless principal trades.

[159] *See, e.g.*, Securities Exchange Act Release No. 44030 (March 2, 2001), 66 FR 14235 (March 9, 2001) (order granting approval of proposed rule change by the NASD regarding trading ahead of customer limit orders pursuant to decimal pricing in the Nasdaq market). *See also* NASD Rule 6440(f) (applying limit order protection rules to NASD members in exchange-listed securities).

[160] For example, a market maker receives an order to buy 1,000 shares of XYZ stock at $20 from a customer and represents the order in its Nasdaq quote. Market maker buys 1,000 shares of XYZ at $20 for its own account. Pursuant to the Manning Interpretation, the market maker would be obligated to sell to the customer to fill the customer's 1,000 share order.

[161] As discussed *infra*, Part X, Rule 3b–3 provides that a person is deemed to own a security if he or she: has entered into a binding, unconditional contract to purchase a security; own a security convertible into or exchangeable for it and has tendered such security for conversion or exchange; have an option to purchase or acquire it and has exercised such option; or have rights or warrants to subscribe to it and have exercised such rights. A person who is deemed to own a security may mark orders to sell such securities long.

[162] 17 CFR 240.10a–1(e)(1).

[163] Current signatories to the ITS Plan include the American Stock Exchange LLC (Amex), Boston Stock Exchange, Inc. (BSE), Chicago Board Options Exchange, Inc. (CBOE), Chicago Stock Exchange, (CHX), Cincinnati Stock Exchange (CSE), NASD, NYSE, Pacific Exchange, Inc. (PCX), and Philadelphia Stock Exchange, Inc. (Phlx).

application of Rule 10a–1.[164] The NYSE has advised its members that it is ''appropriate'' to mark those short sale orders covered under exceptions to the rule as ''short exempt.''[165] In addition, NASD Rule 4991(i) requires all orders executed on Nasdaq be designated as ''buy,'' ''sell long,'' ''sell short,'' or ''sell short exempt.''[166] The proposed amendment would require orders to be marked as either ''long,'' ''short,'' or ''short exempt,'' providing greater uniformity.

Further, we believe that requiring a broker dealer to have physical possession or control of the security at execution, or, in the alternative, that the broker dealer obtain physical possession or control of the security prior to settlement, before marking the order ''long'' should facilitate the process of clearance and settlement in the current T + 3 environment. Disturbances in settlement processes can affect the stability and integrity of the financial system in general. Clearance and settlement systems are designed to preserve financial integrity and minimize the likelihood of systematic disturbances by instituting risk-management systems.[167] Requiring a broker-dealer to have possession or control of the securities before the broker-dealer can mark an order long should help to reduce failures to deliver. We anticipate that this proposed amendment would not be burdensome to market participants because most customer securities are not held by investors in physical form, but rather are held indirectly through their broker-dealer, *i.e.*, in ''street name.'' [168]

Q. What type of additional costs and burdens, if any, would be associated with requiring orders to be marked ''short exempt?''

Q. Does the requirement that a broker has physical possession or control of the security or will have physical possession or control prior to settlement place undue or unreasonable hardship on long sellers?

Q. Should proposed Rule 200 require a broker or dealer marking a sell order ''short exempt'' to identify the specific exception that the broker or dealer is relying on in marking it ''short exempt?'' If not, state why not.

B. Marking Requirements for Riskless Principal Transactions

Recently, some market makers have indicated that they would like exemptive relief from Rule 10a–1 to mark sell orders based on a customer's net position when a broker-dealer or market maker is effecting the execution of the customer's order on a riskless principal basis.[169] For example, a customer who is net long 1,000 shares of XYZ security enters an order to sell those securities with a market maker, the market maker then seeks to sell 1,000 shares of XYZ from his proprietary account to facilitate the trade prior to obtaining the securities from the customer. In this situation, market makers acting as riskless principal have sought an exemption from Rule 10a–1 to mark the market maker's sale from its proprietary account as ''long'' based on the customer's long position, regardless of the market maker's proprietary position in the security.

We believe that for the purposes of short sale regulation, the position of a broker-dealer should be deemed to be the same as a customer's position, regardless of whether the broker-dealer has a proprietary net ''long'' or ''short'' position, when the broker-dealer acts in a riskless principal capacity.[170] We believe that in this context, the broker-dealer effects the sale in a manner analogous to an agency execution. A short sale effected on an agency basis is marked according to the customer's net position. We therefore propose adding an exception to the proposed bid test of Regulation SHO that would allow broker-dealers to mark such sell orders ''short exempt.'' [171] Allowing a broker-dealer to mark an order in this manner does not implicate the stated concerns raised by short selling, *i.e.*, where a customer is long, specialist or market maker principal transactions should not be restricted in the same manner as short sales.[172]

We are concerned, however, that this exception from proposed Rule 201 not be used in an abusive or manipulative manner. Towards that goal, we would restrict this provision to riskless principal transactions as follows:

- A transaction in which a broker or dealer, after having received an order to sell a security, sells the security as principal at the same price to satisfy the order to sell;
- The sell order must be given the same per-share price at which the broker or dealer sold shares to satisfy the facilitated order, exclusive of any explicitly disclosed markup or markdown, commission equivalent or other fee;
- The broker or dealer must have written policies and procedures in place to assure that, at a minimum: the customer order was received prior to the offsetting transaction; the offsetting transaction is allocated to a riskless principal account or customer account within 60 seconds of execution; the broker or dealer has supervisory systems in place to produce records that enable the broker or dealer to accurately and readily reconstruct, in a time-sequenced manner, all orders effected pursuant to this exception.

We believe that these conditions would allow for the surveillance of the exception by linking the exception to specific incoming orders and executions, and by requiring the brokers and dealers to establish procedures for handling such transactions. Moreover, requiring the orders to be received prior to the offsetting transaction and the allocation of the offsetting transaction to the customer within 60 seconds would help avoid the exception from being abused by brokers or dealers who may attempt to retroactively claim the exception for transactions that were not done on a riskless principal basis.[173]

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[164] *See* Restated Intermarket Trading Plan, 33 (May 30, 1997).

[165] *See* NYSE Rule 440B.20.

[166] *See* NASD Rule 4991(i)(2).

[167] *See* Exchange Act Section 17A, 15 U.S.C 78q–1.

[168] DTC holds approximately 83% of all NYSE-traded shares outstanding and 72% of all Nasdaq-traded shares outstanding for the benefit of its participants (*i.e.*, broker-dealers and banks). See Securities Dematerialization White Paper, Securities Industry Association, at 17 (June 5, 2000).

[169] Riskless principal transactions are generally described as trades in which, after receiving an order to sell (or buy) from a customer, the broker-dealer sells (or purchases) the security to (or from) another person in a contemporaneous offsetting transaction. *See* Securities Exchange Act Release No. 44291 (May 18, 2001), 66 FR 27760 (order adopting a *de minimis* exception to the definition of the term ''dealer'' solely for banks engaging in riskless principal transactions under 240.17 CFR 3a5–1); *see also* Securities Exchange Act Release No. 33743 (March 9, 1994), 59 FR 12767–01 (March 17, 1994). More recently, the Commission modified its interpretation of Exchange Act Section 28(e), the ''safe harbor'' provision for money managers who use commission dollars of their advised accounts to obtain research and brokerage, so that it encompasses certain riskless principal transactions as defined by Nasdaq trade reporting rules. *See* Securities Exchange Act Release No. 45194 (December 17, 2001), 67 FR 6 (January 2, 2002) (NASD's rules define a riskless principal trade as a transaction in which a member after having a received an order to buy a security, purchases the security as principal at the same price to satisfy the order to sell. *See* NASD Rules 4632(d)(3)(B), 4642(d)(3)(B), and 6420(d)(3)(B)).

[170] For example, if the customer seeking to sell 1,000 shares of XYZ and the customer was net short in XYZ, a market maker engaging in a riskless principal transaction on behalf of the customer would have to mark the sell order from his principal account short regardless of his own net position.

[171] *See* subparagraph (d)(9) of proposed Rule 201 of Regulation SHO.

[172] *See* Securities Exchange Act Release No. 46994 (December 13, 2002), 67 FR 78033 (December 20, 2002) (order approving NASD amendment to the Manning Interpretation establishing a riskless principal customer facilitation exemption).

[173] The requirement that an offsetting transaction be allocated to either a riskless principal or

Continued

In order to assess whether this proposed exception properly addresses the needs of specialists or market makers, we ask the following questions:

Q. Does the proposed riskless principal exception allow brokers and dealers to facilitate customer orders handled on a riskless principal basis regardless of their proprietary net position? Are the conditions appropriate? In particular, is the requirement to allocate the offsetting transaction to the customer within 60 seconds appropriate?

Q. Is there any concern that this provision is not consistent with the goals of short sale regulation? If so, how?

X. Rule 3b–3

Rule 3b–3 defines the term ''short sale'' as any sale of a security that the seller does not own or any sale that is consummated by the delivery of a security borrowed by, or for the account of, the seller. Rule 3b–3 also defines specific instances when a person shall be deemed to own a security, *i.e.*, a long position, for the purposes of Rule 10a–1.

We are proposing new Rule 200 to replace Rule 3b–3 and include several amendments to Rule 3b–3. As discussed in further detail below, we seek comment on including a modified version of current subparagraph (b) of Rule 3b–3 in Rule 200 that would require that a person not only have entered into an unconditional contract, binding on both parties thereto, to purchase the security, but also that the contract specify the irrevocable price and amount of securities purchased and provides for present delivery. We also propose amending the Rule to allow broker-dealers to calculate net positions in a particular security within defined trading units. Additionally, we propose that the definition of a short sale include the block-positioner exception from the current Rule 10a–1(e)(13). We also propose codifying in Rule 200 prior interpretations related to security futures products, and the unwinding of certain index arbitrage positions.

A. Unconditional Contracts To Purchase Securities

Under Rule 3b–3, a person owns a security if the person has ''purchased, or has entered into an unconditional contract, binding on both parties thereto, to purchase it but has not yet received it.'' [174] The staff has recently received inquiries about whether certain transactions qualify as an ''unconditional contract'' for the purposes of short sale regulation. In particular these inquiries focus on whether it is necessary for a contract to specify the price and amount of securities to be purchased in order to be considered an unconditional contract.

In 1992 the Commission proposed to clarify that an ''unconditional contract'' must specify a fixed, currently ascertainable price, and the exact amount of securities to be obtained in order for a person to be deemed to own a security under subparagraph (b) of Rule 3b–3.[175] The proposed amendments were intended to address potentially abusive trading practices associated with contracts for future purchases of securities where the price or volume was based on a formula or other contingent event. We were concerned about the potential for abuse associated with securities contracts where the purchase price is based on the next following closing price in the primary market for the stock or stocks. The concern was that a purchaser under such a contract may have incentive to sell the securities (long) that are subject to the contract prior to the close of trading on the primary market in a manner that would depress the closing price. Similarly, we expressed concern regarding shares expected to be received from dividend reinvestment plan purchases being considered in calculating a long position pursuant to Rule 3b–3 where the number of shares received under a plan was not known but only estimated based on a formula. The proposed amendments were never adopted or withdrawn.

As stated, the language of subparagraph (b) of Rule 3b–3 may be subject to abuse by individuals seeking to claim a long position only to avoid application of the tick test provisions in Rule 10a–1. Further, it is possible that where a contract mandates that securities will be purchased at the closing price, there may be incentive to depress the market price of the security to obtain the security at a lower price.[176] Moreover, there is the potential that contracts in which the amount of securities owned is not known until some later period may be designed to create a long position that would facilitate avoidance of the tick test. It appears to us that a fixed price and quantity of a contract to purchase securities, as well as present delivery of the securities, are essential elements in determining whether such a contract conveys ownership for purposes of short sale regulation,[177] and requiring these elements would restrict certain activities designed to manipulate the market. Therefore, we are proposing that Rule 200, subparagraph (b)(2) require that the unconditional contract specify the price and amount of securities to be purchased in order for a person to claim ownership of the securities underlying the contract under proposed Regulation SHO.

Q. Should proposed Rule 200 provide that in order for a person to be deemed to own a security by virtue of the fact that he has entered into an unconditional contract to purchase the security, the contract must specify the price and amount of the security to be purchased? If not, state why not.

In addition, questions have arisen about whether an unconditional contract must contemplate present delivery of securities in order for persons to claim ownership of securities under Rule 3b–3. In order for a person to claim ownership of a security, she should have title to the security or some other type of present or near-term ownership right to obtain the security. In the case of options, convertibles, rights, or warrants, the rule requires that a person exercise or convert the instrument in order to claim ownership of the underlying security. However, there is currently no express requirement that a person who has

customer account within 60 seconds is a condition that is consistent with previously stated Nasdaq policy regarding the handling of mixed capacity trades and compliance with the Manning Interpretation. *See* NASD Notice to Members 01–85, at Question 7 and Notice to Members 95–67, at Question 5.

[174] 17 CFR 240.3b–3(b).

[175] *See* Securities Exchange Act Release No. 30772 (June 3, 1992), 57 FR 24415 (June 9, 1992). Three commenters supported the price provision while four opposed it. Those who opposed it believed that a fixed-price requirement would prevent large transactions from being effected in an orderly manner and would place an undue burden on market participants who enter into contracts to buy and sell securities at a price to be determined in the future. Five commenters favored the fixed quantity provision and one commenter opposed it.

[176] *Id.*

[177] The Commission notes that in a typical ''equity line'' financing arrangement, an investor and the company enter into a written agreement under which the company has the right to ''put'' its securities to the investor. Under this ''put,'' the company has the right to tell the investor when to buy securities from the company over a set period of time and the investor has no right to decline to purchase the securities. The dollar value of the equity line is set in the written agreement, but the number of shares that the company will actually issue may be determined by a formula tied to the market price of the securities at the time the company exercises its ''put.'' *See* Division of Corporation Finance, Current Issues Outline Quarterly Update (March 31, 2001). As such, equity line financing arrangements and convertible financing arrangements would generally not meet the requirements for an unconditional contract, due to the fact that such arrangements may not specify a fixed price and quantity of the securities to be purchased, nor would they contemplate present delivery of the securities upon conversion or exercise of the put. All sales executed by the investor prior to the company exercising its ''put,'' or the investor exercising its conversion right, would thus be short sales subject to all applicable regulations, including the borrow and delivery requirements in proposed Rule 203, and, if the security sold is a ''covered security,'' the bid test provisions of proposed Rule 201.

entered into an unconditional, binding contract be expected to receive the securities imminently in order to claim ownership.

We are concerned that, without an express requirement that the contract contemplate present delivery, there is a danger that contracts would be formed solely for the purposes of creating a long position to evade the short sale rule, although there is no real intention to actually acquire the securities pursuant to the contract. As a result, we are seeking comment on whether buyers of securities pursuant to a contract should be required to have a reasonable expectation of imminent receipt of the securities prior to considering themselves to own the securities pursuant to proposed Rule 200. We are not proposing a present or imminent delivery requirement in proposed Rule 200 but instead we are seeking comment on such a provision.

Q. Should proposed Rule 200 require a definite time frame that limits when the buyer can consider themselves long, *i.e.*, a buyer would be deemed to own the securities only if the contract contemplates the buyer will receive the securities within 30 days?

Q. If so, what should the time frame be? Does industry practice provide some objective standard that is reasonable?

B. Ownership of Securities Underlying Securities Futures Products

We propose that new Rule 200 include language consistent with existing Commission guidance defining when a person shall be deemed to own a security underlying a security futures contract.[178] Specifically, we have stated that a person who holds a security future obligating him to take delivery of the underlying securities by physical settlement would not be considered long in these securities for the purposes of proposed Rule 100 until the security future terminates trading.[179] This interpretation is consistent with the way current Rule 3b–3 addresses several instances where a person owns a security that entitles a person to acquire securities underlying the instrument, *e.g.*, options, rights, warrants, and convertibles. In those instances, Rule 3b–3 requires the option, right, warrant, or convertible to be exercised, tendered, or converted before the person can be considered as having a long position in the underlying security. These provisions also implicitly contemplate that the person will shortly acquire the security being sold. For a physically-settled security future, the holder will obtain the underlying security only after the security future terminates trading. A security future settled by receipt of cash has no effect on a person's long position.

We are proposing subparagraph (b)(6) of Rule 200 that provides that a person holding a long security futures position is not considered to own the underlying security for the purposes of Rule 3b–3 until the security terminates trading.

Q. Should proposed Rule 200 require delivery of the securities underlying a futures contract before a person can consider himself long for the purposes of short sale regulation?

C. Aggregation Units

Rule 3b–3 requires a seller of an equity security subject to Rule 10a–1 to aggregate all of its positions in that security in order to determine whether the seller has a ''net long position'' in the security.[180] Broker-dealer firms have represented that firm-wide netting is costly, burdensome, and potentially counterproductive for large, multi-service brokerage firms. Firm-wide netting is currently required at least once a day.[181]

Many large broker-dealers are divided into ''desks'' that pursue separate trading strategies. At times, the firm may have a net short position in a security, but a particular desk may have a net long position in that security. This situation may result in a desk not being able to pursue an investment strategy that calls for the desk to sell its long position. This result appears to be unwarranted where the sale is not made to benefit the positions of other firm trading units. While the firm could form separate broker-dealers for each trading unit's strategy to support the independence of each trading unit, this approach would be costly and elevate form over substance.

In 1998, the staff issued a letter stating that the Division would not recommend that the Commission take enforcement action if a multi-service broker-dealer calculated its net position in a particular security within defined trading units independently from the positions held by the other aggregation units within the firm (''aggregation unit letter'').[182] We propose to incorporate aggregation unit netting into proposed Rule 200 because we believe that such netting allows aggregation units at multi-service broker-dealers to pursue different trading strategies, as well as provide liquidity to the market, without the restrictions of firm-wide netting.

Specifically, we propose to allow trading unit aggregation if: (1) The broker or dealer has a written plan of organization that identifies each aggregation unit, specifies the trading objective of each, and supports its independent identity;[183] (2) each aggregation unit within the firm continuously determines, on a real-time basis, its net position for every security that it trades that is subject to proposed Rule 201 of Regulation SHO;[184] (3) each trader pursuing a particular trading objective or strategy is included in only one aggregation unit; and (4) individual traders are assigned to only one aggregation unit at a time. We believe that these conditions would help prevent potential coordinated manipulative activity amongst the aggregation units by ensuring they are separate and independent.[185]

We seek comment on our proposal to include the aggregation unit netting into Rule 200 of proposed Regulation SHO as well as firm-wide netting in general.

Q. Is this relief necessary for multi-service firms? How easily can these firms estimate

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[178] *Commission Guidance on the Application of Certain Provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, and Rules Thereunder to Trading in Security Futures Products*, Securities Exchange Act Release No. 46101 (June 21, 2002), 67 FR 43234 (June 27, 2002).

[179] Termination of trading is the moment at which an open position in a security future, either a long or short position, can no longer be closed or liquidated either by buying or selling an opposite position. A person obligated to deliver would be considered short at the termination of trading, and a person entitled to receive securities at the termination of trading would be considered long. *Id.*

[180] See 17 CFR 240.3b–3. *See also* Securities Exchange Act Release No. 20230 (September 27, 1983), 48 FR 45119, 45120 (October 3, 1983) (to determine whether a person has a ''net long position'' in a security, all accounts must be aggregated).

[181] See Securities Exchange Act Release No. 27938 (April 23, 1990), 55 FR 17949, 17950 (aggregation must be based on a listing of securities positions in all proprietary accounts as determined at least once each trading day). Allowing aggregation to be determined once per day was largely due to practical considerations arising from technological limitations at the time the interpretation was issued.

[182] *See* Letter regarding Bear, Stearns & Co. Inc.; Credit Suisse First Boston Corporation; Deutsche Bank Securities Inc.; Donaldson, Lufkin & Jenrette Securities Corporation; Goldman, Sachs & Co.; J.P. Morgan Securities Inc.; Lehman Brothers Inc.; Merrill Lynch, Pierce, Fenner & Smith; Morgan Stanley & Co. Inc.; PaineWebber Inc.; Prudential Securities Inc.; Salomon Smith Barney Inc.; SG Cowen Securities Corporation; and Warburg Dillon Read LLC. (November 23, 1998), 1998 SEC No-Act LEXIS 1038.

[183] The independence of the units would be evidenced by a variety of factors, such as separate management structures, location, business purpose, and profit and loss treatment.

[184] This condition holds firms accountable for knowing the activities and positions of each aggregation unit.

[185] We believe that these conditions have worked well in restricting the exemptive relief to situations that do not appear to raise the abuses that the short sale price test is designed to prevent, and should be incorporated in the proposed exception. We also note that market participants that rely on the aggregation unit exception have designed their programming and surveillance systems in accordance with these conditions.

their real time positions for individual trading units? What about for the entire firm?

Q. Are the conditions included in proposed Rule 200 appropriate? Should there be additional conditions?

Q. Can the utility of the aggregation unit provision to multi-service firms be improved? If so, how?[186] Are the designated conditions appropriate?

Q. Should the aggregation unit provision be available to non-broker-dealers, for example, to hedge funds?

Q. On its face, Rule 3b–3 contemplates that a sale must be marked based on positions in all proprietary accounts in that security at the time of the sale. In light of the advances in technology since 1990, is it possible for firms or other entities to be able to determine their aggregate position in all proprietary accounts contemporaneously throughout the day? If not, why not?

Q. If firms or other entities are unable to determine their aggregate position in all proprietary accounts contemporaneously throughout the day, is there a means of allocating a daily aggregate position within the firm that would be capable of surveillance?

D. Block-Positioner Exception

The block-positioner exception is currently in subsection (e)(13) of Rule 10a–1.[187] Because this exception directly relates to a broker-dealer's calculation of its net position under current Rule 3b–3, we propose to incorporate the block-positioner exception without modification into Rule 200 of Regulation SHO.

Rule 3b–3 considers broker-dealers to have a short position in a security even though that position is fully offset by equivalent convertible securities, rights, warrants, or call options. Therefore, arbitrage activities may result in the block-positioner having a net short position. This short position would require compliance with the ''tick'' restrictions of the Rule and may inhibit the efforts of broker-dealers who engage in both block-positioning and offset activities. If a broker-dealer seeks to dispose of a block of securities it bought as a principal while acting in the capacity of a block-positioner, it may be unnecessarily hindered in doing so if it simultaneously has an equal or larger short position in the same security, even though that short position is fully offset as a result of arbitrage or hedging activity.

The block-positioner exception was created in order to facilitate the activities of broker-dealers who engage in both block positioning and arbitrage.[188] The Commission has recognized the important role block-positioners play in providing liquidity for large securities and in maintaining a fair and orderly market. When adopting this exception, the Commission noted that when a block-positioning firm's other short positions are fully offsetting other instruments, the result is an economically neutral position. The Commission noted that these other positions provide no incentive to effect sales from the block-positioning trading account in a manner that would cause or accelerate a decline in the market because gains in the short position would be offset by losses in the short position. The exception is limited in that it is available only to broker-dealers acting in the capacity of a block-positioner, and only if the short position is created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedging activities. We are proposing to include in proposed Regulation SHO the block positioner exception as it currently exists.

Q. Does the block-positioner exception continue to be needed?

Q. Does the block-positioner exception require any amendments? If so, what are alternatives to the way the rule currently operates?

E. Liquidation of Index Arbitrage Positions

Index arbitrage generally involves the purchase or sale of a ''basket'' of all stocks comprising a securities index or a smaller number of stocks designed to track day-to-day price movement of an index, and a contemporaneous offsetting sale or purchase of one or more commodity futures or options on a future or standardized option contracts on that index in an attempt to profit from price discrepancies between the stocks and the derivative index products. Index arbitrage often involves a liquidation (or ''unwinding'') transaction in order to realize arbitrage profits. Liquidation may consist of either simple elimination of each long or short stock position at expiration of the futures or option contract, or earlier termination of both the stock positions and the futures or option contract position.

Pursuant to Rule 3b–3, a seller of an equity security subject to Rule 10a–1 must aggregate all of the seller's positions in that security in order to determine whether the seller has a ''net long position'' in the security. Therefore, if a person does not have a net long position in a security, any sale of that security must be designated as a short sale and must comply with the tick test provisions of current Rule 10a–1. A person liquidating an index arbitrage position involving a long basket of stocks may be unable to sell all the securities contemporaneously with closing out the derivative instrument position because of the requirement to net short security positions in other proprietary accounts, and as a consequence may not realize the expected arbitrage profit.

In 1992 the Commission proposed codifying prior no-action relief from the tick test provisions of paragraphs (a) and (b) of Rule 10a–1 relating to liquidations of certain index arbitrage positions.[189] Specifically, we proposed a new exception from the tick test provisions of Rule 10a–1(a) and (b) for any sale by a person effected in connection with the liquidation of an index arbitrage position relating to a securities index that is the subject of a financial futures (or options on such futures) contract traded on a contract market designated by the Commodity Futures Trading Commission, or a standardized options contract as defined in Rule 9b–1(a)(4) under the Exchange Act,[190] notwithstanding that such person may not have a net long position in that security. The proposed exception was limited, however, to contexts where: (1) such person's net short position is solely the result of one or more short positions created and maintained in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities; and (2) the sale does not occur during a period commencing at the time that the Dow Jones Industrial Average (DJIA) had declined by 50 points or more from its closing value on the previous day and terminating upon the establishment

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[186] One commenter to the Concept Release said that while the Aggregation Letter is sensible in concept, firms have expressed difficulty devising procedures to meet its requirements. *See* Letter from Willkie, Farr & Gallagher (WFG).

[187] *See* Securities Exchange Act Release No. 20715 (March 6, 1984), 49 FR 9414 (March 13, 1984). Block positioning is the facilitation of a large purchase or sale of securities for a customer by buying or selling as principal the amount of securities that cannot be immediately placed or obtained from third parties.

[188] *Id.*

[189] Securities Exchange Act Release No. 30772 (June 3, 1992), 57 FR 24415 (June 9, 1992). The release proposed codifying as Rule 10a–1(g)(2) limited relief permitting the liquidation of certain existing index arbitrage positions involving long baskets of stock and short index futures or options without aggregating short stock positions in other proprietary accounts if those short stock positions are fully hedged. *See* Letter re: Merrill Lynch, Pierce, Fenner & Smith, Inc. (December 17, 1986); Securities Exchange Act Release No. 27938 (April 23, 1990), 55 FR 17949 (April 30, 1990) (release clarifying and emphasizing certain aspects of the limited relief granted in the Merrill Lynch letter).

[190] Rule 9b–1(a)(4) states: ''Standardized options are option contracts trading on a national securities exchange, an automated quotation system of a registered securities association, or a foreign securities exchange which relates to option classes the terms of which are limited to specific expiration dates and exercise prices, or such other securities as the Commission may, by order, designate.'' 17 CFR 240.9b–1(a)(4).

of the closing value of the DJIA on the next succeeding trading day. If the market decline restriction were in effect, each individual security would be required to be aggregated in the usual way with all of the seller's other positions in that security to determine whether the seller has a net long position.[191] The amendments proposed in the 1992 Release were never adopted.[192]

We propose to include in Rule 200 of Regulation SHO the relief for certain index arbitrage activities because we understand the relief is still being used and because codifying it would provide for ease of reference. We propose including it in Rule 200 with a minor change from the 1992 proposal. Namely Rule 200(f) would alter the second condition to specify that the relief would not be available during a period commencing at the time that the DJIA has declined below its closing value on the previous trading day by at least two percent and terminating upon the establishment of the closing value of the DJIA on the next succeeding trading day during which the DJIA has not declined by two percent or more from its closing value on the previous day. This change would keep the language in proposed Rule 200 consistent with the current language in NYSE Rule 80A.[193]

The Commission notes that levels of program trading have increased in recent years,[194] and some have argued that this may be related to market volatility.[195] It should be noted that index arbitrage is not the only type of program trading.[196] The Commission requests comment on the usefulness and scope of the proposed amendment, including whether market participants believe that providing an exception from the proposed uniform bid test for some index arbitrage activity poses dangers for the markets.

Q. Is the relief for certain index arbitrage activities proposed to be incorporated in Rule 200 necessary under proposed Regulation SHO? Are the conditions appropriate?

XI. Hedging Transactions

In the Concept Release, the Commission requested comment on, among other things, exempting hedging transactions from short sale regulation. Currently, short sales related to hedges are treated the same under Rule 10a–1 as any other short sales. This is because Rule 3b–3 only takes equity positions into account, and it does not consider derivative positions related to these equity positions.[197] Some have suggested that bona fide hedging activity should be exempted from short sale regulation because such activity presents little threat of manipulation as gains from short hedging positions are offset by losses in a related security, *i.e.*, they are economically neutral positions.[198]

As discussed above, while the exceptions in the block-positioner and index arbitrage contexts do allow offsetting derivative positions to be considered, those exceptions provide limited aggregation relief for existing offsetting positions. They do not apply to short sales effected to establish an offsetting position. We have not included an exception for hedging short sales in our proposed Regulation SHO. We believe that a hedging exception is not necessary because the proposed bid test and pilot would provide market participants with additional flexibility in effecting short sales in order to hedge long exposure.

Q. Should a hedging exception be added to proposed Rule 201? If so, how should such an exception be designed so that it can be monitored and is not subject to abuse?

Q. Does the advent of trading in security futures absent short sale regulation, when combined with the proposed bid test and short sale pilot, address the concerns expressed by participants requesting an exception from Rule 201 for hedging? If not, why not?

Q. Should a hedging exception be included in Rule 201 that only applies to a particular group of market participants, *i.e.*, OTC market makers, option market makers, or specialists, that would allow short selling without regard to either a tick or bid test to offset the risk associated with their role in maintaining fair and orderly markets? Who should qualify for such an exception, what criteria would be used for determining whether short selling was part of maintaining fair and orderly markets, and how could the SROs and Commission surveil for compliance with such an exception?

XII. Elimination of Current Subparagraphs 10a–1(a)(2) and (a)(3)

One of the more significant changes in our proposal is the use of a bid test based on the consolidated best bid, which we believe would provide uniformity in short sale regulation for all markets in securities covered by proposed Rule 201. As a result, we are also proposing to eliminate the provision that markets currently have to use their own markets as a reference point for measuring the permissibility of short sales.

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[191] This proposed market decline restriction substantially paralleled, and would be invoked simultaneously with, the operation of NYSE Rule 80A, which at the time of the proposal applied when the DJIA index moved 50 points or more from the previous day's close. Rule 80A was more restrictive, in that it required all NYSE index arbitrage stock transactions, whether undertaken by a short or long seller, to be effected on a plus or zero-plus tick. The proposed exception, however, would have operated for a longer period of time than 80A, which at that time terminated once the DJIA recovers 25 points from the 80A trigger level. Instead, the exception would terminate upon the establishment of the closing value of the DJIA on the next succeeding trading day, in order to allow the markets to avoid incremental selling pressure at the close of trading on a volatile trading day and at the opening of trading on the following day, since trading activity at these times may have a substantial effect on the market's short-term direction.

[192] Commenters were generally in favor of codifying the exemption. However, the proposal was never acted upon.

[193] Under Rule 80A, when the DJIA index moves two percent or more from the previous day's close, index arbitrage orders in component stocks of the S&P 500 stock price index are subject to a tick test. In down markets sell orders may be executed only on a plus or zero-plus tick (and be marked ''sell plus''); in up markets buy orders may be executed only on a minus or zero-minus tick (and be marked ''buy minus''). The test remains in effect for the remainder of the trading day once it has been activated, but shall be removed if the DJIA subsequently moves within one percent of the previous day's closing value.

[194] The NYSE publishes weekly program trading data on its website at *www.nyse.com*. The data shows that program trading over the past few years has increased as a percentage of the overall NYSE average daily volume. For example, during July 28 through August 1, 2003, program trading amounted to 45.5% of the NYSE's average daily volume of 1,474.7 million shares, or 671.4 million shares a day.

[195] *See* David Henry, *Whipsawed by Wall Street,* Bus. Wk., (March 10, 2003); Karen Talley, *Program Trading Grows as a Force in Stock Market,* WSJ, (June 17, 2002).

[196] Program trading encompasses a wide range of portfolio-trading strategies involving the purchase or sale of a basket of at least 15 stocks with a total value of $1million or more. Program trading is calculated as the sum of the shares bought, sold and sold short in program trades. The total of these shares is divided by total reported volume. The NYSE reported on its website that during July 28 through August 1, 2003, 13.3% of program volume executed by NYSE member firms related to index arbitrage. For the period from June 30 through July 3, 2003, when the program trading percentage reached 52% of NYSE average daily volume, the highest levels reported for the year to date, 8.5% of program volume executed by NYSE member firms related to index arbitrage.

[197] Under Rule 3b–3, holdings in convertible securities, options, rights and warrants are only considered to be long positions if they have been converted or exercised. *See* Rule 3b–3(d).

[198] The CBOE submitted to the Commission a letter suggesting parameters of a possible hedging exception to Rule 10a–1. *See* Letter from CBOE (August 20, 2001). In particular, CBOE proposed a pilot program under which options market-makers and specialists would be exempt from the tick test provisions of the short sale rule when selling select listed stocks short to hedge positions in options that result from market-making obligations. Under the proposal, market makers and specialists would be able to sell CBOE pilot program stocks short on a minus or zero minus tick to hedge, on a delta equivalent basis only, pre-existing long exposure (stocks and options combined) or contemporaneous option transactions, subject to several provisions enumerated in their letter. The letter is available for review in the Commission's Public Reference Room (File No. S7–24–99).

This provision, currently subparagraph (a)(2) of Rule 10a–1, was added in response to operational difficulties associated with the tick test based on the last trade price reported in a security in the consolidated transaction reporting system.[199] At the time the provision was added, certain SROs asserted that the last trade price in the consolidated system should not be the reference point for the tick test because last trade price data was not available in a timely manner and because the principal exchanges did not have adequate information retrieval systems on their floors to ensure adherence with the short sale rule.[200]

We believe that this provision would no longer be needed in light of advances in the dissemination of market information and the proposed use of the consolidated bid for the price test. Currently, all participants in the markets have access to a consolidated, real-time stream of quotations for all the exchange and Nasdaq equity securities that would be subject to the bid test.[201] Further, unlike the tick test, where the sequence of trade prices plays a crucial role in determining when short sales can be effected, the sequence of the bids under the proposed bid test is not a factor in determining the price at which a short sale can be effected; rather, the reference is the best bid at the time of the short sale transaction. We thus believe that the concerns that gave rise to the (a)(2) provision are no longer present.[202] As a result, we propose to eliminate the ability of a market to use its own market information for purposes of the bid test of Regulation SHO.

We also propose to eliminate current subparagraph (a)(3) of Rule 10a–1. This subparagraph allows for an adjustment to the sale price of a security after a security goes ex-dividend, ex-right, or ex any other distribution when determining the price at which a short sale may be effected. Specifically, this provision allows for the reduction of all sale prices by the value of the distribution prior to the ''ex'' date. Under the proposed bid test, we do not believe (a)(3) is necessary because the last trade price would not be a factor in determining when a short sale can be effected, and the bid would immediately reflect the impact of the corporate action.

Q. Are there any regulatory or operational reasons to allow markets to use their own bid information in regulating short sales under the proposed rule?

Q. Would allowing markets to use their own bid information affect the operation or effectiveness of the proposed rule? If so, how?

Q. Is there any reason to retain the requirements of existing subparagraph (a)(3) of Rule 10a–1, which allows for the adjustment to the sale price of a security after a security goes ex-dividend, ex-right, or ex any other distribution, under the proposed bid test? For example, do exchanges that match opening trades prior to the opening quotes require such a provision?

XIII. Exclusion of Bonds

In 1992 the Commission proposed excluding from the application of Rule 10a–1 transactions in nonconvertible corporate bonds listed and effected on an exchange.[203] This action was in response to a petition for rulemaking by the Amex that paragraph (b) of the Rule be amended to exclude corporate bonds from short sale regulation.[204] Amex had noted that while paragraph 10a–1(a) of the Rule is not applied to bonds because transactions in corporate bonds are not required to be reported on a consolidated basis with other markets, bonds are covered under paragraph (b) regulating short sales of other securities on an exchange. According to the Amex, a competitive inequity was thus created between the exchanges and the over-the-counter market, where short selling is not regulated at all.[205] Moreover, it was argued that, because the majority of corporate bond transactions occur in the OTC market, it would be difficult for a market participant to effect a manipulation of the primary bond market through short sales on an exchange.

The Commission preliminarily concluded in the release that the application of Rule 10a–1 to bonds might impose an unnecessary regulatory burden on the exchange market because exchange trading of such bonds is not susceptible to the types of market abuse that the short sale rule is designed to prevent. Moreover, given the limited amount of bond trading effected on exchanges, there would appear to be little reason for concern over the effect of short selling of bonds on an exchange. Accordingly, the Commission proposed to exclude transactions in bonds from Rule 10a–1 by amending paragraph (b) to add the phrase ''except a bond or debenture.''[206] It was also determined that up until the time that final action was taken on this proposed amendment, no-action relief would be provided under Rule 10a–1 with regard to short sales in exchange-listed bonds.[207]

Commenters were generally in favor of this proposed amendment and some also recommended that convertible bonds be excluded from Rule 10a–1 as well.[208] The amendments proposed in the 1992 release were never adopted or withdrawn. We believe that the same rationales that were cited in 1992 generally continue to apply today. In addition, as there is not currently a source for consolidated quote information on corporate bonds similar to what exists for equity securities, it is evident that our proposed bid test could not be applicable in the bond market.[209] We have thus proposed that the uniform bid test in Regulation SHO would not apply to bonds.[210]

Q. Should corporate bonds be excluded from proposed Rule 201?

XIV. After Hours Trading/Foreign Markets Issues

A. After-Hours Trading

Trading in U.S. stocks outside of regular market hours is not a new

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[199] *See* Securities Exchange Act Release No. 11276 (March 5, 1975), 54 FR 12522 (March 19, 1975) (release proposing subparagraph (a)(2) in response to stated operational and other difficulties associated with complying with Rule 10a–1) (Proposing Release); *see also* Securities Exchange Act Release No. 11468 (June 12, 1975), 40 FR 25442 (June 16, 1975) (adoption of proposed changes adding subparagraph (a)(2)) (Adopting Release).

[200] *Id.*

[201] *See, supra* part IV.B.

[202] In adopting subparagraph (a)(2) the Commission noted that the ''modernization of exchange facilities may eliminate the need to structure short sale regulation in this manner and that it should be possible ultimately to utilize the kind of uniform rule'' originally proposed. *See, supra* n. 199.

[203] *See* Securities Exchange Act Release No. 30772 (June 3, 1992), 57 FR 24415 (June 9, 1992).

[204] *See* Letters from Carrie E. Dwyer, Vice President and General Counsel, Amex, to John Wheeler, Secretary, SEC (December 30, 1985 and January 22, 1986); and Letter from Scott L. Noah, Assistant Vice President and General Counsel, Amex, to Jonathan G. Katz, Secretary, SEC (November 22, 1989) (Amex Letters).

[205] The Commission noted the fact that the NASD had filed in April of 1992 a proposed rule change to implement its own short sale regulation, however this ''bid test'' would not relate to OTC transactions in bonds. *See, supra* n. 203 at n. 34.

[206] Convertible bonds were not proposed to be excluded from the Rule. The Commission noted that convertible bonds are defined as ''equity securities'' in the Exchange Act (Section 3(a)(11), 15 U.S.C. 78c(a)(11)). Further, it was argued that short selling of convertible bonds (at least in the much larger OTC market) might have an impact on the price of related exchange-traded equity securities. Id at n. 43.

[207] *Id.*

[208] *See* Letters from American Bar Association, Bear Stearns & Co., Inc., New York Stock Exchange, Securities Industry Association, and Sullivan & Cromwell.

[209] In 2001, the Commission approved a proposal by the NASD to establish a corporate bond reporting and transaction dissemination facility, TRACE. *See* Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001) (SR–NASD–1999–65) (order approving TRACE).

[210] Should there in the future be a source for consolidated quote information on corporate bonds, we may decide to revisit the application of the bid test to bonds.

phenomenon.[211] For years, institutional investors and market professionals have sent after-hours orders to broker-dealers for execution as principal on alternative broker-dealer trading systems, such as ECNs. However, technological advances have changed the securities markets, and trading has expanded beyond the regular trading hours of 9:30 a.m. to 4 p.m. Eastern Time (ET).

We have supported investor choice in trading hours provided that essential protections for investors and the markets are not compromised. We have approved several SRO programs designed to further these goals, including extending consolidated last trade price and quotation information. We have also approved after hours and pre-opening trading sessions for the Archipelago Exchange (ArcaEx).[212] In addition, we have approved on a pilot basis a Nasdaq program to extend the operation of key trade and price reporting systems until 6:30 p.m. ET.[213] However, the NASD has not extended its short sale bid test, Rule 3350, to the after-hours market.[214] Nonetheless, NASD members are still required to make affirmative determinations that they will receive delivery of a security from their customers or that the member can borrow the security on behalf of the customer for delivery by settlement date before accepting short sale orders.[215]

We currently interpret the tick test to apply to all trades in listed securities, whenever they occur. By its terms, Rule 10a–1 uses as a reference point the last trade price reported to the tape. Thus, after the tape ceases to operate, the rule prevents any person from effecting a short sale at a price that is lower than the last sale reported to the tape. Most of the comments received in response to the Concept Release supported applying the short sale rule to after-hours trading.[216] We believe that the proposed uniform short sale rule should apply to after hours trades in all covered securities, requiring all short sales in covered securities to be effected at a price above the current best bid displayed as part of the consolidated best bid and offer. After the time the consolidated best bid ceases to be calculated and disseminated, the proposed rule would prevent short selling at a price at or below the last published consolidated best bid. We believe that applying the proposed bid test to after hours trades in all covered securities would extend the goals of short sale regulation to the after hours markets.

We solicit comment on this proposed operation of the rule, including, but not limited to, the following issues:

Q. Does the consolidated quote information that is collected and published after hours provide sufficient information to allow short selling after hours at a price above the consolidated best bid, or should the rule impose a fixed reference point above which all short sales must be effected, such as the consolidated best bid at the close of the regular session?

Q. Should the proposed short sale rule allow short selling above the best bid after the time that the consolidated best bid ceases to be collected and disseminated, if reliable quotes are still published?[217] Would this approach, which would most likely have multiple reference points, be a feasible alternative?

B. Off-Shore Trading

In July 1992, the Commission announced that it was undertaking a study of the U.S. equity markets and of the regulatory environment in which those markets operate.[218] As part of the study, the Commission addressed and sought comment on the practice of U.S. broker-dealers ‘‘booking’’ trades through their foreign desks or foreign affiliates to avoid U.S. transparency requirements, off-board trading restrictions, transaction fees, or limits on short sales. In what is commonly referred to as the ‘‘fax market,’’ a U.S. broker-dealer acting as principal for its customer negotiates and agrees to the terms of a trade in the U.S., but transmits or faxes the terms overseas to be ‘‘printed’’ on the books of a foreign office.[219]

Consistent with prior Commission action, we view short sale regulation as applying to trades in reported securities when the trade is agreed to in the United States, even if the trades are ‘‘booked’’ overseas.[220] For example, a

[211] *See* Division of Market Regulation, SEC, Market 2000: An Examination of Current Equity Market Developments (January 1994), at II–13 and II–14.

[212] *See* Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001). ArcaEx entered into an agreement with SIAC to extend the operation of the consolidated tape for exchange-listed stocks and Nasdaq NMS stocks from 8 a.m. to 8 p.m. ET.

[213] *See* Securities Exchange Act Release No. 42003 (October 13, 1999), 64 FR 56554 (October 20, 1999). Under the pilot, any Nasdaq market maker that chooses to post quotations and trade during these extended hours is obligated to post firm two-sided quotations when opening and making its market, but may enter or leave the market on the hour or half-hour up to 6:30 p.m. Regardless of an NASD's member's quotation activity, all transactions in Nasdaq National Market, Small Cap, Convertible Debt and OTC transactions in exchange-listed securities executed between the hours of 8 a.m. and 6:30 p.m. must be reported within 90 seconds.

[214] *See* NASD Head Trader Alert #2000–55 (August 7, 2000).

[215] *See* NASD Rule 3370.

[216] The NYSE and the NASD were among those commentators who recommended extending the short sale rule to cover after hours trading. The NYSE stated that, ‘‘With respect to after-hours trading, the Exchange believes that the Rule should apply given the potential for trading abuses in a market environment with lesser trading volume and greater volatility.’’ *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE (February 3, 2000). The NASD recommended that short sale regulation be extended to all securities being traded in extended hours sessions, including National Market and SmallCap securities. ‘‘The justifications for regulating short-sales—the threats of abusive short-selling, extreme volatility, and reduced liquidity due to the high risk to market-makers—apply with equal, if not greater, force during extended hours trading.’’ *See* Letter from Richard G. Ketchum, President, NASD, Inc. (February 15, 2000). However, as noted, the NASD subsequently determined not to apply Rule 3350 after-hours, due to the belief that the volume of trading after hours was not sufficient to justify imposing short sale regulation.

[217] For example, in its comment letter in response to the Concept Release, one commenter urged the Commission to allow short sales to be effected on ATSs based on their respective systems' last trade price when the tape is not operating. It was noted that this option could only be extended to such ATSs that meet certain thresholds relative to the overall trading volume in the after-hours market. *See* Letter from Orrick, Herrington & Sutcliffe, counsel for MarketXT (December 30, 1999). Island also suggested allowing ATSs operating after-hours to rely on their own bid as a reference point. *See* Letter from The Island ECN, Inc. (January 21, 2000).

[218] *See* Securities Exchange Act Release No. 30920 (July 14, 1992), 57 FR 32587 (July 22, 1992).

[219] This practice of ‘‘booking'' trades overseas was analyzed and dealt with in further depth in the Division of Market Regulation's Market 2000 Report. In the Report, the Division estimated that approximately 7 million shares a day in NYSE stocks are faxed overseas, and many of these trades are nominally ‘‘executed'' in the London over-the-counter market. The Report further stated that off-shore trades generally are not reported publicly. Rather, they are reported for regulatory purposes only to the NYSE and NASD pursuant to NYSE Rule 410 or to the NASD on Form T. *See* Division of Market Regulation, SEC, Market 2000: An Examination of Current Equity Market Developments (January 1994), Study VII, p. 2.

[220] *See, e.g.*, Securities Exchange Act Release No. 27938 (April 23, 1990), 55 FR 17949 (April 30, 1990) (stating that the no-action position exempting certain index arbitrage sales from the tick test provisions of Rule 10a–1 will not apply to an index arbitrage position that was established in an offshore transaction unless the holder acquired the securities from a seller that acted in compliance with Rule 10a–1 or other comparable provision of foreign law); *see also* Securities Exchange Act Release No. 21958 (April 18, 1985), 50 FR 16302 (April 25, 1985) at n. 48 (stating that, ‘‘Rule 10a–1 does not contain any exemption for short sales effected in international markets.''). The question of whether a particular transaction negotiated in the U.S. but nominally executed abroad by a foreign affiliate is a domestic trade for U.S. regulatory purposes was also addressed in the Commission's Order concerning Wunsch Auction Systems, Inc. (WASI). The Commission stated its belief that ‘‘trades negotiated in the U.S. on a U.S. exchange are domestic, not foreign trades. The fact that the trade may be time-stamped in London for purposes of avoiding an SRO rule does not in our view affect the obligation of WASI and BT Brokerage to maintain a complete record of such trades and report them as U.S. trades to U.S. regulatory and self-regulatory authorities and, where applicable, to U.S. reporting systems.'' *See* Securities Exchange Act Release No. 28899 (February 20, 1991), 56 FR 8377 (February 28, 1991).

U.S. money manager decides to sell a block of 500,000 shares in a NYSE security. The money manager negotiates a price with a U.S. broker-dealer, who sends the order ticket to its foreign trading desk for execution. In our view, this trade occurred in the United States as much as if the trade had been executed by the broker-dealer at a U.S. trading desk. Under the proposed rule, if the sale agreed to is a short sale in an exchange-listed or Nasdaq NMS security, unless otherwise excepted, it must be effected at a price one cent above the current best bid displayed as part of the consolidated best bid and offer regardless of where it is executed.

Q. What factors should be used to determine whether a trade in a covered security is agreed to in the U.S.? If a trade is agreed to by a broker-dealer located outside the U.S., should the trade be viewed as agreed to outside the U.S., regardless of the location of the seller? Would the requirement that trades agreed to in the U.S. be effected at a price above the current best bid disadvantage U.S. broker-dealers in favor of foreign broker-dealers? If so, please explain.

Q. For trades agreed to in the United States and executed overseas, is the time of agreement a sufficient determinative event for the triggering of the rule?

XV. Limitations on Short Selling During Significant Market Declines

To protect investors and the markets, the Commission has approved proposals to restrict trading if key market indexes fall by specified amounts. In response to the October, 1987 market break, the Commission approved various exchanges' circuit breaker proposals to permit these brief, coordinated cross-market halts to provide opportunities during a severe market decline to reestablish an equilibrium between buying and selling interests in an orderly fashion, and help to ensure that market participants have a reasonable opportunity to become aware of, and respond to, significant price movements.[221] The coordinated cross-market trading halts provided by circuit breaker procedures are designed to operate only during significant market declines and to substitute orderly, pre-planned halts for the *ad hoc* and destabilizing halts which can occur when market liquidity is exhausted.[222] Currently, all stock exchanges and the NASD have rules or policies to implement coordinated circuit breaker halts.[223] The options markets also have rules applying circuit breakers.[224] The futures exchanges that trade futures on indexes have adopted circuit breaker halt procedures in conjunction with their price limit rules for index products.[225] Finally, security futures products are required to have cross-market circuit breaker regulatory halt procedures in place.[226]

We note that current short sale regulation focuses on the prices of individual securities rather than market segments or market indexes. Nevertheless, we seek comment on whether short selling should be restricted in the future in response to a severe market decline.

Q. Should short selling be restricted or prevented during a period of significant market decline, such as after circuit breakers have been lifted? If so, at what level should the restrictions take place, *i.e.*, if the market declines 10%, 20% etc.? How long a period of time should the restrictions remain in effect?

Q. Should short selling be restricted or prevented for any particular security if the price of that security declines significantly during the course of a trading day? If so, at what level should the restrictions take place, *i.e.*, if the price of the security declines 10%, 20% etc.? How long a period of time should the restrictions remain in effect?

XVI. Rule 105 of Regulation M—Short Sales in Connection With a Public Offering

The price of securities in an offering is generally based on a security's closing market price. When market prices are artificially distorted securities markets are prevented from functioning as independent pricing mechanisms and offering price integrity is eroded. Short sales of securities that depress the market price shortly before an offering is priced can cause (i) the postponement or abandonment of an offering, and (ii) the offering price to be lower than anticipated because artificial forces distort it.[227] The pre-pricing short sales may exert downward pressure on a security's market price causing the market price to decline. Consequently, the offering price is set lower than anticipated because it is now based off an artificially depressed market price. Short sellers who anticipate and receive an offering allocation cover their short sales at the lower, fixed offering price generating a profit. Rule 105 of Regulation M addresses this market abuse.

A. Scope of Rule 105 of Regulation M

Rule 105 of Regulation M prohibits a short seller from covering short sales with offered securities purchased from an underwriter, broker or dealer participating in the offering if the short sale occurred within the period of five days prior to pricing of the offering securities. The Rule promotes offering prices that are based upon market prices determined by natural market forces instead of prices distorted by artificial forces. Rule 105 of Regulation M applies to offerings of securities for cash pursuant to a registration statement or a notification on Form 1–A filed under the Securities Act of 1933. The Rule prohibits covering a short sale with offering securities purchased from an underwriter or broker or dealer participating in the offering if the short sale occurred during the Rule 105 of Regulation M restricted period, which is the shorter of the period beginning (i) five business days before pricing of the offered securities and ending with such pricing, or (ii) with the initial filing of such registration statement or notification on Form 1-A and ending with the pricing. The Rule excepts shelf offerings filed under Rule 415 and offerings not conducted on a firm commitment basis as well as providing for exemptive relief. The Rule is prophylactic, and prohibits the conduct irrespective of the short seller's intent in effecting the short sale.

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[221] *See* Securities Exchange Act Release No. 26198 (October 19, 1988), 53 FR 41637 (October 24, 1988) (approving rules of the Amex, CBOE, NASD, NYSE).

[222] *See* Circuit Breaker Report by the Staff of the President's Working Group on Financial Markets (August 18, 1998) (Circuit Breaker Report), n. 33.

[223] *See* Securities Exchange Act Release No. 39846 (April 9, 1998), 63 FR 18477 (April 15, 1998) (order approving proposals by Amex, BSE, CHX, NASD, NYSE, and Phlx). *See also e.g.*, NYSE Rule 80B. The current circuit breaker procedures call for cross-market trading halts when the Dow Jones Industrial Average (DJIA) declines by 10 percent, 20 percent, and 30 percent from the previous day's closing value.

[224] *See* Amex Rule 950 (applying Amex Rule 117, Trading Halts Due to Extraordinary Market Volatility, to options transactions); CBOE Rule 6.3B; ISE Rule 703; PCX Rule 4.22 (which applies to options contracts through Rules 6.1(a) and (e)); and Phlx Rule 133.

[225] *See, e.g.*, CME Rule 4002.I. The CME will implement a circuit breaker trading halt in SPX Futures if the 10% circuit breaker halt has been imposed in the securities markets and the futures are "locked" at their 10% price limit. Trading will not reopen in SPX Futures until the circuit breaker halt has been lifted in the securities markets and trading has resumed in stocks comprising at least 50% of the index capitalization. The CME will implement another circuit breaker trading halt in SPX Futures if the 20% circuit breaker halt has been imposed in the securities markets and the futures are locked at their 20% price limit. Once again, trading will not reopen in SPX Futures until the circuit breaker halt has been lifted in the securities markets and trading has resumed in stocks comprising at least 50% of the index capitalization.

[226] *See* Securities Exchange Act Release No. 45956 (May 17, 2002), 67 FR 36740 (May 24, 2002).

[227] Concerned about losses in "cold" issues, investors may engage in schemes to guarantee "cold" issue profits by effecting short sales prior to the pricing of an offering (pre-pricing short sales) and covering the short sales with offering securities.

B. Shelf Offerings

We believe that the use of shelf offerings (offerings filed under § 230.415 of the Securities Act of 1933) is common today. If an individual with notice of a shelf offering takedown effects short sales during the five days prior to pricing and covers his short sale with shelf offering securities, his conduct may cause the same downward price pressure that occurs with pre-pricing short sales in connection with non-shelf offerings. The trading has the same manipulative potential, the same effect on offering price, and causes the same abuse that Rule 105 of Regulation M is designed to prevent. Accordingly, we propose eliminating the current shelf offering exception in Rule 105 of Regulation M. We solicit comment concerning the proposed elimination of the shelf offering exception. We also seek comments concerning other areas of the Rule.

Q. In what manner are shelf offerings of equity securities marketed to potential investors? Include a discussion of the similarities and/or differences with respect to the marketing efforts of shelf and non-shelf offerings. Discuss the types of marketing efforts used and whether potential investors have notice of a shelf takedown before it occurs.

Q. Should Rule 105 of Regulation M be applicable to only equity offerings? What is the Rule's relevance with respect to debt offerings and the potential for manipulation with debt offerings or other offering types?

Q. Should the prohibitions of Rule 105 of Regulation M extend to derivative securities, *i.e.*, should a person be prohibited from covering put options entered into within the period five days prior to pricing with securities purchased from an underwriter, broker or dealer participating in the offering?

Q. Should the prohibitions of Rule 105 of Regulation M extend to short sales effected prior to the exercise of conversion rights under a debenture, or other security, and covering the short sales with securities issued in the conversion when the conversion consideration is based upon the security's market price during a certain time period prior to the conversion?

Q. Should a person who executes short sales during the five day business period prior to the pricing of an offering be permitted to cover preexisting short positions held prior to that five day period with offering securities? Please provide a detailed analysis, including a discussion regarding the fungibility of securities. Can you trace offering shares in a person's account to show that they are used to cover the preexisting short position as opposed to the short sales executed five days prior to pricing?

Q. Does the language ''cover a short sale'' provide the proper scope of prohibited activity? Is there additional or alternative language we should consider?

Q. What is the manner in which firms, including prime brokerage firms, monitor compliance with Rule 105 of Regulation M, both manually and with computer systems?

Q. Should Rule 105 apply to acquisitions from an issuer in a shelf takedown, such as a public equity line from an issuer or other direct purchase arrangement with an issuer?

C. Sham Transactions Designed To Give the Appearance of Covering With Open Market Securities

Recently, the Commission has become aware of, and taken action, with respect to conduct designed to evade, but which violates Rule 105 of Regulation M.[228] This conduct may involve short sales within the restricted period of Rule 105, the purchase of offering shares, and the contemporaneous sale and purchase of the same class of shares as the offering shares. For example, an individual may sell the shares in the market and immediately purchase an equivalent number of shares. Where the transaction is structured such that there is no legitimate economic purpose or substance to the contemporaneous purchase and sale, no genuine change in beneficial ownership, and/or little or no market risk, that transaction may be a sham transaction.

The Commission would continue to consider enforcement action against those participating in sham transactions structured in a manner to give the appearance of compliance with Rule 105, but in fact, violate the rule. We are not proposing revisions to Rule 105 with respect to activities that violate the current rule. We seek comment, however, on criteria in addition to economic purpose or substance, change in beneficial ownership, and market risk, that may distinguish sham transactions from legitimate trading. The Commission also solicits comment regarding whether there should be additional language in the rule text of Rule 105 to address other transactions that cause the harm the Rule 105 is designed to prevent.

XVII. General Request for Comment

The Commission seeks comment generally on all aspects of proposed Regulation SHO and the proposed amendment to Rule 105 of Regulation M under the Exchange Act. In addition to the specific requests for comment found throughout this release, the Commission asks commenters to address whether proposed Regulation SHO furthers the Commission's objectives to (1) allow relatively unrestricted short selling in an advancing market, (2) prevent short selling at successively lower prices, thus eliminating short selling as a tool for driving the market down, and (3) preventing short sellers from accelerating a declining market by exhausting all remaining bids at one price level, causing successively lower prices to be established by long sellers. Commenters are requested to provide empirical data to support their views and arguments related to the proposals herein. In addition to the questions posed above, commenters are welcome to offer their views on any other matter raised by the proposed Regulation SHO and Rule 105.

XVIII. Paperwork Reduction Act

Proposed Regulation SHO would impose a new ''collection of information'' within the meaning of the Paperwork Reduction Act of 1995,[229] and the Commission has submitted them to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. 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. OMB has not yet assigned a control number to the new collection of information imposed by Regulation SHO.

A. Summary of Collections of Information

Proposed Regulation SHO, Rule 201 contains a requirement that all sell orders of securities registered under Section 12(g) of the Exchange Act be marked ''long,'' ''short,'' and ''short exempt.'' Currently, Rule 10a–1 prohibits the execution of a sell order for a security covered by Rule 10a–1 unless the order is marked either ''long'' or ''short.'' Proposed Regulation SHO would be a new collection of information because the collection would cover a much larger number of securities. Proposed Regulation SHO, Rule 201 would add two elements to this marking requirement. First, a new category for ''short exempt'' orders would be added. Second, the marking requirement would be extended to apply to all equity securities, including exchange-listed securities, Nasdaq NMS, Nasdaq SmallCap, OTCBB, and Pink Sheet securities. If the Commission adopts Proposed Regulation SHO, Rule 10a–1 would be repealed and any collection of information under Rule 10a–1 would be eliminated.

Sell orders of exchange-listed and Nasdaq securities are already marked ''long,'' ''short,'' or ''short exempt'' pursuant to Rule 10a–1, NYSE Rule

[228] *See,* Ascend Capital, LLC, Securities Exchange Act Release No. 48188 (July 17, 2003).

[229] 44 U.S.C. 3501 *et seq.*

440B.20, and the ITS Plan.[230] Nasdaq NMS and Nasdaq SmallCap securities are also currently subject to marking requirement pursuant to NASD Rule 4991. Proposed Regulation SHO, Rule 201 would simply codify current industry practice for exchange-listed and Nasdaq securities into a uniform marking requirement.

Proposed Regulation SHO, Rule 201 would also apply to securities not currently covered under Rule 10a–1. Proposed Regulation SHO's marking requirement would apply to all sell orders of equity securities registered under Section 12(g) of the Exchnage Act, including, exchange-listed, Nasdaq NMS and SmallCap, OTCBB, Pink Sheets, and any other securities registered under 12(g).

As a result, the collection of information under proposed Regulation SHO is the requirements that all sell orders of equity securities registered under the Exchange Act be marked ''long,'' ''short,'' or ''short exempt.''

B. Proposed Use of Information

The information required by proposed Regulation SHO is necessary for the execution of the Commission's mandate under the Exchange Act to prevent fraudulent, manipulative and deceptive acts and practices by broker-dealers. The purpose of the information collected is to enable a national securities exchange or national securities association to monitor whether a person effecting a short sale covered by proposed Regulation SHO is acting in accordance with Regulation SHO. In particular, requiring each order be marked either ''long,'' ''short,'' or ''short exempt'' would aid in ensuring compliance with proposed Rules 201 and 203. Moreover, the ''short exempt'' category would aid is surveillance for compliance with the proposed limited exception from the bid test for riskless principal transactions.

C. Respondents

The marking provision in Rule 201 would apply to all 6,752 active brokers or dealers that are registered with the Commission. The Commission has considered each of these respondents for the purposes of calculating the reporting burden under proposed Regulation SHO.

D. Total Annual Reporting and Recordkeeping Burdens

Proposed Rule 201 of Regulation SHO would require all brokers or dealers to mark all sell orders appropriately as ''long,'' ''short,'' or ''short exempt'' for all securities registered under Section 12(g) of the Exchange Act. We assume that all of the approximately 6,752 registered broker-dealers effect sell orders in securities covered by proposed Regulation SHO. For purposes of the Paperwork Reduction Act, the Commission staff has estimated that a total of 1,164,755,007 trades are executed annually.[231]

This is an average of approximately 172,505 annual responses by each respondent. Each response of marking orders ''long,'' ''short,'' or ''short exempt'' takes approximately .000139 hours (.5 seconds) to complete.[232] Thus, the total approximate estimated annual hour burden per year is 161,900 burden hours (1,164,755,007 responses @ 0.000139 hours/response). A reasonable estimate for the paperwork compliance for the proposed rules for each broker-dealer is approximately 24 burden hours (172,505 responses @ .000139 hours/response) or (a total of 161,900 burden hours / 6,752 respondents).

E. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. S7–23–03. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–23–03, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549–0609. As OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

XIX. Consideration of Proposed Regulation SHO's Costs and Benefits

The Commission is considering the costs and the benefits of proposed Regulation SHO, which would replace Rules 3b-3, 10a-1, and 10a-2, as well as proposed amendments to Rule 105 of Regulation M. The Commission is sensitive to these costs and benefits, and encourages commenters to discuss any additional costs or benefits beyond those discussed here. In particular, the Commission requests comment on the potential costs for any modification to both computer systems and surveillance mechanisms and for information gathering, management, and recordkeeping systems or procedures, as well as any potential benefits resulting from the proposals for registrants, issuers, investors, brokers or dealers, other securities industry professionals, regulators, and others. Commenters should provide analysis and data to support their views on the costs and benefits associated with proposed Regulation SHO and proposed amendments to Rule 105 of Regulation M.

A. Proposed Rule 201: Price Test and Marking Requirements

1. The Proposed Uniform Bid Test

a. Benefits

We believe that the proposed bid test would simplify the application of the price test and provide flexibility to those seeking to sell short, especially in the current decimals environment. This increased ability to execute short sales in securities currently subject to Rule 10a-1 may lead to a reduction in transaction costs. Moreover, we believe that a uniform rule is preferable to applying different tests in different markets, which can require market participants to apply different rules to different securities, and thus may also reduce transaction costs. Also, there would be benefits associated with systems and surveillance mechanisms

[230] See Section IX.A regarding Marking Orders.

[231] In calendar year 2002 there were approximately 545,556,000 trades on the NYSE, and 607,824,500 on Nasdaq NMS and Nasdaq SmallCap, and 11,374,507 in OTCBB, Pink Sheet, and other (gray market) securities.

[232] We believe it is reasonable that it would only take 0.5 seconds or .00039 hours to mark an order ''long,'' ''short,'' or ''short exempt.''

that would only have to be programmed to consider a single test based on the consolidated best bid instead of two tests based on last sale and last bid information.

In addition, the degree of restrictiveness of a price test may affect how well the stock price represents fundamental values. For example, a flexible price test may allow a trader to more freely sell short a stock that he or she believes is overvalued. The Commission seeks comments on whether the proposed bid test would affect stock prices and whether proposed Rule 201would result in prices that are a better reflection of the issuer's fundamental values.

The Commission seeks estimates and views regarding the benefits to particular types of market participants as well as any other costs or benefits that may result from the adoption of proposed Regulation SHO. Please provide any specific data.

Another potential benefit of the proposed bid test is that it should simplify surveillance systems in that proposed Rule 201 would look to the consolidated best bid at the time of execution as the reference price for short sales. This should be less complicated than comparing the immediately preceding sale or bid as the reference point for short sale compliance. In addition, we note that having only one short sale rule instead of two would mean that new staff (compliance personnel, traders, etc.) would only need to be trained regarding one rule. Over the long run, we believe this would likely lead to decreased costs for training and compliance.

The Commission received approximately 35 formal requests for relief from Rule 10a-1 in 2002 in addition to approximately 340 phone calls. The Commission anticipates that a large percentage of the relief requested would no longer be necessary under the proposed uniform bid test. We expect that each request for relief requires a number of labor hours from traders and lawyers, both in-house and outside counsel, of a broker-dealer or exchange, when making informal (phone calls) or formal (letters) requests for exemptions from Rule 10a-1. The Commission requests empirical data to quantify this benefit.

b. Costs

As an aid in evaluating costs and reductions in costs associated with the proposed Rule 201, the Commission requests the public's views and any supporting information regarding the costs associated with implementing the proposed uniform bid test. The Commission believes that the proposed uniform bid test requiring short sales in exchange-listed and Nasdaq NMS securities to be effected at a price one cent above the consolidated best bid at the time of execution would impose costs on brokers or dealers, specialists, market makers, ECNs, Alternative Trading Systems (ATSs), and SROs. Adoption of the proposed uniform bid test in the various markets would require modifications to trading systems and surveillance systems. Under the proposal, systems trading exchange-listed securities and Nasdaq NMS securities would have to shift from Rule 10a-1's tick test and NASD Rule 3350's bid test, respectively, to the proposed uniform bid test. The Commission anticipates that these changes would result in immediate implementation costs associated with reprogramming trading and surveillance systems. One exchange informed us that reprogramming systems would take one month at a cost of approximately $100,000. A broker-dealer stated that it would take two months to reconfigure its systems to account for a new bid test but was unable to provide a cost estimate. These estimates do not include costs associated with training staff that would be effected by these systems modifications.

The Commission seeks examples of all types of entities that would be affected by this proposal. The Commission seeks specific comments on the costs associated with system changes, including the type of system changes necessary and quantification of costs associated with changing the systems, including both start-up costs and maintenance. Comments are also requested on the types of jobs and staff that would be affected by systems modifications and training about the new rule, the number of labor hours that would be required to accomplish these matters, and the compensation rates of these staff members. The Commission also requests data to quantify the benefits of this proposal relating to ongoing compliance and surveillance of a uniform bid test. In addition, there may be costs associated with changing surveillance systems to monitor for compliance with the proposed bid test. We request specific comment on the costs for reprogramming systems to accommodate the proposed bid test in Rule 201.

2. Market Makers

a. Benefits

NASD Rule 3350 currently exempts from operation of the NASD's short sale rule short sales executed by qualified market makers in connection with bona fide market making.[233] We do not propose a market maker exception to Rule 201. We believe this would benefit the markets by subjecting all participants to the same regulation. We believe that the proposal would allow all market participants to establish short positions without being disadvantaged by an exception to the rule only available to certain participants. For example, there may be benefits in limiting the ability of a market maker to profit from position trading in anticipation of a market decline. The Commission also requests comment on any benefits that may result from adopting a price test absent a market maker exception. The Commission also seeks comments on the benefits of not allowing anyone to sell short at or below the best bid in a declining market.

b. Costs

The absence of a market maker exception from Rule 201 may have implications for market makers' ability to supply liquidity. Some may argue that investors are harmed when market makers incur an increase in costs because market makers would pass the increased costs to investors. The Commission requests detailed comments on these, or any other, costs to market makers, investors or others associated with not adopting an exception from the proposed bid test for market makers.

The Commission also recognizes that proposed Rule 201 may result in lost trading or business opportunities in the various markets. For example, there may be a cost in lost trading or business opportunities for those who trade Nasdaq NMS securities, in that the proposed bid test is more restrictive than the current Nasdaq bid test, and the market maker exemption has been eliminated. Please quantify, if possible, whether there would be any lost trading or business opportunity costs.

4. Use of the Consolidated Best Bid

a. Benefits

Proposed Regulation SHO would use the consolidated best bid as a reference point for all short sales of exchange-listed or Nasdaq NMS securities wherever traded. The Commission believes that the use of the consolidated best bid is a benefit because it reflects the consolidated bids from the various market centers that trade exchange-listed and Nasdaq NMS securities and is continuously collected and disseminated on a real-time basis, in a single steam of information and would

[233] *See supra* part VIII for a further discussion.

be a more accurate depiction of the market's valuation of a security.

b. Costs

The Commission is aware that this change may result in increased costs to traders, specialists, broker-dealers, and floor brokers on the NYSE or Amex who have heretofore used the last sale occurring in their own market as a reference point for short sales. For example, there would be a cost to market participants in gaining access to the consolidated best bid by subscribing to a vendor. We believe, however, that most, if not all, market participants already have access to this information. The Commission seeks information quantifying the cost of gaining access to the consolidated best bid.

In addition, it is possible that the consolidated best bid may flicker more than an exchange's own best bid. Bid flickering may impede on the ability to execute short sales, which may result in increased costs. Please provide data to assist the Commission quantify these costs, if any.

5. Marking Orders

a. Benefits

Proposed Rule 201 would permit broker-dealers to mark orders long only if the customer owns the securities and they are in the customer's account, or would be prior to settlement. Proposed Rule 201 also would require broker-dealers to differentiate between "long," "short," and "short exempt" sell orders. We believe these provisions would provide several benefits. The Commission notes that the current marking requirements can lead to undetected violations of proposed Rule 201 because once the order is marked "long," others handling the order execute the order as if it were a long sale, even though settlement on the sale may be effected by the delivery of borrowed securities. This can complicate surveillance for violations of the price test, as short sales executed under an exception from the price test can be masked as long sales. A benefit of this proposal is that surveillance for violations of proposed Rule 201 would be aided through accurate indications of when and under what circumstances these exceptions are utilized. An additional benefit is that the "short exempt" category would aid in surveillance for compliance with the proposed riskless principle exception to the bid test.

Further, we believe the proposed requirement that a broker-dealer cannot mark a sale "long" unless it has physical possession or control of the security, either when the order is placed or prior to settlement, is a benefit because it would facilitate the process of clearance and settlement. Disturbances in settlement processes can affect the stability and integrity of the financial system in general. Clearance and settlement systems are designed to preserve financial integrity and minimize the likelihood of systematic disturbances by instituting risk-management systems. Requiring a broker-dealer to have possession or control of the securities before it can mark an order long would assist in reducing settlement and credit risks.

The Commission proposes extending the marking requirements to all equity securities, including OTCBB and Pink Sheet securities. This proposal is designed to assist in surveillance for violations of the locate and delivery requirements proposed in Rule 203 of Regulation SHO.

b. Costs

The Commission does not currently believe any costs would arise from the proposed requirement that sell orders be marked long only if the securities to be sold are owned by the customer and either presently, or prior to settlement, in the customer's account. Most customer securities are not held by investors in physical form, but rather are held indirectly through their broker-dealer, *i.e.*, in "street name."

The Commission anticipates that any costs arising from the proposed requirement that certain sell orders be marked "short exempt" would be minimal because some self-regulatory organizations already either require or advise members to utilize the "short exempt" designation. We believe that the Commission's proposed amendment codifies current practice and provides the markets with a uniform practice. The Commission proposes extending the marking requirements to all equity securities, including OTCBB and Pink Sheet securities. The Commission recognizes that there is a paperwork burden cost associated with adding the "short exempt" category and extending the marking requirement to all equity securities. As discussed above in Section XVIII, the paperwork burden is estimated at approximately 24 burden hours for each broker-dealer registered with the Commission.[234] The Commission does not believe there are any additional costs to this proposal, however we seek any data supporting any additional costs not mentioned.

6. Exceptions to the Rule

a. Benefits

Proposed Regulation SHO would eliminate or alter exceptions to Rule 10a–1's tick test and create certain exceptions to the proposed bid test, which we believe would result in benefits. Proposed Regulation SHO proposes eliminating the equalizing exception, which is based on the last sale concept and would have no utility under the proposed bid test. This would further the goal of regulatory simplification.

In addition, the Commission believes that extension of the odd-lot exception to all market makers may reduce market makers' costs, since they would no longer need to register as odd-lot dealers or third market makers to avail themselves of the exception. Moreover permitting market makers to offset customer odd-lot orders and liquidate odd-lot positions without regard to the proposed uniform bid test would enhance market makers' ability to provide liquidity. To the extent that the benefits flowing from this increased liquidity can be quantified, we seek data and analysis on how to represent them accurately.

Moreover, the benefit of the proposal to alter Rule 10a–1's domestic arbitrage exception to require that a person relying on the exception must subsequently acquire or purchase the security upon which the arbitrage is based is that it would help reduce pricing disparities between securities. In addition, the proposed language change would help with surveillance for compliance with the exception.

In addition, the proposed limited exception to the bid test when the market is locked or crossed is beneficial because it increases liquidity by giving responsible broker-dealers flexibility to execute short sales in such situations. Moreover, the proposed exception permitting broker-dealers to sell short at the consolidated best bid to satisfy any obligations of a broker-dealer to customer limit orders, as determined by federal securities laws or rules of a self-regulatory organization, is a benefit because it ensures that customer limit orders are executed in a fair manner and at prices similar to the price at which a firm has traded for its own account. Finally, the proposed exception relating to pre-opening VWAP short sales would codify existing exemptive relief, thus providing the benefit of regulatory simplification, and may also promote a more liquid market for large traders.

[234] For a full discussion of the paperwork burden associated with the marking requirements see Section XVIII.

b. Costs

The Commission does not believe there would be any costs associated with altering the odd-lot and domestic arbitrage exceptions, eliminating the equalizing exception, creating new exceptions relating to locked or crossed markets and facilitating customer orders, and codifying existing VWAP exemptive relief. The Commission seeks comment, however, on whether any such costs exist, and if so, data to support such costs.

B. Proposed Rule 203: Locate and Delivery Requirements

1. Benefits

Proposed Rule 203 would enhance locate and delivery requirements for short sales in all equity securities. These changes are proposed in response to complaints from many issuers and investors concerning allegations of abusive ''naked short selling.'' The Commission proposes to adopt safeguards to address the problems associated with large persistent failures-to-deliver. The Commission believes that this requirement would help curtail manipulative naked short selling.

The Commission believes that it would be beneficial to establish uniform procedures to be utilized by short sellers to locate securities for borrowing, which could help promote and enhance the national clearance and settlement system. The Commission is proposing to prohibit a broker-dealer from executing a short sale order for its own account or the account of another person, unless the broker-dealer, or the person for whose account the short sale rule is executed: (1) Borrowed the security, or entered into an arrangement for the borrowing of the security, or (2) had reasonable grounds to believe that it could borrow the security so that it would be capable of delivering the securities on the delivery date it is due. This uniform rule would further the goals of regulatory simplification and avoidance of regulatory arbitrage. Please describe any additional benefits resulting from the proposed uniform locate requirements.

The Commission is also proposing additional delivery requirements targeted at securities where there is evidence of large settlement failures. The proposal would specify that a short sale in any security that meets the threshold, *i.e.*, any security where there are fails to deliver at a clearing agency registered with the Commission of 10,000 shares or more, and that is equal to one-half of one percent of the issue's total shares outstanding, must be delivered, or the broker-dealer would be required to enter into a contract to borrow the security, or effect a buy in so that, in either event, the security would be delivered within two days after the settlement date. If the securities are not delivered within two days after the settlement date, for a period of ninety calendar days the broker or dealer shall not execute a short sale in such security for his own account or the account of the person for whose account the failure to deliver occurred unless the broker or dealer or the person for whose account the short sale is executed has borrowed the security, or entered into a bona fide arrangement to borrow the security, and will deliver the security on the date delivery is due. The proposed Rule would also require the rules of the registered clearing agency to include the following provisions: (A) A broker or dealer failing to deliver securities as specified in subparagraph (3) above shall be referred to the NASD and the Examining Authority (as defined in 15c3–1(c)(12)) for such broker or dealer for appropriate action; and (B) The registered clearing agency shall withhold a benefit equal to any mark to market amounts or payments that otherwise would be made to the participant failing to deliver, and assess appropriate charges.

The Commission believes that these additional delivery requirements would protect and enhance the operation, integrity, and stability of the markets. In particular, this requirement is targeted at securities with lower market capitalization that may be more susceptible to abuse. We also believe that clearly articulated rules restricting naked short selling would assist the Commission in its enforcement efforts.

The Commission believes that a large amount of fails at the clearing level may impose costs on the clearing agency. For example, certain issuers have taken steps to make themselves either ''certificate only,'' which require physical certification of company ownership for all share transfers, or ''custody only,'' which restricts ownership of their securities by depositories or financial intermediaries. The Commission believes these custody arrangements are highly costly to the clearing agencies, depositories and financial intermediaries. The Commission believes this proposed additional delivery requirement would provide a benefit because it would mitigate some of these costs. Please provide data supporting this, and any other, benefit that the proposal would provide in mitigating such costs, including benefits to clearing agencies, depositories and financial intermediaries in implementing and complying with this proposal.

Proposed Rule 203 would also make two changes to existing long sale delivery rules. First, the rule would extend current delivery requirements for long sales of listed securities to all equity securities, including Nasdaq NMS, Nasdaq SmallCap, OTCBB, and Pink Sheet securities. The intended benefits of this change are uniformity across markets and a reduction in the number of fails to deliver on long sales. Moreover, the Commission believes that this modification would facilitate the process of clearance and settlement. The amended rule would also permit a broker-dealer effecting a long sale to fail to deliver, or to deliver borrowed securities, if prior to the sale, the seller told the broker-dealer he owned the security and would deliver it to the broker-dealer prior to settlement. This change is necessary to conform the proposed rule with proposed Rule 201(c), which would require an order to be marked long only if the seller informs his broker-dealer that he owns the security and the broker-dealer will have physical possession or control of the security prior to settlement. It is intended that this change would both reduce the number of over-the-counter fails, and facilitate the process of clearance and settlement. The Commission requests data to quantify the value of the benefits identified.

2. Costs

The Commission recognizes that the proposed locate and delivery requirement may increase costs for market participants who engage in short selling. However, we believe that these costs would be minimal, because the proposed rules largely incorporate existing SRO locate rules, such as NYSE Rule 440C.10 and NASD Rule 3370. The Commission is, however, proposing an exception from these requirements for short sales executed by specialists or market makers in connection with bona-fide market making activities. In addition, any costs that may be initially incurred would be mitigated over time because the uniform rule should lead to regulatory simplification with regard to training and surveillance. Please describe any additional costs resulting from the proposed uniform borrow requirements to market participants already subject to locate requirements by SROs. The Commission requests data to quantify the costs identified.

This proposal would apply to all equity securities, including securities that have quotations published on the OTCBB and Pink Sheets. Issuers and investors have complained about ''naked short selling'' in these thinly-capitalized securities trading over-the-counter. The proposed locate and delivery requirements would address some of these concerns. There may be costs associated with implementing these borrowing requirements for OTCBB and Pink Sheets securities. The Commission requests comment on the costs of implementing these requirements, as well as costs associated with ongoing compliance and surveillance associated with this proposal. The Commission is also concerned with the impact this proposal may have on small issuers. Please provide data to quantify the costs to small issuers and potential investors in these small issuers, including whether reduced short selling opportunities may make the securities in these markets more susceptible to having overvalued stock prices. In addition, we request comment on the extent to which the recommended proposals may affect the ability of small issuers to secure financing through the issuance of convertible debentures. Please describe and analyze any other costs associated with this proposal.

The Commission also recognizes that there would be costs to market participants in implementing and complying with the proposed additional delivery requirements targeted at securities with substantial settlement failures. The Commission seeks estimates and views regarding these costs for particular types of market participants, as well as any other costs or benefits that may result from adoption of the proposal.

The Commission is not proposing any exception from the proposed additional delivery requirements for shorts sales in connection with bona-fide market making because we believe that extended fails to deliver appear characteristic of an investment or trading strategy, rather than one related to market making. The Commission believes that there may be costs to market makers that have open extended fail positions. We have requested comment on the need for market makers engaging in bona-fide market making to maintain extended fail positions. Please provide information detailing any costs that may be associated with not providing a market maker exception to the proposed additional delivery requirements. In particular, we request comment on any lost trading or business opportunity costs to market makers, any potential impact on investors, and a detailed description of any such costs.

In general, the Commission acknowledges that the proposed additional delivery requirements may bring about new costs for market participants. The Commission requests data to quantify the costs identified. Broker-dealers, market makers, SROs, and clearance and settlement firms may incur costs in making initial system changes necessary to implement these new requirements, as well as maintain ongoing compliance and surveillance mechanisms. We request specific comment on the system changes to computer hardware and software, or surveillance costs necessary to implement this rule. If this rule requires additional labor, please indicate what type of jobs are affected, how many additional hours are required and the approximate costs of these additional hours.

C. Proposed Rule 202(T): Temporary Short Sale Rule Suspension

1. Benefits

The proposed pilot program would suspend the operation of the proposed bid test provision for selected stocks that the Commission believes are less susceptible to manipulation because they are more liquid and have a high market capitalization. The proposed pilot program is intended to provide the Commission with empirical data to assess whether the proposed bid test should be removed for liquid securities. The empirical data collected would enable the Commission to study the effects of deregulated short selling on, among other things, market volatility, price efficiency, and liquidity. The proposed pilot program would assist the Commission in determining if, and to what extent, a price test inhibits the markets. The data would also be used to study the extent to which the proposed bid test achieves the stated objectives of the short sale rule by comparing trading activity in liquid securities that are subject to a price test with liquid securities that are not subject to a price test. The markets would benefit in the long run from the possibility of removing a rule that may weaken markets or, alternatively, by retaining a rule that may strengthen markets.

In addition, the Commission recognizes that, in the presence of short sale restrictions in equity securities, the absence of short sale regulation for securities futures may make trading security futures an attractive hedging alternative to equities. The pilot is designed to remedy potentially unfair competition caused by disparate regulation between equities and security futures products. We believe that the proposed pilot program would give the Commission an opportunity to determine whether suspension of the proposed bid test would enhance competition among equities and securities futures in the most liquid securities. The Commission requests data to quantify the costs and the value of the benefits relating to security futures products and this proposal.

The Commission anticipates that broker-dealers, including market makers, may be able to provide greater liquidity in securities included in the proposed pilot program, because the absence of the proposed bid test would make it easier to fill buy orders. The Commission believes that this could benefit investors, however, the Commission seeks comment on how to assess the potential benefits of short selling without a bid test restriction in these selected securities. In addition, the Commission seeks comment on the benefits of acquiring the potential empirical data gathered from the proposed pilot program. Would the proposed pilot program effectively allow the Commission to better understand short sales and short sale restrictions? Please provide estimates and views on these potential benefits.

2. Costs

The Commission anticipates that the proposed pilot program may cause additional costs to brokers, dealers, SROs, and potentially issuers and investors. While we anticipate that SROs and broker-dealers would need to make system changes in order to exclude the selected securities from the proposed bid test, we do not know what these changes would cost. The Commission seeks detailed comment on the extent of required system changes and costs associated with implementation of the pilot program, and on any potential cost to investors due to the absence of a price test applied to these securities. In particular, the Commission seeks comment on whether the pricing of such securities is going to be more or less efficient, and whether manipulation of market prices (either upward or downward) is apt to be more or less prevalent.

The Commission believes issuers may incur some costs associated with inclusion in the pilot program and seeks estimates and views on potential costs to those issuers selected for the pilot program.

D. Proposed Rule 200: Definition of a Short Sale

1. Unconditional Contracts

a. Benefits

Proposed Rule 200 requires that unconditional contracts provide for present delivery, and specify the price and number of securities to be sold. In addition, the proposal would require that persons who claim to be long actually receive a specified number of securities at a specified price and at a specified time. The benefit of this proposal is that it would prevent abuse by individuals seeking to claim a long position merely to avoid application of the price test provisions in proposed Rule 201. Specifically, if the price must be in the contract, there would be no incentive to attempt to depress the market price of security, such as depressing the price prior to closing where a contract mandates that the security be purchased at the closing price.

b. Costs

The Commission does not anticipate any costs for this proposal. However, the Commission notes that some broker-dealers may claim that such a proposal would inhibit their trading strategy and increase the cost of doing business. The Commission seeks comment on how such a proposal would affect the trading of retail and institutional investors and the potential costs, if any, of limitations to the trading strategies of investors.

2. Securities Futures

a. Benefits

Proposed Rule 200 would codify existing guidance issued by the Commission as to when a person is deemed to own a security underlying a security futures contract.[235] Codifying this guidance would provide ease of reference for compliance with the short sale rule for those trading in security futures.

b. Costs

The Commission acknowledges, however, that the existing interpretation may present costs associated with lost business opportunities for individuals who intended to use securities futures for trading strategies. In light of this, and in recognition that some participants may not have commented on the guidance when it was issued, the Commission requests data to quantify the costs and the value of the benefits identified.

3. Aggregation Units

a. Benefits

We have also proposed to incorporate aggregation unit netting into Rule 200. This proposal would allow multi-service broker-dealers to calculate net positions in a particular security within defined trading units independently from the positions held by the other aggregation units within the firm, subject to certain conditions. This proposal is intended to allow multi-service firms to pursue different trading strategies under certain circumstances without being inhibited by the requirements of a price test when effecting short sales, which should increase efficiency and flexibility at large firms.

b. Costs

The Commission does not believe there are any costs associated with this proposal because firms are not required to use aggregation units.

E. Proposed Amendments to Regulation M, Rule 105

1. Benefits

The proposed amendment to Rule 105 of Regulation M would eliminate the exception for offerings filed under § 230.415, commonly referred to as the shelf offering exception. We believe the elimination of the shelf offering exception would update Rule 105 of Regulation M and provide a uniform treatment of shelf offerings and non-shelf offerings in light of our belief that both shelf offerings and non-shelf offerings are susceptible to the manipulative abuse that Rule 105 of Regulation M is intended to prevent.

We believe that the proposed amendment to Rule 105 of Regulation M would benefit issuers and investors by promoting shelf-offering prices that are based upon market prices that are not artificially influenced. We believe this should safeguard the integrity of the capital raising process with respect to shelf offerings and enhance investor confidence in our market. The proposal would also protect issuers conducting shelf offerings from receiving reduced offering proceeds as a result of manipulative conduct. These benefits are difficult to quantify. The Commission encourages commenters to provide data or other facts to support their views concerning these and any other benefits not mentioned here.

2. Costs

We request comment as to whether the proposed elimination of the shelf offering exception would impose greater costs on market participants than the current rule. We recognize that the proposed elimination of the shelf offering exception would diminish a short seller's ability to effect a covering transaction by restricting the source of securities from which he may cover. Such costs are difficult to quantify and we solicit detailed description of the type and amount of any such costs from commenters. We believe, however, that any costs associated with restricting a short sellers' ability to cover with offering shares is balanced by the benefits derived from preventing the manipulative activity of effecting pre-pricing short sales and covering with offering shares. Additionally, we solicit comment concerning the costs to issuers, shareholders, and others of pre-pricing short sales prior to a shelf offering takedown and covering with shelf offering shares. Such costs may include costs associated with postponement or abandonment of an offering or a lower than anticipated offering price.

XX. Consideration on Burden and Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act requires the Commission, whenever it engages in rulemaking and must consider or determine if an action is necessary or appropriate in the public interest, to consider whether the action would promote efficiency, competition, and capital formation.[236] In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.[237] Exchange Act Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Proposed Regulation SHO is intended to promote regulatory simplification by applying a uniform bid test to short sales in exchange-listed and Nasdaq NMS securities that occur in various markets and enhanced locate and delivery requirements to all equity securities. The Commission preliminarily believes that proposed Regulation SHO would promote efficiency because market participants would have to apply only one price test to exchange-listed and Nasdaq NMS securities, and the pilot program would give the Commission the opportunity to study how the new price test affects a broad range of securities in different markets. We also preliminarily believe that the locate and delivery requirements would promote efficiency by addressing large failures to deliver

[235] Commission Guidance on the Application of Certain Provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, and Rules thereunder to Trading in Security Futures Products, Securities Exchange Act Release No. 46101 (June 21, 2002), 67 FR 43234 (June 27, 2002).

[236] 15 U.S.C. 78c(f).

[237] 15 U.S.C. 78w(a)(2).

securities that have the potential to disrupt market operations and pricing systems.

The Commission preliminarily believes that Regulation SHO's uniform price test and enhanced locate and delivery requirements would promote capital formation because the proposed rules would reduce market volatility and the opportunities for market manipulation, thereby strengthening issuer and investor confidence in the markets. Applying the locate and delivery requirements to all equity securities would promote capital formation and especially help smaller issuers, whose securities may be more susceptible to the effects of naked short selling, enter into and remain in the marketplace and would promote capital efficiency in smaller, thinly capitalized securities that are more susceptible to manipulation.

As discussed above, proposed Regulation SHO would apply a uniform bid test to covered securities and the locate and delivery requirements to all equity securities. The Commission preliminarily believes that Regulation SHO would promote competition among exchanges or other market centers in attracting issuers to list on a particular market, in that market participants would no longer be able to select a market on which to execute a short sale based on disparate regulation. In addition, the Commission preliminarily believes proposed Regulation SHO would level the playing field by applying uniform regulation.

The Commission requests comment on whether the proposed amendments are expected to promote efficiency, competition, and capital formation.

XXI. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,'' [238] we must advise the Office of Management and Budget as to whether the proposed regulation constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effect on competition, investment or innovation.

If a rule is ''major,'' its effectiveness will generally be delayed for 60 days pending Congressional review. We request comment on the potential impact of the proposed regulation on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their view to the extent possible.

XXII. Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA), in accordance with the provisions of the Regulatory Flexibility Act (RFA),[239] regarding the proposed Regulation SHO, Rules 200, 201, 202(T), and 203, replacing Rule 10a–1, Rule 10a–2, and Rule 3b–3, and proposed amendments to Rule 105 under the Exchange Act.

A. Reasons for the Proposed Action

Based on recent developments, including but not limited to, increased instances of ''naked'' short selling, *i.e.*, selling short without borrowing the necessary securities to make delivery; decimalization; the advent of security futures trading; and an increasing amount of Nasdaq securities being traded away from the Nasdaq market, and thus not subject to any short sale price test, the Commission is proposing Regulation SHO, Rules 200, 201, 202(T), and 203, replacing Rules 10a–1, 10a–2, and 3b–3, along with amendments to Rule 105. The proposed rules, including a proposed uniform bid test Rule 201 that would apply to all exchange-listed and Nasdaq NMS securities wherever they are traded, enhanced locate and delivery requirements under proposed Rule 203, clarification of ownership under proposed Rule 200, as well as a temporary Rule 202(T) suspending the proposed bid test for certain securities during a two-year pilot, are designed to modernize short sale regulation in light of recent developments while providing simplification and uniformity to participants.

B. Objectives

The proposed amendments are designed to fulfill several objectives. First, one of the prime objectives of the proposed amendments is to provide uniform short sale regulation applicable to trades in exchange-listed and Nasdaq NMS securities occurring in multiple, dispersed, and diverse markets. Second, the proposed amendments provide greater flexibility in effecting short sales in a decimal environment as well as accommodating trading systems that utilize price improvement models that often conflict with existing short sale regulation. Third, the proposed amendments extend locate and delivery requirements to all equity securities, including the SmallCap, OTCBB, and Pink Sheet securities that have low market capitalization and may be more susceptible to manipulation. These locate and delivery requirements are designed to help prevent large fail positions, which may help facilitate some manipulative strategies.

C. Legal Basis

Pursuant to the Exchange Act and, particularly, Sections 2, 3(b), 9(h), 10, 11A, 15, 17(a), 19, 23(a) thereof, 15 U.S.C. 78b, 78c, 78i, 78j, 78k–1, 78o, 78q, 78s, 78w(a), the Commission proposed to adopt Regulation SHO, Rules § 240.200, 240.201, 240.202(T), and 240.203, replacing § 240.3b–3, 240.10a–1, and 240.10a–2.

D. Small Entities Subject to the Rule

Paragraph (c)(1) of Rule 0–10 [240] states that the term ''small business'' or ''small organization,'' when referring to a broker-dealer, means a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to § 240.17a–5(d); and is not affiliated with any person (other than a natural person) that is not a small business or small organization. As of 2002, the Commission estimates that there were approximately 880 broker dealers that qualified as small entities as defined above.The Commission's proposed amendments would require all small entities to modify, and in some cases install, systems and surveillance mechanisms to ensure compliance with the uniform bid test, marking, and locate and delivery requirements.

E. Reporting, Recordkeeping, and Other Compliance Requirements

The proposed amendments may impose some new compliance and marking requirements on broker-dealers that are small entities. Small broker dealers that only trade SmallCap, OTCBB, or Pink Sheet securities were not previously subject to marking and borrow and delivery requirements. Under the proposed amendments these broker-dealers would have an obligation to comply with the marking requirements and the borrow and delivery requirements imposed upon them by the proposals. Moreover, some small entities that trade securities that are subject to the pilot program may

[238] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[239] 5 U.S.C. 603.

[240] 17 CFR 240.0–10(c)(1).

have to make changes to exclude these securities from the uniform bid test.

F. Duplicative, Overlapping or Conflicting Federal Rules

The Commission believes that there are no federal rules that duplicate, overlap or conflict with the proposed rules and the proposed temporary rule.

G. Significant Alternatives

Pursuant to Section 3(a) of the RFA,[241] the Commission must consider the following types of alternatives: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the Rule for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the Rule, or any part thereof, for small entities.

The primary goal of the proposed amendments and the temporary rule is to promote uniformity in short sale regulation wherever trades in certain securities occur. As such, we believe that imposing different compliance or reporting requirements, and possibly a different timetable for implementing compliance or reporting requirements, for small entities would undermine the goal of uniformity. In addition, we have concluded similarly that it would not be consistent with the primary goal of the proposals to further clarify, consolidate or simplify the proposed amendments for small entities. The Commission also preliminarily believes that it would be inconsistent with the purposes of the Exchange Act to use performance standards to specify different requirements for small entities or to exempt broker-dealer entities from having to comply with the proposed rules and temporary rule.

H. Request for Comments

The Commission encourages the submission of written comments with respect to any aspect of the IRFA. Those comments should specify costs of compliance with the proposed temporary rule, and suggest alternatives that would accomplish the objective of proposed amendments and temporary rule.

XXIII. Statutory Authority

Pursuant to the Exchange Act and, particularly, Sections 2, 3(b), 9(h), 10, 11A, 15, 17(a), 17A, 23(a) thereof, 15 U.S.C. 78b, 78c, 78i, 78j, 78k–1, 78o, 78q, 78q–1, 78w(a), the Commission proposed to adopt § 240.200, 240.201, 240.202(T), 203, along with amendments to Regulation M, Rule 105.

[241] 5 U.S.C. 603 (c).

Text of Proposed Regulation SHO, Amendments and Temporary Rule

List of Subjects in 17 CFR Parts 240 and 242

Brokers, Fraud, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, Title 17, Chapter II, of the Code of Federal Regulations is proposed to be amended as follows.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

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

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7202, 7241, 7262, and 7263; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

2. Sections 240.3b–3, 240.10a–1, and 240.10a–3 are removed and reserved.

PART 242—REGULATIONS M, SHO, ATS, AND AC AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

3. The authority citation for part 242 continues to be read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k–1(c), 78l, 78m, 78mm, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78g(h), 78w(a), 78dd–1, 80a–23, 80a–29, and 80a–37.

4. The part heading for part 242 is revised as set forth above.

5. Part 242 is amended by adding §§ 242.200 through 242.203 to read as follows:

Regulation SHO—Regulation of Short Sales

Sec.
242.200 Definition of "short sale."
242.201 Price test and marking requirements.
242.202(T) Temporary short sale rule suspension.
242.203 Borrowing and delivery requirements.

Regulation SHO—Regulation of Short Sales

§ 242.200 Definition of "short sale."

(a) The term *short sale* shall mean any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller.

(b) A person shall be deemed to own a security if:

(1) He or his agent has title to it; or

(2) He has purchased, or has entered into an unconditional contract, binding on both parties thereto, to purchase it, but has not yet received it, and the contract specifies the price and amount of the securities to be purchased; or

(3) He owns a security convertible into or exchangeable for it and has tendered such security for conversion or exchange; or

(4) He has an option to purchase or acquire it and has exercised such option; or

(5) He has rights or warrants to subscribe to it and has exercised such rights or warrants; or

(6) He holds a security futures contract to purchase it and has received notice that his position will be physically settled and is irrevocably bound to receive the underlying security.

(c) A person shall be deemed to own securities only to the extent that he has a net long position in such securities.

(d) A broker or dealer shall be deemed to own a security, even if it is not net long, if:

(1) It acquired that security while acting in the capacity of a block positioner; and

(2) To the extent that the broker or dealer's short position in the security is the subject of offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities.

(e) In order to determine its net position, a broker or dealer shall aggregate all of its positions in a security unless it qualifies for independent trading unit aggregation, in which case each independent trading unit shall aggregate all of its positions in a security to determine its net position. Independent trading unit aggregation is available only if:

(1) The broker or dealer has a written plan of organization that identifies each aggregation unit, specifies its trading objective, and supports its independent identity;

(2) Each aggregation unit within the firm must continuously determine its net position for every security that it trades that is subject to § 242.201;

(3) Each trader pursuing a particular trading objective or strategy must be included in one aggregation unit; and

(4) Individual traders must be assigned to only one aggregation unit at a time.

(f) When unwinding index arbitrage positions involving long baskets of stock and one or more short index futures traded on a board of trade or one or more standardized options contracts as defined in § 240.9b–1(a)(4) of this chapter, persons need not aggregate the long stock position with short stock positions in other proprietary accounts provided that:

(1) The short stock positions have been created and maintained in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities; and

(2) The sale does not occur during a period commencing at the time that the Dow Jones Industrial Average has declined by two percent or more from its closing value on the previous day and terminating upon the establishment of the closing value of the Dow Jones Industrial Average on the next succeeding trading day.

§ 242.201 Price test and marking requirements

(a) Definitions. For the purposes of this section:

(1) The term *actively traded security* shall have the same meaning as in § 242.101(c)(1).

(2) The term *average daily trading volume* shall have the same meaning as in § 242.100(b).

(3) The term *consolidated best bid and offer* shall have the same meaning as in § 240.11Ac1–5(a)(7) of this chapter.

(4) The term *covered security* shall mean all national market system securities as defined in § 240.11Aa2–1 of this chapter, but shall exclude Nasdaq Small Cap securities, as determined by NASD rules.

(5) The term *odd lot* shall mean an order for the purchase or sale of a covered security in an amount less than a round lot.

(6) The term *responsible broker or dealer* shall have the same meaning as in § 240.11Ac1–1(a)(21) of this chapter.

(7) The term *riskless principal* shall mean a transaction in which a broker or dealer after having received an order to sell a security, sells the security as principal at the same price to satisfy the order to sell. The sell order must be given the same per-share price at which the broker or dealer sold shares to satisfy the facilitated order, exclusive of any explicitly disclosed markup or markdown, commission equivalent or other fee. In addition, for purposes of this section, a broker or dealer must have written policies and procedures in place to assure that, at a minimum: the customer order was received prior to the offsetting transaction; the offsetting transaction is allocated to a riskless principal or customer account within 60 seconds of execution; the broker or dealer has supervisory systems in place to produce records that enable the broker or dealer to accurately and readily reconstruct, in a time-sequenced manner, all orders which a broker or dealer relies pursuant to this exception.

(b) All short sales of any covered security must be effected at a price at least one cent above the current best bid displayed as part of the consolidated best bid and offer at the time of execution.

(c) A broker or dealer must mark all sell orders of any security as either ''long,'' ''short,'' or ''short exempt.'' A broker or dealer shall mark an order to sell a security ''long'' only if the seller owns the security being sold and either:

(1) The security to be delivered is in the physical possession or control of the broker or dealer; or

(2) The security will be in the physical possession or control of the broker or dealer no later than the settlement of the transaction. An order shall be marked ''short exempt'' if the sale is effected pursuant to one of the exceptions in paragraph (d) of this section.

(d) The provisions of paragraph (b) of this section shall not apply to:

(1) Any sale by any person of a covered security, for an account in which he has an interest, if such person owns the security and intends to deliver such security as soon as is possible without undue inconvenience or expense;

(2) Any sale by a broker or dealer of a covered security for an account in which it has no interest, pursuant to an order marked long;

(3) Any sale of a covered security by a market maker to off-set customer odd-lot orders or to liquidate an odd-lot position by a single round lot sell order which changes such broker or dealer's position by no more than a unit of trading;

(4) Any sale of a covered security by a responsible broker or dealer effected at a price equal to the consolidated best offer when the market for the covered security is locked or crossed, provided however, that the exception shall not apply to any broker or dealer who initiated the locked or crossed market;

(5) Any sale of a covered security for a special arbitrage account by a person who is presently entitled to acquire another security, provided that the security sold short is in the same class as the security he is entitled to acquire, the short sale is in an amount equivalent to the number of the securities that he is entitled to acquire, the sale is effected to profit from a current price difference between the security sold short and the security he is entitled to acquire, and the person subsequently acquires or purchases the security upon which the short sale was based. A person shall be deemed entitled to acquire a security if:

(i) He has an unconditional right or option to acquire or purchase the security at a specific price and in a specific amount when the short sale is effected; and

(ii) The right of acquisition was originally attached to or represented by another security, or was issued to all holders of the securities;

(6) Any sale of a covered security for a special international arbitrage account effected to profit from a current price difference between a security on a foreign securities market and a security on a securities market subject to the jurisdiction of the United States, provided that the short seller has an offer to buy on a foreign market that allows him to immediately cover the short sale at the time it was made. For the purposes of this section, a depositary receipt of a security shall be deemed to be the same security as the security represented by such receipt;

(7)(i) Any sale of a covered security by an underwriter or member of a syndicate or group participating in the distribution of a security in connection with an over-allotment of securities; or

(ii) Any lay-off sale by an underwriter or member of a syndicate or group in connection with a distribution of securities through rights or a standby underwriting commitment;

(8) Any sale of a covered security at the volume weighted average price (VWAP) that meets the following criteria:

(i) The sale is entered into and matched before the regular trading session opens and the execution price of the VWAP matched trade will be determined after the close of the regular trading session; and

(ii) The VWAP for the covered security is calculated by:

(A) Calculating the values for every regular way trade reported in the consolidated system, or on a primary market that accounts for seventy-five percent or more of the covered security's average daily trading volume for the security during the regular trading session, by multiplying each such price by the total number of shares traded at that price;

(B) Compiling an aggregate sum of all values; and

(C) Dividing the aggregate sum by the total number of reported shares for that day in the security; and

(iii) The transactions are reported using a special VWAP trade modifier; and

(iv) Short sales used to calculate the VWAP will themselves be subject to the provisions of paragraph (b) this section, unless excepted or exempted, and § 240.203 of this chapter; and

(v) The VWAP matched security:

(A) Qualifies as an ''actively-traded security''; or

(B) The proposed short sale transaction is being conducted as part of a basket transaction of twenty or more securities in which the subject security does not comprise more than five percent of the value of the basket traded;

(vi) The transaction is not effected for the purpose of creating actual, or apparent, active trading in or otherwise affecting the price of any security;

(vii) A broker or dealer shall be permitted to act as principal on the contra-side to fill customer short sale orders only if the broker or dealer's position in the covered security, as committed by the broker-dealer during the pre-opening period of a trading day and aggregated across all of its customers who propose to sell short the same security on a VWAP basis, does not exceed 10% of the covered security's relevant average daily trading volume;

(9) A sale of any covered security when the broker or dealer is effecting the execution of a customer ''long'' sale on a riskless principal basis, regardless of the broker or dealer's proprietary net position; and

(10) A sale of any covered security at a price equal to the consolidated best bid by a broker or dealer to satisfy any obligations of the broker or dealer to a customer limit order, as determined by federal securities laws or the rules of a self-regulatory organization.

(e) Upon written application or upon its own motion, the Commission may grant an exemption from the provisions of this section, either unconditionally or on specified terms and conditions, to any transaction or class of transactions, or to any security or class of securities, or to any person or class of persons.

§ 242.202(T) Temporary short sale rule suspension.

General rule. Short sales in specified securities constituting a subset of the Russell 1000 index, or such other securities as the Commission designates as permissible by order as necessary or appropriate in the public interest and consistent with the protection of investors after giving due consideration to the security's liquidity, volatility, market depth and trading market, may be effected without regard to the provisions of paragraph (b) of § 242.201. All other provisions of § 242.201 shall remain in effect.

§ 242.203 Borrowing and delivery requirements.

(a) *Long sales.* (1) If a broker or dealer knows or has reasonable grounds to believe that the sale of a security was or will be effected pursuant to an order marked ''long,'' such broker or dealer shall not lend or arrange for the loan of any security for delivery to the broker for the purchaser after sale, or fail to deliver a security on the date delivery is due, unless the broker or dealer knows or has been informed by the seller that the seller owns the security and will deliver it to the clearing broker or dealer prior to the scheduled settlement of the transaction.

(2) The provisions of paragraph (a)(1) of this section shall not apply to:

(i) The loan of any security by a broker or dealer through the medium of a loan to another broker or dealer; or

(ii) Any loan of, arrangement for the loan of, or failure to deliver any security, if, prior to such loan, arrangement or failure to deliver, a national securities exchange, in the case of a sale effected thereon, or a national securities association, in the case of a sale not effected on an exchange, finds:

(A) That such sale resulted from a mistake made in good faith;

(B) That due diligence was used to ascertain that the circumstances specified in § 242.201(c) existed; and

(C) Either that the condition of the market at the time the mistake was discovered was such that undue hardship would result from covering the transaction by a ''purchase for cash'' or that the mistake was made by the seller's broker and the sale was at a price permissible for a short sale under § 242.201(b).

(b) *Short sales.*

(1) A broker or dealer may not execute a short sale order for its own account or the account of another person unless the broker or dealer, or the person for whose account the short sale is executed:

(i) Borrowed the security, or entered into a bona-fide arrangement to borrow the security; or

(ii) Had reasonable grounds to believe that it could borrow the security so that it would be capable of delivering the securities on the date delivery is due.

(2) The provisions of paragraph (b)(1) of this section shall not apply to short sales executed by specialists or market makers in connection with bona-fide market making activities. Bona-fide market making activities shall not include activity that is related to speculative selling strategies or investment purposes of the broker or dealer or is disproportionate to the usual market making patterns or practices of the broker or dealer in that security.

(3) For any security where there are fails to deliver at a clearing agency registered with the Commission of 10,000 shares or more, and that is equal to at least one-half of one percent of the issue's total shares outstanding, if a broker or dealer executes a short sale for its own account or the account of another person, and if for any reason whatever securities have not been delivered within two days after the settlement date:

(i) For a period of ninety calendar days the broker or dealer shall not execute a short sale in such security for his own account or the account of the person for whose account the failure to deliver occurred unless the broker or dealer or the person for whose account the short sale is executed has borrowed the security, or entered into a bona fide arrangement to borrow the security, and will deliver the security on the date delivery is due; and

(ii) The rules of a clearing agency registered pursuant to Section 17A (15 U.S.C. 78q–1) of the Act shall include the following provisions:

(A) A broker or dealer failing to deliver securities as specified in subparagraph (3) above shall be referred to the NASD and the Examining Authority (as defined in 15c3–1(c)(12)) for such broker or dealer for appropriate action; and

(B) The registered clearing agency shall withhold a benefit equal to any mark to market amounts or payments that otherwise would be made to the participant failing to deliver, and assess appropriate charges.

(c) Upon written application or upon its own motion, the Commission may grant an exemption from the provisions of this section, either unconditionally or on specified terms and conditions, to any transaction or class of transactions, or to any security or class of securities, or to any person or class of persons.

Dated: October 28, 2003.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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H.J. Res. 75/P.L. 108–104
Making further continuing appropriations for the fiscal year 2004, and for other purposes. (Oct. 31, 2003; 117 Stat. 1200)

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