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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 02–036–2]

Yucatan Peninsula; Addition to the List of Regions Considered Free of Exotic Newcastle Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations by adding the Mexican States of Campeche, Quintana Roo, and Yucatan to the list of regions considered free of exotic Newcastle disease. We have conducted a risk evaluation and have determined that these three Yucatan Peninsula States have met our requirements for being recognized as free of this disease. This action allows importation into the United States of poultry and poultry products from these regions. We are also adding a certification requirement to ensure that poultry and poultry products from Campeche, Quintana Roo, and Yucatan originate in those States or in any other region recognized by the Animal and Plant Health Inspection Service as free of exotic Newcastle disease and that, prior to export to the United States, such poultry and poultry products are not commingled with poultry and poultry products from regions where exotic Newcastle disease exists.

EFFECTIVE DATE: February 11, 2004.

FOR FURTHER INFORMATION CONTACT: Dr. Hatim Gubara, Staff Veterinarian, Regionalization Evaluation Services Staff, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of certain animals and animal products into the United States in order to prevent the introduction of various animal diseases, such as rinderpest, foot-and-mouth disease (FMD), classical swine fever (CSF), and exotic Newcastle disease (END). Among other things, § 94.6 of the regulations lists regions that are considered to be free of END.

On October 22, 2002, we published in the **Federal Register** (67 FR 64827–64833, Docket No. 02–036–1) a proposal to amend the regulations in § 94.6 by adding the Mexican States of Campeche, Quintana Roo, and Yucatan to the list of regions considered free of END. This proposed rule was intended to allow importation into the United States of poultry and poultry products from these regions. We also proposed to amend § 94.15 to remove references to Campeche, Quintana Roo, and Yucatan because we believed that the requirements specified in that section for transit through the United States of poultry carcasses, parts, or products that are otherwise ineligible for entry into the United States under part 94 would no longer apply to those States if they were listed in § 94.6 as regions considered free of END.

We solicited comments concerning our proposal for 60 days ending December 23, 2002. We did not receive any comments. Therefore, for the reasons given in the proposed rule, we are adopting the changes to § 94.6 described in the previous paragraph.

Upon further consideration, however, we decided not to finalize our proposed changes to § 94.15. Some of the poultry carcasses, parts, or products produced in Campeche, Quintana Roo, and Yucatan for export may be produced in plants that do not meet the standards of the Food Safety Inspection Service (FSIS) of the U.S. Department of Agriculture (USDA) as specified in 9 CFR part 381. Such poultry carcasses, parts, or products are eligible to transit through the United States under current § 94.15(c). By not finalizing our proposed changes to § 94.15, we will allow such import-ineligible products to continue transiting the United States under the conditions specified in that section.

A comment we received on another proposed rule also had implications for the current rulemaking. On May 13, 2002, we published in the **Federal Register** (67 FR 31987–31992, Docket No. 01–074–1) a proposal to amend the regulations in §§ 94.9 and 94.10 by adding the Mexican States of Baja California, Baja California Sur, Chihuahua, and Sinaloa to the list of regions considered free of CSF, thus allowing importation into the United States of pork, pork products, live swine, and swine semen from those regions. One of the commenters on that proposal, noting that it appeared likely that most of the pork and pork products exported by the State of Chihuahua were derived from swine raised in other regions, requested more information about where those swine originated. The commenter was concerned that pork intended for export to the United States from Chihuahua could be derived from swine that originated in neighboring CSF-affected regions. Because we shared this concern, we added some safeguards when we published the final rule changing the CSF status of those four Mexican States (68 FR 47835–47842, Docket No. 01–074–2, August 12, 2003).

Issues pertaining to the integrity of products exported from certain disease-free regions to the United States, such as the one discussed by that commenter, have acquired a new salience due to the advent of regionalization. Regionalization has allowed the Animal and Plant Health Inspection Service (APHIS) of the USDA to designate regions, as well as entire countries, as free of such animal diseases as CSF and END. While regionalization has allowed APHIS to exercise more flexibility in regulating and has helped to facilitate trade, it has caused APHIS to reconsider the issue of border controls in some cases. Border controls between high- and low-risk regions within a country or within a larger community, such as the European Union, may not always be equivalent to border controls between nations. There may now exist a greater likelihood that animal products intended for export to the United States from some disease-free regions could be derived from animals that originated in affected regions or that animals or animal products from free regions could be commingled with animals or animal products from affected regions prior to export to the United States. Such

imports could present a risk of introducing animal diseases into this country.

Some sections of the regulations in part 94 do contain provisions aimed at reducing the potential risks posed by the commingling of import-eligible and ineligible animals and animal products prior to export to the United States. Section 94.11 places certain restrictions on meat and other animal products imported from certain regions that are designated in § 94.1 as free of rinderpest and FMD but that (1) supplement their meat supplies via the importation of fresh meat of ruminants or swine from regions affected by those diseases, (2) share a common land border with such regions, or (3) import animals from such regions under conditions less restrictive than would be acceptable for importation into the United States. Section 94.13 has similar provisions for pork and pork products imported from certain regions that are designated in § 94.12(a) as being free of swine vesicular disease but that border or have trading relationships with affected regions. Both of these sections contain requirements for additional certifications that include declarations that certain conditions intended to prevent commingling of animal products intended for export to the United States have been satisfied.

To prevent the commingling of import-eligible and ineligible poultry and poultry products prior to export to the United States, we are adopting an additional certification requirement similar to those in §§ 94.11 and 94.13 for imports from the newly eligible States of Campeche, Quintana Roo, and Yucatan. This requirement will be contained in a new § 94.25.

The introductory text of the new § 94.25 enumerates the risk factors that necessitate placing restrictions on the importation of live poultry, poultry meat, and other poultry products, including ship stores, airplane meals, and baggage containing such meat or animal products, from the Mexican States of Campeche, Quintana Roo, and Yucatan that go beyond those placed on imports from other regions designated in § 94.6 as END-free. Because these Mexican States supplement their meat supplies by the importation of fresh (chilled or frozen) poultry meat from END-affected regions, share common land borders with such regions, or import live poultry from such regions under conditions less restrictive than would be acceptable for importation into the United States, there exists the possibility that live poultry or poultry products that are intended for export to the United States could originate in affected regions or be commingled with live poultry and poultry products from surrounding END-affected regions. Such imports could present a risk of introducing END into the United States. Therefore, in addition to meeting all applicable requirements of part 93, which contains, among other things, general provisions for the importation of live poultry, and of 9 CFR chapter III, under which are included conditions for importation of poultry products promulgated by the FSIS, live poultry, poultry meat, and other poultry products imported into the United States from Campeche, Quintana Roo, and Yucatan must also satisfy the conditions specified in new § 94.25. As noted earlier, these risk factors are of greater concern now than they were in the past due to the advent of regionalization. In future rulemakings, therefore, we intend to apply the additional certification requirement more broadly to any region that we recognize as free of END but that is subject to these risk factors.

Paragraph (a) of new § 94.25 states that live poultry, poultry meat, and other poultry products from any region designated in the section must be accompanied by an additional certification by a full-time salaried veterinary officer of the Government of Mexico. Upon arrival of the live poultry, poultry meat, or other poultry product in the United States, the certification must be presented to an authorized inspector at the port of arrival.

Paragraph (b) contains requirements for the additional certification for live poultry imported from Campeche, Quintana Roo, and Yucatan. The certification accompanying the live poultry must identify the exporting region of the poultry as a region designated in § 94.6 as free of END at the time the poultry were in the region. In addition, the certification must state that the poultry (1) have not been in contact with poultry or poultry products from any region where END is considered to exist, (2) have not lived in a region where END is considered to exist, and (3) have not transited through a region where END is considered to exist unless moved directly in a sealed means of conveyance with the seal intact upon arrival at the point of destination. These provisions are intended to ensure that the live poultry have originated in an END-free region, have not been commingled with infected poultry or been in contact with infected poultry products either in the region of origin or while in transit prior to export to the United States, and are being exported from an END-free region. At this time, Campeche, Quintana Roo, and Yucatan, which are the only regions in Mexico that APHIS recognizes as being free of END, are the only regions to which these requirements will apply, but we expect to add more regions, in Mexico and worldwide, to § 94.25 in the future.

Paragraph (c) contains requirements for the additional certification accompanying poultry meat or other poultry products from Campeche, Quintana Roo, and Yucatan. The paragraph includes conditions for slaughter, handling, transiting, and processing that the certification must declare have been satisfied.

Paragraph (c)(1) specifies that the additional certification must state that the poultry meat or other poultry products have been derived from poultry that meet all requirements of § 94.25 and that have been slaughtered in a region designated in § 94.6 as free of END at a federally inspected slaughter plant that is under the direct supervision of a full-time salaried veterinarian of the Government of Mexico and that is approved to export poultry meat and other poultry products to the United States in accordance with the FSIS regulations in 9 CFR 381.196. This provision will help ensure that the poultry meat or other poultry products will only be derived from poultry that are free of END and that slaughtering will take place in establishments and under conditions that meet the standards of the FSIS.

Paragraph (c)(2) specifies that the additional certification must state that the poultry meat or other poultry products have not been in contact with poultry meat or other poultry products from any region where END is considered to exist. This provision will help to ensure that products originating in the three Mexican States will not be commingled in the region of origin with products from END-affected regions.

Paragraph (c)(3) specifies that the additional certification must state that the poultry meat or other poultry products have not transited through a region where END exists unless moved directly in a sealed means of conveyance with the seal intact upon arrival at the point of destination. This provision will help to ensure that poultry meat and other poultry products from Campeche, Quintana Roo, and Yucatan will not be subject to contamination through commingling with END-affected products while transiting through END-affected regions prior to export to the United States.

Finally, paragraph (c)(4) contains requirements for the additional certification that must accompany processed poultry meat or other poultry

products imported from Campeche, Quintana Roo, and Yucatan. The certification must state that the products were processed in a region designated in § 94.6 as free of END in a federally inspected processing plant that is under the direct supervision of a full-time salaried veterinarian of the Government of Mexico. This provision will help to ensure that the products will not be commingled with products from an END-affected region during processing and that the processing will be done under adequate supervision in establishments that are eligible to export poultry products to the United States.

We believe that the safeguards in new § 94.25 will allow for the safe importation of live poultry, poultry meat, and other poultry products from the Mexican States of Campeche, Quintana Roo, and Yucatan.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule with the changes discussed in this document.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule adds the Mexican States of Campeche, Quintana Roo, and Yucatan to the list of regions considered free of exotic Newcastle disease. We have determined that approximately 2 weeks are needed to ensure that APHIS personnel at ports of entry receive official notice of this change in the regulations. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective 15 days after publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule amends the regulations by adding the Mexican States of Campeche, Quintana Roo, and Yucatan to the list of regions considered free of END and removing END-related restrictions on the transiting of poultry carcasses, parts, or products from these States through the United States that would no longer apply. The rule also adds a certification requirement to prevent commingling of products from Campeche, Quintana Roo, and Yucatan with products from END-affected regions prior to export to the United States.

A number of factors may influence how much of the poultry produced in the Yucatan Peninsula will be exported to the United States as a result of this rulemaking. These factors include domestic and international supply of, and demand for, poultry and poultry substitutes, U.S. grain prices, exchange rates, freight rates, the structure (number of large integrated operations versus the number of traditional and semi-traditional operations) of the poultry industry in the Yucatan Peninsula, and the ability of Yucatan Peninsula producers/packers consistently to ship cuts that meet U.S. market specifications.

As shown in table 1, Yucatan Peninsula poultry production peaked at roughly 100,000 metric tons (MTs) in 1997 and consistently accounted for about 8 percent of Mexico's total poultry production from 1992 until 1999, the last year for which data were available.

TABLE 1.—YUCATAN POULTRY PRODUCTION BY STATE 1992–1999 (MTS)

Year	1992	1993	1994	1995	1996	1997	1998	1999
Campeche	4,152	5,821	6,322	6,438	6,679	7,440	6,604	6,784
Quintana Roo	5,124	5,940	5,810	7,043	5,490	5,865	4,685	5,374
Yucatan	63,027	74,311	77,841	83,311	86,485	89,698	79,900	81,470
Total	72,303	86,072	89,884	96,792	98,654	103,003	91,189	93,628
Percentage of Mexico's production	8.05	8.28	7.98	7.54	7.80	.....	.....	.....

Source: Centro de Estadística Agropecuaria/SAGARPA.

Our analysis of poultry production in the Yucatan Peninsula suggests 100,000 MTs as the upper limit for poultry and poultry products that could be made available for export to the United States at this time. The Yucatan Peninsula is a grain and oilseed deficit area. Most of the grains and oilseeds used in poultry production (the single largest and most expensive input in poultry production) are imported from the United States. This dependence on imported grains and oilseeds will tend to limit the growth of the Yucatan Peninsula's poultry production and, consequently, the amount of poultry and poultry products available for export to the United States.

It is far more likely that the actual amount of poultry and poultry products that will be exported to the United States from the Yucatan Peninsula States in the near term as a result of this rulemaking will be significantly less than 100,000 MTs. A general analysis of Mexican poultry production systems suggests that a maximum of 60 to 70 percent of Yucatan Peninsula poultry production might meet U.S. import standards.[1] According to Foreign Agricultural Service attaché reports and Economic Research Service (ERS) analysts, most Yucatan Peninsula production will probably be consumed locally or diverted to the local tourist industry. Because of shipping costs, it is likely that Mexican producers will only find it profitable to ship breast cuts to the United States. Table 2 shows high and low estimates for possible exports of poultry and poultry products from the Yucatan Peninsula to the United States. As shown in the table, between 18,000 and 52,500 MTs of Yucatan Peninsula poultry may be available for export to the United States, depending on domestic consumption, a factor that is very difficult to gauge or predict. Based on these figures, the amount of breast meat cuts available for export to the United States ranges from roughly 5,786 to 16,875 MTs.[2]

[1] "Outlook for Mexican Poultry Industry and U.S.-Mexican Poultry Trade," Milton Madison and David Harvey. USDA/ERS Livestock, Dairy, and Poultry Report, July 17, 1998, LDP–52.

[2] A 42-ounce processed broiler carcass is comprised of 12.5 to 14 ounces of breast meat, or roughly 32 percent breast meat.

TABLE 2.—ESTIMATED YUCANTAN PENINSULA POULTRY AND POULTRY PRODUCTS AVAILABLE FOR EXPORT TO THE UNITED STATES (IN MTS)

Potential Exports	High estimate	Low estimate
Total	100,000	100,000
Acceptable for U.S. import	70,000	60,000
Acceptable for U.S. import and available for export (not consumed domestically)	52,500	18,000
Estimated breast meat available for export to U.S.	16,875	5,786

Source: Centro de Estadística Agropecuaria/SAGARPA statistics provided by Leland Southard of USDA/ERS.

These amounts make up a minuscule share of the U.S. market. The United States is the world's largest producer and exporter of poultry meat. In 1999, U.S. poultry meat production totaled 35.3 billion pounds (159,090,909 MTs), of which 83 percent was broiler meat, 15 percent was turkey meat, and 2 percent was other chicken meat. The total farm value of U.S. poultry production in 1999 was $22.4 billion. Broiler production accounted for the majority of the value at $15.1 billion, followed by eggs at $4.3 billion, turkey at $2.8 billion, and other chicken at $68 million. The high estimate of 52,500 MTs of Yucatan Peninsula poultry and poultry parts available for export to the United States translates to 0.033 percent of U.S. poultry production based on the 1999 figures. The low estimate of 18,000 MTs available for export equals 0.0113 percent of 1999 U.S. production. The percentages for estimated breast meat exports, of course, are even smaller.

The Regulatory Flexibility Act requires that agencies specifically consider the economic impact of their rules on small entities. Among the small entities potentially affected by this rule change are U.S. producers of poultry and poultry products, U.S. freight forwarders, and U.S. trucking and shipping firms. All of these categories are comprised primarily of small entities. Table 3 provides a breakdown.

TABLE 3.—NUMBER AND TYPE OF SMALL BUSINESSES POTENTIALLY AFFECTED BY PROPOSED RULE

Type of business	Total U.S. entities	Small entities
Local and long distance U.S. trucking firms (refrigerated)	13,815	13,529
U.S. freight forwarders	5,771	5,674
Deep sea freight transport	431	273
Poultry farms	63,246	53,530

The U.S. poultry industry is dominated by contract growing arrangements. A small number of very large, vertically integrated poultry companies own most poultry in the United States. The poultry are raised to a marketable size by farmers under contract arrangements. The vertically integrated companies do not qualify as small entities under the Small Business Administration's standard for small poultry enterprises—no more than $750,000 in annual revenues. Most contract poultry growers do qualify as small entities, however.[3] The 1997 Census of Agriculture (the most recent data on the composition of poultry industry by size) reported a total of 63,246 farms in the United States that raised poultry or poultry products, producing poultry and poultry products valued at over $22 billion. According to Census of Agriculture data, approximately 53,530 or 85 percent of the farms raising poultry were ''small'' farms in 1997.[4]

In theory, imported Yucatan poultry will increase the available supply of poultry in the United States, increase competition, and reduce prices. Such a development, while benefitting U.S. consumers, will negatively affect net revenues of U.S. producers. Due to the relatively small tonnage of poultry and poultry products expected to be exported from the Yucatan Peninsula to the United States, however, this rule is unlikely to have a measurable effect on U.S. poultry and poultry product supplies, poultry prices, or poultry producer revenues.

The other affected small entities—U.S. freight forwarding, trucking, or transport firms that have the capacity to transport Mexican poultry from U.S. land border ports or U.S. maritime ports—may benefit from increased economic activity as a result of this rulemaking. As is the case with poultry producers, however, these effects are likely to be very small due to the limited amount of poultry and poultry products expected to be exported to the United States from the Yucatan Peninsula States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains an information collection requirement that was not included in the proposed rule. Specifically, this final rule adds an additional 50 burden hours for a certification that will have to be completed by Federal animal health authorities in Mexico to ensure that,

[3] *http://www.sba.gov*, NAICS Code 112320, poultry production.

[4] 1997 Census of Agriculture—United States data, table 50, summary by market value of agricultural products sold.

prior to export to the United States, poultry and poultry products from Campeche, Quintana Roo, and Yucatan are not commingled with poultry and poultry products from END-affected regions. In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), we submitted this information collection requirement for approval to the Office of Management and Budget (OMB). OMB has approved the information collection for a period of 6 months under control number 0579–0228. We plan, in the near future, to request continuation of that approval for 3 years.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

■ 1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

§ 94.6 [Amended]

■ 2. In § 94.6, paragraph (a)(2) is amended by adding the words ''Mexico (States of Campeche, Quintana Roo, and Yucatan),'' after the word ''Luxembourg,''.

■ 3. A new § 94.25 is added to read as follows:

§ 94.25 Restrictions on importation of live poultry, poultry meat, and other poultry products from specified regions.

The Mexican States of Campeche, Quintana Roo, and Yucatan, which are declared in § 94.6(a)(2) to be free of exotic Newcastle disease (END), supplement their meat supply by the importation of fresh (chilled or frozen) poultry meat from regions designated in § 94.6(a) as regions where END is considered to exist, have a common land border with regions where END is considered to exist, or import live poultry from regions where END is considered to exist under conditions less restrictive than would be acceptable for importation into the United States. Thus, even though the Department has declared such regions to be free of END, live poultry originating in such free regions may be commingled with live poultry originating in an END-affected region and the meat and other animal products produced in such free regions may be commingled with the fresh (chilled or frozen) meat of animals from an END-affected region, resulting in an undue risk of introducing END into the United States. Therefore, live poultry, poultry meat and other poultry products, and ship stores, airplane meals, and baggage containing such meat or animal products originating in the free regions listed in this section may not be imported into the United States unless the following requirements, in addition to all other applicable requirements of part 93 of this chapter and of chapter III of this title, are met:

(a) *Additional certification.* Live poultry, poultry meat, and other poultry products from any region designated in this section must be accompanied by an additional certification by a full-time salaried veterinary officer of the Government of Mexico. Upon arrival of the live poultry, poultry meat, or other poultry product in the United States, the certification must be presented to an authorized inspector at the port of arrival.

(b) *Live poultry.* The certification accompanying live poultry must identify the exporting region of the poultry as a region designated in § 94.6 as free of END at the time the poultry were in the region and must state that:

(1) The poultry have not been in contact with poultry or poultry products from any region where END is considered to exist;

(2) The poultry have not lived in a region where END is considered to exist; and

(3) The poultry have not transited through a region where END is considered to exist unless moved directly through the region in a sealed means of conveyance with the seal intact upon arrival at the point of destination.

(c) *Poultry meat or other poultry products.* The certification accompanying poultry meat or other poultry products must state that:

(1) The poultry meat or other poultry products are derived from poultry that meet all requirements of this section and that have been slaughtered in a region designated in § 94.6 as free of END at a federally inspected slaughter plant that is under the direct supervision of a full-time salaried veterinarian of the Government of Mexico and that is approved to export poultry meat and other poultry products to the United States in accordance with § 381.196 of this title;

(2) The poultry meat or other poultry products have not been in contact with poultry meat or other poultry products from any region where END is considered to exist;

(3) The poultry meat or other poultry products have not transited through a region where END is considered to exist unless moved directly through the region in a sealed means of conveyance with the seal intact upon arrival at the point of destination; and

(4) If processed, the poultry meat or other poultry products were processed in a region designated in § 94.6 as free of END in a federally inspected processing plant that is under the direct supervision of a full-time salaried veterinarian of the Government of Mexico.

(Approved by the Office of Management and Budget under control number 0579–0228)

Done in Washington, DC, this 21st day of January, 2004.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–1735 Filed 1–23–04; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1271

[Docket No. 97N–484R]

Human Cells, Tissues, and Cellular and Tissue-Based Products; Establishment Registration and Listing

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule; opportunity for public comment.

SUMMARY: The Food and Drug Administration (FDA) is issuing an interim final rule to except human dura mater and human heart valve allografts, currently subject to application or notification requirements under the Federal Food, Drug, and Cosmetic Act (the act), from the scope of the definition of ''human cells, tissues, or cellular or tissue-based products (HCT/P's)'' subject to the registration and listing requirements contained in 21 CFR part 1271. That definition became effective on January 21, 2004. FDA is taking this action to assure that these products, which are currently subject to the act and therefore regulated under the current good manufacturing practice regulations set out in the quality system regulations in 21 CFR part 820 are not released from the scope of those regulations before a more comprehensive regulatory framework applicable to HCT/P's, including donor suitability requirements, good tissue practice regulations, and appropriate enforcement provisions, is fully in place. When that comprehensive framework is in place, FDA intends that human dura mater and human heart valves will be subject to it. FDA intends to revoke this interim final rule at that time.

DATES: The interim final rule is effective January 23, 2004. The compliance date is March 29, 2004. Submit written or electronic comments on the interim final rule by April 26, 2004.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Paula S. McKeever, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

In an earlier related rulemaking entitled ''Human Cells, Tissues, and Cellular and Tissue-Based Products; Establishment Registration and Listing'' (66 FR 5447, January 19, 2001), the agency defined an HCT/P as ''articles containing or consisting of human cells or tissues that are intended for implantation, transplantation, infusion, or transfer into a human recipient.'' Examples of HCT/P's included, but were not limited to, ligaments, skin, bone, dura mater, heart valves, corneas, peripheral and cord blood hematopoietic stem cells, manipulated autologous chondrocytes, oocytes, and spermatozoa (66 FR at 5447 at 5467).

That rule further provided that HCT/P's meeting the criteria established in part 1271 (21 CFR part 1271) in § 1271.10 would be regulated solely under section 361 of the Public Health Service Act (the PHS Act) (42 U.S.C. 264). The effect of these two provisions was that human dura mater and human heart valve allografts meeting the definition of HCT/P and the criteria in § 1271.10 for regulation solely under section 361 of the PHS Act would be removed from the scope of regulations established under the authority of the act. Instead they would be regulated solely under the comprehensive HCT/P regulations that the agency intended to issue under the authority of section 361 of the PHS Act. The agency intended to replace the current good manufacturing practice requirements applicable to human dura mater and human heart valve allografts, which provide protection against the risks of communicable disease and are set out in the Quality System Regulation under part 820 (21 CFR part 820), with donor suitability and good tissue practice regulations, which would be developed specifically to address the risks of communicable disease transmission.

Accordingly, at the time the registration and listing rule published, FDA had proposed two other rules to establish the remainder of that comprehensive regulatory framework:

- Suitability Determination for Donors of Human Cellular and Tissue-Based Products (64 FR 52696, September 30, 1999), and
- Current Good Tissue Practice for Manufacturers of Human Cellular and Tissue-Based Products; Inspection and Enforcement (66 FR 1508, January 8, 2001).

When finalized, these three rules will establish a comprehensive regulatory framework for human cellular and tissue-based products, to be contained in part 1271. However, because all three regulations were not in place at the time the registration and listing rule published, the agency delayed, initially for 2 years, the effective date of the definition of HCT/P previously quoted. The agency made the registration and listing rule effective at first only for products currently regulated as human tissue intended for transplantation under 21 CFR part 1270. The agency explained that FDA did not intend to begin regulating human dura mater and human heart valve allografts that meet the criteria for regulation solely under section 361 of the PHS Act until the donor-suitability and good tissue practice (GTP) components of part 1271 become effective, or other appropriate steps have been taken. (66 FR at 5447 at 5453). Because finalizing the remaining two rules presented difficult issues and the rulemaking has taken more time than initially foreseen, FDA delayed the effective date for an additional year, until January 21, 2004 (68 FR 2689, January 21, 2003).

We (FDA) have now reached that date, and although work on the remaining two rules is nearing completion, the rules have not yet published. Rather than again delay the effective date of this provision, FDA believes that the provision should take effect, provided that the agency issues this interim final rule to assure that human dura mater and human heart valve allografts remain subject to appropriate provisions under the act, and including current good manufacturing practice requirements, until the comprehensive regulatory framework is in place. (FDA understands that many establishments may have reasonably expected FDA to delay the effective date of this provision again, because the donor suitability and GTP rules are not yet finalized. Once the comprehensive framework is in place, the agency intends to revoke this interim final rule, so that the comprehensive regulatory framework would then apply to human dura mater and human heart valve allografts, and these products would no longer be subject to regulation as medical devices under the act.

II. Legal Authority

FDA is issuing this regulation under the authority of section 361 of the PHS Act. Under that section, FDA may make and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases between the States or from foreign countries into the States. (See sec. 1, Reorg. Plan No. 3 of 1966 at 42 U.S.C. 202 for delegation of section 361 of the PHS Act authority from the Surgeon General to the Secretary of the Department of Health and Human Services (the Secretary); See 21 CFR 5.10(a)(4) for delegation from the Secretary to FDA.) Intrastate transactions affecting interstate communicable disease transmission may also be regulated under section 361 of the PHS Act. (See *Louisiana* v. *Mathews*, 427 F. Supp. 174, 176 (E.D. La. 1977).) Until we put into place the new regulatory framework's remaining components, which are intended to

prevent the introduction, transmission, and spread of communicable diseases, it is necessary to preserve the applicability of regulations currently applicable to human dura mater and human heart valve allografts.

III. Issuance of an Interim Final Rule; Immediate Effective Date

Under the provisions of the Administrative Procedure Act at 5 U.S.C. 553(b)(B) and FDA's administrative practices and procedures regulations at § 10.40(e)(1) (21 CFR 10.40(e)(1)), the Commissioner of Food and Drugs (the Commissioner) finds that use of prior notice and comment procedures for issuing this interim final rule is contrary to the public interest. In addition, the Commissioner finds good cause under 5 U.S.C. 553(d)(3) and § 10.40(c)(4)(ii) for making this interim final rule effective immediately upon filing at the Office of the Federal Register.

FDA concludes that this interim final rule is necessary to assure that human dura mater and human heart valve allografts, currently subject to good manufacturing practice regulatory requirements under the authority of the act, do not lose that protection during an interim period occurring between the date of their incorporation into the definition of HCT/P (January 21, 2004) and the effective date for the tissue donor suitability and GTP rules, to be finalized in the near future. Human dura mater and human heart valve allografts present significant risks of communicable disease transmission when the products are not handled properly. Absent this interim final rule, human dura mater and human heart valve allografts would fall within the definition of HCT/P's (§ 1271.3(d)(2)), and likely would also fall within the criteria for regulation solely under section 361 of the PHS Act (§ 1271.10). This would mean that human dura mater and human heart valve allografts would no longer be subject to the quality system regulation currently applicable to devices (part 820). If this occurred before the donor suitability and GTP rules became final, the public would lose the important public health protections afforded by the quality system regulation. In light of the significant public health risk that would be presented by these products if their manufacture were not subject to either a good tissue practice or current good manufacturing practice regulation, the Commissioner finds good cause to make these regulatory requirements final and effective immediately.

Although this agency is publishing this regulation as an interim final rule without an opportunity for prior notice and comment on a proposed rule, FDA is providing opportunity for comment on this interim final rule.

IV. Provisions of the Interim Final Rule

This interim final rule amends § 1271.3(d)(2) to delete the words ''dura mater and heart valves'' from the definition of ''Human cells, tissues, or cellular or tissue-based products (HCT/P's).'' It further adds new § 1271.3(d)(2)(viii), an exception to the definition of HCT/P's for human dura mater and human heart valve allografts. A minor change was necessary to § 1271.3(d)(2)(vi) and (d)(2)(vii) due to the addition of § 1271.3(d)(2)(viii).

V. Analysis of Impacts

FDA has examined the impacts of the interim final rule under Executive Order 12866 and the Regulatory Flexibility Act (Public Law 104–4), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1571), which are not applicable to interim final rules. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this interim final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the interim final rule is not a significant regulatory action as defined by the Executive order. Therefore, FDA is not required under the Executive order to submit it to Office of Management and Budget (OMB) for review.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of proposed and final rules on small entities. Because this rule actually narrows the scope of the current regulation, this interim final rule does not impose in any new requirements. The agency certifies that the interim final rule will not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act requires no further analysis of this interim final rule.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits, before issuing any final rule that was the subject of a notice of proposed rulemaking and that may result in the expenditure in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation). The current inflation adjusted statutory threshold is about $110 million. FDA does not expect this interim final rule to result in any 1-year expenditure that would meet or exceed this amount. FDA is not required to prepare a written statement under the Unfunded Mandates Reform Act of 1995.

VI. The Paperwork Reduction Act of 1995

This interim final rule contains no collections of information. Therefore, clearance by OMB under Paperwork Reduction Act of 1995 is not required.

VII. Environmental Impact

The agency has determined under 21 CFR 25.30(i) and 21 CFR 25.30(j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Federalism

FDA has analyzed this interim final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the interim final rule does not contain 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 government. Accordingly, the agency has concluded that the interim final rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

IX. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this interim final rule. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 1271

Biologics, Drugs, Human cells and tissue-based products, Medical devices, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 1271 is amended as follows:

PART 1271—HUMAN CELLS, TISSUES, AND CELLULAR AND TISSUE–BASED PRODUCTS

■ 1. The authority citation for 21 CFR part 1271 continues to read as follows:

Authority: 42 U.S.C. 216, 243, 264, 271.

■ 2. Section 1271.3 is amended by revising the second sentence in the introductory text of paragraph (d)(2), by revising paragraphs (d)(2)(vi) and (d)(2)(vii), and by adding paragraph (d)(2)(viii) to read as follows:

§ 1271.3 How does FDA define important terms in this part?

* * * * *

(d) * * *

(2) * * * Examples of HCT/P's include, but are not limited to, bone, ligament, skin, cornea, hematopoietic stem cells derived from peripheral and cord blood, manipulated autologous chondrocytes, epithelial cells on a synthetic matrix, and semen or other reproductive tissue.* * *

* * * * *

(vi) Cells, tissues, and organs derived from animals other than humans;

(vii) In vitro diagnostic products as defined in § 809.3(a) of this chapter; and

(viii) Human dura mater and human heart valve allografts.

* * * * *

Dated: January 21, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–1733 Filed 1–23–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9112]

RIN 1545–BC90

Low-Income Housing Credit Allocation Certification; Electronic Filing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains regulations that facilitate the electronic filing of Form 8609, ''Low-Income Housing Credit Allocation Certification.'' The regulations affect taxpayers who file Form 8609.

DATES: *Effective Date:* These regulations are effective January 27, 2004.

Date of Applicability: For date of applicability, *see* § 1.42–1(j).

FOR FURTHER INFORMATION CONTACT: Paul F. Handleman, (202) 622–3040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

In 1998, Congress enacted the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 1998), Public Law 105–206 (112 Stat. 685) (1998). Section 2001(a) of RRA 1998 states that the policy of Congress is that paperless filing should be the preferred and most convenient means of filing Federal tax returns. Section 2001(a) of RRA 1998 also sets a long-range goal for the IRS to have at least 80 percent of all Federal tax returns filed electronically by 2007. Section 2001(b) of RRA 1998 requires the IRS to establish a 10-year strategic plan to eliminate barriers to electronic filing.

The IRS has identified § 1.42–1T(e)(1) and (h)(2) as regulatory provisions that impede electronic filing of Form 8609, ''Low-Income Housing Credit Allocation Certification,'' by requiring a taxpayer to include a third-party signature from an authorized State or local housing credit agency (Agency) official when filing the form. This Treasury decision eliminates that requirement.

Explanation of Provisions

Section 42 provides for a low-income housing credit that may be claimed as part of the general business credit under section 38. In general, the credit is allowable only if the owner of a qualified low-income building receives a housing credit allocation from an Agency of the jurisdiction where the building is located.

Section 1.42–1T(d)(8)(ii) provides that housing credit allocations are deemed made when Part I of Form 8609 is completed and signed by an authorized Agency official and mailed to the owner of the qualified low-income building. Under § 1.42–1T(e)(1), an owner is required to complete the Form 8609 on which the Agency made the applicable housing credit allocation and submit a copy of it with the owner's Federal income tax return for each year in the compliance period. Under § 1.42–1T(h)(2), the owner is required to file a completed Form 8609 (or copy thereof) with the owner's Federal income tax return for each of the 15 taxable years in the compliance period. Section 1.42–1T(h)(2) also provides other rules for completing Form 8609.

This Treasury decision facilitates the electronic filing of Federal tax returns by eliminating the requirements in § 1.42–1T(e)(1) and (h)(2) that an owner file a copy of the completed Form 8609 that is signed by the authorized Agency official with the owner's Federal income tax return for each of the 15 taxable years in the compliance period. Notwithstanding that the owner need not file a copy of the Form 8609 signed by the Agency official, the building owner must continue to retain that form for 3 years after the due date, including extensions, of the building owner's tax return for the tax year that includes the end of the 15-year compliance period. The other rules in § 1.42–1T(h)(2) for completing Form 8609 are also deleted. The requirements for completing and filing Form 8609 are addressed in the instructions to the form.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

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

Section 1.42–1 also issued under 26 U.S.C. 42(n); * * *

■ **Par. 2.** Section 1.42–1 is added to read as follows:

§ 1.42–1 Limitation on low-income housing credit allowed with respect to qualified low-income buildings receiving housing credit allocations from a State or local housing credit agency.

(a) through (g) [Reserved]. For further guidance, *see* § 1.42–1T(a) through (g).

(h) *Filing of forms.* A completed Form 8586, ''Low-Income Housing Credit,'' must be filed with the owner's Federal income tax return for each taxable year the owner of a qualified low-income building is claiming the low-income housing credit under section 42(a). A completed Form 8609, ''Low-Income Housing Credit Allocation Certification,'' must be filed with the owner's Federal income tax return for each of the 15 taxable years of the compliance period. Failure to comply with the requirement of the preceding sentence for any taxable year after the first taxable year in the credit period will be treated as a mathematical or clerical error for purposes of section 6213(b)(1) and (g)(2).

(i) [Reserved]. For further guidance, *see* § 1.42–1T(i).

(j) *Effective date.* Section 1.42–1(h) applies to forms filed on or after January 27, 2004. The rule that applies for forms filed before January 27, 2004 is contained in § 1.42–1T(h) in effect before January 27, 2004 (*see* 26 CFR part 1 revised as of April 1, 2003).

■ **Par. 3.** Section 1.42–1T is amended by:

■ 1. Removing the last two sentences in paragraph (e)(1).

■ 2. Revising paragraph (h).

■ The revision reads as follows:

§ 1.42–1T Limitation on low-income housing credit allowed with respect to qualified low-income buildings receiving housing credit allocations from a State or local housing credit agency (temporary).

* * * * *

(h) *Filing of forms.* For further guidance, *see* § 1.42–1(h).

* * * * *

Approved: January 19, 2004.

Mark E. Mathews,

Deputy Commissioner for Services and Enforcement.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 04–1580 Filed 1–26–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 4, 5, 13, 19, 24, 25, 28, 70, 194, and 252

[T.D. TTB–8]

RIN 1513–AA76

Exportation of Liquors; Recodification of Regulations; Administrative Changes Due to the Homeland Security Act of 2002

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau is recodifying its regulations pertaining to exportation of liquors. Due to the Homeland Security Act, we are also making administrative changes to these regulations to reflect the Bureau's new name and organizational structure. This document does not include any substantive regulatory changes.

DATES: This rule is effective on January 27, 2004.

FOR FURTHER INFORMATION CONTACT: Lisa M. Gesser, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 128, Morganza, Maryland 20660; (301–290–1460) or e-mail *Lisa.Gesser@ttb.gov.*

SUPPLEMENTARY INFORMATION:

Background

As a part of our continuing efforts to reorganize title 27, chapter I, Code of Federal Regulations (27 CFR), we are removing all of part 252, Exportation of Liquors, from subchapter M—Alcohol, Tobacco and Other Excise Taxes, and recodifying it as part 28 in subchapter A—Liquor, of that chapter. We are also changing the title of subchapter A to ''Subchapter A—Alcohol'' and are revising the title of the new part 28 to read ''Part 28—Exportation of Alcohol.'' These changes better describe the contents of that subchapter and part. The table below shows from which section of part 252 the requirements of part 28 are derived.

In addition, because section 1111 of the Homeland Security Act of 2002 (Public Law 107–296, 116 Stat. 2135) divided the Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, into two separate agencies, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) in the Department of Justice, and the Alcohol and Tobacco Tax and Trade Bureau (TTB), which remains in the Department of the Treasury, we are making administrative changes to part 28. This reorganization requires us to amend each of the CFR parts under our jurisdiction to reflect our Bureau's new name and organizational structure.

DERIVATION TABLE FOR PART 28

The requirements of section:	Are derived from section:
Subpart A	
28.1	252.1
28.2	252.2
28.3	252.3
28.4	252.4
Subpart B	
28.11	252.11
Subpart C	
28.20	252.20
28.21	252.21
28.22	252.22
28.23	252.23
28.25	252.25
28.26	252.26
28.27	252.27
28.28	252.28
28.30	252.30
28.35	252.35
28.36	252.36
28.37	252.37
28.38	252.38
28.40	252.40
28.41	252.41
28.42	252.42
28.43	252.43
28.45	252.45
28.48	252.48
Subpart D	
28.51	252.51
28.52	252.52
28.52a	252.52a
28.52b	252.52b
28.53	252.53
28.54	252.54
28.55	252.55
28.56	252.56
28.57	252.57
28.58	252.58
28.59	252.59
28.60	252.60
28.61	252.61
28.62	252.62
28.63	252.63
28.64	252.64
28.65	252.65
28.66	252.66
28.67	252.67
28.70	252.70
28.71	252.71
28.72	252.72
28.73	252.73
28.74	252.74
28.80	252.80
Subpart E	
28.91	252.91

DERIVATION TABLE FOR PART 28—Continued

The requirements of section:	Are derived from section:
28.92	252.92
28.93	252.93
28.94	252.94
28.95	252.95
28.96	252.96
28.97	252.97
28.98	252.98
28.100	252.100
28.101	252.101
28.102	252.102
28.103	252.103
28.104	252.104
28.105	252.105
28.106	252.106
28.107	252.107
28.110	252.110
28.115	252.115
28.116	252.116
28.117	252.117
28.118	252.118
Subpart F	
28.121	252.121
28.122	252.122
28.123	252.123
28.124	252.124
28.125	252.125
28.126	252.126
28.127	252.127
28.130	252.130
28.131	252.131
28.132	252.132
28.133	252.133
Subpart G	
28.141	252.141
28.142	252.142
28.143	252.143
28.144	252.144
28.145	252.145
28.146	252.146
28.147	252.147
28.148	252.148
28.149	252.149
28.150	252.150
Subpart H	
28.151	252.151
28.152	252.152
28.153	252.153
28.154	252.154
28.155	252.155
28.156	252.156
28.160	252.160
28.161	252.161
28.162	252.162
28.163	252.163
Subpart I	
28.171	252.171
28.190	252.190
28.191	252.191
28.192	252.192
28.193	252.193
28.194	252.194
28.195	252.195

DERIVATION TABLE FOR PART 28—Continued

The requirements of section:	Are derived from section:
28.195b	252.195b
28.196	252.196
28.197	252.197
28.198	252.198
28.199	252.199
Subpart J [Reserved]	
Subpart K	
28.211	252.211
28.212	252.212
28.213	252.213
28.214	252.214
28.215	252.215
28.216	252.216
28.217	252.217
28.218	252.218
28.219	252.219
28.220	252.220
28.220a	252.220a
Subpart L	
28.221	252.221
28.222	252.222
28.223	252.223
28.225	252.225
28.226	252.226
28.227	252.227
28.230	252.230
Subpart M	
28.241	252.241
28.242	252.242
28.243	252.243
28.244	252.244
28.244a	252.244a
28.245	252.245
28.246	252.246
28.247	252.247
28.250	252.250
28.251	252.251
28.252	252.252
28.253	252.253
Subpart N	
28.261	252.261
28.262	252.262
28.263	252.263
28.264	252.264
28.265	252.265
28.266	252.266
28.267	252.267
28.268	252.268
28.269	252.269
28.275	252.275
28.280	252.280
28.281	252.281
28.282	252.282
28.285	252.285
28.286	252.286
28.290	252.290
28.291	252.291
28.295	252.295
Subpart O	
28.301	252.301

DERIVATION TABLE FOR PART 28—Continued

The requirements of section:	Are derived from section:
28.302	252.302
28.303	252.303
28.304	252.304
28.310	252.310
28.315	252.315
28.316	252.316
28.317	252.317
28.318	252.318
28.320	252.320
28.321	252.321
Subpart P	
28.331	252.331
28.332	252.332
28.333	252.333
28.334	252.334
28.335	252.335

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no new or revised recordkeeping or reporting requirements.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under the Administrative Procedure Act (5 U.S.C. 553), the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

This final rule is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this final rule is not subject to the analysis this Executive Order requires.

Administrative Procedure Act

Because this final rule merely makes technical amendments to improve the organization of the regulations, no notice of proposed rulemaking and public comment period is required under 5 U.S.C. 553(b)(B). Similarly, because this final rule makes no substantive changes and is merely a recodification of existing regulations, this final rule is not subject to the effective date limitation of 5 U.S.C. 553(d).

Drafting Information

The principal author of this document is Lisa M. Gesser, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau.

List of Subjects

27 CFR Part 4

Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

27 CFR Part 5

Advertising, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 13

Administrative practice and procedure, Alcohol and alcoholic beverages, Labeling.

27 CFR Part 19

Caribbean Basin initiative, Claims, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Surety bonds, Vinegar, Virgin Islands, Warehouses.

27 CFR Part 24

Administrative practice and procedure, Claims, Electronic funds transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Vinegar, Warehouses, Wine.

27 CFR Part 25

Beer, Claims, Electronic funds transfers, Excise taxes, Exports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds.

27 CFR Part 28

Aircraft, Alcohol and alcoholic beverages, Armed forces, Beer, Claims, Excise taxes, Exports, Foreign trade zones, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Vessels, Warehouses, Wine.

27 CFR Part 70

Administrative practice and procedure, Claims, Excise taxes, Freedom of information, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surety bonds.

27 CFR Part 194

Alcohol and alcoholic beverages, Claims, Excise taxes, Exports, Packaging and containers, Reporting and recordkeeping requirements.

27 CFR Part 252

Aircraft, Alcohol and alcoholic beverages, Armed forces, Beer, Claims, Excise taxes, Exports, Foreign trade zones, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Vessels, Warehouses, Wine.

Authority and Issuance

■ For the reasons discussed in the preamble, we amend title 27, chapter I, Code of Federal Regulations as follows:

SUBCHAPTER A—ALCOHOL

■ 1. Revise the heading of subchapter A to read as set forth above.

PART 4—LABELING AND ADVERTISING OF WINE

■ 2. The authority citation for 27 CFR part 4 continues to read as follows:

Authority: 27 U.S.C. 205, unless otherwise noted.

§ 4.5 [Amended]

■ 3. Amend § 4.5 by removing the reference to ''27 CFR Part 252—Exportation of Liquors'' and adding, in part number order, a reference to ''27 CFR Part 28—Exportation of Alcohol.''

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

■ 4. The authority citation for 27 CFR part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805; 27 U.S.C. 205.

§ 5.2 [Amended]

■ 5. Amend § 5.2 by removing the reference to ''27 CFR Part 252—Exportation of Liquors'' and adding, in part number order, a reference to ''27 CFR Part 28—Exportation of Alcohol.''

PART 13—LABELING PROCEEDINGS

■ 6. The authority citation for 27 CFR part 13 continues to read as follows:

Authority: 27 U.S.C. 205(e), 26 U.S.C. 5301 and 7805.

§ 13.3 [Amended]

■ 7. Amend § 13.3 by removing the reference to ''27 CFR Part 252—Exportation of Liquors'' and adding, in part number order, a reference to ''27 CFR Part 28—Exportation of Alcohol.''

PART 19—DISTILLED SPIRITS PLANTS

■ 8. The authority citation for 27 CFR part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5113, 5142, 5143, 5146, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 19.3 [Amended]

■ 9. Amend § 19.3 by removing the reference to ''27 CFR Part 252—Exportation of Liquors'' and adding, in part number order, a reference to ''27 CFR Part 28—Exportation of Alcohol.''

§§ 19.46, 19.396, 19.397, 19.531, 19.540, 19.605, 19.606, 19.607, 19.608, 19.685, 19.686, 19.687, and 19.769 [Amended]

■ 10. Amend the above referenced sections as follows:

Amend:	By removing the reference to:	And replacing it with:
§ 19.46	27 CFR part 252	27 CFR part 28.
§ 19.396	27 CFR part 252	27 CFR part 28.
§ 19.397	27 CFR part 252	27 CFR part 28.
§ 19.397	27 CFR 252.195b	27 CFR 28.195b.
§ 19.397	27 CFR 252.92	27 CFR 28.92.
§ 19.531(h)	27 CFR part 252	27 CFR part 28.
§ 19.540(a)	Part 252	Part 28.
§ 19.605(a)(1)	27 CFR part 252	27 CFR part 28.
§ 19.606(c)	27 CFR part 252	27 CFR part 28.
§ 19.607(a)(6)	27 CFR part 252	27 CFR part 28.
§ 19.608(a)(7)	27 CFR part 252	27 CFR part 28.
§ 19.685(a)	27 CFR part 252	27 CFR part 28.
§ 19.685(a)	27 CFR part 20, 22, or 252	27 CFR part 20, 22, or 28.

Amend:	By removing the reference to:	And replacing it with:
§ 19.686(a) (two times)	27 CFR part 252	27 CFR part 28.
§ 19.687	27 CFR 252.197 through 252.199	27 CFR 28.197 through 28.199.
§ 19.769 (introductory text)	Part 252	Part 28.

PART 24—WINE

■ 11. The authority citation for 27 CFR part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 24.4 [Amended]

■ 12. Amend § 24.4 by removing the reference to ''27 CFR Part 252—Exportation of Liquors'' and adding, in part number order, a reference to ''27 CFR Part 28—Exportation of Alcohol.''

§§ 24.67 and 24.292 [Amended]

■ 13. Amend the above referenced sections as follows:

Amend:	By removing the reference to:	And replacing it with:
§ 24.67(a)	27 CFR part 252	27 CFR part 28.
§ 24.292(a)	Part 252	Part 28.
§ 24.292(b)	Part 252	Part 28.

PART 25—BEER

■ 14. The authority citation for 27 CFR part 25 continues to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5091, 5111, 5113, 5142, 5143, 5146, 5222, 5401–5403, 5411–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7011, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

§ 25.4 [Amended]

■ 15. Amend § 25.4 by removing the reference to ''27 CFR Part 252—Exportation of Liquors'' and adding, in part number order, a reference to ''27 CFR Part 28—Exportation of Alcohol.''

§§ 25.145, 25.203, and 25.261 [Amended]

■ 16. Amend the above referenced sections as follows:

Amend:	By removing the reference to:	And replacing it with:
§ 25.145(b)(4)	Part 252	Part 28.
§ 25.203	Part 252	Part 28.
§ 25.261(a)(4)	Part 252	Part 28.

PART 70—PROCEDURE AND ADMINISTRATION

■ 17. The authority citation for 27 CFR part 70 continues to read as follows:

Authority: 5 U.S.C. 301 and 552; 26 U.S.C. 4181, 4182, 5146, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 5802, 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331–6343, 6401–6404, 6407, 6416, 6423, 6501–6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656–6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423, 7424, 7425, 7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601–7606, 7608–7610, 7622, 7623, 7653, 7805.

§§ 70.411, 70.414, and 70.462 [Amended]

■ 18. Amend the above referenced sections as follows:

Amend:	By removing the reference to:	And replacing it with:
§ 70.411(c)(28)	Part 252	Part 28.
§ 70.414(f)(2)	Part 252	Part 28.
§ 70.414(f)(2)	Parts 19 and 252	Parts 19 and 28.
§ 70.462	27 CFR part 252	27 CFR part 28.

PART 194—LIQUOR DEALERS

■ 19. The authority citation for 27 CFR part 194 continues to read as follows:

Authority: 26 U.S.C. 5001, 5002, 5111–5114, 5116, 5117, 5121–5124, 5142, 5143, 5145, 5146, 5206, 5207, 5301, 5352, 5555, 5613, 5681, 5691, 6001, 6011, 6061, 6065, 6071, 6091, 6109, 6151, 6311, 6314, 6402, 6511, 6601, 6621, 6651, 6657, 7011, 7805.

§ 194.281 [Amended]

■ 20. Amend § 194.281 as follows:

■ a. Remove the reference to ''§ 252.171'' and add, in its place, a reference to ''§ 28.171''.

■ b. Remove the reference to ''Parts 19 and 252'' and add, in its place, a reference to ''Parts 19 and 28''.

PART 252—[REDESIGNATED AS PART 28]

■ 21. Transfer 27 CFR part 252 from chapter l, subchapter M, to chapter l, subchapter A and redesignate as 27 CFR part 28.

PART 28—EXPORTATION OF LIQUORS

■ 22. The authority citation for the newly redesignated 27 CFR part 28 continues to read as follows:

Authority: 5 U.S.C. 552(a); 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5041, 5051, 5054, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5555, 6302, 7805; 27 U.S.C. 203, 205; 44 U.S.C. 3504(h).

PART 28—EXPORTATION OF ALCOHOL

■ 23. Revise the heading of the newly redesignated part 28 to read as set forth above.

§§ 28.2 and 28.4 [Amended]

■ 24. Amend the above referenced sections as follows:

Amend:	By removing the reference to:	And adding in its place:
§ 28.2(a)	ATF	TTB.
§ 28.2(b)	ATF Web site (*http://www.ATF.treas.gov/*)	TTB Web site (*http://www.ttb.gov*).
§ 28.4 (section heading)	Director	Administrator.
§ 28.4	Director	Administrator.
§ 28.4 (two times)	Part 252	Part 28.
§ 28.4 (two times)	ATF officers	TTB officers.
§ 28.4 (two times)	ATF Order 1130.27	TTB Order 1135.28.
§ 28.4	Director's	Administrator's.
§ 28.4	ATF delegation	TTB delegation.
§ 28.4	ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950.	Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950.
§ 28.4	ATF Web site (*http://www.ATF.treas.gov/*)	TTB Web site (*http://www.ttb.gov/)*.

§ 28.11 [Amended]

■ 25. Amend § 28.11 as follows:

■ a. Remove the definition of ''Appropriate ATF officer'' and add, in its place, the definition of ''Appropriate TTB officer'' to read as follows: ''*Appropriate TTB officer.* An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.28, Delegation of the Administrator's Authorities in 27 CFR part 28, Exportation of Alcohol.''

■ b. Remove the definition of ''Director'' and add, in alphabetical order, the definition of ''Administrator'' to read as follows: ''*Administrator.* The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.''

■ c. Remove the definition of ''District Director.''

■ 26. Amend part 28 as follows:

AMENDMENT TABLE FOR PART 28

Amend:	By removing the reference to:	And adding in its place:
§ 28.20(a)(1) (two times)	ATF	TTB.
§ 28.20(a)(2) (introductory text heading)	ATF	TTB.
§ 28.20(a)(2) (introductory text)	ATF	TTB.
§ 28.20(a)(3)	ATF	TTB.
§ 28.20(a)(4)	ATF	TTB.
§ 28.20(b)(1)	ATF	TTB.
§ 28.20(b)(2) (introductory text heading)	ATF	TTB.
§ 28.20(b)(2) (introductory text)	ATF	TTB.
§ 28.20(b)(3)	ATF	TTB.
§ 28.20(c) (two times)	ATF	TTB.
§ 28.21(b)	§ 252.22	§ 28.22.
§ 28.21(e)	§ 252.22	§ 28.22.
§ 28.22	§ 252.21	§ 28.21.
§ 28.22 (five times)	ATF	TTB.
§ 28.22 (Note:)	ATF	TTB.
§ 28.23	ATF	TTB.
§ 28.25	§ 252.63 or § 252.64	§ 28.63 or § 28.64.
§ 28.26(a)(1)	§ 252.27	§ 28.27.
§ 28.26(b)	§ 252.28	§ 28.28.
§ 28.27	§ 252.122(a)	§ 28.122(a).
§ 28.27	§ 252.28	§ 28.28.
§ 28.28	§ 252.26(a) or (b) and § 252.27	§ 28.26(a) or (b) and § 28.27.
§ 28.28	§§252.26(a)(2) and 252.27	§§ 28.26(a)(2) and 28.27.
§ 28.30(a)	ATF	TTB.
§ 28.35	ATF	TTB.
§ 28.36 (introductory text)	ATF	TTB.
§ 28.36(c) (two times)	ATF	TTB.
§ 28.36 (concluding text) (two times)	ATF	TTB.
§ 28.37 (section heading)	ATF	TTB.
§ 28.37 (three times)	ATF	TTB.
§ 28.38 (two times)	ATF	TTB.
§ 28.40(a)	§ 252.250	§ 28.250.
§ 28.40(b)	§ 252.251	§ 28.251.
§ 28.40(c)	§ 252.252	§ 28.252.

AMENDMENT TABLE FOR PART 28—Continued

Amend:	By removing the reference to:	And adding in its place:
§ 28.40(d)	§ 252.250	§ 28.250.
§ 28.40(e)	§ 252.253	§ 28.253.
§ 28.41	§ 252.268	§ 28.268.
§ 28.42	§ 252.250	§ 28.250.
§ 28.43(a)(2)	§ 252.275	§ 28.275.
§ 28.43(a)(3)	§ 252.250	§ 28.250.
§ 28.43(a)(3)	§ 252.251	§ 28.251.
§ 28.43(a)(3)	§ 252.252	§ 28.252.
§ 28.43(a)(4)	§ 252.253	§ 28.253.
§ 28.43(a)(6)	ATF	TTB.
§ 28.43(b)(1)	§ 252.23	§ 28.23.
§ 28.43(b)(2)	§§ 252.264 or 252.282	§§ 28.264 or 28.282.
§ 28.43(b)(3)	ATF	TTB.
§ 28.45	ATF	TTB.
§ 28.52a	ATF	TTB.
§ 28.55	ATF	TTB.
§ 28.56 (introductory text)	ATF	TTB.
§ 28.57 (section heading)	Director	Administrator.
28.57	ATF	TTB.
§ 28.57 (two times)	Director	Administrator.
§ 28.58(a)	§ 252.91	§ 28.91.
§ 28.58(b)	§ 252.121	§ 28.121.
§ 28.58(c)	§ 252.151	§ 28.151.
§ 28.58(c)	ATF	TTB.
§ 28.59	§ 252.121	§ 28.121.
§ 28.60	§ 252.141	§ 28.141.
§ 28.61	§ 252.91(a)(1), (2), (3), (5), or § 252.121(a), (b), (c), or (d).	28.91(a)(1), (2), (3), (5), or § 28.121(a), (b), (c), or (d).
§ 28.61	ATF	TTB.
§ 28.61	§ 252.51	§ 28.51.
§ 28.62(a)	§ 252.91(a)(1), (2), (3), (5), or § 252.121(a), (b), (c), or (d).	§ 28.91(a)(1), (2), (3), (5), or § 28.121(a), (b), (c), or (d).
§ 28.62(a)	ATF	TTB.
§ 28.62(a)	§ 252.51	§ 28.51.
§ 28.62(b)	ATF	TTB.
§ 28.62(c)	ATF	TTB.
§ 28.62(d)	§ 252.54	§ 28.54.
§ 28.63	§ 252.25	§ 28.25.
§ 28.63	§ 252.51	§ 28.51.
§ 28.64(a)	§ 252.25	§ 28.25.
§ 28.64(a)	§ 252.51	§ 28.51.
§ 28.65	§§ 252.171 and 252.211	§§ 28.171 and 28.211.
§ 28.65	ATF	TTB.
§ 28.65	§ 252.51	§ 28.51.
§ 28.65	§ 252.171(d)	§ 28.171(d).
§ 28.67	ATF	TTB.
§ 28.67	§ 252.72	§ 28.72.
§ 28.70 (two times)	ATF	TTB.
§ 28.71	§§ 252.171 and 252.211	§§ 28.171 and 28.211.
§ 28.71	§ 252.72	§ 28.72.
§ 28.71 (two times)	ATF	TTB.
§ 28.71	§ 252.70	§ 28.70.
§ 28.72 (three times)	ATF	TTB.
§ 28.72	§ 252.73(b)	§ 28.73(b).
§ 28.73(a)	§ 252.70	§ 28.70.
§ 28.73(b)	§ 252.72	§ 28.72.
§ 28.74	§ 252.53	§ 28.53.
§ 28.74 (three times)	ATF	TTB.
§ 28.91(a)(2)	§ 252.21	§ 28.21.
§ 28.91(a)(5)	§ 252.26	§ 28.26.
§ 28.92 (section heading)	ATF	TTB.
§ 28.92(a) (three times)	ATF	TTB.
§ 28.92(b)	ATF	TTB.
§ 28.95	ATF	TTB.
§ 28.96 (two times)	ATF	TTB.
§ 28.98 (four times)	ATF	TTB.
§ 28.103(b)	ATF	TTB.
§ 28.104 (two times)	ATF	TTB.
§ 28.105	ATF	TTB.
§ 28.107 (two times)	ATF	TTB.
§ 28.115 (introductory text)	§ 252.116	§ 252.116.
§ 28.116 (introductory text)	§ 252.115	§ 28.115.

AMENDMENT TABLE FOR PART 28—Continued

Amend:	By removing the reference to:	And adding in its place:
§ 28.116 (introductory text)	ATF	TTB.
§ 28.116 (introductory text)	§ 252.117	§ 28.117.
§ 28.116(e)	ATF	TTB.
§ 28.117	§ 252.116	§ 28.116.
§ 28.117 (four times)	ATF	TTB.
§ 28.117	§ 252.115	§ 28.115.
§ 28.121(b)	§ 252.21	§ 28.21.
§ 28.121(d)	§ 252.27	§ 28.27.
§ 28.122 (section heading)	ATF	TTB.
§ 28.122(a) (three times)	ATF	TTB.
§ 28.122(b)	ATF	TTB.
§ 28.122(c) (four times)	ATF	TTB.
§ 28.122(d) (four times)	ATF	TTB.
§ 28.123(b)	ATF	TTB.
§ 28.125 (two times)	ATF	TTB.
§ 28.125	§ 252.122	§ 28.122.
§ 28.126	ATF	TTB.
§ 28.131 (introductory text)	§ 252.130	§ 28.130.
§ 28.131 (introductory text)	ATF	TTB.
§ 28.131(c)	ATF	TTB.
§ 28.131 (concluding text)	ATF	TTB.
§ 28.132	§ 252.131	§ 28.131.
§ 28.132 (seven times)	ATF	TTB.
§ 28.132	§ 252.130	§ 28.130.
§ 28.133 (two times)	ATF	TTB.
§ 28.141(a)(2)	§ 252.21	§ 28.21.
§ 28.141(c)	§ 252.60	§ 28.60.
§ 28.146	ATF	TTB.
§ 28.146	§ 252.142	§ 28.142.
§ 28.147	§ 252.262	§ 28.262.
§ 28.147	ATF	TTB.
§ 28.151 (concluding text)	§ 252.58(c)	§ 28.58(c).
§ 28.152 (section heading)	ATF	TTB.
§ 28.152	§ 252.151	§ 28.151.
§ 28.152	ATF	TTB.
§ 28.153	§§ 252.93, 252.94, 252.98, 252.105, and 252.117.	§§ 28.93, 28.94, 28.98, 28.105, and 28.117.
§ 28.160 (introductory text)	§ 252.161	§ 28.161.
§ 28.161 (introductory text)	§ 252.160	§ 28.160.
§ 28.161 (introductory text)	ATF	TTB.
§ 28.161 (introductory text)	§ 252.162	§ 28.162.
§ 28.161(c)	ATF	TTB.
§ 28.162	§ 252.161	§ 28.161.
§ 28.162 (four times)	ATF	TTB.
§ 28.162	§ 252.160	§ 28.160.
§ 28.171(b)	§ 252.21	§ 28.21.
§ 28.171(d)	§ 252.26(b)	§ 28.26(b).
§ 28.171 (concluding text)	ATF	TTB.
§ 28.190 (section heading)	ATF	TTB.
§ 28.190	ATF	TTB.
§ 28.192 (two times)	ATF	TTB.
§ 28.195b(a)	§ 252.171	§ 28.171.
§ 28.195b(a)	ATF	TTB.
§ 28.195b(b)	§ 252.250	§ 28.250.
§ 28.195b(b)	ATF	TTB.
§ 28.195b(c)	ATF	TTB.
§ 28.197 (introductory text)	§ 252.198	§ 28.198.
§ 28.197 (introductory text)	§ 252.171	§ 28.171.
§ 28.198 (introductory text)	§ 252.197	§ 28.197.
§ 28.198 (introductory text)	ATF	TTB.
§ 28.198 (introductory text)	§ 252.199	§ 28.199.
§ 28.198(b)	ATF	TTB.
§ 28.199	§ 252.198	§ 28.198.
§ 28.199 (two times)	ATF	TTB.
§ 28.199	§ 252.197	§ 28.197.
§ 28.211(b)	§ 252.21	§ 28.21.
§ 28.211 (concluding text)	ATF	TTB.
§ 28.214	§ 252.211 and § 252.212	§ 28.211 and § 28.212.
§ 28.215	ATF	TTB.
§ 28.218	ATF	TTB.
§ 28.218	§ 252.214	§ 28.214.
§ 28.219 (introductory text)	§ 252.220	§ 28.220.

AMENDMENT TABLE FOR PART 28—Continued

Amend:	By removing the reference to:	And adding in its place:
§ 28.219 (introductory text)	§ 252.211	§ 28.211.
§ 28.220 (introductory text)	§ 252.219	§ 28.219.
§ 28.220 (introductory text)	ATF	TTB.
§ 28.220 (introductory text)	§ 252.220a	§ 28.220a.
§ 28.220a	§ 252.220	§ 28.220.
§ 28.220a (two times)	ATF	TTB.
§ 28.220a	§ 252.219	§ 28.219.
§ 28.221(b)	§ 252.21	§ 28.21.
§ 28.221 (concluding text)	ATF	TTB.
§ 28.225 (introductory text)	ATF	TTB.
§ 28.226	ATF	TTB.
§ 28.226	§ 252.221	§ 28.221.
§ 28.226	§ 252.225	§ 28.225.
§ 28.227	§ 252.221	§ 28.221.
§ 28.227	§ 252.225(a), (b), or (c)	§ 28.225(a), (b), or (c).
§ 28.227	ATF	TTB.
§ 28.246	§§ 252.241 through 252.245	§§ 28.241 through 28.245.
§ 28.247	§§ 252.241–252.245	§§ 28.241–28.245.
§ 28.247	ATF	TTB.
§ 28.250 (introductory text) (two times)	ATF	TTB.
§ 28.250(a)(4)	ATF	TTB.
§ 28.250 (concluding text)	§ 252.253	§ 28.253.
§ 28.250 (concluding text)	ATF	TTB.
§ 28.252	§ 252.250	§ 28.250.
§ 28.261	ATF	TTB.
§ 28.262	ATF	TTB.
§ 28.264	§ 252.261	§ 28.261.
§ 28.264 (two times)	ATF	TTB.
§ 28.264	§ 252.291	§ 28.291.
§ 28.265 (four times)	ATF	TTB.
§ 28.266	§ 252.265	§ 28.265.
§ 28.266	ATF	TTB.
§ 28.267	ATF	TTB.
§ 28.268	ATF	TTB.
§ 28.268	§ 252.22	§ 28.22.
§ 28.269(a)	ATF	TTB.
§ 28.269(b)	ATF	TTB.
§ 28.269(c) (two times)	ATF	TTB.
§ 28.275 (two times)	ATF	TTB.
§ 28.281 (two times)	ATF	TTB.
§ 28.282	ATF	TTB.
§ 28.285 (seven times)	ATF	TTB.
§ 28.285	§ 252.291	§ 28.291.
§ 28.286	ATF	TTB.
§ 28.290 (introductory text) (three times)	ATF	TTB.
§ 28.290 (introductory text)	§ 252.291	§ 28.291.
§ 28.291 (introductory text)	§§ 252.264, 252.285, or 252.290	§§ 28.264, 28.285, or 28.290.
§ 28.291(f)	§ 252.264	§ 28.264.
§ 28.291(g)	§ 252.285	§ 28.285.
§ 28.291(h)	§ 252.290	§ 28.290.
§ 28.295	§ 252.43	§ 28.43.
§ 28.301	ATF	TTB.
§ 28.302 (introductory text) (two times)	ATF	TTB.
§ 28.302 (concluding text)	§ 252.301	§ 28.301.
§ 28.302 (concluding text) (three times)	ATF	TTB.
§ 28.302 (concluding text)	§ 252.303	§ 28.303.
§ 28.303 (introductory text)	§ 252.301	§ 28.301.
§ 28.303 (introductory text)	ATF	TTB.
§ 28.304 (two times)	ATF	TTB.
§ 28.304	§ 252.303	§ 28.303.
§ 28.310	ATF	TTB.
§ 28.310	§§ 252.302 through 252.304	§§ 28.302 through 28.304.
§ 28.315	ATF	TTB.
§ 28.316 (introductory text) (two times)	ATF	TTB.
§ 28.316 (concluding text)	§ 252.315	§ 28.315.
§ 28.316 (concluding text) (three times)	ATF	TTB.
§ 28.316 (concluding text)	§ 252.317	§ 28.317.
§ 28.317 (introductory text)	§ 252.315	§ 28.315.
§ 28.317 (introductory text)	ATF	TTB.
§ 28.317 (concluding text)	ATF	TTB.
§ 28.318	§ 252.317	§ 28.317.
§ 28.318	§ 252.304	§ 28.304.

AMENDMENT TABLE FOR PART 28—Continued

Amend:	By removing the reference to:	And adding in its place:
§ 28.320(a) (two times)	ATF	TTB.
§ 28.320(b) (two times)	ATF	TTB.
§ 28.321	ATF	TTB.
§ 28.331	§ 252.40	§ 28.40.
§ 28.331	§ 252.41	§ 28.41.
§ 28.331	§ 252.42	§ 28.42.
§ 28.331 (two times)	ATF	TTB.
§ 28.331	§ 252.65	§ 28.65.
§ 28.332	§ 252.331	§ 28.331.
§ 28.332 (four times)	ATF	TTB.
§ 28.333 (two times)	ATF	TTB.
§ 28.333	§ 252.40	§ 28.40.
§ 28.333	§ 252.41	§ 28.41.
§ 28.333	§ 252.42	§ 28.42.
§ 28.334	ATF	TTB.
§ 28.335	ATF	TTB.

Signed: October 2, 2003.

Arthur J. Libertucci,

Administrator.

Approved: December 24, 2003.

Timothy E. Skud,

Deputy Assistant Secretary, Tax, Trade, and Tariff Policy.

[FR Doc. 04–1508 Filed 1–26–04; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–04–010]

RIN 1625–AA09

Drawbridge Operation Regulations; Southern Branch of the Elizabeth River, Chesapeake, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary deviation from regulations.

SUMMARY: The Coast Guard has approved a temporary deviation from the regulations governing the operation of the Jordan Bridge across the Southern Branch of the Elizabeth River, at mile 2.8, in Chesapeake, Virginia. From midnight on January 14, 2004, through midnight on February 14, 2004, this deviation allows the bridge to be untended and maintained in the full open position to vessels while a full assessment of the structural integrity of the bridge is completed. This deviation is necessary to facilitate the needs of navigation caused by an allision with a tug and barge that occurred on January 3, 2004.

DATES: This deviation is effective from midnight on January 14, 2004, through midnight on February 14, 2004.

FOR FURTHER INFORMATION CONTACT: Bill Brazier, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6422.

SUPPLEMENTARY INFORMATION: On January 3, 2004, the Jordan Bridge experienced severe damage as a result of an allision with a tug and barge. This 75-year old vertical-lift drawbridge, which spans the Southern Branch of the Elizabeth River, was struck nearly dead center causing significant damage to the bridge. The Jordan Bridge, which connects the cities of Chesapeake and Portsmouth, is owned and operated by the City of Chesapeake.

The structural impact of the mishap essentially knocked the bridge, which rises vertically between two towers, off its track locking the span approximately 80 feet in the air. Subsequently, waterway passage maintained a 75-foot vertical height restriction and efforts to realign the bridge span were completed on January 12, 2004. On January 13, 2004, the damaged bridge was raised to the full open position to 145 feet, at mean high water, and the Captain of the Port of Hampton Roads lifted all waterway restrictions on the Jordan Bridge allowing all vessel traffic to transit. Until a full assessment of the damages to Jordan Bridge is completed, the bridge will be maintained in the full open position to vessels and untended, except for two days, from midnight on January 14, 2004, through midnight on February 14, 2004. On January 22 and 23, 2004, the bridge will be lowered for repair inspections. During these two days the bridge will be tended and will operate as required by the regulations in 33 CFR 117.997(b).

The District Commander has granted temporary deviation from the operating requirements listed in 33 CFR 117.997(b) to allow all vessel traffic to transit until a full assessment of Jordan Bridge is completed. The temporary deviation allows the Jordan Bridge across the Southern Branch of the Elizabeth River, mile 4.0, to remain in the full open position to vessels from midnight on January 14, 2004, through midnight on February 14, 2004, except for January 22 and 23, 2004.

Dated: January 15, 2004.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Section, Fifth Coast Guard District.

[FR Doc. 04–1611 Filed 1–26–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–03–050]

RIN 1625–AA09

Drawbridge Operating Regulation; Upper Mississippi River, Louisiana, Missouri

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Louisiana Railroad Drawbridge, across the Upper Mississippi River, mile 282.1, at Louisiana, Missouri. This deviation allows the drawbridge to remain closed to navigation for 46 days from 8 a.m., January 15, 2004, until 8 a.m., February 29, 2004, Central Standard Time. The

deviation will facilitate maintenance work on the bridge that is essential to the continued safe operation of the drawbridge.

DATES: This temporary deviation is effective from 8 a.m., January 15, 2004, until 8 a.m., February 29, 2004.

ADDRESSES: Materials referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (obr), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Bridge Administration Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Commander (obr), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, (314) 539–3900, extension 2378.

SUPPLEMENTARY INFORMATION: The Kansas City Southern Railway Company requested a temporary deviation on December 15, 2003 for the operation of the drawbridge to allow the bridge owner time for preventative maintenance. Presently, the draw opens on signal for passage of river traffic. This deviation allows the bridge to remain closed to navigation for 46 days from 8 a.m., January 15, 2004, until 8 a.m., February 29, 2004, Central Standard Time. Vessels not exceeding the vertical clearance of the drawbridge may pass under the drawbridge during repairs. There are no alternate routes for vessels transiting through mile 282.1, Upper Mississippi River.

The Louisiana Railroad Drawbridge provides a vertical clearance of 15.8 feet above normal pool in the closed to navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. In order to repair the four large wedge cylinders, the bridge must be kept inoperative and in the closed to navigation position. This deviation has been coordinated with waterway users. No objections were received.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: January 20, 2004.

Roger K. Wiebusch,

Bridge Administrator.

[FR Doc. 04–1643 Filed 1–26–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD13–04–001]

Drawbridge Operation Regulations; Hoquiam River, Aberdeen, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Thirteenth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Simpson Avenue Drawbridge at mile 0.5 and the Riverside Avenue Drawbridge at mile 0.9 across the Hoquiam River at Aberdeen, Washington. This deviation allows the bridges to temporarily operate on two-hour notice for all openings for vessels. The deviation is necessary to facilitate seismic retrofit of the structures.

DATES: This deviation is effective from 6 a.m., February 16 through 6 p.m., April 15, 2004.

ADDRESSES: Materials referred to in this document are available for inspection or copying at Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174–1067 between 7:45 a.m. and 4:15 p.m., Monday through Friday, except Federal holidays. The telephone number is (206) 220–7270. The Bridge Section of the Aids to Navigation and Waterways Management Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Austin Pratt, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch, (206) 220–7282.

SUPPLEMENTARY INFORMATION: Washington State Department of Transportation (WSDOT) requested this deviation from normal operations to facilitate seismic retrofit. The containment system for contaminants and other equipment must be modified or removed in order to operate the movable spans. Currently, the draws need not open for the passage of vessels unless one hour notice is provided at all times. Vessels on the related reach of the waterway should be able to provide at least two hours notice for openings without unreasonable inconvenience.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: January 20, 2004.

Jeffrey M. Garrett,

Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.

[FR Doc. 04–1644 Filed 1–26–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 148, 149, and 150

[USCG–1998–3884]

RIN 1625–AA20 (formerly RIN 2115–AF63)

Deepwater Ports; Correction

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule; correction.

SUMMARY: On January 6, 2004, the Coast Guard published a temporary interim rule with request for comments in the **Federal Register**, which inadvertently contained errors in the table of contents for 33 CFR part 149 and in paragraph designations for 33 CFR 149.415. This document corrects those errors.

DATES: Effective on January 27, 2004.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Kevin Tone, Vessel and Facility Operating Standards Division (G–MSO–2), Coast Guard, telephone 202–267–0226.

SUPPLEMENTARY INFORMATION: The Coast Guard published a temporary interim rule with request for comments in the **Federal Register** of January 6, 2004 (69 FR 724; FR Doc. 03–32204). The rule contained inadvertent errors in the table of contents to 33 CFR part 149 and in paragraph designations for 33 CFR 149.415. These errors are nonsubstantive, but we are correcting them to prevent unnecessary confusion.

PART 149—[CORRECTED]

■ In temporary interim rule FR Doc. 03–32204 published on January 6, 2004 (69 FR 724), make the following corrections. On page 761, in the third column, remove the words ''149.150 What are the requirements for the receipt of oil residues from vessels?'' On page 769, in the second column under § 149.415, redesignate paragraphs (d) and (e) as paragraphs (c) and (d) respectively.

Dated: January 20, 2004.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security, & Environmental Protection.

[FR Doc. 04–1642 Filed 1–26–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–03–018]

RIN 1625–AA00

Security and Safety Zone: Protection of Large Passenger Vessels, Puget Sound, WA

AGENCY: Coast Guard, DHS.

ACTION: Final rule; notice of enforcement.

SUMMARY: The Captain of the Port Puget Sound will begin, on February 8, 2004, enforcing the Large Passenger Vessel Security and Safety Zones that were published in the **Federal Register** on January 14, 2004. The zones provide for the security and safety of large passenger vessels in the navigable waters of Puget Sound and adjacent waters. These security and safety zones will be enforced until further notice.

DATES: 33 CFR 165.1317 will be enforced commencing February 8, 2004.

FOR FURTHER INFORMATION CONTACT: LTjg T. Thayer, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, WA 98134 at (206) 217–6200 or (800) 688–6664 to obtain information concerning enforcement of this rule.

SUPPLEMENTARY INFORMATION: On January 14, 2004, the Coast Guard published a final rule (69 FR 2066) establishing regulations in 33 CFR 165.1317 for the security and safety of large passenger vessels in the navigable waters of Puget Sound and adjacent waters, Washington. These security and safety zones provide for the regulation of vessel traffic in the vicinity of certain large passenger vessels (as defined by the final rule) and exclude persons and vessels from the immediate vicinity of these large passenger vessels. Entry into these zones is prohibited unless otherwise exempted or excluded under the final rule or unless authorized by the Captain of the Port or his designee. The Captain of the Port Puget Sound will begin enforcing the Large Passenger Vessel Safety and Security Zones established in 33 CFR 165.1317 on February 8, 2004.

The Captain of the Port may be assisted by other Federal, State, or local agencies in enforcing this security zone.

Dated: December 10, 2003.

Danny Ellis,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 04–1613 Filed 1–26–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 03–16476; Notice 2]

RIN No. 2127–AJ30

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule, partial response to petitions for reconsideration.

SUMMARY: This final rule temporarily permits compliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant crash protection,* according to the test procedures of that standard prior to the amendments made by the November 19, 2003, final rule.[1] This document amends FMVSS No. 208 through the adoption of FMVSS 208a, which contains these ''old'' test procedures. This final rule permits the certification of motor vehicles under the ''old'' test procedures until August 31, 2004.

The agency received seven petitions for reconsideration of the November 2003 final rule, requesting that NHTSA consider modifying certain requirements of the amended FMVSS No. 208. Specifically, petitioners asked that the agency reconsider: The seat positioning procedures for the barrier tests, low risk deployment tests, and other test procedures; the test procedure for positioning the left foot of the 5th percentile adult female test dummy (barrier test); the ''chin on rim'' low risk deployment test procedure; the dummy positioning procedure for the head-on-instrument panel low risk deployment test with the 6-year-old test dummy; the definition of Plane C and D in the dummy positioning procedure for low risk deployment; and the effective date and content of Appendix A.

Petitioners have indicated that compliance with the amended requirements of FMVSS No. 208, prior to resolution of petitions for reconsideration, would cause substantial economic hardship because certification testing for the model year 2004 fleet has completed. This rulemaking partially responds to the petitions for reconsideration by permitting manufacturers to temporarily certify vehicles according to the test procedures required prior to the effective date of the November 2003 final rule.

DATES: This final rule becomes effective on January 27, 2004.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Louis Molino, Office of Crashworthiness Standards, at (202) 366–2264, facsimile (202) 366–4329.

For legal issues, you may contact Chris Calamita, Office of the Chief Counsel, at (202) 366–2992, facsimile (202) 366–3820.

SUPPLEMENTARY INFORMATION:

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I. Background
II. Petitions For Reconsideration
III. Final Rule
IV. Regulatory Analyses and Notices

I. Background

FMVSS No. 208 specifies the performance requirements for the protection of vehicle occupants in crashes. On November 19, 2003, the agency published a final rule that responded, in part, to petitions for reconsideration of the amendments to detailed seat and dummy positioning procedures we made in December 2001 to our May 2000 Advanced Air Bag Rule. In particular, we amended portions of FMVSS No. 208 regarding seat positioning procedures when using the 5th percentile adult female test dummy in the barrier test and the low risk deployment test; when using the 3-year-old and 6-year-old test dummies in the low risk deployment test; the fore and aft seat location for rear facing child restraint systems (RFCRSs); and the seat track position for the low risk deployment test. We also responded to petitions for reconsideration regarding test dummy positioning procedure issues, specifically those addressing foot positioning of the 5th percentile adult female test dummy; positioning out-of-position test dummies; and positioning of test dummy hands. The November 2003 final rule amended the definitions of ''Plane C'' and ''Plane D'' as they relate to test dummy positioning, Point 1 under the low risk deployment tests, and addressed other reference points and definitions. The November 2003 final rule also amended the list of child

[1] See, 68 **Federal Register** 65179.

restraint systems required for certain compliance testing.

II. Petitions for Reconsideration

In response to the November 2003 final rule, the agency received seven petitions for reconsideration. Petitions were submitted by Evenflo Company, Inc. (Evenflo), Maserati S.p.A. (Maserati), Alliance for Automobile Manufacturers (Alliance), TRW Automotive (TRW), Automotive Occupant Restraint Council (AORC), American Honda Motor Co., Inc. (Honda), and Ferrari S.p.A. (Ferrari). Petitioners have asked the agency to reconsider the following issues.

A. Seat Positioning Procedures

The Alliance has requested that the agency specify a vertical seat position when determining the seat cushion reference angle. Specifically, the Alliance requested that the seat be positioned in the full rear and full down position when determining the seat cushion reference angle. The Alliance also requested that S16.2.10.3.2 and S16.2.10.3.3 of FMVSS No. 208 be amended to specify that the reference point used in these sections is the seat cushion reference point.

B. Left foot—5th percentile adult female test dummy (Barrier test)

The Alliance, Honda, and Ferrari petitioned to permit positioning of the left foot of the 5th percentile adult female test dummy in a manner more representative of a ''real world'' configuration. Ferrari and Honda requested that the left foot be permitted to rest on the foot rest. The Alliance requested that if spacer blocks are to be required, then the agency should specify the material properties of the spacer blocks for consistency in testing. Honda requested that the amendments for positioning the left foot of the 5th percentile adult female test dummy adopted in the November 2003 final rule be postponed until September 1, 2004. The Alliance requested that the amendments for positioning the left foot of the 5th percentile adult female test dummy, along with the rest of the November 2003 final rule, be postponed until September 1, 2005.

C. ''Chin on Rim'' Test Procedure

The Alliance and Honda requested that the agency amend the chin on rim test procedure to provide for consistency and repeatability in testing out-of-position drivers. The Alliance requested that for vehicle models with adjustable and non-adjustable steering wheels, the adjustable steering wheel should be positioned as close as possible to the position of the non-adjustable steering wheel. When spacer blocks are required to position the dummy's chin on the steering wheel, Honda requested that the agency specify the shape of the blocks. Honda stated that the pre-test load applied to the neck can vary with the shape of the spacer blocks. Honda also requested that the amendments for the ''chin on rim'' test procedure adopted in the November 2003 final rule be postponed until September 1, 2004.

D. Head-on-Instrument Panel Test Procedure

Honda petitioned the agency to permit rotation of the lower legs when positioning the head of the six-year-old dummy on the instrument panel, in order to prevent bracing by the feet on the vehicle floor. Honda stated that this bracing prevents the torso from being rotated into position.

Honda also requested that spacer blocks be permitted when space is present between the six-year-old dummy's feet and the vehicle floor. Honda stated that variation of the feet due to lack of contact with the floor results in variation in the force required to maintain the thigh angle. Again with regards to the six-year-old dummy, Honda requested that the head-on-instrument panel test procedure specify the point and direction for applying the 222 N force to prevent differences in dummy position.

Honda further requested that the amendments for the head-on-instrument-panel test procedure adopted in the November 2003 rule be postponed until September 1, 2004.

E. Definition of Planes C and D

The Alliance, Maserati, and Ferrari requested clarification of the procedure for determining the volumetric centers of an uninflated and statically inflated air bag, which are used to define Planes C and D. Maserati stated that the new definition of Plane C may alter the positioning of the dummy in low risk deployment testing by 50 mm and that the effect of this altered position on compliance is unknown at this time. The Alliance stated that one of its members has reported that the redefined Plane C may alter the positioning of the dummy by 30 mm.

The Alliance requested that the effective date for the amended definitions of Planes C and D be postponed to September 1, 2005. Ferrari requested a two year lead time and Maserati requested a three year lead time. AORC has requested that the agency revert to the previous method for defining Planes C and D.

F. Appendix A

Evenflo and TRW have requested that Appendix A be amended to reflect child restraint systems (CRSs) currently manufactured and available for retail purchase. Evenflo stated that several of the discontinued CRS models in Appendix A are no longer available. TRW petitioned the agency to create a separate Appendix to indicate which CRSs will be used in testing through at least 2006. To facilitate the use of automatic suppression systems based on weight detection, Honda petitioned the agency to limit the weight of CRSs. Honda also petitioned the agency to permit 18 months of lead time for the amended Appendix A.

The Alliance requested that the agency develop a procedure for installing CRSs equipped with lower anchorages and tether attachments. The Alliance stated that artificially tight installations can cause some occupant classification systems to misclassify the occupant. The Alliance also requested the effective date for the revised Appendix A be postponed until September 1, 2005.

III. Final Rule

The agency set a January 20, 2004 effective date for the amendments to the FMVSS No. 208 seat and dummy positioning procedures in the November 2003 final rule. The petitions filed by Evenflo, Maserati, the Alliance, TRW, AORC, Honda, and Ferrari have asked the agency to reconsider several aspects of that rulemaking. NHTSA is currently considering all seven petitions.

Given that the January 20, 2004 effective date occurred mid-model year, the agency has determined that it is appropriate to first partially respond to petitions concerning the effective date of the November 2003 final rule. Manufacturers are currently required to certify at least 20 percent of all vehicles manufactured between September 1, 2003 and August 31, 2004 as fully complying with the advanced air bag requirements, unless advanced credits are utilized. These production dates roughly correspond with the model year 2004 fleet. Much of the testing that manufacturers conduct to certify compliance of the 2004 model year fleet has already been done. Although we believe the new positioning procedures result in more accurate and repeatable dummy placement, the new procedures could result in a test dummy being placed differently relative to the air bag than it was during vehicle certification. As a result, it is possible that injury criteria could be exceeded under the new procedures, even though they were

not exceeded in certification testing. If so, manufacturers may need to make minor modifications to their designs to assure compliance with the new requirement. However, we note that no petitioner provided comparative test data between old and new dummy positions. Nor did any manufacturer state that they could not comply with the test requirements using the new dummy positions. Nonetheless, the agency is permitting compliance according to the testing procedures required by FMVSS No. 208 immediately prior to the November 2003 amendments.

This document adopts FMVSS No. 208a, which contains the pre-November 2003 final rule test procedures. Manufacturers may rely on the test procedures in FMVSS No. 208a until August 31, 2004, after which, the manufacturers will be required to meet the new requirements of FMVSS No. 208. (The November 2003 amendments to Appendix A already have an effective date of September 1, 2004.) If a manufacturer opts to certify a vehicle according to the procedures in FMVSS No. 208a, it must certify using all of the relevant seat and dummy positioning procedures in FMVSS No. 208a in place of the corresponding test procedures in FMVSS. No. 208. We have decided against any further extension of the old procedures because we believe the new positioning procedures should not require any more than minor modifications by affected manufacturers. Other issues raised in the petitions for reconsideration will be addressed by the agency in a separate document.

The agency believes that a partial response to the petitions for reconsideration is necessary so motor vehicle manufacturers do not face substantial economic hardship associated with certain new requirements of the amended FMVSS No. 208. As discussed in the petitions, the updated requirements of FMVSS No. 208 may necessitate retesting and recertification of occupant protection systems. By permitting compliance according to the old test procedures until August 31, 2004, vehicle manufacturers may avoid mid-model year product changes that would otherwise result from the November 2003 final rule, which went into effect on January 20, 2004.

NHTSA expects that all other issues raised in the petitions will be fully addressed prior to the new, September 1, 2004 effective date. In the event, however, that these issues have not been resolved, all affected manufacturers will be required to meet the new requirements. Effective dates of agency final rules are not stayed due to outstanding petitions for reconsideration of those rules.

IV. Regulatory Analyses and Notices

A. Economic Impacts

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rulemaking document was not reviewed under Executive Order 12866. It is not significant within the meaning of the DOT Regulatory Policies and Procedures. It does not impose any burden on manufacturers and effectively extends the compliance date for existing regulatory requirements for an additional seven months. The agency believes that this impact is so minimal as to not warrant the preparation of a full regulatory evaluation.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, we have considered the impacts of this rulemaking action will have on small entities (5 U.S.C. 601 *et seq.*). I certify that this rulemaking action will not have a significant economic impact upon a substantial number of small entities within the context of the Regulatory Flexibility Act. The following is our statement providing the factual basis for the certification (5 U.S.C. 605(b)). This action will not have a significant economic impact on a substantial number of small businesses because it does not significantly change the requirements of the November 2003 final rule. Small organizations and small governmental units will not be significantly effected since the potential cost impacts associated with this rule remain unchanged from the November 2003 final rule.

C. Environmental Impacts

We have not conducted an evaluation of the impacts of this final rule under the National Environmental Policy Act. This rulemaking action effectively extends the date by which the manufacturers must comply with the newly upgraded requirements of FMVSS No. 208. This rulemaking does not impose any change that would have any environmental impacts. Accordingly, no environmental assessment is required.

D. Executive Order 13132 (Federalism)

E.O. 13132 requires NHTSA 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.'' E.O. 13132 defines the term ''Policies that have federalism implications'' 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 E.O. 13132, NHTSA may not issue a regulation that has federalism implication, 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 NHTSA consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in E.O. 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100

million annually. This action, which permits manufacturers to rely on test procedures required prior to the November 2003 upgrade for an additional seven months, will not result in additional expenditures by state, local or tribal governments or by any members of the private sector. Therefore, the agency has not prepared an economic assessment pursuant to the Unfunded Mandates Reform Act.

F. Paperwork Reduction Act

There are no information collection requirements in this rule.

G. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

H. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

If you have any responses to these questions, please forward them to Chris Calamita, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

I. National Technology Transfer and Advancement Act

Under the National Technology and Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), ''all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.'' This document permits temporary compliance with FMVSS No. 208 according to test procedures prior to amendments made in the November 2003 final rule. No new standards or procedures are adopted by this document.

J. 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 in 49 CFR Part 571

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, NHTSA amends 49 CFR Chapter V as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 of title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Part 571 is amended by adding § 571.208a to read as follows:

571.208a Optional test procedures for vehicles manufactured between January 27, 2004 and August 31, 2004.

For vehicles manufactured between January 27, 2004 and August 31, 2004, a manufacturer may, at its option, comply with certain requirements of Standard No. 208 in accordance with the test procedures set forth in this § 571.208a instead of the corresponding test procedures in § 571.208.

S1 through S15 [Reserved] *See* § 571.208, S1 through S15.

S16. *Test procedures for rigid barrier test requirements using 5th percentile adult female dummies.*

S16.1 *General provisions.* Crash testing to determine compliance with the requirements of S15 of this standard is conducted as specified in the following paragraphs (a) and (b).

(a) *Belted test.* Place a 49 CFR part 572 subpart O 5th percentile adult female test dummy at each front outboard seating position of a vehicle, in accordance with the procedures specified in S16.3 of this standard. Impact the vehicle traveling longitudinally forward at any speed, up to and including 48 km/h (30 mph), into a fixed rigid barrier that is perpendicular within a tolerance of ± 5 degrees to the line of travel of the vehicle under the applicable conditions of S16.2 of this standard.

(b) *Unbelted test.* Place a 49 CFR part 572 subpart O 5th percentile adult female test dummy at each front outboard seating position of a vehicle, in accordance with the procedures specified in S16.3 of this standard, except S16.3.5. Impact the vehicle traveling longitudinally forward at any speed, from 32 km/h (20 mph) to 40 km/h (25 mph), inclusive, into a fixed rigid barrier that is perpendicular within a tolerance of ± 5 degrees to the line of travel of the vehicle under the applicable conditions of S16.2 of this standard.

S16.2 *Test conditions.*

S16.2.1 The vehicle, including test devices and instrumentation, is loaded as in S8.1.1 of FMVSS No. 208.

S16.2.2 Movable vehicle windows and vents are placed in the fully closed position, unless the vehicle manufacturer chooses to specify a different adjustment position prior to the time the vehicle is certified.

S16.2.3 Convertibles and open-body type vehicles have the top, if any, in place in the closed passenger compartment configuration.

S16.2.4 Doors are fully closed and latched but not locked.

S16.2.5 The dummy is clothed in form fitting cotton stretch garments with short sleeves and above the knee length pants. A size 7½W shoe which meets the configuration and size specifications of MIL–S–21711E (see S4.7) or its equivalent is placed on each foot of the test dummy.

S16.2.6 Limb joints are set at one g, barely restraining the weight of the limb when extended horizontally. Leg joints are adjusted with the torso in the supine position.

S16.2.7 Instrumentation shall not affect the motion of dummies during impact.

S16.2.8 The stabilized temperature of the dummy is at any level between 20.6 °C and 22.2 °C (69 °F to 72 °F).

S16.2.9 *Steering wheel adjustment.*

S16.2.9.1 Adjust a tiltable steering wheel, if possible, so that the steering wheel hub is at the geometric center of its full range of driving positions.

S16.2.9.2 If there is no setting detent at the mid-position, lower the steering wheel to the detent just below the mid-position.

S16.2.9.3 If the steering column is telescoping, place the steering column

in the mid-position. If there is no mid-position, move the steering wheel rearward one position from the mid-position.

S16.2.10 *Driver and passenger seat set-up*.

S16.2.10.1 *Lumbar support adjustment*. Position adjustable lumbar supports so that the lumbar support is in its lowest, retracted or deflated adjustment position.

S16.2.10.2 *Other seat adjustments*. Position any adjustable parts of the seat that provide additional support so that they are in the lowest or most open adjustment position.

S16.2.10.3 *Seat position adjustment*. If the passenger seat does not adjust independently of the driver seat, the driver seat shall control the final position of the passenger seat.

S16.2.10.3.1 If the seat is adjustable in the fore and aft and/or vertical directions, move the seat to the rearmost position at the full down height adjustment. If the seat cushion adjusts fore and aft, independent of the seat back, set this adjustment to the full rearward position. If the seat cushion contains a height adjustment, independent of the seat back, set this adjustment to the full down position. Record a seat cushion reference angle.

S16.2.10.3.2 Using only controls which move the seat fore and aft, move the seat to the full forward position. If seat adjustments other than fore-aft are present and the seat cushion reference angle changes from that measured in S16.2.10.3.1, use those adjustments to maintain as closely as possible the angle recorded in S16.2.10.3.1.

S16.2.10.3.3 If the seat height is adjustable, determine the maximum and minimum heights at this position, while maintaining, as closely as possible, the angle recorded in S16.2.10.3.1. Set the seat at the midpoint height with the seat cushion reference angle set as closely as possible to the angle recorded in S16.2.10.3.1. Mark location of the seat for future reference.

S16.3 *Dummy seating positioning procedures*. The 49 CFR part 572 subpart O 5th percentile adult female test dummy is positioned as follows:

S16.3.1 *General provisions and definitions*.

S16.3.1.1 All angles are measured with respect to the horizontal plane unless otherwise stated.

S16.3.1.2 The dummy's neck bracket is adjusted to align the zero degree index marks.

S16.3.1.3 The term ''midsagittal plane'' refers to the vertical plane that separates the dummy into equal left and right halves.

S16.3.1.4 The term ''vertical longitudinal plane'' refers to a vertical plane parallel to the vehicle's longitudinal centerline.

S16.3.1.5 The term ''vertical plane'' refers to a vertical plane, not necessarily parallel to the vehicle's longitudinal centerline.

S16.3.1.6 The term ''transverse instrumentation platform'' refers to the transverse instrumentation surface inside the dummy's skull casting to which the neck load cell mounts. This surface is perpendicular to the skull cap's machined inferior-superior mounting surface.

S16.3.1.7 The term ''thigh'' refers to the femur between, but not including, the knee and the pelvis.

S16.3.1.8 The term ''leg'' refers to the lower part of the entire leg including the knee.

S16.3.1.9 The term ''foot'' refers to the foot including the ankle.

S16.3.1.10 The longitudinal centerline of a bucket seat cushion is determined at the widest part of the seat cushion. Measure perpendicular to the longitudinal centerline of the vehicle.

S16.3.1.11 For leg and thigh angles use the following references:

S16.3.1.11.1 *Thigh*—a straight line on the thigh skin between the center of the ½–13 UNC–2B tapped hole in the upper leg femur clamp (see drawings 880105–504 (left thigh) and 880105–505 (right thigh), upper leg femur clamp) and the knee pivot shoulder bolt (part 880105–527 in drawing 880105–528R & 528L, sliding knee assy. w/o pot).

S16.3.1.11.2 *Leg*—a straight line on the leg skin between the center of the ankle shell (parts 880105–609 & 633 in drawing 880105–660, ankle assembly) and the knee pivot shoulder bolt (part 880105–527 in drawing 880105–528R & 528L, sliding knee assy. w/o pot).

S16.3.2 *Driver dummy positioning*.

S16.3.2.1 *Driver torso/head/seat back angle positioning*.

S16.3.2.1.1 With the seat in the position determined in S16.2.10, use only the controls which move the seat fore and aft to place the seat in the rearmost position, without adjusting independent height controls. If the seat cushion reference angle automatically changes as the seat is moved from the full forward position, maintain, as closely as possible, the seat cushion reference angle in S16.2.10.3.1, for the final forward position when measuring the pelvic angle as specified in S16.3.2.1.11.

S16.3.2.1.2 Fully recline the seat back, if adjustable. Install the dummy into the driver's seat, such that when the legs are positioned 120 degrees to the thighs, the calves of the legs are not touching the seat cushion.

S16.3.2.1.3 *Bucket seats*. Center the dummy on the seat cushion so that its midsagittal plane is vertical and coincides with the vertical longitudinal plane through the center of the seat cushion.

S16.3.2.1.4 *Bench seats*. Position the midsagittal plane of the dummy vertical and parallel to the vehicle's longitudinal centerline and aligned with the center of the steering wheel rim.

S16.3.2.1.5 Hold the dummy's thighs down and push rearward on the upper torso to maximize the dummy's pelvic angle.

S16.3.2.1.6 Place the legs at 120 degrees to the thighs. Set the initial transverse distance between the longitudinal centerlines at the front of the dummy's knees at 160 to 170 mm (6.3 to 6.7 in), with the thighs and legs of the dummy in vertical planes. Push rearward on the dummy's knees to force the pelvis into the seat so there is no gap between the pelvis and the seat back or until contact occurs between the back of the dummy's calves and the front of the seat cushion.

S16.3.2.1.7 Gently rock the upper torso relative to the lower torso laterally in a side to side motion three times through a ± 5 degree arc (approximately 51 mm (2 in) side to side) to reduce friction between the dummy and the seat.

S16.3.2.1.8 If needed, extend the legs slightly so that the feet are not in contact with the floor pan. Let the thighs rest on the seat cushion to the extent permitted by the foot movement. Keeping the leg and the thigh in a vertical plane, place the foot in the vertical longitudinal plane that passes through the centerline of the accelerator pedal. Rotate the left thigh outboard about the hip until the center of the knee is the same distance from the midsagittal plane of the dummy as the right knee ± 5 mm (± 0.2 in). Using only controls which move the seat fore and aft, attempt to return the seat to the full forward position. If either of the dummy's legs first contacts the steering wheel, then adjust the steering wheel, if adjustable, upward until contact with the steering wheel is avoided. If the steering wheel is not adjustable, separate the knees enough to avoid steering wheel contact. Proceed with moving the seat forward until either the leg contacts the vehicle interior or the seat reaches the full forward position. (The right foot may contact and depress the accelerator and/or change the angle of the foot with respect to the leg during seat movement.) If necessary to avoid contact with the vehicles brake or clutch

pedal, rotate the test dummy's left foot about the leg. If there is still interference, rotate the left thigh outboard about the hip the minimum distance necessary to avoid pedal interference. If a dummy leg contacts the vehicle interior before the full forward position is attained, position the seat at the next detent where there is no contact. If the seat is a power seat, move the seat fore and aft to avoid contact while assuring that there is a maximum of 5 mm (0.2 in) distance between the vehicle interior and the point on the dummy that would first contact the vehicle interior. If the steering wheel was moved, return it to the position described in S16.2.9. If the steering wheel contacts the dummy's leg(s) prior to attaining this position, adjust it to the next higher detent, or if infinitely adjustable, until there is 5 mm (0.2 in) clearance between the wheel and the dummy's leg(s).

S16.3.2.1.9 For vehicles without adjustable seat backs, adjust the lower neck bracket to level the head as much as possible. For vehicles with adjustable seat backs, while holding the thighs in place, rotate the seat back forward until the transverse instrumentation platform of the head is level to within ± 0.5 degree, making sure that the pelvis does not interfere with the seat bight. Inspect the abdomen to ensure that it is properly installed. If the torso contacts the steering wheel, adjust the steering wheel in the following order until there is no contact: Telescoping adjustment, lowering adjustment, raising adjustment. If the vehicle has no adjustments or contact with the steering wheel cannot be eliminated by adjustment, position the seat at the next detent where there is no contact with the steering wheel as adjusted in S16.2.9. If the seat is a power seat, position the seat to avoid contact while assuring that there is a maximum of 5 mm (0.2 in) distance between the steering wheel as adjusted in S16.2.9 and the point of contact on the dummy.

S16.3.2.1.10 If it is not possible to achieve the head level within ± 0.5 degrees, minimize the angle.

S16.3.2.1.11 Measure and set the dummy's pelvic angle using the pelvic angle gage (drawing TE–2504, incorporated by reference in 49 CFR part 572, subpart O, of this chapter). The angle shall be set to 20.0 degrees ± 2.5 degrees. If this is not possible, adjust the pelvic angle as close to 20.0 degrees as possible while keeping the transverse instrumentation platform of the head as level as possible by adjustments specified in S16.3.2.1.9 and S16.3.2.1.10.

S16.3.2.1.12 If the dummy is contacting the vehicle interior after these adjustments, move the seat rearward until there is a maximum of 5 mm (0.2 in) between the contact point of the dummy and the interior of the vehicle or if it has a manual seat adjustment, to the next rearward detent position. If after these adjustments, the dummy contact point is more than 5 mm (0.2 in) from the vehicle interior and the seat is still not in its forwardmost position, move the seat forward until the contact point is 5 mm (0.2 in) or less from the vehicle interior, or if it has a manual seat adjustment, move the seat to the closest detent position without making contact, or until the seat reaches its forwardmost position, whichever occurs first.

S16.3.2.2 *Driver foot positioning.*

S16.3.2.2.1 If the vehicle has an adjustable accelerator pedal, adjust it to the full forward position. Rest the right foot of the test dummy on the undepressed accelerator pedal with the rearmost point of the heel on the floor pan in the plane of the pedal. If the foot cannot be placed on the accelerator pedal, set it initially perpendicular to the leg and then place it as far forward as possible in the direction of the pedal centerline with the rearmost point of the heel resting on the floor pan. If the vehicle has an adjustable accelerator pedal and the right foot is not touching the accelerator pedal when positioned as above, move the pedal rearward until it touches the right foot. If the accelerator pedal in the full rearward position still does not touch the foot, leave the pedal in that position.

S16.3.2.2.2 If the ball of the foot does not contact the pedal, change the angle of the foot relative to the leg such that the toe of the foot contacts the undepressed accelerator pedal.

S16.3.2.2.3 Place the left foot on the toe-board with the rearmost point of the heel resting on the floor pan as close as possible to the point of intersection of the planes described by the toe-board and floor pan, and not on the wheel-well projection or foot rest.

S16.3.2.2.4 If the left foot cannot be positioned on the toe board, place the foot perpendicular to the lower leg centerline as far forward as possible with the heel resting on the floor pan.

S16.3.2.2.5 If necessary to avoid contact with the vehicle's brake or clutch pedal, rotate the test dummy's left foot about the lower leg. If there is still pedal interference, rotate the left leg outboard about the hip the minimum distance necessary to avoid the pedal interference. If the left foot does not contact the floor pan, place the foot parallel to the floor and place the leg as perpendicular to the thigh as possible.

S16.3.2.3 *Driver arm/hand positioning.*

S16.3.2.3.1 Place the dummy's upper arms adjacent to the torso with the arm centerlines as close to a vertical longitudinal plane as possible.

S16.3.2.3.2 Place the palms of the dummy in contact with the outer part of the steering wheel rim at its horizontal centerline with the thumbs over the steering wheel rim.

S16.3.2.3.3 If it is not possible to position the thumbs inside the steering wheel rim at its horizontal centerline, then position them above and as close to the horizontal centerline of the steering wheel rim as possible.

S16.3.2.3.4 Lightly tape the hands to the steering wheel rim so that if the hand of the test dummy is pushed upward by a force of not less than 9 N (2 lb) and not more than 22 N (5 lb), the tape releases the hand from the steering wheel rim.

S16.3.3 *Passenger dummy positioning.*

S16.3.3.1 *Passenger torso/head/seat back angle positioning.*

S16.3.3.1.1 With the seat in the position determined in S16.2.10, use only the controls which move the seat fore and aft to place the seat in the rearmost position, without adjusting independent height controls. If the seat cushion reference angle automatically changes as the seat is moved from the full forward position, maintain as closely as possible the seat cushion reference angle in S16.2.10.3.1, for the final forward position when measuring the pelvic angle as specified in S16.3.3.1.11.

S16.3.3.1.2 Fully recline the seat back, if adjustable. Install the dummy into the passenger's seat, such that when the legs are 120 degrees to the thighs, the calves of the legs are not touching the seat cushion.

S16.3.3.1.3 *Bucket seats.* Center the dummy on the seat cushion so that its midsagittal plane is vertical and coincides with the vertical longitudinal plane through the center of the seat cushion.

S16.3.3.1.4 *Bench seats.* Position the midsagittal plane of the dummy vertical and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline as the midsagittal plane of the driver dummy.

S16.3.3.1.5 Hold the dummy's thighs down and push rearward on the upper torso to maximize the dummy's pelvic angle.

S16.3.3.1.6 Place the legs at 120 degrees to the thighs. Set the initial

transverse distance between the longitudinal centerlines at the front of the dummy's knees at 160 to 170 mm (6.3 to 6.7 in), with the thighs and legs of the dummy in vertical planes. Push rearward on the dummy's knees to force the pelvis into the seat so there is no gap between the pelvis and the seat back or until contact occurs between the back of the dummy's calves and the front of the seat cushion.

S16.3.3.1.7 Gently rock the upper torso relative to the lower torso laterally side to side three times through a ± 5 degree arc (approximately 51 mm (2 in) side to side).

S16.3.3.1.8 If needed, extend the legs slightly so that the feet are not in contact with the floor pan. Let the thighs rest on the seat cushion to the extent permitted by the foot movement. With the feet perpendicular to the legs, place the heels on the floor pan. If a heel will not contact the floor pan, place it as close to the floor pan as possible. Using only controls which move the seat fore and aft, attempt to return the seat to the full forward position. If a dummy leg contacts the vehicle interior before the full forward position is attained, position the seat at the next detent where there is no contact. If the seats are power seats, position the seat to avoid contact while assuring that there is a maximum of 5 mm (0.2 in) distance between the vehicle interior and the point on the dummy that would first contact the vehicle interior.

S16.3.3.1.9 For vehicles without adjustable seat backs, adjust the lower neck bracket to level the head as much as possible. For vehicles with adjustable seat backs, while holding the thighs in place, rotate the seat back forward until the transverse instrumentation platform of the head is level to within ± 0.5 degrees, making sure that the pelvis does not interfere with the seat bight. Inspect the abdomen to insure that it is properly installed.

S16.3.3.1.10 If it is not possible to orient the head level within ± 0.5 degrees, minimize the angle.

S16.3.3.1.11 Measure and set the dummy's pelvic angle using the pelvic angle gage (drawing TE–2504, incorporated by reference in 49 CFR part 572, subpart O, of this chapter). The angle shall be set to 20.0 degrees ± 2.5 degrees. If this is not possible, adjust the pelvic angle as close to 20.0 degrees as possible while keeping the transverse instrumentation platform of the head as level as possible as specified in S16.3.3.1.9 and S16.3.3.1.10.

S16.3.3.1.12 If the dummy is contacting the vehicle interior after these adjustments, move the seat rearward until there is a maximum of 5 mm (0.2 in) between the contact point of the dummy and the interior of the vehicle or if it has a manual seat adjustment, to the next rearward detent position. If after these adjustments the dummy contact point is more than 5 mm (0.2 in) from the vehicle interior and the seat is still not in its forward most position, move the seat forward until the contact point is 5 mm (0.2 in) or less from the vehicle interior, or if it has a manual seat adjustment, move the seat to the closest detent position without making contact, or until the seat reaches its forward most position, whichever occurs first.

S16.3.3.2 *Passenger foot positioning.*

S16.3.3.2.1 Place the passenger's feet flat on the toe board.

S16.3.3.2.2 If the feet cannot be placed flat on the toe board, set them perpendicular to the leg center lines and place them as far forward as possible with the heels resting on the floor pan.

S16.3.3.3 *Passenger arm/hand positioning.*

S16.3.3.3.1 Place the dummy's upper arms in contact with the seat back and the torso.

S16.3.3.3.2 Place the palms of the dummy in contact with the outside of the thighs.

S16.3.3.3.3 Place the little fingers in contact with the seat cushion.

S16.3.4 *Driver and passenger adjustable head restraints.*

S16.3.4.1 If the head restraint has an automatic adjustment, leave it where the system positions the restraint after the dummy is placed in the seat.

S16.3.4.2 Adjust each head restraint to its lowest position.

S16.3.4.3 Measure the vertical distance from the top most point of the head restraint to the bottom most point. Locate a horizontal plane through the midpoint of this distance. Adjust each head restraint vertically so that this horizontal plane is aligned with the center of gravity (CG) of the dummy head.

S16.3.4.4 If the above position is not attainable, move the vertical center of the head restraint to the closest detent below the center of the head CG.

S16.3.4.5 If the head restraint has a fore and aft adjustment, place the restraint in the forwardmost position or until contact with the head is made, whichever occurs first.

S16.3.5 *Driver and passenger manual belt adjustment (for tests conducted with a belted dummy)*

S16.3.5.1 If an adjustable seat belt D-ring anchorage exists, place it in the manufacturer's design position for a 5th percentile adult female with the seat in the position specified in S16.2.10.3.

S16.3.5.2 Place the Type 2 manual belt around the test dummy and fasten the latch.

S16.3.5.3 Ensure that the dummy's head remains as level as possible, as specified in S16.3.2.1.9 and S16.3.2.1.10 and S16.3.3.1.9 and S16.3.3.1.10.

S16.3.5.4 Remove all slack from the lap belt. Pull the upper torso webbing out of the retractor and allow it to retract; repeat this operation four times. Apply a 9 N (2 lbf) to 18 N (4 lbf) tension load to the lap belt. If the belt system is equipped with a tension-relieving device, introduce the maximum amount of slack into the upper torso belt that is recommended by the manufacturer. If the belt system is not equipped with a tension-relieving device, allow the excess webbing in the shoulder belt to be retracted by the retractive force of the retractor.

S17 through S19 [Reserved] See § 571.208, S17 through S19.

S20 *Test procedure for S19 of FMVSS No. 208.*

S20.1 *General provisions.*

S20.1.1 Tests specifying the use of a car bed, a rear facing child restraint, or a convertible child restraint may be conducted using any such restraint listed in sections A, B, and C of Appendix A of FMVSS No. 208 respectively. The car bed, rear facing child restraint, or convertible child restraint may be unused or have been previously used only for automatic suppression tests. If it has been used, there shall not be any visible damage prior to the test.

S20.1.2 Each vehicle certified to this option shall comply in tests conducted with the right front outboard seating position, if adjustable fore and aft, at full rearward, middle, and full forward positions. If the child restraint or dummy contacts the vehicle interior, move the seat rearward to the next detent that provides clearance. If the seat is a power seat, move the seat rearward while assuring that there is a maximum of 5 mm (0.2 in) clearance.

S20.1.3 If the car bed, rear facing child restraint, or convertible child restraint is equipped with a handle, the vehicle shall comply in tests conducted with the handle at both the child restraint manufacturer's recommended position for use in vehicles and in the upright position.

S20.1.4 If the car bed, rear facing child restraint, or convertible child restraint is equipped with a sunshield, the vehicle shall comply in tests conducted with the sunshield both fully open and fully closed.

S20.1.5 The vehicle shall comply in tests with the car bed, rear facing child restraint, or convertible child restraint

uncovered and in tests with a towel or blanket weighing up to 1.0 kg (2.2 lb) placed on or over the restraint in any of the following positions:

(a) with the blanket covering the top and sides of the restraint, and

(b) with the blanket placed from the top of the vehicle's seat back to the forwardmost edge of the restraint.

S20.1.6 Except as otherwise specified, if the car bed, rear facing child restraint, or convertible child restraint has an anchorage system as specified in S5.9 of FMVSS No. 213 and is tested in a vehicle with a right front outboard vehicle seat that has an anchorage system as specified in FMVSS No. 225, the vehicle shall comply with the belted test conditions with the restraint anchorage system attached to the vehicle seat anchorage system and the vehicle seat belt unattached. It shall also comply with the belted test conditions with the restraint anchorage system unattached to the vehicle seat anchorage system and the vehicle seat belt attached. The vehicle shall comply with the unbelted test conditions with the restraint anchorage system unattached to the vehicle seat anchorage system.

S20.1.7 If the car bed, rear facing child restraint, or convertible child restraint comes equipped with a detachable base, the vehicle shall comply in tests conducted with the detachable base attached to the child restraint and with the detachable base unattached to the child restraint.

S20.1.8 Do not attach any tethers.

S20.1.9 *Seat set-up.* Unless otherwise stated,

S20.1.9.1 *Lumbar support adjustment.* Position adjustable lumbar supports so that the lumbar support is in its lowest, retracted or deflated adjustment position.

S20.1.9.2 *Other seat adjustments.* Position any adjustable parts of the seat that provide additional support so that they are in the lowest or most open adjustment position.

S20.1.9.3 If the seat cushion adjusts fore and aft, independent of the seat back, set this adjustment to the full rearward position.

S20.1.9.4 If the seat height is adjustable, determine the maximum and minimum heights at the full rearward, middle, and full forward positions. Set the seat at the mid-point height for each of the three fore-aft test positions.

S20.1.9.5 The seat back angle, if adjustable, is set at the manufacturer's nominal design seat back angle for a 50th percentile adult male as specified in S8.1.3 of FMVSS No. 208.

S20.1.9.6 If adjustable, set the head restraint at the full down and full forward position.

S20.1.10 The longitudinal centerline of a bucket seat cushion is determined at the widest part of the seat cushion. Measure perpendicular to the longitudinal centerline of the vehicle.

S20.2 *Static tests of automatic suppression feature which shall result in deactivation of the passenger air bag.* Each vehicle that is certified as complying with S19.2 of FMVSS No. 208 shall meet the following test requirements.

S20.2.1 *Belted rear facing and convertible child restraints.*

S20.2.1.1 The vehicle shall comply in tests using any child restraint specified in section B and section C of Appendix A of FMVSS No. 208.

S20.2.1.2 Locate a vertical plane through the longitudinal centerline of the child restraint. This will be referred to as ''Plane.''

S20.2.1.3 For bucket seats, ''Plane B'' refers to a vertical plane parallel to the vehicle longitudinal centerline through the longitudinal centerline of the right front outboard vehicle seat cushion. For bench seats, ''Plane B'' refers to a vertical plane through the right front outboard vehicle seat parallel to the vehicle longitudinal centerline the same distance from the longitudinal centerline of the vehicle as the center of the steering wheel.

S20.2.1.4 *Facing rear.*

(a) The vehicle shall comply in both of the following positions, if applicable:

(1) Without attaching the child restraint anchorage system as specified in S5.9 of FMVSS No. 213 to a vehicle seat anchorage system specified in FMVSS No. 225, align the child restraint system facing rearward such that Plane A is aligned with Plane B.

(2) If the child restraint is certified to S5.9 of FMVSS No. 213, and the vehicle seat has an anchorage system as specified in FMVSS No. 225, attach the child restraint to the vehicle seat anchorage instead of aligning the planes. Do not attach the vehicle safety belt.

(b) While maintaining the child restraint positions achieved in S20.2.1.4(a), secure the child restraint by following, to the extent possible, the child restraint manufacturer's directions regarding proper installation of the restraint in the rear facing mode.

(c) Place any adjustable seat belt anchorages at the vehicle manufacturer's nominal design position for a 50th percentile adult male occupant. Cinch the vehicle belts to any tension from zero up to 134 N (30 lb) to secure the child restraint. Measure belt tension in a flat, straight section of the lap belt between the child restraint belt path and the contact point with the belt anchor or vehicle seat, on the side away from the buckle (to avoid interference from the shoulder portion of the belt).

(d) Position the 49 CFR part 572 subpart R 12-month-old CRABI dummy in the child restraint by following, to the extent possible, the manufacturer's instructions provided with the child restraint for seating infants.

(e) Start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system, and close all vehicle doors. Wait 10 seconds, then check whether the air bag is deactivated.

S20.2.1.5 *Facing forward (convertible restraints only).*

(a) The vehicle shall comply in both of the following positions, if applicable:

(1) Without attaching the child restraint anchorage system as specified in S5.9 of FMVSS No. 213 to a vehicle seat anchorage system specified in FMVSS No. 225, align the child restraint system facing forward such that Plane A is aligned with Plane B.

(2) If the child restraint is certified to S5.9 of FMVSS No. 213, and the vehicle seat has an anchorage system as specified in FMVSS No. 225, attach the child restraint to the vehicle seat anchorage instead of aligning the planes. Do not attach the vehicle safety belt.

(b) While maintaining the child restraint positions achieved in S20.2.1.5(a), secure the child restraint by following, to the extent possible, the child restraint manufacturer's directions regarding proper installation of the restraint in the forward facing mode.

(c) Place any adjustable seat belt anchorages at the vehicle manufacturer's nominal design position for a 50th percentile adult male occupant. Cinch the vehicle belts to any tension from zero up to 134 N (30 lb) to secure the child restraint. Measure belt tension in a flat, straight section of the lap belt between the child restraint belt path and the contact point with the belt anchor or vehicle seat, on the side away from the buckle (to avoid interference from the shoulder portion of the belt).

(d) Position the 49 CFR part 572 subpart R 12-month-old CRABI dummy in the child restraint by following, to the extent possible, the manufacturer's instructions provided with the child restraint for seating infants.

(e) Start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system, and close all vehicle doors. Wait 10 seconds, then check whether the air bag is deactivated.

S20.2.2 *Unbelted rear facing and convertible child restraints.*

S20.2.2.1 The vehicle shall comply in tests using any child restraint specified in section B and section C of Appendix A of FMVSS No. 208.

S20.2.2.2 Locate a vertical plane through the longitudinal centerline of the child restraint. This will be referred to as ''Plane A''.

S20.2.2.3 For bucket seats, ''Plane B'' refers to a vertical plane parallel to the vehicle longitudinal centerline through the longitudinal centerline of the right front outboard vehicle seat cushion. For bench seats, ''Plane B'' refers to a vertical plane through the right front outboard seat parallel to the vehicle longitudinal centerline the same distance from the longitudinal centerline of the vehicle as the center of the steering wheel.

S20.2.2.4 *Facing rear.*

(a) Align the child restraint system facing rearward such that Plane A is aligned with Plane B and the child restraint is in contact with the seat back.

(b) Position the 49 CFR part 572 subpart R 12-month-old CRABI dummy in the child restraint by following, to the extent possible, the manufacturer's instructions provided with the child restraint for seating infants.

(c) Start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system, and close all vehicle doors. Wait 10 seconds, then check whether the air bag is deactivated.

S20.2.2.5 *Facing forward.*

(a) Align the child restraint system facing forward such that Plane A is aligned with Plane B and the child restraint is in contact with the seat back.

(b) Position the 49 CFR part 572 subpart R 12-month-old CRABI dummy in the child restraint by following, to the extent possible, the manufacturer's instructions provided with the child restraint for seating infants.

(c) Start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system, and close all vehicle doors. Wait 10 seconds, then check whether the air bag is deactivated.

S20.2.3 *Tests with a belted car bed.*

S20.2.3.1 The vehicle shall comply in tests using any car bed specified in section A of Appendix A of FMVSS No. 208.

S20.2.3.2(a) Install the car bed by following, to the extent possible, the car bed manufacturer's directions regarding proper installation of the car bed.

(b) Place any adjustable seat belt anchorages at the vehicle manufacturer's nominal design position for a 50th percentile adult male occupant. Cinch the vehicle belts to secure the car bed.

(c) Position the 49 CFR part 572 subpart K Newborn Infant dummy in the car bed by following, to the extent possible, the car bed manufacturer's instructions provided with the car bed for positioning infants.

(d) Start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system, and close all vehicle doors. Wait 10 seconds, then check whether the air bag is deactivated.

S20.3 *Static tests of automatic suppression feature which shall result in activation of the passenger air bag system.*

S20.3.1 Each vehicle certified to this option shall comply in tests conducted with the right front outboard seating position, if adjustable fore and aft, at the full rearward, middle, and, subject to S16.3.3.1.8, full forward positions. All tests are conducted with the seat height, if adjustable, in the mid-height position.

S20.3.2 Place a 49 CFR part 572 subpart O 5th percentile adult female test dummy at the right front outboard seating position of the vehicle, in accordance with procedures specified in S16.3.3 of this standard, except as specified in S20.3.1, subject to the fore-aft seat positions in S20.3.1. Do not fasten the seat belt.

S20.3.3 Start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system, and then close all vehicle doors.

S20.3.4 Wait 10 seconds, then check whether the air bag system is activated.

S20.4 *Low risk deployment test.* Each vehicle that is certified as complying with S19.3 of FMVSS No. 208 shall meet the following test requirements.

S20.4.1 Position the right front outboard vehicle seat in the full forward seat track position, adjust the seat height (if adjustable) to the mid-height position, and adjust the seat back (if adjustable) to the nominal design position for a 50th percentile adult male as specified in S8.1.3 of FMVSS No. 208. Position adjustable lumbar supports so that the lumbar support is in its lowest, retracted or deflated adjustment position. Position any adjustable parts of the seat that provide additional support so that they are in the lowest or most open adjustment position. If the seat cushion adjusts fore and aft, independent of the seat back, set this adjustment to the full rearward position. If adjustable, set the head restraint at the full down position. If the child restraint or dummy contacts the vehicle interior, move the seat rearward to the next detent that provides clearance. If the seat is a power seat, move the seat rearward while assuring that there is a maximum of 5 mm (0.2 in) clearance.

S20.4.2 The vehicle shall comply in tests using any child restraint specified in section B and section C of Appendix A to FMVSS No. 208.

S20.4.3 Locate a vertical plane through the longitudinal centerline of the child restraint. This will be referred to as ''Plane A''.

S20.4.4 For bucket seats, ''Plane B'' refers to a vertical plane parallel to the vehicle longitudinal centerline through the geometric center of the right front outboard seat cushion. For bench seats, ''Plane B'' refers to a vertical plane through the right front outboard seat parallel to the vehicle longitudinal centerline that is the same distance from the longitudinal centerline of the vehicle as the center of the steering wheel.

S20.4.5 Align the child restraint system facing rearward such that Plane A is aligned with Plane B.

S20.4.6 If the child restraint is certified to S5.9 of FMVSS No. 213, and the vehicle seat has an anchorage system as specified in FMVSS No. 225, attach the child restraint to the vehicle seat anchorage instead of aligning the planes. Do not attach the vehicle safety belt.

S20.4.7 While maintaining the child restraint position achieved in S20.4.5, secure the child restraint by following, to the extent possible, the child restraint manufacturer's directions regarding proper installation of the restraint in the rear facing mode. Place any adjustable seat belt anchorages at the manufacturer's nominal design position for a 50th percentile adult male occupant. Cinch the vehicle belts to any tension from zero up to 134 N (30 lb) to secure the child restraint. Measure belt tension in a flat, straight section of the lap belt between the child restraint belt path and the contact point with the belt anchor or vehicle seat, on the side away from the buckle (to avoid interference from the shoulder portion of the belt).

S20.4.8 Position the 49 CFR part 572 subpart R 12-month-old CRABI dummy in the child restraint by following, to the extent possible, the manufacturer's instructions provided with the child restraint for seating infants.

S20.4.9 Deploy the right front outboard frontal air bag system. If the air bag system contains a multistage inflator, the vehicle shall be able to comply at any stage or combination of stages or time delay between successive stages that could occur in the presence of an infant in a rear facing child restraint and a 49 CFR part 572, subpart

R 12-month-old CRABI dummy positioned according to S20.4 in a rigid barrier crash test at speeds up to 64 km/h (40 mph).

S21 [Reserved] *See* § 571.208, S21.

S22 *Test procedure for S21 of FMVSS No. 208.*

S22.1 *General provisions and definitions.*

S22.1.1 Tests specifying the use of a forward facing child restraint, including a booster seat where applicable, may be conducted using any such restraint listed in section C and section D of Appendix A of FMVSS No. 208, respectively. The child restraint may be unused or have been previously used only for automatic suppression tests. If it has been used, there shall not be any visible damage prior to the test. Booster seats are to be used in the manner appropriate for a 3-year-old child of the same height and weight as the 3-year-old child dummy.

S22.1.2 Unless otherwise specified, each vehicle certified to this option shall comply in tests conducted with the right front outboard seating position at the full rearward, middle, and the full forward positions. If the dummy contacts the vehicle interior, move the seat rearward to the next detent that provides clearance. If the seat is a power seat, move the seat rearward while assuring that there is a maximum of 5 mm (0.2 in) clearance.

S22.1.3 Except as otherwise specified, if the child restraint has an anchorage system as specified in S5.9 of FMVSS No. 213 and is tested in a vehicle with a right front outboard vehicle seat that has an anchorage system as specified in FMVSS No. 225, the vehicle shall comply with the belted test conditions with the restraint anchorage system attached to the vehicle seat anchorage system and the vehicle seat belt unattached. It shall also comply with the belted test conditions with the restraint anchorage system unattached to the vehicle seat anchorage system and the vehicle seat belt attached.

S22.1.4 Do not attach any tethers.

S22.1.5 The definitions provided in S16.3.1 through S16.3.10 apply to the tests specified in S22.

S22.1.6 For leg and thigh angles use the following references:

(a) *Thigh*—a straight line on the thigh skin between the center of the 5/16 × 1/2 in. screw (part 9001024, item 10 in drawing 210–0000 sheet 2 of 7, complete assembly (HYB III 3 YR OLD)) and the knee bolt (part 210–5301 in drawing 210–5000–1 & –1, leg assembly).

(b) *Leg*—a straight line on the leg skin between the center of the ankle bolt (part 210–5701 in drawing 210–5000–1 & –2, leg assembly) and the knee bolt (part 210–5301 in drawing 210–5000–1 & –2, leg assembly).

S22.1.7 *Seat set-up.* Unless otherwise stated,

S22.1.7.1 *Lumbar support adjustment.* Position adjustable lumbar supports so that the lumbar support is in its lowest, retracted or deflated adjustment position.

S22.1.7.2 *Other seat adjustments.* Position any adjustable parts of the seat that provide additional support so that they are in the lowest or most open adjustment position.

S22.1.7.3 If the seat cushion adjusts fore and aft, independent of the seat back, set this adjustment to the full rearward position.

S22.1.7.4 If the seat height is adjustable, determine the maximum and minimum heights at the full rearward seat track position, the middle seat track position, and the full forward seat track position. Set the seat at the mid-point height for each of the three fore-aft test positions.

S22.1.7.5 The seat back angle, if adjustable, is set at the manufacturer's nominal design seat back angle for a 50th percentile adult male as specified in S8.1.3 of FMVSS No. 208.

S22.1.7.6 If adjustable, set the head restraint at the full down and full forward position.

S22.2 *Static tests of automatic suppression feature which shall result in deactivation of the passenger air bag.* Each vehicle that is certified as complying with S21.2 of FMVSS No. 208 shall meet the following test requirements:

S22.2.1 *Belted test with forward facing child restraints or booster seats.*

S22.2.1.1 Install the restraint in the right front outboard seat in accordance, to the extent possible, with the child restraint manufacturer's instructions provided with the seat for use by children with the same height and weight as the 3-year-old child dummy.

S22.2.1.2 Locate a vertical plane through the longitudinal centerline of the child restraint. This will be referred to as ''Plane A''.

S22.2.1.3 For bucket seats, ''Plane B'' refers to a vertical longitudinal plane through the longitudinal centerline of the seat cushion of the right front outboard vehicle seat. For bench seats, ''Plane B'' refers to a vertical plane through the right front outboard vehicle seat parallel to the vehicle longitudinal centerline the same distance from the longitudinal centerline of the vehicle as the center of the steering wheel.

22.2.1.4 The vehicle shall comply in both of the following positions, if applicable:

(a) Without attaching the child restraint anchorage system as specified in S5.9 of FMVSS No. 213 to a vehicle seat anchorage system specified in FMVSS No. 225 and without attaching any tethers, align the child restraint system facing forward such that Plane A is aligned with Plane B.

(b) If the child restraint is certified to S5.9 of FMVSS No. 213, and the vehicle seat has an anchorage system as specified in FMVSS No. 225, attach the child restraint to the vehicle seat anchorage instead of aligning the planes. Do not attach the vehicle safety belt.

S22.2.1.5 *Forward facing child restraint.*

S22.2.1.5.1 Place any adjustable seat belt anchorages at the vehicle manufacturer's nominal design position for a 50th percentile adult male occupant. Cinch the vehicle belts to any tension from zero up to 134 N (30 lb) to secure the child restraint. Measure belt tension in a flat, straight section of the lap belt between the child restraint belt path and the contact point with the belt anchor or vehicle seat, on the side away from the buckle (to avoid interference from the shoulder portion of the belt).

S22.2.1.5.2 Position the 49 CFR part 572 subpart P 3-year-old child dummy in the child restraint such that the dummy's lower torso is centered on the child restraint and the dummy's spine is against the seat back of the child restraint. Place the arms at the dummy's sides.

S22.2.1.5.3 Attach all belts that come with the child restraint that are appropriate for a child of the same height and weight as the 3-year-old child dummy, if any, by following, to the extent possible, the manufacturer's instructions provided with the child restraint for seating children.

S22.2.1.6 *Booster seat.*

S22.2.1.6.1 Place any adjustable seat belt anchorages at the vehicle manufacturer's nominal design position for a 50th percentile adult male occupant. For booster seats designed to be secured to the vehicle seat even when empty, cinch the vehicle belts to any tension from zero up to 134 N (30 lb) to secure the booster seat. Measure belt tension in a flat, straight section of the lap belt between the child restraint belt path and the contact point with the belt anchor or vehicle seat, on the side away from the buckle (to avoid interference from the shoulder portion of the belt).

S22.2.1.6.2 Position the 49 CFR part 572 subpart P 3-year-old child dummy

in the booster seat such that the dummy's lower torso is centered on the booster seat cushion and the dummy's back is parallel to and in contact with the booster seat back or, if there is no booster seat back, the vehicle seat back. Place the arms at the dummy's sides.

S22.2.1.6.3 If applicable, attach all belts that come with the child restraint that are appropriate for a child of the same height and weight as the 3-year-old child dummy, if any, by following, to the extent possible, the manufacturer's instructions provided with the child restraint for seating children.

S22.2.1.6.4 If applicable, place the Type 2 manual belt around the test dummy and fasten the latch. Remove all slack from the lap belt portion. Pull the upper torso webbing out of the retractor and allow it to retract; repeat this four times. Apply a 9 to 18 N (2 to 4 lb) tension load to the lap belt. Allow the excess webbing in the upper torso belt to be retracted by the retractive force of the retractor.

S22.2.1.7 Start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system, and then close all vehicle doors.

S22.2.1.8 Wait 10 seconds, then check whether the air bag is deactivated.

S22.2.2 *Unbelted tests with dummies.* Place the 49 CFR part 572 subpart P 3-year-old child dummy on the right front outboard seat in any of the following positions (without using a child restraint or booster seat or the vehicle's seat belts):

S22.2.2.1 *Sitting on seat with back against seat back*

(a) Position the dummy in the seated position and place it on the right front outboard seat.

(b) In the case of vehicles equipped with bench seats, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline as the center of the steering wheel. In the case of vehicles equipped with bucket seats, position the midsagittal plane of the dummy vertically such that it coincides with the longitudinal centerline of the seat cushion. Position the torso of the dummy against the seat back. Position the dummy's thighs against the seat cushion.

(c) Allow the legs of the dummy to extend off the surface of the seat.

(d) Rotate the dummy's upper arms down until they contact the seat back.

(e) Rotate the dummy's lower arms until the dummy's hands contact the seat cushion.

(f) Start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system, and then close all vehicle doors.

(g) Wait 10 seconds, then check whether the air bag is deactivated.

S22.2.2.2 *Sitting on seat with back against reclined seat back.* Repeat the test sequence in S22.2.2.1 with the seat back angle 25 degrees rearward of the manufacturer's nominal design position for the 50th percentile adult male. If the seat will not recline 25 degrees rearward of the nominal design position, use the closest position that does not exceed 25 degrees.

S22.2.2.3 *Sitting on seat with back not against seat back.*

(a) Position the dummy in the seated position and place it on the right front outboard seat.

(b) In the case of vehicles equipped with bench seats, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline as the center of the steering wheel. In the case of vehicles equipped with bucket seats, position the midsagittal plane of the dummy vertically such that it coincides with the longitudinal centerline of the seat cushion. Position the dummy with the spine vertical so that the horizontal distance from the dummy's back to the seat back is no less than 25 mm (1.0 in) and no more than 150 mm (6.0 in), as measured along the dummy's midsagittal plane at the mid-sternum level. To keep the dummy in position, a material with a maximum breaking strength of 311 N (70 lb) may be used to hold the dummy.

(c) Position the dummy's thighs against the seat cushion.

(d) Allow the legs of the dummy to extend off the surface of the seat.

(e) Position the upper arms parallel to the spine and rotate the dummy's lower arms until the dummy's hands contact the seat cushion.

(f) Start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system, and then close all vehicle doors.

(g) Wait 10 seconds, then check whether the air bag is deactivated.

S22.2.2.4 *Sitting on seat edge, spine vertical, hands by the dummy's sides.*

(a) In the case of vehicles equipped with bench seats, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline as the center of the steering wheel. In the case of vehicles equipped with bucket seats, position the midsagittal plane of the dummy vertically such that it coincides with the longitudinal centerline of the seat cushion.

(b) Position the dummy in the seated position forward in the seat such that the legs are vertical and the back of the legs rest against the front of the seat with the spine vertical. If the dummy's feet contact the floor pan, rotate the legs forward until the dummy is resting on the seat with the feet positioned flat on the floor pan and the dummy spine vertical. To keep the dummy in position, a material with a maximum breaking strength of 311 N (70 lb) may be used to hold the dummy.

(c) Place the upper arms parallel to the spine.

(d) Lower the dummy's lower arms such that they contact the seat cushion.

(e) Start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system, and then close all vehicle doors.

(f) Wait 10 seconds, then check whether the air bag is deactivated.

S22.2.2.5 *Standing on seat, facing forward.*

(a) In the case of vehicles equipped with bench seats, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline as the center of the steering wheel rim. In the case of vehicles equipped with bucket seats, position the midsagittal plane of the dummy vertically such that it coincides with the longitudinal centerline of the seat cushion. Position the dummy in a standing position on the right front outboard seat cushion facing the front of the vehicle while placing the heels of the dummy's feet in contact with the seat back.

(b) Rest the dummy against the seat back, with the arms parallel to the spine.

(c) If the head contacts the vehicle roof, recline the seat so that the head is no longer in contact with the vehicle roof, but allow no more than 5 mm (0.2 in) distance between the head and the roof. If the seat does not sufficiently recline to allow clearance, omit the test.

(d) If necessary use a material with a maximum breaking strength of 311 N (70 lb) or spacer blocks to keep the dummy in position.

(e) Start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system, and then close all vehicle doors.

(f) Wait 10 seconds, then check whether the air bag is deactivated.

S22.2.2.6 *Kneeling on seat, facing forward.*

(a) In the case of vehicles equipped with bench seats, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline as the center of the steering wheel. In the case of vehicles equipped with bucket seats, position the midsagittal plane of the dummy vertically such that it coincides with the longitudinal centerline of the seat cushion.

(b) Position the dummy in a kneeling position in the right front outboard seat with the dummy facing the front of the vehicle with its toes at the intersection of the seat back and seat cushion. Position the dummy so that the spine is vertical. Push down on the legs so that they contact the seat as much as possible and then release. Place the arms parallel to the spine.

(c) If necessary use a material with a maximum breaking strength of 311 N (70 lb) or spacer blocks to keep the dummy in position.

(d) Start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system, and then close all vehicle doors.

(e) Wait 10 seconds, then check whether the air bag is deactivated.

S22.2.2.7 *Kneeling on seat, facing rearward.*

(a) In the case of vehicles equipped with bench seats, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline as the center of the steering wheel. In the case of vehicles equipped with bucket seats, position the midsagittal plane of the dummy vertically such that it coincides with the longitudinal centerline of the seat cushion.

(b) Position the dummy in a kneeling position in the right front outboard seat with the dummy facing the rear of the vehicle. Position the dummy such that the dummy's head and torso are in contact with the seat back. Push down on the legs so that they contact the seat as much as possible and then release. Place the arms parallel to the spine.

(c) Start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system, and then close all vehicle doors.

(d) Wait 10 seconds, then check whether the air bag is deactivated.

S22.2.2.8 *Lying on seat.* This test is performed only in vehicles with 3 designated front seating positions.

(a) Lay the dummy on the right front outboard seat such that the following criteria are met:

(1) The midsagittal plane of the dummy is horizontal,

(2) The dummy's spine is perpendicular to the vehicle's longitudinal axis,

(3) The dummy's arms are parallel to its spine,

(4) A plane passing through the two shoulder joints of the dummy is vertical,

(5) The anterior of the dummy is facing the vehicle front,

(6) The head of the dummy is positioned towards the passenger door, and

(7) The horizontal distance from the topmost point of the dummy's head to the vehicle door is 50 to 100 mm (2–4 in).

(8) The dummy is as far back in the seat as possible.

(b) Rotate the thighs as much as possible toward the chest of the dummy and rotate the legs as much as possible against the thighs.

(c) Move the dummy's upper left arm parallel to the vehicle's transverse plane and the lower left arm 90 degrees to the upper arm. Rotate the lower left arm about the elbow joint and toward the dummy's head until movement is obstructed.

(d) Start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system, and then close all vehicle doors.

(e) Wait 10 seconds, then check whether the air bag is deactivated.

S22.3 *Static tests of automatic suppression feature which shall result in activation of the passenger air bag system.*

S22.3.1 Each vehicle certified to this option shall comply in tests conducted with the right front outboard seating position at the full rearward, middle, and, subject to S16.3.3.1.8, full forward positions. All tests are conducted with the seat height, if adjustable, in the mid-height position.

S22.3.2 Place a 49 CFR part 572 subpart O 5th percentile adult female test dummy at the right front outboard seating position of the vehicle, in accordance with procedures specified in S16.3.3 of this standard, except as specified in S22.3.1. Do not fasten the seat belt.

S22.3.3 Start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system, and then close all vehicle doors.

S22.3.4 Wait 10 seconds, then check whether the air bag system is activated.

S22.4 *Low risk deployment tests.*

S22.4.1 Each vehicle that is certified as complying with S21.4 shall meet the following test requirements with the 49 CFR part 572, subpart P 3-year-old child dummy in both of the following positions: Position 1 (S22.4.2) and Position 2 (S22.4.3).

S22.4.1.1 Locate and mark a point on the front of the dummy's chest jacket on the midsaggital plane which is 114 mm (4.5 in) ± 3 mm (± 0.1 in) along the surface of the skin from the top of the skin at the neck line. This is referred to as ''Point 1.''

S22.4.1.2 Locate the vertical plane parallel to the vehicle longitudinal centerline through the geometric center of the opening through which the right front air bag deploys into the occupant compartment. This is referred to as ''Plane D.''

S22.4.1.3 Locate the horizontal plane through the geometric center of the opening through which the right front air bag deploys into the occupant compartment. This is referred to as ''Plane C.''

S22.4.2 *Position 1 (chest on instrument panel).*

S22.4.2.1 If a seat is adjustable in the fore and aft and/or vertical directions, move the seat to the rear-most seating position and full-down height adjustment. If the seat cushion adjusts fore and aft, independent of the entire seat, adjust the seat cushion to the full-rearward position. If the seat back is adjustable, place the seat back at the manufacturer's nominal design seat back angle for a 50th percentile adult male as specified in S8.1.3 of FMVSS No. 208. Position any adjustable parts of the seat that provide additional support so that they are in the lowest or most open adjustment position. If adjustable, set the head restraint in the lowest position.

S22.4.2.2 Place the dummy in the front passenger seat such that:

S22.4.2.2.1 The midsagittal plane is coincident with Plane D.

S22.4.2.2.2 The legs are initially vertical to the floor pan. The legs and thighs shall be adjusted to the extent necessary for the head/torso to contact the instrument panel as specified in S22.4.2.3.

S22.4.2.2.3 The upper arms are parallel to the torso and the hands are in contact with the thighs.

S22.4.2.3 Without changing the seat position and with the dummy's thorax instrument cavity rear face vertical, move the dummy forward until the dummy head/torso contacts the instrument panel. If the dummy loses contact with the seat cushion because of the forward movement, maintain the height of the dummy and the angle of the thigh with respect to the torso. Once contact is made, raise the dummy vertically until Point 1 lies in Plane C. If the dummy's head contacts the windshield and keeps Point 1 from

reaching Plane C, lower the dummy until there is no more than 5 mm (0.2 in) clearance between the head and the windshield. (The dummy shall remain in contact with the instrument panel while being raised or lowered, which may change the dummy's fore-aft position.)

S22.4.2.4 If possible, position the legs of the dummy so that the legs are vertical and the feet rest flat on the floor pan of the vehicle. If the positioning against the instrument panel does not allow the feet to be on the floor pan, the feet shall be parallel to the floor pan.

S22.4.2.5 If necessary, material with a maximum breaking strength of 311 N (70 lb) and spacer blocks may be used to support the dummy in position. The material should support the torso rather than the head. Support the dummy so that there is minimum interference with the full rotational and translational freedom for the upper torso of the dummy and the material does not interfere with the air bag.

S22.4.3 *Position 2 (head on instrument panel).*

S22.4.3.1 Place the passenger seat in the full rearward seating position. Place the seat back at the manufacturer's nominal design seat back angle for a 50th percentile adult male as specified in S8.1.3 of FMVSS No. 208. If adjustable in the vertical direction, place the seat in the mid-height position. If the seat cushion adjusts fore and aft, independent of the entire seat, adjust the seat cushion to the full rearward position. Position any adjustable parts of the seat that provide additional support so that they are in the lowest or most open adjustment position. If adjustable, set the head restraint in the lowest position.

S22.4.3.2 Place the dummy in the front passenger seat such that:

S22.4.3.2.1 The midsagittal plane is coincident with Plane D.

S22.4.3.2.2 The legs are vertical to the floor pan, the back of the legs are in contact with the seat cushion, and the dummy's thorax instrument cavity rear face is vertical. If it is not possible to position the dummy with the legs in the prescribed position, rotate the legs forward until the dummy is resting on the seat with the feet positioned flat on the floor pan, and the back of the legs are in contact with the front of the seat cushion. Set the transverse distance between the longitudinal centerlines at the front of the dummy's knees at 86 to 91 mm (3.4 to 3.6 in), with the thighs and the legs of the dummy in vertical planes.

S22.4.3.2.3 The upper arms are parallel to the torso and the hands are in contact with the thighs.

S22.4.3.3 Move the seat forward, while maintaining the thorax instrument cavity rear face orientation until any part of the dummy contacts the vehicle's instrument panel.

S22.4.3.4 If dummy contact has not been made with the vehicle's instrument panel at the full forward seating position of the seat, slide the dummy forward until contact is made. Maintain the thorax instrument cavity rear face vertical orientation, the height of the dummy, and the angle of the thigh with respect to the horizontal.

S22.4.3.5 If head/torso contact with the instrument panel has not been made, maintain the angle of the thighs with respect to the horizontal while applying a force towards the front of the vehicle on the spine of the dummy between the shoulder joints until the head or torso comes into contact with the vehicle's instrument panel.

S22.4.3.6 If necessary, material with a maximum breaking strength of 311 N (70 lb) and spacer blocks may be used to support the dummy in position. The material should support the torso rather than the head. Support the dummy so that there is minimum interference with the full rotational and translational freedom for the upper torso of the dummy and the material does not interfere with the air bag.

S22.4.4 Deploy the right front outboard frontal air bag system. If the frontal air bag system contains a multistage inflator, the vehicle shall be able to comply with the injury criteria at any stage or combination of stages or time delay between successive stages that could occur in a rigid barrier crash test at or below 26 km/h (16 mph), under the test procedure specified in S22.5.

S22.5 *Test procedure for determining stages of air bag systems subject to low risk deployment (low speed crashes) test requirement.*

S22.5.1 The test described in S22.5.2 shall be conducted with an unbelted 50th percentile adult male test dummy in the driver seating position according to S8 of FMVSS No. 208 as it applies to that seating position and an unbelted 5th percentile adult female test dummy either in the right front seating position according to S16 as it applies to that seating position or at any fore-aft seat position on the passenger side.

S22.5.2 Impact the vehicle traveling longitudinally forward at any speed, up to and including 26 km/h (16 mph) into a fixed rigid barrier that is perpendicular ± 5 degrees to the line of travel of the vehicle under the applicable conditions of S8 and S10 of FMVSS No. 208, and S16 of this standard excluding S10.7, S10.8 and S10.9 of FMVSS No. 208 and S16.3.5 of this standard.

S22.5.3 Determine which inflation stage or combination of stages are fired and determine the time delay between successive stages. That stage or combination of stages, with time delay between successive stages, shall be used in deploying the air bag when conducting the low risk deployment tests described in S22.4, S24.4, and S26.

S22.5.4 If the air bag does not deploy in the impact described in S22.5.2, the low risk deployment tests described in S22.4, S24.4, and S26 shall be conducted with all stages using the maximum time delay between stages.

S23 [Reserved] See § 571.208, S23.

S24 *Test procedure for S23 of FMVSS No. 208.*

S24.1 *General provisions and definitions.*

S24.1.1 Tests specifying the use of a booster seat may be conducted using any such restraint listed in section D of Appendix A of FMVSS No. 208. The booster seat may be unused or have been previously used only for automatic suppression. If it has been used, there shall not be any visible damage prior to the test. Booster seats are to be used in the manner appropriate for a 6-year-old child of the same height and weight as the 6-year-old child dummy.

S24.1.2 Unless otherwise specified, each vehicle certified to this option shall comply in tests conducted with the right front outboard seating position at the full rearward seat track position, the middle seat track position, and the full forward seat track position. If the dummy contacts the vehicle interior, move the seat rearward to the next detent that provides clearance. If the seat is a power seat, move the seat rearward while assuring that there is a maximum of 5 mm (0.2 in) distance between the vehicle interior and the point on the dummy that would first contact the vehicle interior. All tests are conducted with the seat height, if adjustable, in the mid-height position, and with the seat back angle, if adjustable, at the manufacturer's nominal design seat back angle for a 50th percentile adult male as specified in S8.1.3 of FMVSS No. 208.

S24.1.3 Except as otherwise specified, if the booster seat has an anchorage system as specified in S5.9 of FMVSS No. 213 and is tested in a vehicle with a right front outboard vehicle seat that has an anchorage system as specified in FMVSS No. 225, the vehicle shall comply with the belted test conditions with the restraint anchorage system attached to the vehicle seat anchorage system and the vehicle seat belt unattached. It shall also

comply with the belted test conditions with the restraint anchorage system unattached to the vehicle seat anchorage system and the vehicle seat belt attached. The vehicle shall comply with the unbelted test conditions with the restraint anchorage system unattached to the vehicle seat anchorage system.

S24.1.4 Do not attach any tethers.

S24.1.5 The definitions provided in S16.3.1 through S16.3.10 apply to the tests specified in S24.

S24.1.6 For leg and thigh angles, use the following references:

S24.1.6.1 *Thigh*—a straight line on the thigh skin between the center of the 5/16–18 UNC–2B threaded access hole in the upper leg clamp (drawing 127–4004, 6 YR H3—upper leg clamp) and the knee screw (part 9000248 in drawing 127–4000–1 & –2, leg assembly).

S24.1.6.2 *Leg*—a straight line on the leg skin between the center of the lower leg screw (part 9001170 in drawing 127–4000–1 & –2, leg assembly) and the knee screw (part 9000248 in drawing 127–4000–1 & –2, leg assembly).

S24.2 *Static tests of automatic suppression feature which shall result in deactivation of the passenger air bag.* Each vehicle that is certified as complying with S23.2 of FMVSS No. 208 shall meet the following test requirements.

S24.2.1 Except as provided in S24.2.2, conduct all tests as specified in S22.2, except that the 49 CFR part 572 subpart N 6-year-old child dummy shall be used.

S24.2.2 *Exceptions.* The tests specified in the following paragraphs of S22.2 need not be conducted: S22.2.1.5, S22.2.2.3, S22.2.2.5, S22.2.2.6, S22.2.2.7, and S22.2.2.8.

S24.2.3 *Sitting back in the seat and leaning on the right front passenger door.*

(a) Position the dummy in the seated position and place the dummy in the right front outboard seat. For bucket seats, position the midsagittal plane of the dummy vertically such that it coincides with the longitudinal center line of the seat cushion. For bench seats, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the longitudinal centerline of the vehicle as the center of the steering wheel.

(b) Place the dummy's back against the seat back and rest the dummy's thighs on the seat cushion.

(c) Allow the legs and feet of the dummy to extend off the surface of the seat. If this positioning of the dummy's legs is prevented by contact with the instrument panel, move the seat rearward to the next detent that provides clearance. If the seat is a power seat, move the seat rearward, while assuring that there is a maximum of 5 mm (0.2 in) distance between the vehicle interior and the part of the dummy that was in contact with the vehicle interior.

(d) Rotate the dummy's upper arms toward the seat back until they make contact.

(e) Rotate the dummy's lower arms down until they contact the seat.

(f) Close the vehicle's passenger-side door and then start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system.

(g) Push against the dummy's left shoulder to lean the dummy against the door; close all remaining doors.

(h) Wait 10 seconds, then check whether the air bag is deactivated.

S24.3 Static tests of automatic suppression feature which shall result in activation of the passenger air bag system.

S24.3.1 Each vehicle certified to this option shall comply in tests conducted with the right front outboard seating position at the full rearward seat track position, the middle seat track position, and, subject to S16.3.3.1.8, the full forward seat track position. All tests are conducted with the seat height, if adjustable, in the mid-height position.

S24.3.2 Place a 49 CFR part 572 subpart O 5th percentile adult female test dummy at the right front outboard seating position of the vehicle, in accordance with procedures specified in S16.3.3 of this standard, except as specified in S24.3.1. Do not fasten the seat belt.

S24.3.3 Start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system, and then close all vehicle doors.

S24.3.4 Wait 10 seconds, then check whether the air bag system is activated.

S24.4 *Low risk deployment tests.*

S24.4.1 Each vehicle that is certified as complying with S23.4 of FMVSS No. 208 shall meet the following test requirements with the 49 CFR part 572 subpart N 6-year-old child dummy in both of the following positions: Position 1 (S24.4.2) or Position 2 (S24.4.3).

S24.4.1.1 Locate and mark a point on the front of the dummy's chest jacket on the midsagittal plane which is 139 mm (5.5 in) ± 3 mm (± 0.1 in) along the surface of the skin from the top of the skin at the neckline. This is referred to as ''Point 1.''

S24.4.1.2 Locate the vertical plane parallel to the vehicle longitudinal centerline through the geometric center of the opening through which the right front air bag deploys into the occupant compartment. This is referred to as ''Plane D.''

S24.4.1.3 Locate the horizontal plane through the geometric center of the opening through which the right front air bag deploys into the occupant compartment. This is referred to as ''Plane C.''

S24.4.2 *Position 1 (chest on instrument panel).*

S24.4.2.1 If a seat is adjustable in the fore and aft and/or vertical directions, move the seat to the rearmost seating position and full down height adjustment. If the seat cushion adjusts fore and aft, independent of the entire seat, adjust the seat cushion to the full rearward position. If the seat back is adjustable, place the seat back at the manufacturer's nominal design seat back angle for a 50th percentile adult male as specified in S8.1.3. Position any adjustable parts of the seat that provide additional support so that they are in the lowest or most open adjustment position. Position an adjustable head restraint in the lowest position.

S24.4.2.2 Remove the legs of the dummy at the pelvic interface.

S24.4.2.3 Place the dummy in the front passenger seat such that:

(a) The midsagittal plane is coincident with Plane D.

(b) The upper arms are parallel to the torso and the hands are next to where the thighs would be.

(c) Without changing the seat position and with the dummy's thorax instrument cavity rear face 6 degrees forward of the vertical, move the dummy forward until the dummy head/torso contacts the instrument panel. If the dummy loses contact with the seat cushion because of the forward movement, maintain the height of the dummy while moving the dummy forward. If the head contacts the windshield before head/torso contact with the instrument panel, maintain the thorax instrument cavity angle and move the dummy forward such that the head is following the angle of the windshield until there is head/torso contact with the instrument panel. Once contact is made, raise or lower the dummy vertically until Point 1 lies in Plane C. If the dummy's head contacts the windshield and keeps Point 1 from reaching Plane C, lower the dummy until there is no more than 5 mm (0.2 in) clearance between the head and the windshield. (The dummy shall remain in contact with the instrument panel while being raised or lowered which may change the dummy's fore-aft position.)

S24.4.2.4 If necessary, material with a maximum breaking strength of 311 N

(70 lb) and spacer blocks may be used to support the dummy in position. The material should support the torso rather than the head. Support the dummy so that there is minimum interference with the full rotational and translational freedom for the upper torso of the dummy and the material does not interfere with the air bag.

S24.4.3 *Position 2 (head on instrument panel).*

S24.4.3.1 Place the passenger seat in the full rearward seating position. Place the seat back at the manufacturer's nominal design seat back angle for a 50th percentile adult male as specified in S8.1.3 of FMVSS No. 208. If adjustable in the vertical direction, place the seat in the mid-height position. If the seat cushion adjusts fore and aft, independent of the entire seat, adjust the seat cushion to the full rearward position. Position any adjustable parts of the seat that provide additional support so that they are in the lowest or most open adjustment position. Position an adjustable head restraint in the lowest position.

S24.4.3.2 Place the dummy in the front passenger seat such that:

(a) The midsagittal plane is coincident with Plane D.

(b) The legs are perpendicular to the floor pan, the back of the legs are in contact with the seat cushion, and the dummy's thorax instrument cavity rear face is 6 degrees forward of vertical. If it is not possible to position the dummy with the legs in the prescribed position, rotate the legs forward until the dummy is resting on the seat with the feet positioned flat on the floor pan and the back of the legs are in contact with the front of the seat cushion. Set the transverse distance between the longitudinal centerlines at the front of the dummy's knees at 112 to 117 mm (4.4. to 4.6 in), with the thighs and the legs of the dummy in vertical planes.

(c) The upper arms are parallel to the torso and the hands are in contact with the thighs. S24.4.3.3 Move the seat forward, while maintaining the thorax instrument cavity rear face orientation until any part of the dummy contacts the vehicle's instrument panel.

S24.4.3.4 If dummy contact has not been made with the vehicle's instrument panel at the full forward seating position of the seat, slide the dummy forward on the seat until contact is made. Maintain the thorax instrument cavity rear face orientation, the height of the dummy, and the angle of the thigh with respect to the horizontal.

S24.4.3.5 If head/torso contact has not been made with the instrument panel, maintain the angle of the thighs with respect to the horizontal while applying a force towards the front of the vehicle on the spine of the dummy between the shoulder joints until the head/torso comes into contact with the vehicle's instrument panel.

S24.4.3.6 If necessary, material with a maximum breaking strength of 311 N (70 lb) and spacer blocks may be used to support the dummy in position. Material should support the torso rather than the head. Support the dummy so that there is minimum interference with the full rotational and translational freedom for the upper torso of the dummy and the material does not interfere with the air bag.

S24.4.4 Deploy the right front outboard frontal air bag system. If the frontal air bag system contains a multistage inflator, the vehicle shall be able to comply with the injury criteria at any stage or combination of stages and at any time delay between successive stages that could occur in a rigid barrier crash at speeds up to 26 km/h (16 mph) under the test procedure specified in S22.5.

S25 [Reserved] See § 571.208, S25.

S26 *Procedure for low risk deployment tests of driver air bag.*

S26.1 Each vehicle that is certified as complying with S25.3 of FMVSS No. 208 shall meet the requirements of S25.3 and S25.4 with the 49 CFR part 572 subpart O 5th percentile adult female dummy in both of the following positions: Driver position 1 (S26.2) and Driver position 2 (S26.3).

S26.2 *Driver position 1 (chin on module).*

S26.2.1 Adjust the steering controls so that the steering wheel hub is at the geometric center of the locus it describes when it is moved through its full range of driving positions. If there is no setting at the geometric center, position it one setting lower than the geometric center. Set the rotation of the steering wheel so that the vehicle wheels are pointed straight ahead.

S26.2.2 Locate the vertical plane parallel to the vehicle longitudinal axis which passes through the geometric center of the opening through which the driver air bag deploys into the occupant compartment. This is referred to as ''Plane E.''

S26.2.3 Place the seat in the full rearward seating position. If adjustable in the vertical direction, place the seat in the mid-height position. If the seat cushion adjusts fore and aft, independent of the entire seat, adjust the seat cushion to the full rearward position. If the seat back is adjustable, place the seat back at the manufacturer's nominal design seat back angle for a 50th percentile adult male as specified in S8.1.3 of FMVSS No. 208. If the seat cushion contains an independent seat cushion angle adjustment mechanism, adjust the seat cushion angle to the middle of the range of seat cushion angles. Position any adjustable parts of the seat that provide additional support so that they are in the lowest or most open adjustment position. Position an adjustable head restraint in the lowest position.

S26.2.4 Place the dummy in the driver's seat such that:

S26.2.4.1 The midsagittal plane is coincident with Plane E.

S26.2.4.2 The legs are perpendicular to the floor pan and the back of the legs are in contact with the seat cushion. The legs may be adjusted if necessary to achieve the final head position.

S26.2.4.3 The dummy's thorax instrument cavity rear face is 6 degrees forward (toward the front of the vehicle) of the steering wheel angle (*i.e.*, if the steering wheel angle is 25 degrees from vertical, the thorax instrument cavity rear face angle is 31 degrees).

S26.2.4.4 The initial transverse distance between the longitudinal centerlines at the front of the dummy's knees is 160 to 170 mm (6.3 to 6.7 in), with the thighs and legs of the dummy in vertical planes.

S26.2.4.5 The upper arms are parallel to the torso and the hands are in contact with the thighs.

S26.2.5 Maintaining the spine angle, slide the dummy forward until the head/torso contacts the steering wheel.

S26.2.6 While maintaining the spine angle, adjust the height of the dummy so that the bottom of the chin is in the same horizontal plane as the highest point of the air bag module cover (dummy height can be adjusted using the seat height adjustments and/or spacer blocks). If the seat prevents the bottom of the chin from being in the same horizontal plane as the module cover, adjust the dummy height to as close to the prescribed position as possible.

S26.2.7 If necessary, material with a maximum breaking strength of 311 N (70 lb) and spacer blocks may be used to support the dummy in position. The material should support the torso rather than the head. Support the dummy so that there is minimum interference with the full rotational and translational freedom for the upper torso of the dummy and the material does not interfere with the air bag.

S26.3 *Driver position 2 (chin on rim).*

S26.3.1 Place the seat in the full rearward seating position. If adjustable in the vertical direction, place the seat in the mid-height position. If the seat

cushion adjusts fore and aft, independent of the entire seat, adjust the seat cushion to the full rearward position. If the seatback is adjustable, place the seat back at the manufacturer's nominal design seat back angle for a 50th percentile adult male as specified in S8.1.3 of FMVSS No. 208. If the seat cushion contains an independent seat cushion angle adjustment mechanism, adjust the seat cushion angle to the middle of the range of seat cushion angles. Position any adjustable parts of the seat that provide additional support so that they are in the lowest or most open adjustment position. Position an adjustable head restraint in the lowest position.

S26.3.2 Adjust the steering controls so that the steering wheel hub is at the geometric center of the locus it describes when it is moved through its full range of driving positions. If there is no setting at the geometric center, position it one setting lower than the geometric center. Set the rotation of the steering wheel so that the vehicle wheels are pointed straight ahead.

S26.3.3 Locate the vertical plane parallel to the vehicle longitudinal axis which passes through the geometric center of the opening through which the driver air bag deploys into the occupant compartment. This is referred to as ''Plane E.''

S26.3.4 Place the dummy in the driver's seat position such that:

S26.3.4.1 The midsagittal plane is coincident with Plane E.

S26.3.4.2 The legs are perpendicular to the floor pan and the back of the legs are in contact with the seat cushion. The legs may be adjusted if necessary to achieve the final head position.

S26.3.4.3 The dummy's thorax instrument cavity rear face is 6 degrees forward (toward the front of the vehicle) of the steering wheel angle (*i.e.*, if the steering wheel angle is 25 degrees from vertical, the thorax instrument cavity rear face angle is 31 degrees).

S26.3.4.4 The initial transverse distance between the longitudinal centerlines at the front of the dummy's knees is 160 to 170 mm (6.3 to 6.7 in), with the thighs and legs of the dummy in vertical planes.

S26.3.4.5 The upper arms are parallel to the torso and the hands are in contact with the thighs.

S26.3.5 Maintaining the spine angle, slide the dummy forward until the head/torso contacts the steering wheel.

S26.3.6 While maintaining the spine angle, position the dummy so that a point on the chin 40 mm below the center of the mouth (chin point) is in contact with the rim of the uppermost portion of the steering wheel. If the dummy's head contacts the vehicle windshield or upper interior before the prescribed position can be obtained, lower the dummy until there is no more than 5 mm (0.2 in) clearance between the vehicle's windshield or upper interior, as applicable.

S26.3.7 If the steering wheel can be adjusted so that the chin point can be in contact with the rim of the uppermost portion of the steering wheel, adjust the steering wheel to that position and readjust the spine angle to coincide with the steering wheel angle. Position the dummy so that the chin point is in contact with the rim of the uppermost portion of the steering wheel.

S26.3.8 If necessary, material with a maximum breaking strength of 311 N (70 lb) and spacer blocks may be used to support the dummy in position. The material should support the torso rather than the head. Support the dummy so that there is minimum interference with the full rotational and translational freedom for the upper torso of the dummy and the material does not interfere with the air bag.

S26.4 Deploy the left front outboard frontal air bag system. If the air bag system contains a multistage inflator, the vehicle shall be able to comply with the injury criteria at any stage or combination of stages or time delay between successive stages that could occur in a rigid barrier crash at speeds up to 26 km/h (16 mph) under the test procedure specified in S22.5.

S27 through S29 [Reserved] *See* § 571.208, S27 through S29.

Issued on: January 16, 2004.

Jeffrey W. Runge,

Administrator.

[FR Doc. 04–1386 Filed 1–21–04; 5:06 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031126297–3297–01; I.D. 012204A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the first seasonal allowance of the pollock interim total allowable catch (TAC) for Statistical Area 610 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 22, 2004, until superseded by the notice of Final 2004 Harvest Specifications of Groundfish for the GOA, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The first seasonal allowance of the pollock interim TAC in Statistical Area 610 of the GOA is 2,894 metric tons (mt) as established by the interim 2004 harvest specifications for groundfish of the GOA (68 FR 67964, December 5, 2003).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the first seasonal allowance of the pollock interim TAC in Statistical Area 610 will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,694 mt, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

Maximum retainable amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is

impracticable and contrary to the public interest as it would prevent the Agency from responding to the most recent fisheries data in a timely fashion and would delay the closure of the pollock fishery under the interim TAC in Statistical Area 610.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by section 679.20 and is exempt from review under Executive Order 12866.

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

Dated: January 22, 2004.

Bruce C. Morehead,

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

[FR Doc. 04–1676 Filed 1–22–04; 4:20 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 17
Tuesday, January 27, 2004

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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1220

[No. LS–03–09]

Soybean Promotion and Research Program: Procedures to Request a Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the procedures for soybean producers to request a referendum on the Soybean Promotion and Research Order (Order), as authorized under the Soybean Promotion, Research, and Consumer Information Act (Act). The changes are intended to improve the operation of these procedures. The Act provides that the Department of Agriculture (USDA), 5 years after the conduct of the initial referendum and every 5 years thereafter, will give soybean producers the opportunity to request an additional referendum on the Order. Individual producers and other producer entities would be provided the opportunity to request a referendum during a specified period announced by USDA, at the county Farm Service Agency (FSA) office where FSA maintains and processes the producer's administrative farm records. For the producer not participating in FSA programs, the opportunity to request a referendum would be provided at the county FSA office serving the county where the producer owns or rents land. If at least 10 percent of U.S. soybean producers (not in excess of one-fifth of which may be producers in any one State) support the conduct of a referendum, a referendum must be conducted within 1 year of that determination.

DATES: Written comments must be received by February 17, 2004.

ADDRESSES: Send comments to Kenneth R. Payne, Chief; Marketing Programs Branch; Livestock and Seed Program; Agricultural Marketing Service (AMS), USDA, Room 2638–S; STOP 0251; 1400 Independence Avenue, SW., Washington, DC 20250–0251. Comments may also be sent electronically to *SoybeanComments@usda.gov* or by facsimile at (202) 720–1125. All comments should reference the docket number LS–03–09, the date, and the page number of this issue of the **Federal Register.** Comments received may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, or via the Internet at *http://www.ams.usda.gov/lsg/mpb/rp-soy.htm.*

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Chief, Marketing Programs Branch on (202) 720–1115, fax (202) 720–1125, or by e-mail at *Kenneth.Payne@usda.gov* or Phil Brockman, USDA, Farm Service Agency, on (202) 690–8034, fax (202) 720–5900, or by e-mail on *Phil.Brockman@usda.gov.*

Producers can determine the location of county FSA offices by contacting (1) the nearest county FSA office, (2) the State FSA office, or (3) through an online search of FSA's Web site at *http://www.fsa.usda.gov/pas/default.asp.* From the options available on this Web page select ''Your local office,'' click on your State, and click on the map to select a county.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866

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

Executive Orders 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposal is not intended to have a retroactive effect. This proposed rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1971 of the Act, a person subject to the Order may file a petition with USDA stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with the law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing, USDA would rule on the petition. The Act provides that the district courts of the United States in any district in which such person is an inhabitant, or has their principal place of business, has jurisdiction to review USDA's ruling on the petition, if a complaint for this purpose is filed within 20 days after the date of the entry of the ruling.

Further, section 1974 of the Act provides, with certain exceptions, that nothing in the Act may be construed to preempt or supersede any other program relating to soybean promotion, research, consumer information, or industry information organized and operated under the laws of the United States or any State. One exception in the Act concerns assessments collected by Qualified State Soybean Boards (QSSBs). The exception provides that to ensure adequate funding of the operations of QSSBs under the Act, no State law or regulation may limit or have the effect of limiting the full amount of assessments that a QSSB in that State may collect, and which is authorized to be credited under the Act. Another exception concerns certain referenda conducted during specified periods by a State relating to the continuation or termination of a QSSB or State soybean assessment.

Regulatory Flexibility Act

The Agricultural Marketing Service has determined that this proposed rule will not have a significant impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (RFA) (5 United States Code (U.S.C.) 601 *et seq.*). Participation in the Request for Referendum is voluntary. Not all persons subject to the Order are expected to participate. USDA personnel would determine producer eligibility.

For the purposes of the Request for Referendum, the Secretary would use the most recent number of soybean producers identified by USDA's FSA. The latest number of soybean producers identified by FSA was obtained by averaging the number of soybeans producers for crop years 2001 (597,151) and 2002 (573,825). Therefore, the

number of soybean producers who would be eligible to participate in the Request for Referendum would be 585,488. The majority of producers subject to the Order are small businesses under the criteria established by the Small Business Administration (SBA) (13 CFR 121.201). SBA defines small agricultural producers as those having annual receipts of less than $750,000 annually.

This proposed rule would revise the current procedures for soybean producers to request a referendum on the Order. The proposed changes affect a number of sections in subpart F of part 1220, and include requiring documentation with form LS–51–1 to demonstrate that the producer or producer entity paid soybean assessments. Other changes are intended to improve the operation of the procedures. The procedures to request a referendum on the Soybean Checkoff Program would permit all eligible producers who have been engaged in the production of soybeans or soybean products, during a representative period, to participate.

The information collection requirements, as discussed below, are minimal. Requesting a form by mail, in-person, facsimile, or via the Internet would not impose a significant economic burden on participants. Accordingly, the Administrator of AMS has determined that this proposed rule will not have a significant economic impact on a substantial number of small business entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1990 (44 U.S.C. Chapter 35), the reporting and recordkeeping requirements included in 7 CFR part 1220 were previously approved by OMB and were assigned OMB control number 0581–0093. The purpose of this proposed rule is to provide soybean producers the opportunity to request a referendum on the Order. The proposed changes would affect the information collection requirements by requiring documentation to be provided with form LS–51–1. However, providing the documentation will have no significant impact on the approved per response burden for form LS–51–1.

Background

The Act (7 U.S.C. 6301–6311) provides for the establishment of a coordinated program of promotion and research designed to strengthen the soybean industry's position in the marketplace, and to maintain and expand domestic and foreign markets and uses for soybeans and soybean products. The program is financed by an assessment of 0.5 of 1 percent of the net market price of soybeans sold by producers. The final Order establishing a Soybean Promotion, Research, and Consumer Information program was published in the July 9, 1991, issue of the **Federal Register** (56 FR 31043) and assessments began on September 1, 1991.

The Act required that an initial referendum be conducted no earlier than 18 months and not later than 36 months after the issuance of the Order to determine whether the Order should be continued.

The initial referendum was conducted on February 9, 1994. On April 1, 1994, the Secretary announced that of the 85,606 valid ballots cast, 46,060 (53.8 percent) were in favor of continuing the Order and the remaining 39,546 votes (46.2 percent) were against continuing the Order. The Act required approval by a simple majority for the Order to continue.

The Act also required that within 18 months after the Secretary announced the results of the initial referendum, the Secretary would conduct a poll among producers to determine if producers favored a referendum on the continuance of the payment of refunds under the Order.

A July 25, 1995, nationwide poll of soybean producers did not generate sufficient support for a refund referendum to be held. A refund referendum would have been held if at least 20 percent (not in excess of one-fifth of which may be producers in any one State) of the 381,000 producers (76,200) nationwide requested it. Only 48,782 soybean producers participated in the poll. Consequently, refunds were discontinued on October 1, 1995.

The Act also specifies that the Secretary shall, 5 years after the conduct of the initial referendum and every 5 years thereafter, provide soybean producers an opportunity to request a referendum on the Order. On October 1, 1999, through November 16, 1999, a nationwide request for a referendum on the Order was conducted to determine if there was sufficient interest among soybean producers to vote on whether to continue the Soybean Checkoff Program. If at least 10 percent of the 600,813 soybean producers nationwide (not in excess of one-fifth of which may be producers in any one State) participated in the request for referendum, a referendum would have been held. Only 17,970 eligible soybean producers completed valid requests—far short of the 60,082 required to trigger a referendum.

For all such referendums, if the Secretary determines that at least 10 percent of U.S. producers engaged in growing soybeans (not in excess of one-fifth of which may be producers in any one State) support the conduct of a referendum, the Secretary must conduct a referendum within 1 year of that determination. If these requirements are not met, no referendum would be conducted.

For the purposes of the Request for Referendum, USDA determined that they would use the most recent data of soybean producers identified by USDA's FSA. The latest number of soybean producers identified by FSA was 597,151 soybeans producers for crop year 2001 and 573,825 soybean producers for crop year 2002. The information for crop years 2001 and 2002 are based on acreage reports compiled by FSA on a daily basis. Using the last two crop years would help ensure that all eligible producers were counted. Since some producers use soybeans in rotation with other crops and do not plant soybeans every year or the market for some producers in a particular crop year may not have been conducive for growing soybeans, averaging two crop years would help ensure that all eligible producers were counted.

In an effort to follow procedures similar to determining the number of soybean producers for the Request for Referendum that was conducted in 1999, USDA averaged the number of soybean producers for crop years 2001 and 2002, which averages 585,488 soybean producers. Therefore, USDA has determined that the number of soybean producers who would be eligible to participate in the Request for Referendum would be 585,488.

The Act provides that producers shall have an opportunity to request a referendum during a period established by the Secretary. Eligible persons must certify on an official form that they were engaged in the growing of soybeans during a representative period specified by the Secretary, and indicate that they favor the conduct of a referendum. Further, producers would be required to provide documentation, such as sales receipts, showing that an assessment was paid during the representative period. USDA proposes that the Request for Referendum period would be a 4-week period announced by the Secretary and that the representative period for which a producer was engaged in the growing of soybeans would be January 1, 2001, to December 31, 2003. The Act also provides that a Request for Referendum may be made in person or by mail-in request at county

Cooperative Extension Service offices or county FSA offices. USDA proposes that providing soybean producers an opportunity to request a referendum at the county FSA office would give soybean producers the greatest opportunity to request a referendum.

The proposed rule sets forth revised procedures for producers to request a referendum as authorized under the Act, including definitions, eligibility, certification and request procedures, reporting results, and disposition of the forms and records. FSA would coordinate State and county FSA roles in conducting the Request for Referendum by (1) determining producer eligibility, (2) canvassing and counting requests, and (3) reporting the results.

The following are the proposed revisions to the Order, subpart F, ''Procedures to Request a Referendum.'' We believe that publishing the entire subpart F of the Order would be easier for commenters to review than only publishing the parts that were revised.

Sections 1220.600 through 1220.615 are revised by removing the phrase ''the term'' from all of the definitions. In addition, the definition for ''Department'' was deleted; however, it is defined in subpart A, which applies to all subparts of the Order. Definitions for ''Farm Service Agency State Committee'' and ''Farm Service Agency State Executive Director'' were also added.

Section 1220.616, the number of soybean producers was revised from 600,813 to 585,488.

Section 1220.618, ''Eligibility,'' is revised by requesting producers to provide evidence that they or the producer entity that they represent has paid the soybean assessment during the representative period.

Section 1220.619, ''Time and place for requesting a referendum,'' added two paragraphs to assist persons in locating FSA county offices and determining which FSA county office to vote.

Section 1220.620, ''Facilities,'' explains the type of facilities that FSA is to provide to persons voting in the request for referendum.

Section 1220.622, ''Certification and request procedures,'' clarified the procedures in requesting a referendum in terms of completing form LS–51–1, providing documentation that the soybean assessment was paid during the representative period, how to obtain forms by mail, facsimile, or via the Internet, and how to return the form and documentation.

Current procedures provide that FSA county offices list and post the names of producers that request a referendum. Any person could challenge a producer or producer entity's eligibility. Instead, USDA is proposing that producers and producer entities provide documentation that they paid the soybean assessment when they complete form LS–51–1. FSA will then determine whether the producer is eligible, based on the documentation submitted by the producer or producer entity. If FSA cannot determine the person's eligibility or if the person failed to submit the documentation, then FSA shall notify ineligible persons in writing. Persons declared ineligible by FSA have the opportunity to provide additional documentation and will then be notified by FSA of their eligibility.

Section 1220.623, ''Canvassing requests,'' explains that county FSA offices are to start canvassing form LS–51–1 on the 5th business day following the Request for Referendum period. It also explains who and how the canvassing is to be conducted.

Section 1220.624, ''Confidentiality,'' was added to not divulge names of persons requesting a referendum.

The remainder of the proposed Request for Referendum procedures is similar to the 1999 Request for Referendum procedures, as well as, counting and reporting the results from FSA county offices to FSA State offices to the FSA Administrator to the AMS Administrator, and ultimately announcing the results in a press release and in the **Federal Register**.

A 20-day comment period is provided for interested persons to comment on this proposed rule. This comment period is deemed appropriate because the Act provides that the Secretary, 5 years after the conduct of the initial referendum, will give soybean producers the opportunity to request additional referenda on the Order. A 20-day comment period will assist in timely implementation of this rule consistent with the provisions of the Act.

List of Subjects in 7 CFR Part 1220

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Soybeans and soybean products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that title 7, part 1220 be amended as follows:

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR part 1220 continues to read as follows:

Authority: 7 U.S.C. 6301–6311.

2. Subpart F is revised to read as follows:

Subpart F—Procedures To Request a Referendum

Definitions

Sec.
1220.600 Act.
1220.601 Administrator, AMS.
1220.602 Administrator, FSA.
1220.603 Farm Service Agency.
1220.604 Farm Service Agency County Committee.
1220.605 Farm Service Agency County Executive Director.
1220.606 Farm Service Agency State Committee.
1220.607 Farm Service Agency State Executive Director.
1220.608 Order.
1220.609 Person.
1220.610 Producer.
1220.611 Public notice.
1220.612 Representative period.
1220.613 Secretary.
1220.614 Soybeans.
1220.615 State and United States.

Procedures

1220.616 General.
1220.617 Supervision of the process for requesting a referendum.
1220.618 Eligibility.
1220.619 Time and place for requesting a referendum.
1220.620 Facilities.
1220.621 Certifications and request form.
1220.622 Certification and request procedures.
1220.623 Canvassing requests.
1220.624 Confidentiality.
1220.625 Counting requests.
1220.626 FSA county office report.
1220.627 FSA State office report.
1220.628 Results of the request for referendum.
1220.629 Disposition of records.
1220.630 Instructions and forms.

Subpart F—Procedures To Request a Referendum

Definitions

§ 1220.600 Act.

Act means the Soybean, Promotion, Research, and Consumer Information Act set forth in title XIX, subtitle E, of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624), and any amendments thereto.

§ 1220.601 Administrator, AMS.

Administrator, AMS, means the Administrator of the Agricultural Marketing Service, or any officer or employee of USDA to whom there has been delegated or may be delegated the authority to act in the Administrator's stead.

§ 1220.602 Administrator, FSA.

Administrator, FSA, means the Administrator, of the Farm Service Agency, or any officer or employee of USDA to whom there has been delegated or may be delegated the authority to act in the Administrator's stead.

§ 1220.603 Farm Service Agency.

Farm Service Agency also referred to as ''FSA'' means the Farm Service Agency of USDA.

§ 1220.604 Farm Service Agency County Committee.

Farm Service Agency County Committee, also referred to as ''FSA County Committee or COC,'' means the group of persons within a county who are elected to act as the Farm Service Agency County Committee.

§ 1220.605 Farm Service Agency County Executive Director.

Farm Service Agency County Executive Director, also referred to as ''CED,'' means the person employed by the FSA County Committee to execute the policies of the FSA County Committee and to be responsible for the day-to-day operation of the FSA county office, or the person acting in such capacity.

§ 1220.606 Farm Service Agency State Committee.

Farm Service Agency State Committee, also referred to as ''FSA State Committee,'' means the group of persons within a State who are appointed by the Secretary to act as the Farm Service Agency State Committee.

§ 1220.607 Farm Service Agency State Executive Director.

Farm Service Agency State Executive Director, also referred to as ''SED,'' means the person employed by the FSA State Committee to execute the policies of the FSA State Committee and to be responsible for the day-to-day operation of the FSA State office, or the person acting in such capacity.

§ 1220.608 Order.

Order means the Soybean Promotion and Research Order.

§ 1220.609 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1220.610 Producer.

Producer means any person engaged in the growing of soybeans in the United States who owns or who shares the ownership and risk of loss of such soybeans.

§ 1220.611 Public notice.

Public notice means a notice published in the **Federal Register**, not later than 60 days prior to the last day of the Request for Referendum period, that provides information regarding the Request for Referendum period. Such notification shall include, but not be limited to explanation of producers' rights, procedures to request a referendum, the purpose, dates of the Request for Referendum period, location for conducting the Request for Referendum, and eligibility requirements. Additionally, the United Soybean Board is required to provide producers, in writing, this same information during the same time period. Other pertinent information shall also be provided, without advertising expense, through press releases by State and county FSA offices and other appropriate Government offices, by means of newspapers, electronic media, county newsletters, and the like.

§ 1220.612 Representative period.

Representative period means the period designated by the Secretary pursuant to section 1970 of the Act.

§ 1220.613 Secretary.

Secretary means the Secretary of Agriculture of the United States Department of Agriculture (USDA) or any other officer or employee of USDA to whom there has been delegated or to whom there may be delegated the authority to act in the Secretary's stead.

§ 1220.614 Soybeans.

Soybeans means all varieties of glycine max or glycine soja.

§ 1220.615 State and United States.

State and United States include the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

Procedures

§ 1220.616 General.

An opportunity to request a referendum shall be provided to U.S. soybean producers to determine whether eligible producers favor the conduct of a referendum and the Request for Referendum shall be carried out in accordance with this subpart.

(a) The opportunity to request a referendum shall be provided at the county FSA offices.

(b) If the Secretary determines, based on results of the Request for Referendum that no less than 10 percent (not in excess of one-fifth of which may be producers in any one State) of all producers have requested a referendum on the Order, a referendum would be held within 1 year of that determination.

(c) If the Secretary determines, based on the results of the Request for Referendum, that the requirements in paragraph (b) of this section were not met, a referendum would not be conducted.

(d) For purposes of paragraphs (b) and (c) of this section, the number of soybean producers in the United States is determined to be 585,488.

§ 1220.617 Supervision of the process for requesting a referendum.

The Administrator, AMS, shall be responsible for supervising the process of permitting producers to request a referendum in accordance with this subpart.

§ 1220.618 Eligibility.

(a) *Eligible producers.* Each person who was a producer and provides evidence that they or the producer entity they represent has paid an assessment on soybeans during the representative period is provided the opportunity to request a referendum. Each producer entity is entitled to only one request.

(b) *Proxy Registration.* Proxy registration is not authorized, except that an officer or employee of a corporate producer, or any guardian, administrator, executor, or trustee of a producer's estate, or an authorized representative of any eligible producer entity (other than an individual producer), such as a corporation or partnership, may request a referendum on behalf of that entity. Any individual who requests a referendum on behalf of any producer entity, shall certify that he or she is authorized by such entity to take such action.

(c) *Joint and group interest.* A group of individuals, such as members of a family, joint tenants, tenants in common, a partnership, owners of community property, or a corporation engaged in the production of soybeans as a producer entity shall be entitled to make only one request for a referendum; provided, however, that any individual member of a group who is an eligible producer separate from the group may request a referendum separately.

§ 1220.619 Time and place for requesting a referendum.

(a) The opportunity to request a referendum shall be provided during a 4-week period beginning and ending on a date determined by the Secretary. Eligible persons shall have the opportunity to request a referendum by following the procedures in § 1220.622

during the normal business hours of each county FSA office.

(b) Producers can determine the location of county FSA offices by contacting the nearest county FSA office, the State FSA office or through an online search of FSA's Web site at *http://www.fsa.usda.gov/pas/default.asp.*

(c) Each eligible person shall vote in the county FSA office where FSA maintains and processes the producer's, corporation's, or other entities administrative farm records. For the producer, corporation, or other entity not participating in FSA programs, the opportunity to request a referendum would be provided at the county FSA office serving the county where the producer, corporation, or other legal entity owns or rents land. An individual or authorized representative of a corporation who grows soybeans in more than one county would request a referendum in the county FSA office where the individual or corporation or other entity does most of its business.

§ 1220.620 Facilities.

Each county FSA office will provide:

(a) A polling place that is well known and readily accessible to producers in the county and that is equipped and arranged so that each person can complete and submit their request in secret without coercion, duress, or interference of any sort whatsoever, and

(b) A holding container of sufficient size so arranged that no request can be read or removed without breaking seals on the container.

§ 1220.621 Certification and request form.

Form LS–51–1 shall be used to request a referendum and certify producer eligibility. The form does not require a ''yes'' or ''no'' vote. Individual producers and representatives of other producer entities should read the form carefully. By completing and signing the form, the individual simultaneously certifies eligibility and requests that a referendum be conducted.

§ 1220.622 Certification and request procedures.

(a) To request that a referendum be conducted, each eligible producer shall, during the Request for Referendum period, be provided the opportunity to request a referendum during a specified period announced by the Secretary.

(1) Each eligible producer shall be required to complete form LS–51–1 in its entirety and sign it. The producer must legibly print his/her name and, if applicable, the producer entity represented, address, county, and telephone number. The producer must read the certification statement on form LS–51–1 and sign it certifying that:

(i) The person or the producer entity they represent was a producer of soybeans during the representative period;

(ii) The individual requesting a referendum on behalf of a corporation or other entity is authorized to do so; and

(iii) The individual has submitted only one request for a referendum unless they are also an authorized representative for another eligible corporation or other entity.

(2) The producer, corporation, or other entity must also provide documentation, such as a sales receipt, showing that the producer, corporation, or other entity has paid assessments on soybeans during the representative period.

(3) Only a completed and signed form LS–51–1 accompanied by documentation showing that soybean assessments were paid during the representative period shall be considered a valid request for a referendum.

(b) To request a referendum, eligible producers may obtain form LS–51–1 in-person, by mail, or by facsimile during the request for referendum period from the county FSA office where FSA maintains and processes the producer's, corporation's, or other entity's administrative farm records. For the producer, corporation, or other entity not participating in FSA programs, the opportunity to request a referendum would be provided at the county FSA office serving the county where the producer, corporation, or other entity owns or rents land. Eligible producers may also obtain form LS–51–1 via the Internet at *http://www.ams.usda.gov/lsg/mpb/rp-soy.htm.* For those persons who chose to obtain form LS–51–1 via the Internet, the completed form and required documentation must be submitted to the county FSA office where FSA maintains and process the producer's, corporation's, or other entity's administrative farm records. For producer, corporation, or other entity not participating in FSA programs, the opportunity to request a referendum would be provided at the county FSA office serving the county where the producer, corporation, or other entity owns or rents land.

(c) Producers or producer entities may return form LS–51–1 and the accompanying documentation in-person, by mail, or facsimile as provided in paragraph (a) of this section. Form LS–51–1 returned in-person or by facsimile, must be received in the appropriate county FSA office prior to the close of the work day on the final day of the Request for Referendum period to be considered a valid request. Forms LS–51–1 and the accompanying documentation returned by mail must be postmarked no later than midnight of the final day of the Request for Referendum period and must be received in the county FSA office prior to the start of canvassing the ballots.

(d) Producers who obtain form LS–51–1 in-person at the appropriate FSA county office may complete and return the form the same day, accompanied by documentation, such as a sales receipt, showing that soybean assessments were paid during the representative period.

§ 1220.623 Canvassing requests.

(a) Canvassing of form LS–51–1 shall take place at the opening of county FSA offices on the 5th business day following the Request for Referendum period. Such canvassing, acting on behalf of the Administrator, AMS, shall be in the presence of at least two members of the county committee. If two or more of the counties have been combined and are served by one county office, the canvassing of the requests shall be conducted by at least one member of the county committee from each county served by the county office. The FSA State committee or the State Executive Director if authorized by the State Committee, may designate the County Executive Director (CED) and a county or State FSA office employee to canvass the requests and report the results instead of two members of the county committee when it is determined that the number of eligible voters is so limited that having two members of the county committee present for this function is impractical, and designate the CED and/or another county or State FSA office employee to canvass requests in any emergency situation precluding at least two members of the county committee from being present to carry out the functions required in this section.

(b) The request for referendum should be canvassed as follows:

(1) *Number of eligible requests for a referendum.* Each person who was a producer during the representative period and provides documentation to prove that they are a producer will be considered eligible to request a referendum.

(2) *Number of ineligible requests for a referendum.* If FSA cannot determine that a producer is eligible based on the submitted documentation or if the producer fails to submit the required documentation, the producer shall be determined to be ineligible. FSA shall notify ineligible producers in writing as soon as practicable but no later than the

8th business day following the final day of the Request for Referendum period.

(c) *Appeal.* A person declared to be ineligible by FSA can appeal such decision and provide additional documentation to the FSA county office within 5 business days after the postmark date of the letter of notification of ineligibility. FSA will then make a final decision on the producer's eligibility and notify the producer of the decision.

(d) *Number of valid requests for referendum.* A person has been declared eligible and has provided and completed all of the required information on form LS–51–1.

(e) *Number of invalid request for a referendum.* An invalid request for referendum includes, but is not limited to the following:

(1) Form LS–51–1 is not signed or all required information has not been provided;

(2) Form LS–51–1 returned in-person or by facsimile was not received by the last business day of the Request for Referendum period;

(3) Form LS–51–1 returned by mail was not postmarked by midnight of the final day of the Request for Referendum period;

(4) Form LS–51–1 returned by mail was not received in the county FSA office prior to canvassing of the ballots;

(5) Form LS–51–1 is mutilated or marked in such a way that any required information on the form is illegible; or

(6) Form LS–51–1 not returned to the appropriate county FSA office.

§ 1220.624 Confidentiality.

The names of persons requesting a referendum shall be confidential and may not be divulged except as the Secretary may direct.

§ 1220.625 Counting requests.

(a) The requests for a referendum shall be counted by county FSA offices on the same day as the requests are canvassed if there are no ineligibility determinations to resolve. For those county FSA offices that do have ineligibility determinations, the requests shall be counted no later than the 14th business day following the final day of the Request for Referendum period.

(b) Requests for a referendum shall be counted as follows:

(1) Total number of producers who returned a Request for Referendum form LS–51–1;

(2) Number of ineligible producers requesting a referendum;

(3) Number of eligible producers requesting a referendum;

(4) Number of valid requests for a referendum; and

(5) Number of invalid requests for a referendum.

§ 1220.626 FSA county office report.

The county FSA office report shall be certified as accurate and complete by the CED or designee, acting on behalf of the Administrator, AMS, as soon as may be reasonably possible, but in no event later than 18th business day following the final day of the specified period, have prepared and certified the county summary of requests on a form provided by the Administrator, FSA. Each county FSA office shall transmit the results in its county to the FSA State office. The results in each county may be made available to the public upon notification by the Administrator, FSA, that the final results have been released by the Secretary. A copy of the report shall be posted for 30 days following the date of notification by the Administrator, FSA, in the county FSA office in a conspicuous place accessible to the public. One copy shall be kept on file in the county FSA office for a period of at least 12 months after notification by FSA that the final results have been released by the Secretary.

§ 1220.627 FSA State office report.

Each FSA State office shall transmit to the Administrator, FSA, as soon as possible, but in no event later than the 20th business day following the final day of the Request for Referendum period, a report summarizing the data contained in each of the reports from the county FSA offices. One copy of the State summary shall be filed for a period of not less than 12 months after the results have been released and available for public inspection after the results have been released.

§ 1220.628 Results of the request for referendum.

(a) The Administrator, FSA, shall submit to the Administrator, AMS, the reports from all State FSA offices. The Administrator, AMS, shall tabulate the results of the Request for Referendum. USDA will issue an official press release announcing the results of the Request for Referendum and publish the same results in the **Federal Register**. In addition, USDA will post the official results at the following Web site: *http://www.ams.usda.gov/lsg/mpb/rp-soy.htm.* Subsequently, State reports and related papers shall be available for public inspection upon request during normal business hours in the Marketing Programs Branch office, Livestock and Seed Program, AMS, USDA, Room 2638–South, STOP 0251, 1400 Independence Avenue, SW., Washington, DC.

(b) If the Secretary deems necessary, a State report or county report shall be reexamined and checked by such persons who may be designated by the Secretary.

§ 1220.629 Disposition of records.

Each FSA CED will place in sealed containers marked with the identification of the ''Request for Soybean Referendum,'' all of the form LS–51–1's along with the accompanying documentation and county summaries. Such records will be placed in a secure location under the custody of the FSA CED for a period of not less than 12 months after the date of notification by the Administrator, FSA, that the final results have been announced by the Secretary. If the county FSA office receives no notice to the contrary from the Administrator, FSA, by the end of the 12 month period as described above, the CED or designee shall destroy the records.

§ 1220.630 Instructions and forms.

The Administrator, AMS, is authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart.

Dated: January 21, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–1602 Filed 1–26–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–15–AD]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Model A109C, A109E, and A109K2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD) for Agusta S.p.A. (Agusta) Model A109C, A109E, and A109K2 helicopters. That AD currently requires inspecting the main rotor blade (blade) tip cap for bonding separation and a crack, and also requires a tap inspection of the tip cap for bonding separation in the blade bond area and a dye penetrant inspection of the tip cap leading edge along the welded joint line

of the upper and lower tip cap skin shells for a crack. This action would require those same actions, but would correct a blade part number (P/N) that was stated incorrectly in the Applicability section of the existing AD. This proposal is prompted by the need to correct a blade P/N. The actions specified by the proposed AD are intended to prevent failure of a blade tip cap, excessive vibration, and subsequent loss of control of the helicopter.

DATES: Comments must be received by March 29, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–15–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Richard Monschke, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2001–SW–15–AD.'' The postcard will be date stamped and returned to the commenter.

Discussion

On December 19, 2000, Agusta issued Alert Bollettino Tecnico Nos. 109–106, 109K–22, and 109EP–1, all Revision B, which specified inspecting for debond and cracks at the tip cap of blades, P/N 709–0103–01, all dash numbers, through serial numbers 1428 with a prefix of ''A5'' or ''EM''.

The Ente Nazionale per l'Aviazionne Civile (ENAC), the airworthiness authority for Italy, classified these technical bulletins as mandatory and issued AD Nos. 2000–571, 2000–572, and 2000–573, all dated December 22, 2000, requiring an inspection of the tip cap of blades for disbonds or cracks on the specified Agusta Model A109C, A109E, and A109K2 helicopters.

These helicopter models are manufactured in Italy and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, ENAC has kept the FAA informed of the situation described above. The FAA has examined the findings of ENAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

On November 21, 2001, the FAA issued AD 2001–24–07, Amendment 39–12523 (66 FR 60144, December 3, 2001), which superseded AD 98–19–04, Amendment 39–11039, Docket No. 98–SW–40–AD. AD 98–19–04 required inspecting between the metal shells and honeycomb core for bonding separation, visually inspecting the blade tip for swelling or deformation, and visually inspecting the welded bead along the leading edge of the blade tip cap for a crack. AD 2001–24–07 retained those requirements, and added a requirement for a tap inspection of the tip cap for bonding separation in the blade bond area, and a dye penetrant inspection of the tip cap leading edge along the welded joint line of the upper and lower tip cap skin shells for a crack. Installing a tip cap, P/N 709–0103–29–109, on an affected blade is a terminating action for the requirements of the existing AD for that blade. That action was prompted by three occurrences in which the blade tip cap leading edge opened in flight due to cracks, resulting in excessive helicopter vibration. That condition, if not corrected, could result in failure of a blade tip cap, excessive vibration, and subsequent loss of control of the helicopter.

Since issuing AD 2001–24–07, we discovered that a blade P/N was incorrectly stated in the Applicability section of the AD. P/N 709–0130–01–all dash numbers should have been stated as P/N 709–0103–01–all dash numbers.

The previously described unsafe condition is likely to exist or develop on other helicopters of these same type designs. Therefore, the proposed AD would revise AD 2001–24–07 to correct the P/N and to continue to require:

- A tap inspection of the upper and lower sides of the tip cap for bonding separation and in the tip cap to blade bond area;
- A visual inspection of the upper and lower side of the blade tip cap for swelling or deformation; and
- A dye penetrant inspection of the tip cap leading edge along the welded joint line of the upper and lower tip cap skin shells for a crack.

The FAA estimates that this proposed AD would affect 44 helicopters of U.S. registry, and the proposed actions would take approximately 6 work hours per helicopter to accomplish the initial and repetitive inspection at an average labor rate of $65 per work hour. Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators to be $17,160, assuming that no blade will need to be replaced as a result of these inspections.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–12523 (66 FR 60144), and by adding a new airworthiness directive (AD), to read as follows:

Agusta S.p.A.: Docket No. 2001–SW–15–AD. Revises AD 2001–24–07, Amendment 39–12523.

Applicability: Model A109C, A109E, and A109K2 helicopters, with main rotor blade (blade), part number (P/N) 709–0103–01–all dash numbers, having a serial number (S/N) up to and including S/N 1428 with a prefix of either ''EM–'' or ''A5–'' installed, certificated in any category.

Compliance: Required within 10 hours time-in-service (TIS), unless accomplished previously, and thereafter at intervals not to exceed 25 hours TIS.

To prevent failure of a blade tip cap, excessive vibration, and subsequent loss of control of the helicopter, accomplish the following:

(a) Tap inspect the upper and lower sides of each tip cap for bonding separation between the metal shells and the honeycomb core using a steel hammer, P/N 109–3101–58–1, or a coin (quarter) in the area indicated as honeycomb core on Figure 1 of Alert Bollettino Tecnico Nos. 109–106, 109K–22, or 109EP–1, all Revision B, and dated December 19, 2000 (ABT), as applicable. Also, tap inspect for bonding separation in the tip cap to blade bond area (no bonding voids are permitted in this area).

(b) Visually inspect the upper and lower sides of each blade tip cap for swelling or deformation.

(c) Dye-penetrant inspect the tip cap leading edge along the welded joint line of the upper and lower tip cap skin shells for a crack in accordance with the Compliance Instructions, paragraph 3, of the applicable ABT.

(d) If any swelling, deformation, crack, or bonding separation that exceeds the prescribed limits in the applicable maintenance manual is found, replace the blade with an airworthy blade.

(e) Replacement blades affected by this AD must comply with the repetitive inspection requirements of this AD. Replacing an affected blade with a blade having an airworthy blade tip cap, P/N 709–0103–29–109, is terminating action for the requirements of this AD for that blade.

(f) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Safety Management Office, Rotorcraft Directorate, FAA, for information about previously approved alternative methods of compliance.

Note: The subject of this AD is addressed in Ente Nazionale per l'Aviazionne Civile (Italy) AD Nos. 2000–571, 2000–572, and 2000–573, all dated December 22, 2000.

Issued in Fort Worth, Texas, on January 16, 2004.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 04–1687 Filed 1–26–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–300–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes. This proposal would require repetitive inspections of certain support arms of the ground spoiler assemblies for cracking, and replacement of any ground spoiler assembly having cracking with a new ground spoiler assembly. This proposal would also require certain inspections for discrepancies of the ground spoiler assemblies and the flap of each wing; and corrective actions if necessary. This action is necessary to prevent failure of the support arms due to cracking, which could result in loss of function and/or separation of the affected ground spoiler assemblies from the airplane, and consequent reduced controllability of the airplane during landing or rejected take-off operations. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 26, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–30AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–300–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from AvCraft Aerospace GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before

and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–300–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–300–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Dornier Model 328–100 series airplanes. The LBA advises that cracking has been found in support arms No. 3 and No. 8 on ground spoiler assemblies No. 1 and No. 2, part numbers 001B577A1000 and 001B577A1100. The cracking is caused by higher loads placed on the support arms as a result of insufficient clearance between the bottom of the trailing edges of the ground spoilers and the upper surfaces of the wing flaps. This condition, if not corrected, could result in loss of function and/or separation of the affected ground spoiler assemblies from the airplane, and consequent reduced controllability of the airplane during landing or rejected take-off operations.

Explanation of Relevant Service Information

Dornier has issued Service Bulletin SB–328–57–435, Revision 1, dated August 7, 2002, which describes procedures for repetitive eddy current inspections to detect cracking in the bottom edge of the flange for ground spoiler support arms No. 3 and No. 8 of ground spoiler assemblies No. 1 and No. 2, part numbers 001B577A1000 and 001B577A1100, left and right sides of the airplane; and replacement of any ground spoiler assembly having cracking with a new ground spoiler assembly.

Dornier has also issued Service Bulletin SB–328–57–439, Revision 1, dated March 10, 2003, which describes procedures for a visual inspection, contour inspection, and clearance inspection of the ground spoilers and the flap of each wing for discrepancies, and corrective action if necessary. The service bulletin includes the following:

- Procedures for a visual inspection of the flap protection strip for chafing marks, reporting inspection results to the manufacturer, and inspecting the bottom surface of the ground spoiler and the mating upper surface of the flap of each wing for surface damage (chafing marks or paint damage), and repair if necessary. If abnormal chafing marks are found, the service bulletin recommends doing the inspection of the spoiler arms per Dornier Service Bulletin SB–328–57–435, Revision 1, dated August 7, 2002.
- Procedures for a contour inspection of the ground spoiler and the flap of each wing to determine if they are within the specified tolerances, adjusting the ground spoiler actuator if out of tolerance, and reporting the inspection results to the manufacturer.
- Procedures for a clearance inspection between the bottom of the trailing edge of the ground spoiler and the upper surface of the flap of each wing. If there is a notable deflection (spring back effect) between the ground spoiler and the surface, the service bulletin recommends reporting the inspection results to the manufacturer. If there is no notable deflection (spring back effect) between the ground spoiler and the surface, the service bulletin recommends adjusting the ground spoiler actuator and repeating the clearance inspection.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The LBA classified these service bulletins as mandatory and issued German airworthiness directives 2002–258, dated September 5, 2002, and 2003–357, dated November 11, 2003, to ensure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept us informed of the situation described above. We have examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between the Proposed AD, German Airworthiness Directive, and Service Information

Operators should note that Service Bulletin SB–328–57–439, Revision 1, dated March 10, 2003, recommends doing the actions in the service bulletin ''as soon as possible or at the latest at the next A-check or equivalent.'' German airworthiness directive 2003–357, dated November 11, 2003, recommends doing the actions ''at latest at the next A-Check or equivalent.'' Because ''A-check'' schedules vary among operators, this proposed AD would require accomplishment of the actions within 400 flight cycles after the effective date of this proposed AD, and accomplishment of any required corrective action before further flight. We find that compliance of within 400 flight cycles after the effective date of this proposed AD is appropriate for affected airplanes to continue to operate without compromising safety.

Service Bulletin SB–328–57–435, Revision 1, states to contact Dornier if any crack is found in a support arm for a ground spoiler, and to send the affected ground spoiler to Dornier, but those actions are not required by this proposed AD. Service Bulletin SB–328–57–439, Revision 1, also recommends that inspection results for cracking of support arms be sent to Dornier, but that action is not required by this proposed AD.

Clarification of Procedures for Installing New Ground Spoiler

Service Bulletin SB–328–57–435, Revision 1, specifies that if a crack is found in a support arm of a ground spoiler during any inspection, the ground spoiler should be replaced with a new ground spoiler. However, the service bulletin does not include procedures for replacing the ground spoiler. This proposed AD specifies that any ground spoiler replacement should be done per the applicable section(s) of chapters 27 or 57 of the maintenance manual.

Cost Impact

We estimate that 53 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 2 work hours per airplane to accomplish the proposed general visual, contour, and clearance inspections of the ground spoilers, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of these proposed inspections on U.S. operators is estimated to be $6,890, or $130 per airplane.

It would take approximately 4 work hours per airplane to accomplish the proposed inspection of the support arms for the ground spoilers, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this proposed inspection on U.S. operators is estimated to be $13,780, or $260 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fairchild Dornier GMBH (Formerly Dornier Luftfahrt GmbH): Docket 2002–NM–300–AD.

Applicability: Model 328–100 series airplanes, as listed in Dornier Service Bulletin SB–328–57–435, Revision 1, dated August 7, 2002; and Dornier Service Bulletin SB–328–57–439, Revision 1, dated March 10, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the support arms of the ground spoiler assemblies due to cracking, which could result in loss of function and/or separation of the affected ground spoiler assemblies from the airplane, and consequent reduced controllability of the airplane during landing or rejected take-off operations, accomplish the following:

Visual, Contour, and Clearance Inspections of Ground Spoilers, and Corrective Actions

(a) Within 400 flight cycles after the effective date of this AD: Do the inspections for discrepancies of the ground spoiler assemblies and the wing flaps by doing all the actions per the Accomplishment Instructions of Dornier Service Bulletin SB–328–57–439, Revision 1, dated March 10, 2003. Any applicable corrective action must be done before further flight per the service bulletin.

Note 1: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Inspection of Ground Spoiler Support Arms

(b) Within 4 weeks after the effective date of this AD, or prior to the accumulation of 4,000 total flight cycles, whichever is later: Do an eddy current inspection for cracking in the bottom edge of the flange for ground spoiler support arms No. 3 and No. 8, left and right sides of the airplane. Do the inspection by accomplishing all of the actions per the Accomplishment Instructions of Dornier Service Bulletin SB–328–57–435, Revision 1, dated August 7, 2002. Repeat the inspection thereafter at intervals not to exceed 1,000 flight cycles.

Corrective Action

(c) If any cracking is found during any inspection required by paragraph (b) of this AD, before further flight, replace the affected ground spoiler assembly with a new ground spoiler assembly per the applicable section(s) of chapters 27 or 57 of the Dornier Model 328–100 Maintenance Manual.

Certain Recommendations in Service Bulletins Not Required

(d) Dornier Service Bulletin SB–328–57–435, Revision 1, dated August 7, 2002, states to contact Dornier if any crack is found in a support arm for a ground spoiler, and to send the affected ground spoiler to Dornier, but those actions are not required by this AD. Dornier Service Bulletin SB–328–57–439, Revision 1, dated March 10, 2003, recommends that inspection results for cracking of support arms be sent to Dornier, but that action is not required by this AD.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Note 2: The subject of this AD is addressed in German airworthiness directives 2002–258, dated September 5, 2002, and 2003–357, dated November 11, 2003.

Issued in Renton, Washington, on January 20, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–1660 Filed 1–26–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–66–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–145 series airplanes. This proposal would require modifying the strap configuration of IC–600 #1 and #2 integrated computers to disable CAT II operations with the flight director. Enabling of CAT II operations with the flight director is not yet approved and could cause the flightcrew to receive hazardously misleading guidance information, which, in the event of a high-workload landing, could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 26, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–66–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–66–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–66–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–66–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–145 series airplanes. The DAC advises that IC–600 integrated computers equipped with certain Engine Indication and Crew Alerting System (EICAS) software versions, not configured through configuration module IM–600, enable CAT II operations with the flight director. This combination is not approved. This condition, if not corrected, could cause the flightcrew to receive hazardously misleading guidance information, which, in the event of a high-workload landing, could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletins 145–31–0022, Change 05, and 145–31–0030, both dated January 22, 2002, which describe procedures for modifying the strap configuration of IC–600 #1 and #2 integrated computers to disable CAT II operations with the flight director. Service Bulletin 145–31–0022, Change 05, applies to airplanes equipped with EICAS software version 16.5, while 145–31–0030 applies to airplanes equipped with EICAS software version 17. Accomplishment of the actions specified in the applicable service bulletin is intended to adequately address the identified unsafe condition. The DAC classified these service bulletins as mandatory and issued Brazilian airworthiness directive 2000–10–02R2, dated February 22, 2002, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the applicable service bulletin described previously.

Cost Impact

The FAA estimates that 251 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. The cost of required parts would be negligible.

Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $32,630, or $130 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket 2003–NM–66–AD.

Applicability: Model EMB–145 series airplanes, certificated in any category; as listed in EMBRAER Service Bulletin 145–31–0022, Change 05; or 145–31–0030; both dated January 22, 2002.

Compliance: Required as indicated, unless accomplished previously.

To prevent enabling of CAT II operations with the flight director, which could cause the flight crew to receive hazardously misleading guidance information, and, in the event of a high-workload landing, could result in reduced controllability of the airplane, accomplish the following:

Modification

(a) Within 400 flight hours after the effective date of this AD: Modify the strap configuration of IC–600 #1 and #2 integrated computers to disable CAT II operations with the flight director, per the Accomplishment Instructions of EMBRAER Service Bulletin 145–31–0022, Change 05 (for airplanes equipped with EICAS software version 16.5); or 145–31–0030 (for airplanes equipped with EICAS software version 17); both dated January 22, 2002; as applicable.

Actions Accomplished Per Earlier Revisions of Service Bulletin

(b) Actions accomplished before the effective date of this AD per the Accomplishment Instructions of EMBRAER Service Bulletin 145–31–0022, dated August 29, 2000; Change 01, dated January 8, 2001; Change 02, dated March 14, 2001; Change 03, dated March 22, 2001; or Change 04, dated April 10, 2001; are acceptable for compliance with the corresponding actions required by paragraph (a) of this AD.

Parts Installation

(c) As of the effective date of this AD, no one may install an IC–600 #1 or #2 integrated computer equipped with EICAS software version 16.5 or 17, unless paragraph (a) of this AD has been accomplished.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, is authorized to approve alternative methods of compliance for this AD.

Note 1: The subject of this AD is addressed in Brazilian airworthiness directive 2000–10–02R2, dated February 22, 2002.

Issued in Renton, Washington, on January 16, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–1659 Filed 1–26–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–05–AD and Docket No. 2002–CE–57–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 401, 401A, 401B, 402, 402A, 402B, 402C, 411, and 411A, and 414A Airplanes; Notice of Public Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of public meeting; reopening of the comment periods.

SUMMARY: This document reopens the comment periods and announces a public meeting on the subject proposed airworthiness directives (ADs) that would apply to Cessna Aircraft Company (Cessna) Models 401, 401A, 401B, 402, 402A, 402B, 402C, 411, and 411A, and 414A airplanes. The proposed ADs would supersede existing ADs and would require you to repetitively inspect the wing spar caps for fatigue cracks with any necessary repair or replacement on all airplanes and incorporate a spar strap modification on each wing spar on certain airplanes. The purpose of the meeting is to discuss technical issues and proposed corrective actions related to our determination that AD actions are necessary to prevent wing spar cap failure due to undetected fatigue cracks. Such failure could result in loss of a wing with consequent loss of airplane control. We are reopening the comment period to facilitate collection and consideration of data that concerns the technical issues. We are also seeking information about possible corrective actions other than those in the proposed ADs.

DATES: The Federal Aviation Administration (FAA) will hold the public meeting on March 3 and 4, 2004, starting at 9 a.m. both days, at the Hilton, Washington Dulles Airport, in Herndon, Virginia.

Registration will begin at 8:30 a.m. on the first day of the meeting.

We must receive any comments on these proposed rules on or before April 5, 2004.

ADDRESSES: We will hold the public meeting at the Hilton, Washington Dulles Airport, 13869 Park Center Road, Herndon, Virginia 20171.

If you are unable to attend, you may mail comments (clearly marked with the docket numbers) to FAA, Central

Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–05–AD and Docket No. 2002–CE–57–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2002–CE–05–AD and Docket No. 2002–CE–57–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

We will give the same consideration to those comments mailed to us as those presented at the public meeting.

FOR FURTHER INFORMATION CONTACT:

• *For Requests to Present a Statement at the Meeting:* Contact Marv Nuss, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4117; facsimile: (816) 329–4090; e-mail: *marvin.nuss@faa.gov.*

• *For Questions Regarding the Proposed ADs:* Contact Paul Nguyen, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4125; facsimile: (316) 946–4107.

• *For Requests for Special Accommodations:* Contact Barbara Pisaro, FAA, Aircraft Certification Service, 800 Independence Ave. SW., Washington, DC 20591; telephone: (202) 267–3827; facsimile: (202) 267–5364.

SUPPLEMENTARY INFORMATION:

Participation at the Public Meeting on the Proposed ADs

What must I do to make a presentation at the meeting? If you would like to make a presentation at the meeting, make your request to FAA no later than 10 days prior to the meeting. Submit these requests to Mr. Marv Nuss as listed in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must include a written summary of your presentation with a time estimate of your presentation.

Will FAA prepare an agenda? We will prepare an agenda for this meeting. To accommodate all presenters, we may allocate less time for your presentation than you requested. If you request to present after the deadline, we will schedule your presentation as time is available. However, your name may not appear on the agenda.

What if I need special equipment? You should include in your presentation request any special audiovisual equipment that you need. We will accommodate reasonable requests.

Background

Why has the FAA proposed airworthiness directive (AD) action (AD Docket Nos. 2002–CE–05–AD and 2002–CE–57–AD) on the wing spars of the Cessna 400 series airplanes beyond what is already currently required? The following briefly summarizes why we are proposing AD actions on this subject. For more detailed information, reference the notice of proposed rulemakings (NPRMs), Docket No. 2002–CE–05–AD (68 FR 26239, May 15, 2003) and Docket No. 2002–CE–57–AD (68 FR 26244, May 15, 2003):

• The FAA has service history of cracks in the wing spars of numerous airplanes since the late 1970s. The most recent was a fatal wing separation accident in 1999.

• Fatigue analysis performed by Cessna and the FAA shows that the wing spars of Cessna 400 series airplanes could fail if not modified.

• The primary safety concern is that once a crack starts in the spar cap, it grows to critical length before it can be detected by current nondestructive inspection (NDI) methods. At the critical length, the crack is still under the fastener head.

• The NDI methods used by current AD and maintenance programs are not detecting fatigue cracks and other damage. Cessna reported only one instance where cracks were detected using NDI procedures. There are other reported instances where cracks were detected visually in the wheel well area on the aft flange.

• The problem with visual inspections is the access doubler flanges cover a large percentage of the forward spar flange. This limits the effectiveness of the visual inspections.

Will we have an additional opportunity to comment while FAA plans the public meeting? Yes. Based on the content of the comments and the interest in the rules expressed by various operators and other interested persons, we have determined that the comment periods for the NPRMs should be reopened in order to seek additional data.

The comment periods will remain open until April 5, 2004, which is approximately one month after the public meeting.

Proprietary Data

Will I be able to obtain a copy of Cessna's fatigue analysis at this meeting? No, although some of the information in the analysis will be discussed. Specific portions of the data used in the analysis are considered proprietary. The Trade Secret Act (18 U.S.C. section 1905) prohibits the disclosure of such data. The requirements of the Administrative Procedures Act (APA) do not allow us to bypass the Trade Secret Act.

Because ADs address unsafe conditions associated with aeronautical products, we routinely evaluate proprietary data to determine if AD action is necessary. In determining whether we should include such material in the Rules Docket, FAA applies the standards developed under the Freedom of Information Act (FOIA; 5 U.S.C. section 552); in particular Exemption 4 (section 552(B)(4). Exemption 4 protects ''trade secrets and commercial or financial information obtained from a person and privileged or confidential.''

When data is determined to meet the standards above, we do not place them in the Rules Docket. We retain them in a separate file that is not released to the public.

Cessna's fatigue analysis meets the requirements of proprietary under the Trade Secret Act and Exemption 4 of the Freedom of Information Act.

Public Meeting Procedures

What procedures should I follow for this public meeting? If you plan to attend the public meeting, please be aware of the following:

• There is no admission fee or other charge to attend or participate in this meeting. You are responsible for your own transportation and accommodations for the meeting. The meeting is open to all who requested in advance to present or who register on the day of the meeting. This is subject to availability of space in the meeting room.

• FAA representatives will conduct the meeting. We will have a panel of technical experts and managers to discuss information on the subject.

• The public meeting is intended as a forum to:

• Resolve questions that concern the approach used in our determination that AD action is necessary; and

• Seek additional data and supporting methodologies from industry, the general public, and operators. You must limit your presentation and submittals to data of this issue.

• The meeting will allow you to present additional information not currently available to FAA and an opportunity for FAA to explain to you the methodology and technical

assumptions that support our conclusions.

• FAA experts, industry, and public participants are expected to hold a full discussion of all technical material presented at the meeting. If you present conclusions on this subject, you must submit data that supports your conclusions. All data will be part of the Rulemaking Dockets.

• We will try and accommodate all speakers. In order to do this, we may need to limit the time for presenters.

• We can make sign and oral interpretation available at the meeting, as well as an assistive listening device. If you need this assistance, make your request to FAA at least 10 days prior to the public meeting.

• A court reporter will record the discussions of the meeting. We will place the transcript of the meeting in the Rules Dockets. If you would like to purchase a copy of the transcript, you must contact the court reporter directly. We will provide further information at the meeting.

• We will review and consider all material presented. Position papers or materials that present views or information related to the proposed ADs may be accepted at the discretion of the presiding officer and placed in the Rules Dockets. The FAA requests that you provide 10 copies of all materials for distribution to the panel members. You have the choice on whether you want to present copies of the material to the audience.

• Panel member statements are intended to facilitate discussion of or to clarify issues. The FAA will consider comments made at this meeting before making a final decision on the issuance of any airworthiness directive.

• The meetings are designed to solicit public views and more complete information on the proposed ADs. Therefore, we will conduct the meeting in an informal and nonadversial manner.

Issued in Kansas City, Missouri, on January 15, 2004.

Dorenda D. Baker,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–1658 Filed 1–26–04; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Chapter I

Notice of Revised Regulatory Review Schedule

AGENCY: Federal Trade Commission.

ACTION: Notice of revised regulatory review schedule.

SUMMARY: The Federal Trade Commission (''Commission'') has a program of systematic review of all of its rules and guides. The Commission hereby gives notice that, based on its current ongoing review proceedings, as well as additional rulemaking proceedings required by new legislation, it does not intend to announce review of any additional rules or guides during 2004. The ten-year regulatory review schedule previously published by the Commission, 67 FR 9630 (Mar. 4, 2002), has been modified accordingly.

FOR FURTHER INFORMATION CONTACT: Neil Blickman, Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement, 600 Pennsylvania Ave., NW., Washington DC 20580, (202) 326–3038.

SUPPLEMENTARY INFORMATION: The Commission has decided not to initiate review of any additional rules or guides during 2004. Currently, the Commission has ongoing review or amendment proceedings that relate to a number of its rules and guides. In addition, during 2004, the Commission will be required to promulgate rules pursuant to the Fair and Accurate Credit Transactions Act of 2003, Pub. L. 108–159 (requiring at least 25 separate rules and 8 studies); the Fairness to Contact Lens Consumers Act of 2003, Pub. L. 108–164; and the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, Pub. L. 108–187. Accordingly, the Commission proposes a revised ten-year regulatory review schedule. A copy of this tentative schedule is appended. The Commission may, in its discretion, modify or reorder the schedule in the future to incorporate new legislative rules, or to respond to external factors (such as changes in the law) or other considerations.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

APPENDIX—REGULATORY REVIEW MODIFIED TEN-YEAR SCHEDULE

16 CFR part	Topic	Year to review
18	Guides for the Nursery Industry	2005
410	TV Picture Tube Size Rule	2005
424	Retail Food Store Advertising and Marketing Practices Rule	2005
14	Administrative Interpretations, General Policy Statements, and Enforcement Policy Statements	2006
311	Recycled Oil Rule	2006
312	Children's Online Privacy Protection Rule	2006
444	Credit Practices Rule	2006
455	Used Car Rule	2006
24	Guides for Select Leather and Imitation Leather Products	2007
435	Mail or Telephone Order Merchandise Rule	2007
500	Regulations Under Section 4 of the Fair Packaging and Labeling Act (''FPLA'')	2007
501	Exemptions from Part 500 of the FPLA	2007
502	Regulations Under Section 5(C) of the FPLA	2007
503	Statements of General Policy or Interpretations Under the FPLA	2007
305	Appliance Labeling Rule	2008
306	Automotive Fuel Ratings, Certification and Posting Rule	2008
429	Cooling Off Rule	2008
601	Summary of Consumer Rights, Notice of User Responsibilities, and Notice of Furnisher Responsibilities under the Fair Credit Reporting Act.	2008
254	Guides for Private Vocational and Distance Education Schools	2009
260	Guides for the use of Environmental Marketing Claims	2009
300	Rules and Regulations under the Wool Products Labeling Act	2009
301	Rules and Regulations under the Fur Products Labeling Act	2009
303	Rules and Regulations under the Textile Fiber Products Identification Act	2009
425	Rule Concerning the Use of Negative Option Plans	2009

APPENDIX—REGULATORY REVIEW MODIFIED TEN-YEAR SCHEDULE—Continued

16 CFR part	Topic	Year to review
239	Guides for the Advertising of Warranties and Guarantees	2010
433	Preservation of Consumers' Claims and Defenses Rule	2010
700	Interpretations of Magnuson-Moss Warranty Act	2010
701	Disclosure of Written Consumer Product Warranty Terms and Conditions	2010
702	Pre-sale Availability of Written Warranty Terms	2010
703	Informal Dispute Settlement Procedures	2010
23	Guides for the Jewelry, Precious Metals, and Pewter Industries	2011
423	Care Labeling Rule	2011
20	Guides for the Rebuilt, Reconditioned and Other Used Automobile Parts Industry	2012
233	Guides Against Deceptive Pricing	2012
238	Guides Against Bait Advertising	2012
240	Guides for Advertising Allowances and Other Merchandising Payments and Services	2012
251	Guide Concerning Use of the word "Free" and Similar Representations	2012
259	Guide Concerning Fuel Economy Advertising for New Automobiles	2012
310	Telemarketing Sales Rule	2013
801	Hart-Scott-Rodino Antitrust Improvements Act Coverage Rules	2013
802	Hart-Scott-Rodino Antitrust Improvements Act Exemption Rules	2013
803	Hart-Scott-Rodino Antitrust Improvements Act Transmittal Rules	2013

[FR Doc. 04–1690 Filed 1–26–04; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 2003N–0496]

RIN 0910–AF09

Food Labeling: Health Claims; Dietary Guidance; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to February 25, 2004, the comment period for the advance notice of proposed rulemaking (ANPRM) that appeared in the **Federal Register** of November 25, 2003 (68 FR 66040). In the ANPRM, FDA requested comments on alternatives for regulating qualified health claims in the labeling of conventional human foods and dietary supplements. FDA also solicited comments on various other issues related to health claims and on the appropriateness and nature of dietary guidance statements on conventional foods and dietary supplement labels. The agency is taking this action in response to requests for an extension to allow interested persons additional time to submit comments.

DATES: Submit written and electronic comments by February 25, 2004.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Nancy T. Crane, Center for Food Safety and Applied Nutrition (HFS–830), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1456, or e-mail: *Nancy.Crane@cfsan.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 25, 2003 (68 FR 66040), FDA published an ANPRM with a 60-day comment period to request comments on alternatives for regulating qualified health claims in the labeling of conventional human foods and dietary supplements. FDA also solicited comments on various other issues related to health claims and on the appropriateness and nature of dietary guidance statements on conventional foods and dietary supplement labels. Comments on the regulatory alternatives and the additional topics will inform FDA's rulemaking to establish regulations for qualified health claims, as well as any policy initiative(s) that FDA may undertake to provide information to consumers to help them make wise food choices.

The agency has received multiple requests for either a 30-day or 60-day extension of the comment period for the ANPRM. Each request conveyed concern that the current 60-day comment period does not allow sufficient time to develop a meaningful or thoughtful response to the ANPRM. In addition, two requests noted that the current comment period occurred during a period of time that included the Thanksgiving and year-end holidays. All of the requests explained that an extension is necessary due to the complexity, implications, and/or importance of the rulemaking on health claims and dietary guidance in food and dietary supplement labeling.

FDA has considered the requests and is extending the comment period for the ANPRM for 30 days, until February 25, 2004. The agency believes that a 30-day extension allows adequate time for interested persons to submit comments without significantly delaying rulemaking on these important issues.

II. Request for Comments

Interested persons may, on or before February 25, 2004, submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on this ANPRM. Submit two copies of any comments, except that individuals may submit one copy. Identify comments with the docket number found in brackets in the heading of this document. Interested persons may review received comments in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 22, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–1772 Filed 1–23–04; 10:57 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[CGD09–01–122]

RIN 2115–AA98

Special Anchorage Area: Henderson Harbor, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of docket closure.

SUMMARY: On January 2, 2002 and again on June 5, 2002, the Coast Guard published requests for comments on the expanded special anchorage area in Henderson Harbor, New York. The Coast Guard received 27 comments in response to these requests. Based upon the comments and in the interest of safe navigation, the Coast Guard has decided that no change will be made at this time to the Henderson Harbor Special Anchorage Area A in Henderson Harbor, Henderson, New York.

DATES: The docket for this rulemaking is closed as of October 10, 2003.

ADDRESSES: The Ninth Coast Guard District Marine Safety Office maintains the public docket for this rulemaking. This docket is available for inspection or copying at room 2069, Ninth Coast Guard District, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Commander Michael Gardiner, Chief, Marine Safety Compliance Operations Branch, Ninth Coast Guard District Marine Safety Office, 1240 E. Ninth Street, Cleveland, Ohio 44199–2060. The phone number is (216) 902–6056.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 2000, the Coast Guard published a final rule in the **Federal Register** that increased the size of the Henderson Harbor Special Anchorage Area (a) (65 FR 11892). The rulemaking to enlarge that special anchorage area was due to declining water levels and the safety of navigation in relation to the lower water levels. The Coast Guard received 5 positive comments in response to the original Notice of Proposed Rulemaking.

Subsequently, the Coast Guard published two requests for comments on January 2, 2002 and again on June 5, 2002 [67 FR 17, 67 FR 38625]. As a result of the subsequent requests for comments, the Coast Guard received 15 negative and 12 positive comments. Virtually every positive comment was based upon a concern for vessel safety, primarily the safety of vessels due to low water levels.

The negative comments generally focused the concern with having vessels obstructing waterfront views, the economic impact of an expanded anchorage area, and the additional time it would take to transit the extension of 1000′. The concern for vessel safety is ultimately the most important consideration. Thus, while these latter comments are important, the Coast Guard is not persuaded at this time to make any changes in light of the concerns they raise.

The regulations governing special anchorage areas are found in 33 CFR 110.1. In particular, sound and light requirements are not applicable to certain vessels anchored in these areas established by the Coast Guard. The Coast Guard does not further regulate the particular use of a special anchorage area by local or state authorities.

In the special anchorage area established in Henderson Harbor, Henderson, New York, the Town Council has established mooring buoys and a fee-based system for the use of those mooring buoys. An enlargement of this special anchorage area by the Coast Guard did not impact what portion or how the Town Council wishes to utilize the special anchorage area. It only provided a larger area over which the Town Council may exercise their control.

Enlarging the special anchorage area did not require the Henderson Town Council to adopt new measures or change how they currently regulate usage of the special anchorage area. The two issues are separate and distinct. As such, the Coast Guard feels that in order to ensure the safety of vessels using that area, the larger anchorage area already established will be left in place.

As such, the Coast Guard is closing this docket. If future action is needed, the Coast Guard will open a rulemaking or issue a new request for comments.

Dated: October 14, 2003.

R.F. Silva,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 04–1612 Filed 1–26–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 167

[USCG–2002–12876]

Port Access Routes Study; In the Approaches to Chesapeake Bay, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of study results.

SUMMARY: The Coast Guard announces the completion of a Port Access Route Study that evaluated the need for modifications to current vessel routing and traffic management measures in the approaches to Chesapeake Bay, Virginia. The study was completed in June 2003. This document summarizes the study recommendations, which include enhancements and modifications to existing vessel routing measures and the creation of a new offshore anchorage area.

ADDRESSES: Comments and material received from the public, as well as the actual study and other documents mentioned in this document, are part of docket USCG–2002–12876 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC, 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For further information on this document, contact John Walters, Aids to Navigation and Waterways Management Branch, Fifth Coast Guard District, telephone 757–398–6230, e-mail *Jwalters@lantd5.uscg.mil;* or George Detweiler, Office of Vessel Traffic Management, Coast Guard, telephone 202–267–0416, e-mail *Gdetweiler@comdt.uscg.mil.* For questions on viewing the docket, contact Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION: You may obtain a copy of the Port Access Route Study by contacting either person listed under the **FOR FURTHER INFORMATION CONTACT** section. A copy is also available in the public docket at the address listed under the **ADDRESSES** section and electronically on the DMS Web site at *http://dms.dot.gov.*

Definitions

The following definitions are from the International Maritime Organization's (IMO's) ''Ships' Routeing Guide'' (except those marked by an asterisk) and should help you review this notice:

Deep-water route means a route within defined limits, which has been accurately surveyed for clearance of sea bottom and submerged obstacles as indicated on nautical charts.

Offshore anchorage area means an anchorage area located in the 3-to-12-nautical-mile belt of the territorial sea in which vessels directed by the Captain of the Port (COTP) to await further orders before entering a U.S. port may stand-by or anchor.

Precautionary area means a routing measure comprising an area within defined limits where vessels must navigate with particular caution and within which the direction of traffic flow may be recommended.

Recommended track means a route which has been specifically examined to ensure so far as possible that it is free of dangers and along which vessels are advised to navigate.

Separation Zone or separation line means a zone or line separating the traffic lanes in which vessels are proceeding in opposite or nearly opposite directions; or separating a traffic lane from the adjacent sea area; or separating traffic lanes designated for particular classes of vessels proceeding in the same direction.

Traffic lane means an area within defined limits in which one-way traffic is established. Natural obstacles, including those forming separation zones, may constitute a boundary.

Traffic Separation Scheme or TSS means a routing measure aimed at the separation of opposing streams of traffic by appropriate means and by the establishment of traffic lanes.

Vessel routing system means any system of one or more routes or routing measures aimed at reducing the risk of casualties; it includes traffic separation schemes, two-way routes, recommended tracks, areas to be avoided, inshore traffic zones, roundabouts, precautionary areas, and deep-water routes.

Background and Purpose

When Did the Coast Guard Conduct This Port Access Route Study (PARS)?

We announced the PARS in a notice published in the **Federal Register** on July 26, 2002, (67 FR 48837) and completed the PARS in June 2003.

What Is the Study Area?

The study area encompassed the area bounded by a line connecting the following geographic points (All coordinates are NAD 1983.):

Latitude	Longitude
37°00.00′N	075°56.00′W
37°00.00′N	075°40.00′W
36°45.00′N	075°40.00′W
36°45.00′N	075°56.00′W

The study area included the Eastern and Southern approaches to Chesapeake Bay used by commercial and public vessels.

Why Did the Coast Guard Conduct This PARS?

The approaches to Chesapeake Bay were last studied in 1989, and the final results were published in the **Federal Register** on April 28, 1994 (59 FR 21937). The study primarily examined the Southern Approach to determine its ability to accommodate vessels requiring a deep-water route. The PARS concluded that the Eastern Approach and Precautionary Area should remain unchanged and proposed the creation of the current deep-water route of the Southern Approach.

On April 12 through 17, 2001, the National Oceanic and Atmospheric Administration (NOAA) conducted a hydrographic data survey of the area. The survey indicated that Nautilus Shoal, which borders the northern edge of the Eastern Approach, is slowly moving southward and is encroaching on the inbound traffic lane. This limits the use of this traffic lane to vessels with drafts less than 27 feet (8.2 meters). Because of this encroachment, the current PARS evaluated changes to the Eastern Approach that would better accommodate deeper-draft, inbound vessels. Also, we decided to review the location of the Southern Approach, particularly in light of the many existing and proposed improvements to the ports of Hampton Roads, Baltimore, and Richmond that will directly affect the numbers, size, and types of vessels using these approaches.

These improvements include dredging and expanding the Norfolk International Terminal, improving the Portsmouth Marine Terminal, completing the Baltimore Harbor Anchorages and Channels improvement project, deepening portions of the James River, improving the Port of Richmond wharf, and completing the 55-foot anchorage for Hampton Roads. Future projects include building a new Virginia Port facility at Craney Island, improving the Pinners Point facility, reopening the Cove Point liquefied natural gas facility, deepening the inbound segment of Thimble Shoals Channel from 45 to 50 feet, and deepening the outbound segment of Thimble Shoals Channel from 50 to 55 feet. Projections for the Port of Hampton Roads forecast a 5% growth rate in container shipping for 2003. In 2002, 24 cruise ships visited downtown Norfolk. Thirty-four cruise ships were scheduled to arrive in Norfolk during 2003. It is anticipated that passenger numbers will increase from 20,000 in 2001 to 80,000 in 2004. The size of vessels calling on these ports should also grow. The ''S'' class container ships, currently in use by Maersk Sealand, may soon call on the Port of Virginia. These massive container vessels are 1,138 feet in length, 140 feet wide, draft almost 48 feet when fully loaded, and have a capacity for 7,100 twenty-foot equivalent units (TEUs). Considering this projected growth in Hampton Roads and the potential growth in other ports accessed via the entrance to Chesapeake Bay, increases in all types of commercial vessel traffic is almost certain.

One potential study recommendation listed in the Notice of Study published July 26, 2002, in the **Federal Register** (67 FR 48837) was to disestablish Chesapeake Light. The PARS confirmed that this light should not be disestablished. Chesapeake Light has proved itself invaluable as a visual reference for inbound, outbound, and maneuvering vessel traffic as well as a platform that can be used to gather meteorological data.

How Did the Coast Guard Conduct This PARS?

First, we announced the start of the study through a Notice of Study published July 26, 2002, in the **Federal Register** (67 FR 48837). This notice identified potential study recommendations and solicited comments concerning these recommendations as well as answers to questions provided in the notice. Second, we considered previous studies, analyses of vessel traffic density, and agency and stakeholder experience in vessel traffic management, navigation, ship handling, and the effects of weather. The recommendations of this PARS are based mainly on comments received to the docket and the results of the previous studies, analyses, and agency and stakeholder experience.

Study Recommendations

The PARS recommendations include the following:

1. Modify the location of the existing Eastern Approach TSS;

2. Modify the regulations for the Southern Approach TSS to allow vessels with a draft of 42 feet (12.8 meters) or greater to use the deep-water route;

3. Retain the Chesapeake Light; and

4. Establish an offshore anchorage area.

This PARS recommendation was not previously identified as a potential study recommendation in the Notice of Study published July 26, 2002, in the **Federal Register** (67 FR 48837). This offshore anchorage area is for vessels that are unable or not approved to enter port.

Next Steps

A brief synopsis of how the PARS recommendations will proceed towards implementation follows:

1. Changes to the TSSs will require approval by the International Maritime Organization (IMO). Any changes to the TSSs will be accomplished through the rulemaking process.

2. The establishment of an offshore anchorage area will be accomplished through the rulemaking process.

3. Changes to aids to navigation resulting from the above actions will be accomplished through the following established procedures—notification of proposed changes in the Local Notice to Mariners with an opportunity for comment and notification of the final changes in the Local Notice to Mariners.

Conclusion

We appreciate the comments we received concerning the PARS. We will provide ample opportunity for additional comments on any recommended changes to existing routing or operational measures that require codification through notices of proposed rulemakings (NPRMs) published in the **Federal Register**.

Dated: January 15, 2004.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 04–1441 Filed 1–26–04; 8:45 am]

BILLING CODE 4901–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI69

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for *Yermo xanthocephalus* (Desert Yellowhead)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment period and notice of availability of draft economic analysis and draft environmental assessment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the draft economic analysis and draft environmental assessment for the proposed designation of critical habitat for *Yermo xanthocephalus* (desert yellowhead) under the Endangered Species Act of 1973, as amended. We also are reopening the public comment period for the proposal to designate critical habitat for this species to allow all interested parties to comment on the proposed rule and the associated draft economic analysis and draft environmental assessment. Over a 10-year time period, the total section 7-related direct costs associated with the *Y. xanthocephalus* listing and critical habitat are estimated at $500,000 to $600,000. Comments previously submitted need not be resubmitted as they have been incorporated into the public record as part of this extended comment period and will be fully considered in preparation of the final rule.

DATES: We will accept and consider all comments received on or before February 26, 2004. Any comments that we receive after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, 4000 Airport Parkway, Cheyenne, WY 82001, or by facsimile to 307–772–2358. You may hand deliver written comments to our Wyoming Field Office at the address given above. You may send comments by electronic mail (e-mail) to *fw6_desertyellowhead@fws.gov*. See the ''Public Comments Solicited'' section below for file format and other information on electronic filing.

You may obtain copies of the draft economic analysis and draft environmental assessment, review comments and materials received, and review supporting documentation used in preparation of the proposed rule, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service's Wyoming Field Office. The draft economic analysis and draft environmental assessment, as well as the proposed rule for the critical habitat designation, also are available on the Internet at *http://mountain-prairie.fws.gov/endspp/plants.*

FOR FURTHER INFORMATION CONTACT: Brian T. Kelly, Field Supervisor, Wyoming Field Office, U.S. Fish and Wildlife Service, at the above address (telephone 307–772–2374; facsimile 307–772–2358; e-mail *Brian_T_Kelly@fws.gov*).

SUPPLEMENTARY INFORMATION:

Background

Yermo xanthocephalus, a perennial herb in the sunflower family, is known from only one population, which occurs in central Wyoming on Federal land managed by the Bureau of Land Management (BLM). The one population numbered approximately 12,000 plants in 2001. *Y. xanthocephalus* has leafy stems up to 12 inches high with alternate, lance-shaped leathery leaves and 25 to 80 flower heads on each stem. Each flower head contains four to six yellow disk flowers surrounded by five small, yellow leaves. *Y. xanthocephalus* occupies shallow deflation hollows shaped by wind and erosion in outcrops of sandstone. Human activities, including potential oil and gas development, potential mining of uranium and zeolites, and recreational off-road vehicle use, resulted in *Y. xanthocephalus* being listed as a threatened species throughout its range on March 14, 2002 (67 FR 11442).

On March 14, 2003 (68 FR 12326), we proposed to designate critical habitat for *Yermo xanthocephalus* pursuant to the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). The proposal includes approximately 146 hectares (360 acres) of federally-managed lands in the Beaver Rim area in Fremont County, Wyoming. This area contains the only known population of the desert yellowhead, as well as the physical or biological features essential for the conservation of the species.

Critical habitat identifies specific areas, both occupied and unoccupied, that are essential to the conservation of a listed species and that may require special management considerations or protection. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of

critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

Section 4 of the Act requires that we consider economic and other relevant impacts prior to making a final decision on what areas to designate as critical habitat. We have prepared a draft economic analysis and draft environmental assessment for the proposal to designate certain areas as critical habitat for *Y. xanthocephalus.* The draft economic analysis indicates that, over a 10-year time period, the total section 7-related direct costs associated with the *Y. xanthocephalus* listing and critical habitat are estimated to be $500,000 to $600,000. We solicit data and comments from the public on these draft documents, as well as on all aspects of the proposal. We may revise the proposal, or its supporting documents, to incorporate or address new information received during the comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

Public Comments Solicited

We intend any final action resulting from this proposal to be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We do not anticipate extending or reopening the comment period on the proposed rule after this comment period ends (*see* **DATES**). We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of *Y. xanthocephalus* habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use practices and current or planned activities in the subject area and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families; and

(5) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

We will also accept comments on the proposed critical habitat designation. If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (*see* **ADDRESSES**). If you would like to submit comments by electronic format, please submit them in ASCII file format and avoid the use of special characters and encryption. Please include your name and return e-mail address in your e-mail message.

Comments previously submitted need not be resubmitted as they have already been incorporated into the public record and will be fully considered in the final rule. Comments submitted during this comment period also will be incorporated into the public record and will be fully considered in the final rule. In order to comply with the terms of a settlement agreement, we are required to complete the final designation of critical habitat for *Yermo xanthocephalus* by March 8, 2004 (Civil Action Number 01–B–2204). To meet this date, all comments or proposed revisions to the proposed rule, associated draft economic analysis, and draft environmental assessment need to be submitted to us during the comment period reopened by this document (*see* **DATES**).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address, which we will honor to the extent allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comments. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for public inspection, by appointment, during normal business hours at the Wyoming Field Office (*see* **ADDRESSES**).

Author

The primary author of this notice is the Wyoming Field Office staff (*see* **ADDRESSES**).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 16, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–1626 Filed 1–26–04; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 69, No. 17

Tuesday, January 27, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. TB–04–03]

National Advisory Committee for Tobacco Inspection Services; Open Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of advisory committee meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C. App. II) announcement is made of a forthcoming meeting of the National Advisory Committee for Tobacco Inspection Services.

DATES: March 2, 2004, 9 a.m.

ADDRESSES: The meeting will be held at the Old Town Alexandria Holiday Inn, 480 King Street, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, Telephone number (202) 205–0567 or fax (202) 205–0235.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to discuss and recommend the level of service to be provided to producers by AMS, review the financial status of the tobacco inspection program, recommend the user fee rate needed to maintain the desired level of service for the 2004–2005 marketing season, and review various regulations issued pursuant to the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*), and the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act for 2002 (Pub. L. 107–76; 7 U.S.C. 511s).

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, STOP 0280, 1400 Independence Avenue, SW., Washington, DC 20250–0280, prior to the meeting. Written statements may be submitted to the Committee before, at or after the meeting. If you need any accommodations to participate in the meeting, please contact the Tobacco Programs at (202) 205–0567 by February 20, 2004, and inform us of your needs.

Dated: January 21, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–1601 Filed 1–26–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Information Collection; Commodity Request (Food Aid Request Entry System, FARES)

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Commodity Credit Corporation (CCC) is seeking comments from all interested individuals and organizations on the extension and revision of an approved information collection under the Paperwork Reduction Act. CCC procures various processed foods and commodities to be exported and donated for use in humanitarian food aid programs. Information related to this activity was previously collected on the United States Agency for International Development (USAID) Form USAID 1550–4, Commodity Request for Foreign Distribution. The Food Aid Request Entry System (FARES) has been developed to replace the AID Form 1550–4 with electronic processing through the FARES.

DATES: Comments on this notice must be received on or before March 29. 2004 to be assured consideration.

ADDRESSES: Comments concerning this notice should be addressed to: Donna Ryles, Chief, Planning and Analysis Division, Kansas City Commodity Office, 6501 Beacon Drive, Kansas City, Missouri 64133–4676. Comments also may be submitted via facsimile to (816) 926–1648, telephone (816) 926–1505 or by e-mail to *dgryles@kcc.fsa.gov.* Comments regarding this information collection requirement may be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Sharon Hadder, Marketing Specialist, (202) 720–3816, or *Sharon_Hadder@wdc.fsa.usda.gov.*

SUPPLEMENTARY INFORMATION:

Description of Information Collection

Title: Food Aid Request Entry System (FARES).

OMB Control Number: 0560–0225.

Type of Request: Extension with revision.

Abstract: The information collection is necessary for the Commodity Credit Corporation (CCC) to procure various processed foods and commodities for export under humanitarian food aid programs. The FARES has been developed to automate the entry of commodity requests submitted to CCC from the United States Agency for International Development (USAID), private voluntary organizations (PVOs), the World Food Program (WFP), the Foreign Agricultural Service (FAS), and the Farm Service Agency (FSA). The FARES will replace the USAID Form 1550–4, Commodity Request for Foreign Distribution, which will become obsolete.

Estimate of Burden: Public reporting burden for collecting information under this notice is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information.

Respondents: United States Agency for International Development (USAID), private voluntary organizations (PVOs), the World Food Program (WFP), Foreign Agricultural Service (FAS) and the Farm Service Agency (FSA).

Respondents: 300.

Estimated Number of Annual Responses Per Respondent: 12.

Estimated Total Annual Burden on Respondents: 3,600 hours.

Comment is invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the

agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information collected; or (d) ways to minimize the burden of the collection of the 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. All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

Signed at Washington, DC, on January 16, 2004.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 04–1670 Filed 1–26–04; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Improving Access to the Summer Food Service Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice solicits comments related to methods for improving access to the Summer Food Service Program by children in needy areas.

DATES: Comments must be postmarked by March 29, 2004 to be considered.

ADDRESSES: Comments should be addressed to Mr. Robert Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Room 634, Alexandria, Virginia 22302–1594. Comments will also be accepted via e-mail sent to *cndproposal@fns.usda.gov.* All written submissions, including e-mail submissions, will be available for public inspection in Room 634 Monday through Friday, 8:30 a.m.–5 p.m.

FOR FURTHER INFORMATION CONTACT: Keith Churchill or Marcus Hambrick, Policy and Program Development Branch, at the above address, or by telephone at (703) 305–2590.

SUPPLEMENTARY INFORMATION: The Food and Nutrition Service, USDA (FNS) is committed to improving access to the Summer Food Service Program (SFSP), authorized by Section 13 of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1761, by children in needy areas. FNS has partnered with national service organizations to promote the SFSP, utilized regional and local community groups to identify unique demographic needs and participation barriers, met with potential sponsoring organizations and community leaders to identify potential solutions to common barriers and targeted specific unserved and underserved areas for Program expansion. In addition to these endeavors, State agencies have made significant efforts to promote and expand the Program.

These endeavors have led FNS to develop and implement additional outreach projects to improve Program access. As part of a comprehensive outreach effort, FNS has developed a media kit and marketing campaign, created SFSP promotional articles for newsletters and publications, and conducted activities designed for specific unserved and underserved areas.

Additionally, FNS has developed Program policies that encourage and expand access to the Program by children in needy areas. Allowing school sponsors to serve summer meals under an existing National School Lunch Program agreement has enabled seamless year-round participation. Other policies include authorizing eligibility determinations based on alternate means in lieu of applications, expanding approved meal service times, and waiving certain budget requirements. Collectively, changes to Program policies have enabled sponsors' participation in the SFSP while considering unique circumstances.

While modest success has been achieved in increasing Program participation by children, FNS continues to solicit comments and evaluate innovative suggestions related to improving Program access, especially in rural areas. In recent years, FNS has received and evaluated numerous suggestions, including: waiving application requirements for enrolled sites in needy areas, allowing off-site consumption of meals, establishing pilot programs to further evaluate innovative methods to improve Program access and even altering the congregate feeding design of the current program to accommodate home-based lunches. As a result of these and other suggestions, FNS has expanded Program access and lessened the management burden placed on Program sponsors.

FNS solicits comments and suggestions related to Program access from all parties. FNS is particularly interested in suggestions from faith-based and community-based organizations, which might take advantage of existing service delivery methods and expand opportunities for program participation by such organizations.

Commenters should consider that FNS does not have the authority to waive certain statutory and regulatory requirements that govern the SFSP, *e.g.* reimburse sponsors that operate in areas where fewer than 50 percent of children are eligible, implement policy that increases Federal costs, or change the nutritional content of meals served. Additionally, FNS will not entertain suggestions that might compromise the health and safety of children who participate in the Program.

FNS encourages all interested parties to submit comments and suggestions related to improving Program access.

Dated: January 22, 2004.

Roberto Salazar,

Administrator.

[FR Doc. 04–1731 Filed 1–26–04; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Final Environmental Impact Statement for the South Platte Wild and Scenic River Study, Pike and San Isabel National Forests, Cimarron and Comanche National Grasslands (PSICC), Douglas, Jefferson, Park and Teller Counties, CO

AGENCY: Forest Service, USDA.

ACTION: Notice of Availability.

SUMMARY: Under the National Environmental Policy Act (Pub. L 91–190) and the National Forest Management Act (Pub. L. 94–588), the Forest Service announces the availability of the Final Environmental Impact Statement for the South Platte Wild and Scenic River Study. The FEIS analyzes the direct, indirect and cumulative impacts of the alternatives analyzed in the study. A Record of Decision is not being issued at this time in order to receive comments on new information not previously disclosed, namely, (1) the proposed amendment to the Forest Plan, and (2) the Preferred Alternative.

DATES: Comments must be received by April 2, 2004.

ADDRESSES: Send written comments to: Robert J. Leaverton, Forest Supervisor, Attn: South Platte Wild and Scenic River Study, Pike and San Isabel

National Forests, 2840 Kachina Drive, Pueblo, Colorado 81008.

FOR FURTHER INFORMATION CONTACT: John Hill, Planning Staff Officer, at above address or by phone at (719)–553–1414, or by e-mail at *jjhill01@fs.fed.us.*

SUPPLEMENTARY INFORMATION: A portion of the river was studied in the early 1980's during preparation of PSICC's Forest Plan. That portion was between Cheesman and Elevemile Reservoirs and was found eligible for inclusion in the National Wild and Scenic River System, but a decision was not made regarding the river's suitability (*i.e.,* whether it would be an appropriate addition to the System). The study of other portions of the rivers was postponed due to the pending proposal to construct Two Forks Reservoir, which was eventually denied by the Environmental Protection Agency in the 1990's.

The current study began in the early 1990's. It included the previous study area plus the river below Cheesman Reservoir to Stontia Springs Reservoir and the North Fork. Previous documents in this study include the Draft Legislative EIS (April 1997) and a Supplemental Draft Legislative EIS (March 2000). These documents were labeled ''legislative'' under the presumption that a recommendation would be made to Congress to designate some or all of the eligible river segments in the study. However, under the Final EIS's Preferred Alternative, no decisions on suitability is contemplated. Therefore no recommendation to Congress would be forthcoming and accordingly the modifier ''legislative'' is not employed.

The Preferred Alternative includes a proposed amendment to the PSICC Forest Plan. An amendment had been contemplated in the Supplemental Draft EIS, but only as an item that would be consistent with whatever alternative was selected for implementation. Its details had not been developed in that document. However, public response indicated a need to review the amendment prior to its being selected in a decision document. In light of this, the Record of Decision is being postponed to provide an opportunity for comment on the proposed amendment. Comments are due April 2, 2004.

Copies of the Final EIS are being provided to entities known to be interested in the study. For others who are interested in reading the document, it has been posted on the web at *http://www.fs.fed.us/r2/psicc/projects/wsr/.*

Dated: January 21, 2004.

Robert J. Leaverton,

Forest Supervisor, Pike and San Isabel National Forests, Cimarron and Comanche National Grasslands.

[FR Doc. 04–1619 Filed 1–26–04; 8:45 am]

BILLING CODE 3410–ES–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. Agenda items to be covered include: Introductions, Approval of Minutes, Public Comment, Chairman Report, Reports from Committees, Presentation of Projects/Possible Action, General Discussion, Next Agenda.

DATES: The meeting will be held on February 12, 2004 from 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Conference Room A, 1135 Lincoln Street, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail ggaddin;@fs.fed.us.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by February 10, 2004 will have the opportunity to address the committee at those sessions.

Dated: January 21, 2004.

James F. Giachino,

Designated Federal Official.

[FR Doc. 04–1618 Filed 1–26–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Maximum Portion of Guarantee Authority Available for Fiscal Year 2004

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: As set forth in 7 CFR part 4279, subpart B, each fiscal year the Agency shall establish a limit on the maximum portion of guarantee authority available for that fiscal year that may be used to guarantee loans with a guarantee fee of 1 percent or guaranteed loans with a guarantee percentage exceeding 80 percent.

Allowing the guarantee fee to be reduced to 1 percent or exceeding the 80 percent guarantee on certain guaranteed loans that meet the conditions set forth in 7 CFR 4279.107 and 4279.119 will increase the Agency's ability to focus guarantee assistance on projects which the Agency has found particularly meritorious, such as projects in rural communities that remain persistently poor, which experience long-term population decline and job deterioration, are experiencing trauma as a result of natural disaster, or are experiencing fundamental structural changes in the economic base.

Not more than 12 percent of the Agency's quarterly apportioned guarantee authority will be reserved for loan requests with a guarantee fee of 1 percent, and not more than 15 percent of the Agency's quarterly apportioned guarantee authority will be reserved for guaranteed loan requests with a guarantee percentage exceeding 80 percent. Once the above quarterly limits have been reached, all additional loans guaranteed during the remainder of that quarter will require a 2 percent guarantee fee and not exceed an 80 percent guarantee limit. As an exception to this paragraph and for the purposes of this notice, loans developed by the North American Development Bank (NADBank) Community Adjustment and Investment Program (CAIP) will not count against the 15 percent limit. Up to 50 percent of CAIP loans may have a guarantee percentage exceeding 80 percent. The funding authority for CAIP loans is not derived from carryover or recovered funding authority of the Business and Industry (B&I) Guaranteed Loan Program.

Written requests by the Rural Development State Office for approval of a guaranteed loan with a 1 percent guarantee fee or a guaranteed loan

exceeding 80 percent must be forwarded to the National Office, Attn: Director, B&I Division, for review and consideration prior to obligation of the guaranteed loan. The Administrator will provide a written response to the State Office confirming approval or disapproval of the request.

EFFECTIVE DATE: January 27, 2004.

FOR FURTHER INFORMATION CONTACT: Fred Kieferle, Processing Branch Chief, Business and Industry Division, Rural Business-Cooperative Service, USDA, Stop 3224, 1400 Independence Avenue, SW., Washington, D.C. 20250–3224, telephone (202) 720–7818.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866.

Dated: January 15, 2004.

John Rosso,

Administrator.

[FR Doc. 04–1633 Filed 1–26–04; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 040114016–4016–01]

Service Annual Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: In accordance with Title 13, United States Code (U.S.C.), Sections 182, 224, and 225, the Bureau of the Census (Census Bureau) has determined that limited financial data (revenue, expenses, and the like) for selected service industries are needed to provide a sound statistical basis for the formation of policy by various governmental agencies and that these data also apply to a variety of public and business needs. To obtain the desired data, the Census Bureau announces the administration of the Service Annual Survey.

FOR FURTHER INFORMATION CONTACT: Ruth A. Bramblett, Chief, Current Services Branch, Service Sector Statistics Division, on (301) 763–7089.

SUPPLEMENTARY INFORMATION: The Census Bureau conducts surveys necessary to furnish current data on subjects covered by the major censuses authorized by Title 13, U.S.C. The Service Annual Survey (SAS) provides continuing and timely national statistical data each year. Data collected in this survey are within the general scope, type, and character of those inquiries covered in the economic census.

The Census Bureau needs reports only from a limited sample of service sector firms in the United States. The SAS now covers all or some of the following nine sectors: Transportation and Warehousing; Information; Finance and Insurance; Real Estate and Rental and Leasing; Professional, Scientific, and Technical Services; Administration and Support and Waste Management and Remediation Services; Health Care and Social Assistance; Arts, Entertainment, and Recreation; and Other Services. The probability of a firm's selection is based on its revenue size (estimated from payroll); that is, firms with a larger payroll will have a greater probability of being selected than those with smaller ones. We are mailing report forms to the firms covered by this survey and require their submission within thirty days after receipt. These data are not publicly available from nongovernment or other government sources.

Based upon the foregoing, the Census Bureau is conducting the Service Annual Survey for the purpose of collecting these data.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C., Chapter 35, the OMB approved the Service Annual Survey under OMB Control Number 0607–0422. Copies of the proposed forms are available upon written request to the Director, U.S. Census Bureau, Washington, DC 20233.

Dated: January 21, 2004.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 04–1636 Filed 1–26–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1315]

Grant of Authority; Establishment of a Foreign-Trade Zone, Lubbock, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the City of Lubbock, Texas (the Grantee), has made application to the Board (FTZ Docket 41–2003, filed 8/18/03), requesting the establishment of a foreign-trade zone at sites in Lubbock, Texas, adjacent to the Lubbock Customs port of entry;

Whereas, notice inviting public comment has been given in the **Federal Register** (68 FR 51550, 8/27/03); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 260, at the sites described in the application, subject to the Act and the Board's regulations, including section 400.28, and subject to the standard 2,000-acre activation limit.

Signed at Washington, DC, this 14 day of January, 2004.

Foreign-Trade Zones Board.

Donald L. Evans,

Secretary of Commerce, Chairman and Executive Officer.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 04–1696 Filed 1–26–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–838, A–331–802, A–533–840, A–549–822, A–570–893, A–552–802]

Notice of Initiation of Antidumping Duty Investigations: Certain Frozen and Canned Warmwater Shrimp From Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam

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

ACTION: Initiation of Antidumping Duty Investigations.

EFFECTIVE DATE: January 27, 2004.

FOR FURTHER INFORMATION CONTACT: David Goldberger at (202) 482–4136

(Brazil and Ecuador), Michael Strollo at 202–482–0629 (India and Thailand); Alex Villanueva at (202) 482–3208 (People's Republic of China and Socialist Republic of Vietnam); Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Initiation of Investigations

The Petitions

On December 31, 2003, the Department of Commerce ''the Department'' received petitions filed in proper form by the Ad Hoc Shrimp Trade Action Committee, an ad hoc coalition representative of U.S. producers of frozen and canned warmwater shrimp and harvesters of wild-caught warmwater shrimp ''the petitioner''. The petitioner filed amendments to the petitions on January 12, 2004.

In accordance with section 732(b)(1) of the Tariff Act of 1930 (''the Act''), the petitioner alleges that imports of certain frozen and canned warmwater shrimp from Brazil, Ecuador, India, Thailand, the People's Republic of China (''the PRC'') and the Socialist Republic of Vietnam (''Vietnam''), are, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that imports from Brazil, Ecuador, India, Thailand, the PRC and Vietnam, are materially injuring, or are threatening to materially injure, an industry in the United States.

The Department finds that the petitioner filed these petitions on behalf of the domestic industry because it is an interested party as defined in section 771(9)(G) of the Act and it has demonstrated sufficient industry support with respect to each of the antidumping investigations that it is requesting the Department to initiate. *See infra*, ''Determination of Industry Support for the Petitions.''

Scope of Investigations

The scope of these investigations include certain warmwater shrimp and prawns, whether frozen or canned, wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[1] deveined or not deveined, cooked or raw, or otherwise processed in frozen or canned form.

The frozen or canned warmwater shrimp and prawn products included in the scope of the investigations, regardless of definitions in the Harmonized Tariff Schedule of the United States (''HTSUS''), are products which are processed from warmwater shrimp and prawns through either freezing or canning and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (Penaeus vannemei), banana prawn (Penaeus merguiensis), fleshy prawn (Penaeus chinensis), giant river prawn (Macrobrachium rosenbergii), giant tiger prawn (Penaeus monodon), redspotted shrimp (Penaeus brasiliensis), southern brown shrimp (Penaeus subtilis), southern pink shrimp (Penaeus notialis), southern rough shrimp (Trachypenaeus curvirostris), southern white shrimp (Penaeus schmitti), blue shrimp (Penaeus stylirostris), western white shrimp (Penaeus occidentalis), and Indian white prawn (Penaeus indicus).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of the investigations. In addition, food preparations, which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of the investigations.

Excluded from the scope are (1) breaded shrimp and prawns (1605.20.10.20); (2) shrimp and prawns generally classified in the Pandalidae family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (1605.20.05.10); and (5) dried shrimp and prawns.

The products covered by this scope are currently classified under the following HTSUS subheadings; 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, 1605.20.10.30, and 1605.20.10.40. These HTSUS subheadings are provided for convenience and for Customs and Border Protection (''CBP'') purposes only and are not dispositive, but rather the written descriptions of the scope of these investigations is dispositive.

As discussed in the preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 calendar days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. In investigations involving some processed agricultural products, the statue allows the Department also to include producers of the raw agricultural product with the definition of the industry. *See* 771(4)(E) of the Act. For a full discussion, see the January 20, 2004, Memorandum to Joseph Spetrini and Jeffrey May from James Doyle, Norbert Gannon, Alex Villanueva, and Christopher Riker entitled ''Antidumping Duty Petitions on Certain Frozen and Canned

[1] ''Tails'' in this context means the tail fan, which includes the telson and the uropods.

Warmwater Shrimp from Brazil, Ecuador, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Domestic Like Product Analysis and Calculation of Industry Support'' (''*DLP and Industry Support Memo*''). The International Trade Commission (''ITC''), which is responsible for determining whether ≥the domestic industry≥ has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[2]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

In this case, the domestic like product referred to in the petition is the single domestic like product defined in the ''Scope of Investigations'' section, above. At this time, the Department has no basis on the record to find the petition's definition of the domestic like product to be inaccurate. The Department, therefore, has adopted the domestic like product definition set forth in the petition. For a discussion of the domestic like product analysis in this case, see the *DLP and Industry Support Memo*.

Moreover, the Department has determined that the petition contains adequate evidence of industry support; therefore, polling was unnecessary (*see DLP and Industry Support Memo*). Specifically, based on the analysis contained in the *DLP and Industry Support Memo*, the Department finds that producers supporting the petition represent over 50 percent of total production of the domestic like product.

Accordingly, the Department determines that this petition is filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate these investigations. The sources of data for the deductions and adjustments relating to U.S. and foreign market prices, constructed value (''CV''), and factors of production are discussed in greater detail in the country-specific Initiation Checklists, as appropriate. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we will re-examine the information and revise the margin calculations.

Regarding an investigation involving a non-market economy (''NME'') country, the Department presumes, based on the extent of central government control in an NME, that a single dumping margin, should there be one, is appropriate for all NME exporters in the given country. In the course of these investigations, all parties will have the opportunity to provide relevant information related to the issues of a country's NME status and the granting of separate rates to individual exporters. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586–87 (May 2, 1994).

Brazil

Export Price

The anticipated period of investigation ''POI'' for Brazil is October 1, 2002, through September 30, 2003.

The petitioner based export price (''EP'') on average unit values (''AUVs'') of headless, shell-on, frozen warmwater shrimp for the POI from official U.S. import statistics. As the AUVs used were net of international freight, insurance and import charges, no further deductions were made to derive U.S. prices. *See* the Initiation Checklist.

Normal Value

The petitioner based normal value (''NV'') on home market ex-factory price quotes from Brazilian producers of head-on, shell-on frozen warmwater shrimp which it obtained from market research. *See* the January 16, 2004, Memorandum to the File from David Goldberger and Jim Nunno entitled ''Telephone Conversation with Foreign Market Researcher.'' These prices were adjusted to reflect headless, shell-on frozen warmwater shrimp, comparable to that which is imported into the United States. The petitioner made currency conversions based on the average of the daily real/U.S. dollar exchange rates as posted on the Department's Web site. *See* the Initiation Checklist.

The estimated dumping margins in the petition, based on comparisons of EP to NV, ranged from 32 percent to 349 percent.

Ecuador

Export Price

The anticipated POI for Ecuador is October 1, 2002, through September 30, 2003.

The petitioner based EP on AUVs of headless, shell-on, frozen warmwater shrimp for the POI from official U.S. import statistics. As the AUVs used were net of international freight, insurance and import charges, no further deductions were made to derive U.S. prices. *See* the Initiation Checklist.

Normal Value

During the course of the initiation, the petitioner placed on the record information which indicated that there is no viable home market for certain frozen and canned warmwater shrimp from Ecuador because nearly all shrimp produced in Ecuador is produced for the export market. We confirmed this information based on our conversation with the market researcher. *See* the January 16, 2004, Memorandum to the File from David Goldberger and Jim Nunno entitled ''Telephone Conversation with Foreign Market Researcher.''

In selecting the third-country market, the petitioner chose Italy because: 1) it is the largest third-country market for scope merchandise outside of the United States during the POI; 2) the aggregate quantity of scope merchandise sold by Ecuadorian exporters to Italy accounted for more than five percent of the aggregate quantity of the scope merchandise sold in the United States; and 3) the product sold to the Italian market is comparable to the product which served as the basis for EP. After examining this evidence, we found the petitioner's selection of Italy as the comparison market to be reasonable.

The petitioner based NV on prices published by the Torino, Italy Chamber of Commerce for the same count sizes upon which it based EP. These prices were adjusted to reflect headless, shell-on shrimp, comparable to that which is imported into the United States. The petitioner further adjusted these prices

[2] *See Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 642-44 (Ct. Int'l Trade 1988) (''the ITC does not look behind ITA's determination, but accepts ITA's determination as to which merchandise is in the class of merchandise sold at LTFV'').

by deducting importer and wholesaler mark-ups, import charges and international freight. Finally, the petitioner made currency conversions based on the average of the daily euro/U.S. dollar exchange rates as posted on the Department's Web site. *See* the Initiation Checklist.

The estimated dumping margins in the petition, based on comparisons of EP to NV, ranged from 85 percent to 166 percent.

India

Export Price

The anticipated POI for India is October 1, 2002, through September 30, 2003.

The petitioner based EP on AUVs of headless, shell-on, frozen warmwater shrimp for the POI from official U.S. import statistics. Although the AUVs used were net of international freight, insurance and import charges, the petitioner made a deduction for import charges, as well as foreign inland freight, to derive U.S. prices. We adjusted the petitioner's EP calculation by not deducting an amount for foreign inland freight and U.S. import expenses because the petitioner either provided inadequate support to deduct these expenses from EP in the petition, or the starting price did not include them. *See* the Initiation Checklist.

Normal Value

The petitioner claims that the home market is not viable for purposes of calculating normal value. Section 773(a)(1)(C)(iii) of the Act provides that the Department may determine that home market sales are inappropriate as a basis for determining normal value if the particular market situation would not permit a proper comparison. In the petition, the petitioner placed on the record information which indicated that virtually all of the frozen and canned warmwater shrimp sold in the home market is of non-export quality. We confirmed this information based on our conversations with the market researcher. *See* the January 16, 2004, Memorandum to the File from Alice Gibbons and Jim Nunno entitled ''Telephone Conversations with Foreign Market Researcher.'' Because the home market does not constitute a valid basis for calculating normal value, the petitioner provided sales of warmwater shrimp to India's largest export market, Japan. According to the petitioner, this is consistent with the Department's prior practice. *See Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon From Chile*, 63 FR 31411, 31418 (June 9, 1998). Although we have accepted the petitioner's claim for purposes of initiating this case, we will continue to examine the issue of home market viability as this case progresses.

In selecting the third-country market, the petitioner chose Japan because: 1) it is the largest third-country market for scope merchandise outside of the United States during the POI; 2) the aggregate quantity of scope merchandise sold by Indian exporters to Japan accounted for more than five percent of the aggregate quantity of the scope merchandise sold in the United States; and 3) the product sold to the Japanese market is comparable to the product which served as the basis for EP. After examining this evidence, we found the petitioner's selection of Japan as the comparison market to be reasonable.

The petitioner based NV on publicly listed price quotations from the Tokyo Central Wholesale Market for the same count sizes upon which it based EP. These prices were adjusted to reflect headless, shell-on and frozen warmwater shrimp, comparable to that which is imported into the United States. The petitioner further adjusted NV by deducting import charges. We revised the petitioner's calculation of the average yen/U.S. dollar exchange rate by calculating a simple average of the daily rates as posted on the Department's Web site rather than monthly averages as posted on the Federal Reserve's Web site. In addition, as noted in the EP section above, we adjusted the petitioner's calculation by not deducting an amount for foreign inland freight expenses. Because the proposed foreign inland freight adjustment to NV is based on the identical information as the proposed adjustment to EP, we similarly find that the petitioner provided inadequate support to substantiate this adjustment. Therefore, we have also not deducted foreign inland freight expenses from NV. *See* the Initiation Checklist.

Pursuant to section 773(b) of the Act, the petitioner provided information demonstrating reasonable grounds to believe or suspect that sales by Indian producers in the relevant foreign market were made at prices below the cost of production (''COP'') and, accordingly, requested that the Department conduct a country-wide sales-below-COP investigation in connection with this investigation. The Statement of Administrative Action (''SAA''), submitted to the Congress in connection with the interpretation and application of the URAA, states that an allegation of sales below COP need not be specific to individual exporters or producers. SAA, H.R. Doc. No. 103–316 at 833 (1994). The SAA, at 833, states that ''Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation.''

Further, the SAA provides that section 773(b)(2)(A) of the Act retains the requirement that the Department have ''reasonable grounds to believe or suspect'' that below-cost sales have occurred before initiating such an investigation. Reasonable grounds exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices. *Id.*

Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacturing (''COM''); selling, general, and administrative expenses (''SG&A''); financial expenses; and packing expenses. Here, the petitioner calculated the COM based on its own production experience, adjusted for known differences between costs to produce frozen and canned warmwater shrimp in the United States and in India using publically available information. Specifically, for fresh shrimp, the petitioner used consumption rates published by the National Marine Fisheries Service. The petitioner used the U.S. producers' own consumption rates for other raw materials, direct labor and energy. To adjust the U.S. producers' costs associated with fresh shrimp, the petitioner relied upon market research. To adjust the U.S. producers' costs associated with sodium tripolyphosphate and packing materials, the petitioner relied upon Indian import statistics as published by the Government of India Ministry of Commerce and Industry. To adjust the U.S. producers' costs associated with labor, the petitioner relied upon Government of India Labor Bureau statistics. To adjust the U.S. producers' costs associated with utilities, the petitioner relied upon Organization for Economic Cooperation and Development's (''OECD'') statistics. The petitioner relied upon its own overhead costs, except for depreciation, which was based on the 2002 financial statements of two Indian seafood processors. To calculate SG&A and financial expense, the petitioner relied upon the 2002 financial statements of two Indian seafood processors.

Based on a comparison of the Japanese market prices for frozen and canned warmwater shrimp to the COP calculated in the petition, we find

reasonable grounds to believe or suspect that sales of the foreign like product were made at prices below the COP within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation relating to third-country sales to Japan.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioner also based NV for sales in the United States on CV. The petitioner calculated CV using the same COM, SG&A, and financial expense figures used to compute the Japanese third-country market costs. The petitioner did not include any amount for profit. Therefore, CV is equivalent to COP.

Based on the changes noted above, the recalculated dumping margins for certain frozen and canned warmwater shrimp from India range from 82.30 percent to 110.90 percent.

People's Republic of China

Export Price

The anticipated POI for the PRC is April 1, 2003, through September 30, 2003.

The petitioner based EP on AUVs of headless, shell-on, frozen warmwater shrimp for the POI from official U.S. import statistics. As the AUVs used were net of international freight, insurance and import charges, no further deductions for these expenses were made to derive U.S. prices. *See* the Initiation Checklist.

Normal Value

The PRC is an NME country and no determination to the contrary has yet been made by the Department. *See* the Initiation Checklist. In accordance with section 771(18)(c)(i) of the Act, any determination that a foreign country has at one time been considered an NME shall remain in effect until revoked. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China*, 68 FR 27530, 27531 (May 20, 2003) (''*Saccharin*'').[3] Accordingly, the petitioner provided a dumping margin calculation using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C).

The petitioner based NV on factors of production. The petitioner asserted that it did not have specific, reliable information on the factors of production incurred for subject merchandise in the PRC. Therefore, the petitioner relied upon an average of factors of production ratios used in the United States for the NV calculation. Specifically, the petition used production factors provided by several U.S. warmwater shrimp processors. *See* the petitioner's January 12 submission at Attachment A. The petitioner argues that because these companies are significant producers of the domestic like product, their experience is an appropriate model for estimating the costs of PRC manufacturers. The model accounts for the amount of each manufacturing input required to produce one pound of frozen warmwater shrimp. The main factor is raw warmwater shrimp; however, other factors of production included in the NV calculation are: tripolyphosphate, labor, electricity, water, overhead and packing materials. *See* the Initiation Checklist.

The petitioner selected India as the surrogate country. The petitioner argued that, pursuant to section 773(c)(4) of the Act, India is an appropriate surrogate because it is a market-economy country that is at a comparable level of economic development to the PRC and is a significant producer of comparable merchandise.[4] Based on the information provided by the petitioner, we believe that its use of India as a surrogate country is appropriate for purposes of initiating this investigation. *See* the Initiation Checklist.

In accordance with section 773(c)(4) of the Act, the petitioner valued factors of production, where possible, on reasonably available, public surrogate country data. To value certain raw materials, the petitioner used official Indian government import statistics, excluding those values from countries previously determined by the Department to be NME countries and excluding imports into India from Indonesia, Korea and Thailand, in light of the prevalence of export subsidies in those countries. *See Notice of Final Determination of Sales at Less Than Fair Value: Ferrovanadium from the People's Republic of China*, 67 FR 71137, 71139 (Nov. 29, 2002). For inputs valued in Indian rupees and not contemporaneous with the POI (*i.e.*, April 2003 - September 2003), the petitioner used information from the wholesale price indices (''WPI'') in India as published in the *International Financial Statistics* by the International Monetary Fund to determine the appropriate adjustments for inflation. In addition, the petitioner made currency conversions, where necessary, based on the average rupee/U.S. dollar exchange rate for the POI.

To value raw warmwater shrimp, the major input, the petitioner used a market researcher to determined the cost of shrimp in India. *See* the January 16, 2004, Memorandum to the File from John LaRose and Jim Nunno entitled ''Telephone Conversation with Foreign Market Researcher.'' The research was conducted in Mumbai, India and completed in December 2003. Sodium tripolyphosphate and packing materials were valued by the petitioner using Indian import statistics, as reported in the *Monthly Statistics of Foreign Trade of India*. The price information from the *Monthly Statistics of Foreign Trade of India* represents cumulative import values for the period April 2002 to March 2003. To value water, the petitioner calculated a surrogate value based on price data in India as reported by the *Second Water Utilities Data Book*, *Asian and Pacific Region*, published by the Asian Development Bank. Electricity in India was valued by the petitioner using the OECD *Energy Prices and Taxes* data. In accordance with 19 CFR 351.408(c)(3), the Department calculates and publishes the surrogate values for labor to be used in NME cases. Therefore, to value labor, the petitioner relied on published wage rates and a labor rate of $0.83 per hour.

The petitioner calculated surrogate financial ratios (depreciation, SG&A and profit) using the 2001 financial statements of two Indian seafood processors that process marine products. To calculate a single surrogate ratio for overhead, depreciation, SG&A, and profit, the petitioner calculated a simple average for the two Indian seafood processors.

In its calculation of the surrogate profit and financial expenses, the petitioner included a zero value expense when averaging the experiences of the two Indian seafood processors.

However, it is the Department's practice not to average a zero expense into the calculation of the surrogate financial ratios. *See Notice of Initiation of Antidumping Duty Investigations: Electrolytic Manganese Dioxide From Australia, Greece, Ireland, Japan, South Africa and the People's Republic of*

[3] The presumption of NME status for the PRC has not been revoked by the Department and remains in effect for purposes of the initiation and this investigation. Therefore, the NV of the product is appropriately based on factors of production valued in a surrogate market economy country in accordance with 773(c) of the Act.

[4] As noted in the India section of this notice, the Indian home market for warmwater shrimp is not viable. However, this situation does not lessen India's ability to be properly designated as the appropriate primary surrogate country for the PRC and Vietnam. Pursuant to section 773(c) of the Act, an appropriate surrogate country is a market economy country that is (A) at a level of comparable economic development to the NME country, and (B) a significant producer of comparable merchandise. India is economically comparable to both the PRC and Vietnam, and India is the second largest producer of shrimp in the world after the PRC. *See* Petition at Volume I, page 8. It follows that India is an appropriate surrogate for purposes of this initiation and these investigations.

China, 68 FR 51551 (Aug. 27, 2003) (''EMD''). Therefore, the Department has recalculated the surrogate financial ratios. *See* the Initiation Checklist at Attachment II. In addition, the petitioner included U.S. producer costs in the normal value calculation of non-depreciation overhead because they were unable to identify those unique costs in the Indian surrogate company financial statements. However, section 773(c)(4) of the Act states that ''{t}he administering authority, in valuing factors of production under paragraph (1), shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economies that are (A) at a level of economic development comparable to that of the non market economy, and (B) significant producers of comparable merchandise.'' Therefore, U.S. prices or costs are not appropriate for use as surrogate values. *See, e.g., Notice of Initiation of Antidumping Duty Investigations: Polyvinyl Alcohol from Germany, Japan, the Peoples Republic of China, the Republic of Korea, and Singapore*, 67 FR 61591 (Oct. 1, 2002) and accompanying *Initiation Checklist* at page 19 (''PVA''). The ultimate goal of the Department's margin calculations is to achieve the greatest accuracy possible. The Department has found no evidence on the record showing that non-depreciation overhead is not included in the overhead figures of the Indian surrogate company financial statements. Therefore, to be conservative, the Department has determined that the U.S. producer costs for non-depreciation overhead should not be included in the normal value calculation. *See* the Initiation Checklist.

Based on comparisons of EP to NV, calculated in accordance with section 773(c) of the Act, the estimated recalculated dumping margins for certain frozen and canned warmwater shrimp from the PRC range from 112.81 percent to 263.68 percent.

Thailand

Export Price

The anticipated POI for Thailand is October 1, 2002, through September 30, 2003.

The petitioner based EP on AUVs of frozen, cooked and peeled shrimp for the POI from official U.S. import statistics. Although the AUVs used were net of international freight, insurance and import charges, the petitioner made a deduction for import charges, as well as foreign inland freight, to derive U.S. prices. We adjusted the petitioner's EP calculation by not deducting amounts for foreign inland freight and U.S. import expenses because the petitioner either provided inadequate support for these expenses in the petition, or the starting price did not include them. *See* the Initiation Checklist.

Normal Value

In the petition, the petitioner placed on the record information which indicated that there is no viable home market for certain frozen and canned warmwater shrimp from Thailand because the Thai market purchases only fresh (*i.e.*, live, unchilled or else chilled, unprocessed) or traditional household industry-produced dried shrimp. We confirmed this information based on our conversation with the market researcher. *See* the January 16, 2004, Memorandum to the File from Elizabeth Eastwood and Jim Nunno entitled ''Telephone Conversation with Foreign Market Researcher.''

In selecting the third-country market, the petitioner chose Japan because: 1) it is the largest third-country market for scope merchandise outside of the United States during the POI; 2) the aggregate quantity of scope merchandise sold by Thai exporters to Japan accounted for more than five percent of the aggregate quantity of the scope merchandise sold in the United States; and 3) the product sold to the Japanese market is comparable to the product which served as the basis for EP. After examining this evidence, we found the petitioner's selection of Japan as the comparison market to be reasonable.

The petitioner based NV on AUVs of Thai exports of frozen, cooked shrimp to Japan during the POI. We revised the petitioner's calculation of the average yen/U.S. dollar exchange rate by calculating a simple average of the daily rates as posted on the Department's Web site rather than monthly averages as posted on the Federal Reserve's Web site. In addition, as noted in the EP section above, we adjusted the petitioner's calculation by not deducting an amount for foreign inland freight expenses. Because the proposed foreign inland freight adjustment to NV is based on the identical information as the proposed adjustment to EP, we similarly find that the petitioner provided inadequate support to substantiate this adjustment. Therefore, we have also not deducted foreign inland freight expenses from NV. *See* the Initiation Checklist.

Based on the changes noted above, the recalculated dumping margin for certain frozen and canned warmwater shrimp from Thailand is 57.64 percent.

Vietnam

Export Price

The anticipated POI for the PRC is April 1, 2003, through September 30, 2003.

The petitioner based EP on AUVs of headless, shell-on, frozen warmwater shrimp for the POI from official U.S. import statistics. As the AUVs used were net of international freight, insurance and import charges, no further deductions for these expenses were made to derive U.S. prices. *See* the Initiation Checklist.

Normal Value

Vietnam is an NME country and no determination to the contrary has yet been made by the Department. In accordance with section 771(18) of the Act, any determination that a foreign country has at one time been considered an NME shall remain in effect until revoked. See the Initiation Checklist. **See, e.g., Saccharin**, 68 FR at 27531.[5] Accordingly, the petitioner provided a dumping margin calculation using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C).

The petitioner based NV on factors of production. The petitioner asserted that it did not have specific, reliable information on the factors of production incurred for subject merchandise in Vietnam. Therefore, the petitioner relied upon an average of factors of production ratios used in the United States for the NV calculation. Specifically, the petition used production factors provided by several U.S. warmwater shrimp processors. The petitioner argues that, because these companies are significant producers of the domestic like product, their experience is an appropriate model for estimating the costs of Vietnamese manufacturers. The model accounts for the amount of each manufacturing input required to produce one pound of frozen warmwater shrimp. The main factor is raw warmwater shrimp, however, other factors of production included in the NV calculation are: tripolyphosphate, labor, electricity, water, overhead and packing materials. *See* the Initiation Checklist.

The petitioner selected India as the surrogate country. The petitioner argued that, pursuant to section 773(c)(4) of the Act, India is an appropriate surrogate because it is a market-economy country

[5] The presumption of NME status for the PRC has not been revoked by the Department and remains in effect for purposes of the initiation and this investigation. Therefore, the NV of the product is appropriately based on factors of production valued in a surrogate market economy country in accordance with 773(c) of the Act.

that is at a comparable level of economic development to Vietnam and is a significant producer of comparable merchandise.[6] Based on the information provided by the petitioner, we believe that the petitioner's use of India as a surrogate country is appropriate for purposes of initiating this investigation. *See* the Initiation Checklist.

In accordance with section 773(c)(4) of the Act, the petitioner valued factors of production, where possible, on reasonably available, public surrogate country data. To value certain raw materials, the petitioner used official Indian government import statistics, excluding those values from countries previously determined by the Department to be NME countries and excluding imports into India from Indonesia, Korea and Thailand, in light of the prevalence of export subsidies in those countries. *See Notice of Final Determination of Sales at Less Than Fair Value: Ferrovanadium from the People's Republic of China*, 67 FR 71137, 71139 (Nov. 29, 2002). For inputs valued in Indian rupees and not contemporaneous with the POI (*i.e.*, April 2003 - September 2003), the petitioner used information from the WPI in India as published in the International Financial Statistics by the *International Monetary Fund* to determine the appropriate adjustments for inflation. In addition, the petitioner made currency conversions, where necessary, based on the average rupee/U.S. dollar exchange rate for the POI.

To value raw warmwater shrimp, the major input, the petitioner used a market researcher to determine the cost of shrimp in India. The research was conducted in Mumbai, India and completed in December 2003. *See* the January 16, 2004, Memorandum to the File from Paul Walker and Jim Nunno entitled ''Telephone Conversation with Foreign Market Researcher.'' Sodium tripolyphosphate and packing materials were valued by the petitioner using Indian import statistics, as reported in the *Monthly Statistics of Foreign Trade of India*. The price information from the *Monthly Statistics of Foreign Trade of India* represents cumulative import values for the period April 2002 to March 2003. To value water, the petitioner calculated a surrogate value based on price data in India as reported by the *Second Water Utilities Data Book, Asian and Pacific Region*, published by the Asian Development Bank. Electricity in India was valued by the petitioner using the OECD *Energy Prices and Taxes* data. In accordance with 19 CFR 351.408(c)(3), the Department calculates and publishes the surrogate values for labor to be used in NME cases. Therefore, to value labor, the petitioner relied on published wage rates and a labor rate of $0.63 per hour.

The petitioner calculated surrogate financial ratios (depreciation, SG&A and profit) using the 2001 financial statements of two Indian seafood processors that process marine products. To calculate a single surrogate ratio for overhead, depreciation, SG&A, and profit, the petitioner calculated a simple average for the two Indian seafood processors. In its calculation of the surrogate profit and financial expenses, the petitioner included a zero value expense when averaging the experiences of the two Indian seafood processors.

However, it is the Department's practice not to average a zero expense into the calculation of the surrogate financial ratios. *See EMD*. Therefore, the Department has recalculated the surrogate financial ratios. *See* the Initiation Checklist at Attachment II. In addition, the petitioner included U.S. producer costs in the normal value calculation of non-depreciation overhead because they were unable to identify those unique costs in the Indian surrogate company financial statements. However, section 773(c)(4) of the Act states that ''{t}he administering authority, in valuing factors of production under paragraph (1), shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economies that are (A) at a level of economic development comparable to that of the non market economy, and (B) significant producers of comparable merchandise.'' Therefore, U.S. prices or costs are not appropriate for use as surrogate values. See, e.g., PVA. The ultimate goal of the Department's margin calculations is to achieve the greatest accuracy possible. The Department has found no evidence on the record showing that non-depreciation overhead is not included in the overhead figures of the Indian surrogate company financial statements. Therefore, to be conservative, the Department has determined that the U.S. producer costs for non-depreciation overhead should not be included in the normal value calculation. *See* the Initiation Checklist.

Based on comparisons of EP to NV, calculated in accordance with section 773(c) of the Act, the estimated recalculated dumping margins for certain frozen and canned warmwater shrimp from Vietnam range from 25.76 percent to 93.13 percent.

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of certain frozen and canned warmwater shrimp from Brazil, Ecuador, India, Thailand, the PRC and Vietnam are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

With regard to Brazil, Ecuador, India, Thailand, the PRC, and Vietnam, the petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV.

The petitioner contends that the industry's injured condition is evident in the declining trends in market share, net operating profits, net sales volumes and revenues, and production employment. These factors apply to both the firms that produce frozen and canned warmwater shrimp, and the harvesters and growers of the raw agricultural product, wild-caught and farm-raised warmwater shrimp. The allegations of injury and causation are supported by relevant evidence including information from U.S. import statistics, the National Marine Fisheries Service, a commodity news reporting agency, industry surveys, and press reports from a variety of sources. We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* the Initiation Checklists.

Initiation of Antidumping Investigations

Based upon our examination of the petitions on certain frozen and canned warmwater shrimp, we have found that they meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of certain frozen and canned warmwater shrimp from Brazil,

[6] As noted in the India section of this notice, the Indian home market for warmwater shrimp is not viable. However, this situation does not lessen India's ability to be properly designated as the appropriate primary surrogate country for the PRC and Vietnam. Pursuant to section 773(c) of the Act, an appropriate surrogate country is a market economy country that is (A) at a level of comparable economic development to the NME country, and (B) a significant producer of comparable merchandise. India is economically comparable to both the PRC and Vietnam, and India is the second largest producer of shrimp in the world after the PRC. *See* Petition at Volume I, page 8. It follows that India is an appropriate surrogate for purposes of this initiation and these investigations.

Ecuador, India, Thailand, the PRC, and Vietnam are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended pursuant to section 733(b)(1)(A) of the Act, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of each petition has been provided to the representatives of the governments of Brazil, Ecuador, India, Thailand, the PRC, and Vietnam. We will attempt to provide a copy of the public version of each petition to each exporter named in the petitions, as provided for under 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiations as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine no later than February 17, 2004, whether there is a reasonable indication that imports of certain frozen and canned warmwater shrimp from Brazil, Ecuador, India, Thailand, the PRC and Vietnam are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: January 20, 2004.

James Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–1698 Filed 1–26–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-427–818]

Notice of Preliminary Results of Antidumping Duty Administrative Review: Low Enriched Uranium from France

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

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

EFFECTIVE DATE: January 27, 2004.

FOR FURTHER INFORMATION CONTACT: Vicki Schepker or Carol Henninger at (202) 482–1756 or (202) 482–3003, respectively; AD/CVD Enforcement Office 5, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue NW, Washington, DC 20230.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on low enriched uranium from France for the period July 13, 2001 to January 31, 2003 (the POR). We preliminarily determine that sales of subject merchandise by Eurodif, S.A. (Eurodif), Compagnie Générale Des Matiéres Nucléaires (COGEMA) and COGEMA, Inc. (collectively, COGEMA/Eurodif or the respondent), have been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on appropriate entries based on the difference between the constructed export price (CEP) and the NV. Interested parties are invited to comment on these preliminary results.

SUPPLEMENTARY INFORMATION:

Background

On February 13, 2002, the Department issued an antidumping duty order on low enriched uranium from France. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Low Enriched Uranium from France*, 67 FR 6680 (February 13, 2002). On February 3, 2003, the Department issued a notice of opportunity to request the first administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 68 FR 5272 (February 3, 2003). In accordance with 19 CFR 351.213(b), COGEMA/Eurodif, a French producer of subject merchandise, requested an administrative review of the antidumping duty order on low enriched uranium from France on February 3, 2003. On February 28, 2003, United States Enrichment Corporation and USEC, Inc. (the petitioner), a domestic producer of subject merchandise, also requested an administrative review. On March 25, 2003, the Department published a notice of initiation of the administrative review, covering the period July 13, 2001, through January 31, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 68 FR 14394 (March 25, 2003).

On April 4, 2003, the Department issued its antidumping questionnaire to COGEMA/Eurodif. We received timely responses to all sections of the initial antidumping questionnaire and associated supplemental questionnaires. Based on a timely allegation filed by the petitioner on June 20, 2003, we initiated a major input investigation with regard to the respondent's purchases of electricity from an affiliated party. On October 27, 2003, the Department published a notice extending the time limit for the preliminary results. *See Extension of the Time Limit for the Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 61184 (October 27, 2003). The time limit for the preliminary results was subsequently further extended to January 20, 2004. *See Extension of the Time Limit for the Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 69994 (December 16, 2003).

Scope of the Order

The product covered by this order is all low enriched uranium (LEU). LEU is enriched uranium hexafluoride (UF^6) with a U_{235} product assay of less than 20 percent that has not been converted into another chemical form, such as UO^2, or fabricated into nuclear fuel assemblies, regardless of the means by which the LEU is produced (including LEU produced through the down-blending of highly enriched uranium).

Certain merchandise is outside the scope of this order. Specifically, this order does not cover enriched uranium hexafluoride with a U_{235} assay of 20 percent or greater, also known as highly enriched uranium. In addition, fabricated LEU is not covered by the scope of this order. For purposes of this order, fabricated uranium is defined as enriched uranium dioxide (UO^2), whether or not contained in nuclear fuel rods or assemblies. Natural uranium concentrates (U^3O^8) with a U_{235} concentration of no greater than 0.711 percent and natural uranium concentrates converted into uranium hexafluoride with a U_{235} concentration of no greater than 0.711 percent are not covered by the scope of this order.

Also excluded from this order is LEU owned by a foreign utility end-user and imported into the United States by or for such end-user solely for purposes of conversion by a U.S. fabricator into uranium dioxide (UO^2) and/or

fabrication into fuel assemblies so long as the uranium dioxide and/or fuel assemblies deemed to incorporate such imported LEU (i) remain in the possession and control of the U.S. fabricator, the foreign end-user, or their designed transporter(s) while in U.S. customs territory, and (ii) are re-exported within eighteen (18) months of entry of the LEU for consumption by the end-user in a nuclear reactor outside the United States. Such entries must be accompanied by the certifications of the importer and end user.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2844.20.0020. Subject merchandise may also enter under 2844.20.0030, 2844.20.0050, and 2844.40.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Verification

As provided in section 782(i)(3) of the Tariff Act of 1930, as amended (the Act), we verified information provided by COGEMA/Eurodif from October 6–14, 2003, October 20–24, 2003, and October 29–30, 2003. We used standard verification procedures, including on-site inspection of the respondents facilities and examination of relevant sales and financial records. *See* Memorandum from Vicki Schepker and Carol Henninger, International Trade Compliance Analysts, to Gary Taverman, Director, Office 5, Re: Verification of the Sales Response of Eurodif S.A., Compagnie Générale Des Matiéres Nucléaires, and COGEMA, Inc., dated December 31, 2003, (Sales Verification Report); *see also* Memorandum from Ernest Gziryan, Senior Accountant, to Neal Halper, Director, Office of Accounting, Re: Verification Report on the Cost of Production and Constructed Value Data Submitted by Eurodif S.A., Compagnie Générale Des Matiéres Nucléaires, and COGEMA, Inc. dated January 20, 2004, (Cost Verification Report); Memorandum from Ernest Z. Gziryan, Senior Accountant, to Neal M. Halper, Director, Office of Accounting, Re: Verification Report on the Cost of Production Data Submitted by EdF, dated January 20, 2004; and Memorandum from Ernest Z. Gziryan, Senior Accountant, to Neal M. Halper, Director, Office of Accounting, Re: Verification Report on the COP Data Submitted by RTE, dated January 20, 2004.

Fair Value Comparisons

To determine whether sales of LEU from France were made in the United States at less than fair value, we compared the constructed export price (CEP) to the constructed value (CV), as described in the *Constructed Export Price* and *Normal Value* sections of this notice.

In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated CEPs and compared them to CV.

We note that during the POR, the respondent sold LEU pursuant to contracts in which it undertook to manufacture and deliver LEU for a cash payment covering only the value of the enrichment component; for the natural uranium feedstock component, the respondent received an amount of natural uranium equivalent to the amount used to produce the LEU shipped (so-called separative work unit (SWU)[1] contracts). However, the product manufactured and delivered by the respondent was LEU. For purposes of our antidumping analysis, we have translated prices and costs involved in SWU contracts to an LEU basis, increasing those values to account for the cost of the uranium feedstock involved. These adjustments are described in greater detail below.

Constructed Export Price

In accordance with section 772 of the Act, we calculated a CEP. Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold in the United States before or after the date of importation by or for the account of the producer or exporter of the merchandise or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, as adjusted under sections 772(c) and (d) of the Act. Consistent with this definition, we found that COGEMA/Eurodif made CEP sales during the POR because the sales were made for the account of COGEMA/Eurodif by the respondent's U.S. subsidiary, COGEMA, Inc., in the United States.

We calculated CEP based on packed prices charged to the first unaffiliated customer in the United States. For all sales, which involved payments on a SWU basis, we translated the prices to an LEU basis by adding a value for the uranium feedstock used in the production of the LEU. This value was derived from the respondent's reported entered value of feed, which was based on publicly available price information used for customs entry purposes.

Section 351.401(i) of the Department's regulations provide that the date of sale will normally be the date of invoice, unless the material terms of sale are set on some other date.

In the instant case, the material terms of sale are set on the date of the contract with the U.S. customer. Therefore, we based the date of sale on that date.

The sales examined in this review represented merchandise which entered the United States during the POR. We have not included deliveries made of merchandise entered during the provisional measures gap period[2] (gap period) in our calculation because these entries are not subject to antidumping duties. For the purposes of the preliminary results, we have accepted COGEMA/Eurodif's allocation methodology for linking deliveries to entries with two exceptions. See Preliminary Results Calculation Memorandum - Eurodif S.A., Compagnie Générale Des Matiéres Nucléaires, and COGEMA, Inc. from Vicki Schepker and Carol Henninger, International Trade Compliance Analysts to Constance Handley, Program Manager (January 20, 2004) (Preliminary Calculation Memorandum). We verified that some entries could be definitively linked to a particular delivery to a U.S. utility. For entries that could not be definitively linked to a delivery, COGEMA/Eurodif used a hierarchy to allocate LEU in inventory at the fabricator to deliveries, starting with Eurodif-produced LEU entered during the POR. *See* Sales Verification Report at 42–43.

We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include foreign inland freight from the plant to the port of exit, international freight, marine insurance, charges for shipment of samples, transportation expenses for the movement of customer feed, and port charges. We also deducted any discounts from the starting price.

In accordance with section 772(d)(1) of the Act, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including indirect selling expenses, credit expense, and inventory carrying costs.

In addition, in accordance with 772(d)(3) and 772(f) of the Act, we made

[1] SWU is a unit of measurement of the effort required to separate the U235 and U238 atoms in uranium feed in order to create a final product richer in U235 atoms.

[2] The provisional measures referred to in section 733(d) of the Act expired on January 9, 2002. The order was published on February 13, 2002. Therefore, between those dates, no duties were collected.

a deduction for CEP profit. The CEP profit rate is normally calculated on the basis of total revenue and total expenses on sales in the comparison market and the U.S. market. In this case, there were no useable home market sales of LEU during the POR and therefore no useable home market profit from which to derive CEP profit. Therefore, we based CEP profit on the total expenses and total revenue derived from Eurodif's U.S. and third-country sales of the subject merchandise. See Preliminary Calculation Memorandum.

Finally, we made additional adjustments to CEP based upon our findings at verification. *See* Preliminary Calculation Memorandum.

Normal Value

A. Selection of Comparison Markets

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the export price (EP) or CEP. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

Pursuant to section 773(a)(1) of the Act, because COGEMA/Eurodif's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable. However, COGEMA/Eurodif has only one customer in the home market, an affiliated party. Because we had no independent means to determine whether prices for sales to this customer were made at arm's length, for purposes of this review, we have based NV on CV. See sections 351.403 and 351.405 of the Department's regulations. Adjustments made in deriving CV are described in detail in the *Calculation of Normal Value Based on Constructed Value* section below.

B. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison market sales, NV may be based on CV. Section 773(e) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative expenses (SG&A), profit, and U.S. packing costs. In accordance with section 773(e)(2)(B)(iii) of the Act, we based general and administrative (G&A) expenses on amounts derived from Eurodif's financial statements. We based financial expenses on the financial statements of COGEMA's parent company, AREVA, which represents the highest level of consolidation for Eurodif. For selling expenses, we used information on Eurodif's indirect selling expenses from its questionnaire response and from information obtained at verification. Where appropriate, we made circumstance of sale (COS) adjustments to CV in accordance with section 773(a)(8) of the Act and 19 CFR 351.410 of the Department's regulations. For a further discussion of the calculation of indirect selling expenses and a COS adjustment of a proprietary nature, see the Preliminary Calculation Memorandum.

Because we could not determine whether COGEMA/Eurodif's sales in France were made in the ordinary course of trade in the home market, we calculated profit in accordance with section 773(e)(2)(B)(iii) of the Act and the Statement of Administrative Action (SAA) at 841. We based CV profit on the profit rate of Eurodif's sales of LEU in all markets other than the United States and France. *See* Constructed Value Calculation Adjustments Memorandum for the Preliminary Results from Ernest Z. Gziryan, Senior Accountant, to Neal M. Halper, Director, Office of Accounting (January 20, 2004) (Constructed Value Calculation Adjustments Memorandum). The profit cap under alternative (iii) of section 773(e)(2)(B) of the Act cannot be calculated in this case because we do not have information allowing us to calculate the amount normally realized by exporters or producers (other than respondent) in connection with the sale, for consumption in the foreign country, of the merchandise in the same general category.

In addition to these adjustments, we included in the reported cost the Public Service Electricity Generation Fund tax (the ''FSPPE levy'') accrued by Eurodif and recorded in the company's books. *See* Constructed Value Calculation Adjustments Memorandum, *see also* Cost Verification Report at 8.

In this case, electricity is considered a major input that Eurodif obtained from its affiliated supplier, Électricité de France (EdF). See Memorandum from Ernest Gziryan, Senior Accountant, to Gary Taverman, Director, Office 5, Re: Petitioner's Allegation of Purchases of Major Inputs From Affiliated Parties at Prices Below the Affiliated Parties' Cost of Production, dated August 13, 2003. Section 773(f)(3) of the statute states that ''in the case of a transaction between affiliated persons involving the production by one of such persons of a major input, the administering authority may determine the value of the major input on the basis of the information available regarding such cost of production, if such cost is greater than the amount that would be determined for such input under paragraph (2).'' Section 351.407(b) of the Department's regulations states that in applying the major input rule, the Department will normally include the higher of the transfer price between affiliates, the market price for the input, or the affiliate's cost of production (COP) for the purchased input. As such, we evaluated the affiliated supplier's reported electricity COP. We found that EdF's books reflected a calculated cost based on a marginal costing methodology and resulted in different costs for the same physically identical product - electricity. As it is the Department's long standing practice to calculate a single average cost for producing products of identical physical characteristics, for the preliminary results we adjusted the reported electricity COP by calculating one average POR cost of producing electricity and used it in our major input analysis. We adjusted the reported value of electricity purchased from EdF to the higher of the transfer price, the market price or EdF's cost of production. Due to the proprietary nature of this information, see the Constructed Value Calculation Adjustments Memorandum for more details.

Level of Trade/CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a

different LOT, and the difference 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. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In implementing these principles in this review, we obtained information from the respondent about the marketing stages involved in the reported U.S. sales, as well as in the home market, including a description of the selling activities performed by the respondent for each channel of distribution. Given that all U.S. sales were CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.

In the U.S. market, the respondent sells to utility customers. After deducting expenses associated with the selling activities reflected in the price under section 772(d) of the Act (*i.e.*, the expenses of COGEMA, Inc.), we noted selling expenses associated with strategic planning and marketing, customer sales contact, production planning and evaluation, and contract administration. These expenses did not vary by U.S. channel of distribution. Therefore, we found all U.S. sales to be made at a single LOT.

Selling expenses for CV were based on Eurodif's selling expenses exclusive of expenses allocated to Eurodif's U.S. sales. Eurodif performed all the selling activities for sales to its sole customer in the French market. Therefore, we found a single LOT of trade in the home market.

Eurodif generally performs the same kinds of selling functions in both markets. We note that for several of the thirteen reported categories of selling functions, Eurodif stated that it performs the functions to the same degree for both the CEP and the home market LOT. The respondent described different degrees of selling activities for its home market sales and sales to its U.S. affiliate in the following categories: sales forecasting, visiting customers/potential customers, negotiating contracts, receiving and booking orders/order processing, collecting payments/invoice follow-up, and customer follow-up. We reviewed each of the selling functions at verification and found that Eurodif performs the same level of selling activity for receiving and booking orders/order processing and collecting payments/invoice follow-up for both home market and CEP sales. *See* Sales Verification Report at 15–19. With regard to the selling functions of visiting customers/potential customers and negotiating contracts, Eurodif had reported different levels of activity for sales in the home market and sales to its U.S. affiliate. We found that Eurodif performs these functions to a similar degree for its sales in the U.S. market and in the home market, as all of its sales in the home market are to one customer under a long-term contract. For sales forecasting and customer follow-up, in which Eurodif reported different levels of activity for sales in the home market and sales to its U.S. affiliate, we found that there are some minor differences in the levels of these selling functions. However, these differences alone do not constitute a basis for finding a more advanced level of trade in the home market. We note that we did not base CV profit on sales in France. *See* the *Calculation of Normal Value Based on Constructed Value* section above. Since there is no evidence on the record to indicate that the selling functions for sales to third-country markets differ from Eurodif's selling functions to COGEMA, Inc., we have no reason to conclude that Eurodif's home market, third-country market and U.S. sales were made at different levels of trade. Accordingly, we are not granting a CEP offset adjustment.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act, based on exchange rates in effect on the date of the U.S. sale, 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 July 13, 2001, through January 31, 2003:

Producer	Weighted-Average Margin (Percentage)
COGEMA/Eurodif	5.34

The Department will disclose calculations performed in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. See 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication, 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 these preliminary results. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no 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. Further, the parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on 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 such comments, within 120 days of publication of these preliminary results.

Assessment

Upon completion of this administrative review, pursuant to 19 CFR 351.212(b), the Department will calculate an assessment rate on all appropriate entries. We will calculate importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer.

Cash Deposit Requirements

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of LEU from France entered, or withdrawn from warehouse,

for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate listed above for COGEMA/Eurodif will be the rate established in the final results of this review, except if a rate is less than 0.5 percent, and therefore *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the 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) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 19.95 percent, the ''All Others'' rate established in the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice 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 entities during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 20, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–1695 Filed 1–26–04; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–887]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol from the People's Republic of China

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

EFFECTIVE DATE: January 27, 2004.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand or Peter Mueller, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3207 and (202) 482–5811 respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that tetrahydrofufuryl alcohol (''THFA'') from the People's Republic of China (''PRC'') is being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Tariff Act of 1930, as amended (''the Act''). The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

On June 23, 2003, the Department of Commerce (''Department'') received a petition on THFA from the PRC filed in proper form by Penn Specialty Chemicals, Inc. (''petitioner''). *See Petition for the Imposition of Antidumping Duties: Tetrahydrofurfuryl Alcohol from the PRC*, dated June 23, 2003 (''*Petition*''). This investigation was initiated on July 18, 2003. *See Notice of Initiation of Antidumping Duty Investigation: Tetrahydrofurfuryl Alcohol from the People's Republic of China*, 68 FR 42686 (July 18, 2003) (''*Notice of Initiation*''). The Department initiated the investigation using a non-market economy analysis. For a further discussion of the PRC's market analysis, please *see* the ''Non-Market Economy Country Status'' section below. For a detailed discussion of the comments regarding the scope of the merchandise under investigation, please *see* the ''Scope of the Investigation'' section below.

On August 11, 2003, the United States International Trade Commission (''ITC'') issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from the PRC of THFA. *See Tetrahydrofurfuryl Alcohol from China*, 68 FR 48938 (August 15, 2003).

On July 23, 2003, the Department requested quantity and value (''Q&V'') information from four PRC companies that were identified in the *Petition* and for which the Department was able to locate contact information.[1] On August 5, 2003, the Embassy of the United States, Beijing, submitted to the Department an additional list (''embassy list'') of potential producers/exporters of THFA in the PRC.[2] Included in the embassy list were two companies that matched with two producers/exporters submitted in the petitioner's list.[3] After comparing the two lists, the Department concluded that seven companies in the PRC potentially exported, manufactured, or had the capability to manufacture THFA.[4] Shortly thereafter, using proprietary U.S. Bureau of Customs and Border Protection (''CBP'') data, the Department identified an additional potential exporter, Qingdao Wenkem (F.T.Z.) Trading Co., Ltd. (''QWTC''), of subject merchandise during the period of investigation (''POI''). Therefore, in total, the Department identified eight potential producers/exporters of subject merchandise during the POI.[5]

On August 12, 2003, the Department requested Q&V information from the three PRC companies which were submitted as part of the embassy list, (*i.e.*, Wenzhou Dongsheng Chemicals and Reagent Factory, Qingdao Tian'an Group Co., Ltd., Gaoping Chemicals Co., Ltd., and Taizhou Qianquan Medical and Chemicals Co., Ltd.), and to QWTC. On August 13, 2003, the Department also sent the Ministry of Commerce in the PRC and the Embassy of the PRC in Washington a letter requesting assistance in locating all known PRC producers/exporters of THFA who exported the subject merchandise to the United States during POI and the quantity and value information for all exports to the United States of the merchandise under investigation during the POI. In response, the Department received two submissions, one from

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[1] Companies include: Hunan Sun-Yuan Chemical Co., Ltd., Shandong Baofeng Chemicals Group Corp., Taizhou Qianquan Medical and Chemicals Co., Ltd., and Zhucheng Huaxiang Chemical Company.

[2] Companies included: Wenzhou Dongsheng Chemicals and Reagent Factory, Qingdao Tian'an Group Co., Ltd., and Gaoping Chemicals Co., Ltd., Zhucheng Huaxiang Chemicals Co., Ltd. and Taizhou Qianquan Medical and Chemicals Co., Ltd.

[3] Two matching companies: Zhucheng Huaxiang Chemicals Co., Ltd. and Taizhou Qianquan Medical and Chemicals Co., Ltd.

[4] Wenzhou Dongsheng Chemicals and Reagent Factory, Qingdao Tian'an Group Co., Ltd., Gaoping Chemicals Co., Ltd., Zhucheng Huaxiang Chemicals Co., Ltd., Taizhou Qianquan Medical and Chemicals Co., Ltd., Hunan Sun-Yuan Chemical Co., Ltd., and Shandong Baofeng Chemicals Group Corp.

[5] Wenzhou Dongsheng Chemicals and Reagent Factory, Qingdao Tian'an Group Co., Ltd., Gaoping Chemicals Co., Ltd., Zhucheng Huaxiang Chemicals Co., Ltd., Taizhou Qianquan Medical and Chemicals Co., Ltd., Hunan Sun-Yuan Chemical Co., Ltd., Shandong Baofeng Chemicals Group Corp., and Qingdao Wenkem (F.T.Z) Trading Company Ltd.

Zhucheng Huaxiang Chemical Co., Ltd. (''ZHC'') on August 6, 2003 and the other from QWTC on August 26, 2003. The data from these responses indicated that ZHC manufactured the subject merchandise during the POI while QWTC exported, in full, ZHC's subject merchandise from the PRC to the United States during the POI.

On August 28, 2003, the Department issued to ZHC the Section A, C, D, and E of the Department's non-market economy antidumping duty questionnaire. On August 29, 2003, the Department issued to the other responding company, QWTC, Section A, C, D, and E of the Department's non-market economy antidumping duty questionnaire. In addition, on September 10, 2003, the Department sent the Ministry of Commerce in the PRC and the Embassy of the PRC in Washington a copy of the Section A, C, D, and E of the Department's non-market economy antidumping duty questionnaire.

On September 4, 2003, the Department requested comments on surrogate country and factor valuation information in order to have sufficient time to consider this information for the preliminary determination. On September 18, 2003, the petitioner submitted comments concerning the surrogate country selection.

On October 1, 2003, the Department received Section A responses from ZHC and QWTC. On October 10, 2003, the petitioner submitted comments concerning ZHC's and QWTC's Section A responses. On October 10, 2003, the Department received ZHC's Section C and D response and on October 14, 2003, the Department received QWTC's Section C response. On October 24, 2003, the petitioner submitted comments concerning ZHC's Section C and D response.

On October 27, 2003, the Department issued its respondent selection memorandum, selecting QWTC as the mandatory respondent to be investigated. *See Memorandum to the File from Peter Mueller, Case Analyst to Edward C. Yang, Director, Office IX, Antidumping Duty Investigation of Tetrahydrofurfuryl Alcohol from the People's Republic of China*, dated October 27, 2003 (''*Respondent Selection Memo*'').

On October 30, 2003, the Department issued a supplemental Section A questionnaire to QWTC. On November 28, 2003, the Department received QWTC's response to the Department's supplemental Section A. On December 11, 2003, the petitioner submitted comments concerning QWTC's November 28, 2003 supplemental Section A response.

On November 14, 2003 the Department issued to QWTC a supplemental containing additional Section A questions and also Section C questions. On December 5, 2003, the Department received QWTC's response to the Department's Section A and C questionnaire.

On November 10, 2003, the Department issued its surrogate country memorandum, selecting India as the surrogate country. *See Memorandum to the File from Peter Mueller, Case Analyst to Edward C. Yang, Director, Office IX, Antidumping Duty Investigation of Tetrahydrofurfuryl Alcohol from the People's Republic of China*, dated November 10, 2003 (''*Surrogate Selection Memo*'').

On November 18, 2003, the Department issued a Section D supplemental questionnaire to QWTC. On December 3, 2003, the Department received QWTC's response to the Department's November 18, 2003 Section D supplemental. On December 11, 2003, the petitioner submitted comments concerning QWTC's December 3, 2003 Section D supplemental response.

On November 19, 2003 the Department issued an additional questionnaire to QWTC regarding QWTC's Section C and D responses. On December 10, 2003, the Department received QWTC's response to the Department's November 19, 2003 Section C and D questionnaire.

On November 19, 2003, the Department sent a cable to the United States Foreign Commercial Service (''FCS'') posts in India, requesting that they provide publicly available financial statements for six manufacturers of furfural and furfuryl alcohol in India. On January 4, 2004, the Department received a cable from the FCS in India relaying that it had contacted six companies and that of the six only two manufacturers of furfural responded with their financial statements. Both sets of financials were sent by facsimile to the Department, the first set on December 16, 2003, and the second set on January 5, 2004. Of the two companies providing financial statements, only Delta Agro Chemical Co., Ltd., the company that submitted financials on January 5, 2004, had financial statements that were publicly available.

On November 20, 2003, the Department published a postponement of the preliminary antidumping duty determination on THFA from the PRC, postponing the preliminary determination from November 30, 2003 to January 19, 2004. *See Notice of Postponement of Preliminary Antidumping Duty Determination: Tetrahydrofurfuryl Alcohol from the People's Republic of China*, 68 FR 65437 (November 20, 2003) (''*Notice of Prelim Postponement*'').

On December 15, 2003, the Department issued a further Section A, C, and D supplemental questionnaire to QWTC. On December 29, 2003, the Department received QWTC's response to the Department's December 15, 2003 Section A, C, and D supplemental questionnaire.

On December 16, 2003, the petitioner submitted comments concerning the valuation of the factors of production.

On December 19, 2003, the Department issued an additional supplemental Section D questionnaire. On January 6, 2004, the Department received QWTC's response to the Department's December 19, 2003 supplemental Section D questionnaire.

Period of Investigation

The POI is October 1, 2002 through March 31, 2003. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition (June 23, 2003). *See* 19 CFR 351.204(b)(1).

Scope of Investigation

For the purpose of this investigation, the product covered is tetrahydrofurfuryl alcohol ($C_5H_{10}O_2$) (''THFA''). THFA, a primary alcohol, is a clear, water white to pale yellow liquid. THFA is a member of the heterocyclic compounds known as furans and is miscible with water and soluble in many common organic solvents. THFA is currently classified in the Harmonized Tariff Schedules of the United States (''HTSUS'') under subheading 2932.13.00.00. Although the HTS subheadings are provided for convenience and for the purposes of the CBP, the Department's written description of the merchandise under investigation is dispositive.

Selection of Respondents

Section 777A(c)(1) of the Act, directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise.[6] In addition, section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies.

[6] Regarding respondent selection in general *see* 19 CFR 351.204 (c).

The Department selected as the mandatory respondent the exporter QWTC, as it accounted for the largest volume of the subject merchandise pursuant to section 777(c)(2)(B) of the Act. *See Respondent Selection Memo* at 3.

The Department need not limit the number of respondents to be examined in this investigation, as the Department found that it had the resources available to investigate the one respondent, QWTC, in the above-captioned case.

Nonmarket Economy Country Status

For purposes of initiation, the petitioner submitted LTFV analysis for the PRC as a non-market economy. *See Notice of Initiation*, at 42687. The Department has treated the PRC as a non-market economy (''NME'') country in all past antidumping investigations. *See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 33805 (May 25, 2000), and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China*, 65 FR 19873 (April 13, 2000). A designation as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. The respondent in this investigation have not requested a revocation of the PRC's NME status. We have, therefore, preliminarily determined to continue to treat the PRC as an NME country. When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs us to base the normal value on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the ''Normal Value'' section, below.

Furthermore, no interested party has requested that the THFA industry in the PRC be treated as a market-oriented industry and no information has been provided that would lead to such a determination. Therefore, we have not treated the THFA industry in the PRC as a market-oriented industry in this investigation.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base normal value, in most circumstances, on the NME producer's factors of production, valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, the Department, in valuing the factors of production, shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that: (1) are at a level of economic development comparable to that of the NME country; and, (2) are significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the normal value section below and in *Antidumping Duty Investigation of Tetrahydrofurfuryl Alcohol from the People's Republic of China: Factor Valuation, Memorandum from Peter Mueller, Case Analyst, through Edward C. Yang, Program Manager, Office IX, to the File* , dated January 19, 2004 (''*Factor Valuation Memo*'').

The Department has determined that India, Pakistan, Indonesia, Sri Lanka, and the Philippines are countries comparable to the PRC in terms of economic development. *See Memorandum from Ron Lorentzen to Robert Bolling: Antidumping Duty Investigation on Tetrahydrofurfuryl Alcohol from the People's Republic of China (PRC): Request for a List of Surrogate Countries*,(''*Policy Letter*''), dated August 26, 2003. Customarily, we select an appropriate surrogate country based on the availability and reliability of data from the countries that are significant producers of comparable merchandise. For PRC cases, the primary surrogate country has often been India if it is a significant producer of comparable merchandise. In this case, we have found that India is a significant producer of comparable merchandise. *See Surrogate Selection Memo*.

The Department used India as the primary surrogate country, and, accordingly, has calculated normal value using Indian prices to value the PRC producers' factors of production, when available and appropriate. Additionally, the Department has used Indonesia as the secondary surrogate country for certain factors of production. *See Surrogate Selection Memo and Factor Valuation Memo*. We have obtained and relied upon publicly available information wherever possible. *See Id*.

In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in an antidumping investigation, interested parties may submit publicly available information to value factors of production within 40 days after the date of publication of this preliminary determination.

Separate Rates

In an NME proceeding, the Department presumes that all companies within the country are subject to governmental control and should be assigned a single antidumping duty rate unless the respondent demonstrates the absence of both *de jure* and *de facto* governmental control over its export activities. *See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026 (April 30, 1996) (''*Bicycles*''). The exporter that the Department selected to investigate, QWTC, and the PRC producer of QWTC's exported goods, ZHC, each provided company-specific separate rates information and stated that they met the standards for the assignment of separate rates. In determining whether companies should receive separate rates, the Department focuses its attention on the exporter, in this case QWTC, rather than the manufacturer (*i.e.*, ZHC), as our concern is the manipulation of dumping margins. *See Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China*, 60 FR 56045 (November 6, 1995). Consequently, the Department analyzed whether the exporter of the subject merchandise, QWTC, should receive a separate rate. QWTC has provided the requested company-specific separate rates information and has indicated that there is no element of government ownership or control over their export operations. We have considered whether the mandatory respondent is eligible for a separate rate as discussed below.

The Department's separate rate test is not concerned, in general, with macroeconomic/ border-type controls (*e.g.*, export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine*, 62 FR 61754 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 61276 (November 17, 1997); and *Notice of Preliminary Determination of Sales at Less than Fair Value: Honey from the People's Republic of China*, 60 FR 14725 (March 20, 1995).

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test

arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, (May 6, 1991), as modified by *Notice of 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*''). Under the separate rates criteria, the Department assigns separate rates in NME cases only if the respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities. *See Silicon Carbide* and *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544 (May 8, 1995) (''*Furfuryl Alcohol*'').

1. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; and (2) any legislative enactments decentralizing control of companies.

The mandatory respondent has placed on the record statements and documents to demonstrate absence of *de jure* control. In its questionnaire responses, the respondent, QWTC reported that it has no relationship with any level of the PRC government. QWTC states that it has complete independence with respect to its export activities and that neither any PRC legislative enactments nor any other formal measures centralize any aspect of QWTC's export activities. QWTC reported that the subject merchandise is not subject to export quotas or export control licenses. Further, QWTC reported that the subject merchandise does not appear on any government list regarding export provisions or export licensing. Furthermore, QWTC stated that the local Chamber of Commerce in the PRC does not coordinate any export activities for QWTC.

QWTC reported that it is required to obtain a business license, which is issued by the Qingdao Industry and Commercial Administrative Bureau. According to QWTC, its business license allows a business entity, such as itself, to operate in the PRC and facilitates QWTC's export and import business based in the PRC. In addition, QWTC submitted the ''Administration Regulations of Free Trade Zone, Qingdao, Shangong'', (''*Administrative Regulation*''). The *Administrative Regulation* defines QWTC's rights as a business within a free trade zone. We examined the *Administrative Regulation* and determine that it demonstrates an authority for establishing the *de jure* decentralized control over the export activities and evidence in favor of the absence of government control associated with its business license. *See Memorandum to the File from Peter Mueller, Case Analyst to Edward C. Yang, Director, Office IX, Antidumping Duty Investigation of Tetrahydrofurfuryl Alcohol from the People's Republic of China*, dated December 22, 2003 (''*Separate Rates Memo*'').

2. Absence of *De Facto* Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255 (December 31, 1998). Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates. The Department typically considers four factors in evaluating whether each respondent is subject to de facto governmental control of its export functions: (1) Whether the exporter sets its own export prices independent of the government and without the approval of a government authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. QWTC has asserted the following: (1) it established its own export prices; (2) it negotiated contracts without guidance from any governmental entities or organizations; (3) it made its own personnel decisions; and (4) it retained the proceeds of its export sales and used profits according to its business needs. Additionally, QWTC's questionnaire responses indicate that it does not coordinate with other exporters in setting prices or in determining which companies will sell to which markets. This information supports a preliminary finding that there is an absence of *de facto* governmental control of the export functions of QWTC. Consequently, we preliminarily determine that QWTC has met the criteria for the application of separate rates.

The evidence placed on the record of this investigation by QWTC demonstrates an absence of government control, both in law and in fact, with respect to QWTC's exports of the merchandise under investigation. As a result, for the purposes of this preliminary determination, we are granting a separate, company-specific rate to QWTC, the exporter which shipped the subject merchandise, THFA, to the United States during the POI. For a full discussion of separate rates, *please see* the *Separate Rates Memo*.

PRC-Wide Rate

For a discussion of the PRC-Wide rate *please see Memorandum to the File From Peter Mueller, Case Analyst to Edward C. Yang, Director, Office IX, Antidumping Duty Investigation of Tetrahydrofurfuryl Alcohol from the People's Republic of China: PRC-Wide Rate*, dated January 20, 2004.

Date of Sale

Section 351.401(i) of the Department's regulations state that ''in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business.'' After examining the sales documentation placed on the record by the respondent, we preliminarily determine that invoice date is the most appropriate date of sale for the respondent. We made this determination because, at this time, there is not enough evidence on the record to determine whether the contracts used by the respondent establish the material terms of sale to the extent required by our regulations in order to rebut the presumption that invoice date is the proper date of sale. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China*, 67 FR 79054 (December 27, 2002). The Department will examine the date of sale issue more fully after the preliminary determination.

Fair Value Comparisons

To determine whether sales of THFA to the United States by QWTC were made at less than fair value, we compared EP to normal value, as described in the ''Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs.

Export Price

In accordance with section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c) of the Act.

We calculated EP for QWTC based on delivered prices to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included foreign inland freight from the plant to the port of exportation, ocean freight, and marine insurance, where appropriate.

Normal Value

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

As the basis for normal value, the respondents in this investigation provided integrated factors of production data from the raw material input stage to the final product stage (*i.e.*, the THFA production stage). In response to supplemental questionnaires, the respondent also provided factors of production information used in each of the earlier production stages, including the raw material input to furfural processing stage and the furfural to furfuryl alcohol production stage, separately. Although the respondent reported the factors of production for the feedstock inputs used to produce the main input to the processing stage (*i.e.*, furfuryl alcohol), for the purposes of this preliminary determination, we are not valuing those inputs when calculating the normal value of THFA. Rather, our normal value calculation begins with the factor value of the furfuryl alcohol used to produce the merchandise under investigation. The preliminary decision to calculate the normal value at the furfuryl alcohol stage is explained below.

Our general policy, consistent with section 773(c)(1)(B) of the Act, is to value the factors of production that a respondent uses to produce the subject merchandise. If the NME respondent is an integrated producer, we take into account the factors utilized in each stage of the production process. For example, in the case of preserved canned mushrooms produced by a fully integrated firm, the Department valued the factors used to grow the mushrooms, the factors used to further process and preserve the mushrooms, and any additional factors used to can and package the mushrooms, including any used to manufacture the cans (if produced in-house). *See Final Results Valuation Memorandum* for *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 31204 (June 11, 2001). If, on the other hand, the firm was not integrated, but simply a processor that purchased fresh mushrooms to preserve and can, the Department valued the purchased mushrooms and not the factors used to grow them. This policy has been applied to both agricultural and industrial products. *See e.g., Persulfates From the People's Republic of China: Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 68 FR 6712 (February 10, 2003) and *Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the People's Republic of China*, 62 FR 9160 (February 28, 1997). Accordingly, our standard NME questionnaire asks respondents to report the factors used in the various stages of production.

There are, however, two limited exceptions to this general rule. First, in some cases a respondent may report factors used to produce an intermediate input that accounts for a small or insignificant share of total output. The Department recognizes that, in those cases, the increased accuracy in our overall calculations that would result from valuing (separately) each of those factors may be so small so as to not justify the burden of doing so. Therefore, in those situations, the Department would value the intermediate input directly.

Second, in certain circumstances, it is clear that attempting to value the factors used in a production process yielding an intermediate product would lead to an inaccurate result because a significant element of cost would not be adequately accounted for in the overall factors buildup. For example, in the *Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Ukraine*, 67 FR 55785 (August 30, 2002), we addressed whether we should value the respondent's factors used in extracting iron ore an input to its wire rod factory. The Department determined that, if it were to use those factors, it would not sufficiently account for the capital costs associated with the iron ore mining operation given that the surrogate used for valuing production overhead did not have mining operations. Therefore, because ignoring this important cost element would distort the calculation, the Department declined to value the inputs used in mining iron ore and valued the iron ore instead. *See also Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China*, 66 FR 49632 (September 28, 2001); *Final Determination of Sales at Less Than Fair Value; Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China*, 62 FR 61964 (November 20, 1997); and *Notice of Final Determination of Sales at Less Than Fair Value; Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544 (May 8, 1995).

In this investigation, we preliminarily determine that the exceptions described above do not apply at this time. However, after carefully reviewing and analyzing the information submitted by the respondent, the Department has found that the data pertaining to the furfural and furfuryl alcohol stages of production cannot be used for purposes of the preliminary determination. In the original Section D questionnaire and in one subsequent supplemental questionnaire, the Department requested multi-stage input information from the respondent. In response, the Department received data which was inadequate for valuing the factors of production consumed in the earlier stages of the production processes (*i.e.*, the furfural and furfuryl alcohol production processes). Although these responses did clarify that the manufacturer was an integrated producer of furfural, furfuryl alcohol, and THFA, the responses did not provide factors of production that were sufficiently detailed, and therefore could not be used to quantify the factors of production from the earlier stages. Thereafter, the Department issued a second supplemental questionnaire, again requesting multi-stage input information and received a response on January 6, 2004, that was received too close to the preliminary date to allow the Department sufficient time to properly analyze (*i.e.*, the submission text and the corresponding data). Therefore, the Department's ability to analyze the inputs provided in the response to the supplemental

questionnaires was particularly constrained given the number of supplemental questionnaires issued in this case and the lack of sufficient time to fully evaluate the responses to those questionnaires. As this is the case, certain critical analysis regarding the data remain.

In light of these concerns, we have not used the multi-stage factor data for the preliminary determination and have incorporated, instead, the value of the furfuryl alcohol input used at the final stage of production. Subsequent to the preliminary determination, we will clarify the factors data for the furfural and furfuryl alcohol stages of production that the respondent has reported. If we make a change in the methodology and use the factor information for the various stages previous to the final determination, we will release to interested parties for comment a preliminary calculation sheet and analysis memorandum using that methodology.

The factors of production from the furfuryl alcohol stage to THFA includes: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; (4) costs associated with packing; and (5) representative capital costs. We calculated normal value based on factors of production, reported by the respondent, for materials, energy, labor, and packing. Where applicable, we deducted from the respondent's normal value the value of by-products sold during the POI. For a further discussion, please *See Memorandum to the File from Peter Mueller, Case Analyst to Edward C. Yang, Director, Office IX, Analysis for the Preliminary Determination of Tetrahydrofurfuryl Alcohol from the People's Republic of China* , dated January 19, 2004 (''*Analysis Memo*''). We valued the input factors using publicly available published information as discussed in the ''Surrogate Country'' and ''Factor Valuations'' sections of this notice.

Factor Valuations

Section 773(c)(1) of the Act provides that, in the case of an NME, the Department shall determine normal value using a factors of production methodology if: (1) the merchandise is exported from an NME, and (2) the information does not permit the calculation of normal value using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Because information on the record does not permit the calculation of NV using home-market prices, third-country prices, or constructed value, and no party has argued otherwise, we calculated NV based on factors of production in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

Because we are using surrogate country factors of production prices to determine normal value, section 773(c)(4) of the Act requires that the Department use values from a market economy (surrogate) country. For this case we have selected India as the primary market economy (surrogate) country. *See Surrogate Country Memo*.

We selected, where possible, publicly available values from India which were: (1) average non-export values; (2) representative of a range of prices within the POI or most contemporaneous with the POI; (3) product-specific; and, (4) tax-exclusive. Where necessary, we have excluded import data from an NME country (*i.e.*, the PRC) and from countries (*i.e.*, South Korea, Thailand, and Indonesia) that the Department has found to maintain broadly available, non-industry specific export subsidies, which the existence of, provide sufficient reason to believe or suspect that export prices from these countries are distorted. *See 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*.

In accordance with section 773(c) of the Act, we calculated normal value based on factors of production reported by respondent for the POI. To calculate normal value, the reported per-unit factor quantities were multiplied by publicly available surrogate values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. We selected information that represented cumulative values for the POI, for inputs classified according to the Harmonized Commodity Description and Coding System (''HTS''). For unit values initially reported in U.S. dollars (''USD'') no conversion was necessary. For unit values initially reported in Indian rupees, we converted from rupees to USD using the average exchange rate for the POI. *See Factor Valuation Memo* at Attachment I. For values not contemporaneous with the POI, we adjusted the values for inflation/deflation.

To value furfuryl alcohol, we relied upon contemporaneous Indian import values of ''furfuryl alcohol and tetrahydrofurfuryl alcohol'' under the Indian Customs' heading of ''29321300'' obtained from the World Trade Atlas online, which notes that its data was published by the DGCI&S, Ministry of Commerce of India, May 2003. This data was reported in USD. Consistent with the Department's practice, import data from both NMEs (*i.e.*, the PRC and Ukraine) and countries deemed to have generally-available export subsidies (*i.e.*, Indonesia, Korea, and Thailand) were not included in our calculation. Because the HTS category used for furfuryl alcohol is a basket category which includes the subject merchandise, we are removing from the Indian import statistics the import data from the United States. We note also that the import data value for the United States for the basket category is substantially higher than the figures for most other countries. Therefore, we infer that the U.S. figures reported in the Indian import data may include the U.S. production quantities and values of the subject merchandise. Furthermore, we are removing the import data from Japan as it is a similar value to the U.S. value. We surmise that the Japanese data is a mixture of furfuryl alcohol and THFA due to possible transhipment of THFA from the PRC through Japan. We consider both the United Sates and Japan figures to be aberrational as they are significantly higher than the other countries included in this category. Because this data is contemporaneous with the POI, no adjustment has been made for inflation/deflation. *See* Factor Valuation Memo at Attachment III.

As this basket category includes the subject merchandise, we recognize that a more appropriate surrogate value for furfuryl alcohol may be required. However, at the time of this preliminary determination, it is the most appropriate surrogate value that we can locate. Accordingly, we are requesting comments on issues concerning the calculation and selection of surrogate values. In particular, we request that parties provide comments on the calculations for furfuryl alcohol and any suggestions for alternative calculations. In accordance with 19 CFR 351.301(c)(3) of the Department's regulations, interested parties may submit publicly available information to value the factors of production for purposes of the final determination within 40 days after the date of publication of this preliminary determination.

For steam, the Department relied upon the values of the raw material inputs used to make steam, (*i.e.*, coal and water). The respondent reported the usage rate for steam in metric tons and further provided the raw material input usage rates required to produce the steam. When comparing the usage rate for steam used in the production process with the amount of water used

to create the steam, we found that there was one to one ratio between the reported amount of steam consumed and the reported amount of water consumed in making the steam. Although the respondents provided a usage rate for steam, we preliminary determine that the usage rates for inputs to steam, coal and water provide the most accurate factor valuation.

To value coal, we relied upon contemporaneous Indian import values of ''other coal'' under the Indian Customs' heading of ''27011909'' obtained from the *World Trade Atlas* online. This data was reported in USD. Consistent with the Department's practice, import data from both NMEs (*i.e.*, the PRC) and countries deemed to have generally-available export subsidies (*i.e.*, Indonesia, Korea, Ukraine, and Thailand) were not included in our calculation. Because this data is contemporaneous with the POI, no adjustment has been made for inflation/deflation. We adjusted the surrogate value for coal to include freight costs incurred between the supplier and the factory. *See Factor Valuation Memo* at Attachment IV and Attachment VII. We adjusted the input price by including freight costs to make it a delivered price. Specifically, we added the surrogate freight cost to the surrogate value using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401 (Fed. Cir. 1997).

To value hydrogen, we relied upon contemporaneous import values of ''hydrogen,'' obtained from Indonesia Statistics, 2002 as published on *World Trade Atlas* online. The Department researched contemporaneous Indian hydrogen values and compared them to contemporaneous hydrogen values from other countries. As a result, we found the Indian values for hydrogen to be aberrational, in that they were significantly higher than the values from the other countries. Thereafter, we determined that Indonesian import statistics reported the most contemporaneous and non-aberrational hydrogen value. Therefore, we relied upon the contemporaneous Indonesian import values of ''hydrogen'' under the Indonesian Customs' heading of ''280410000'' obtained from the *World Trade Atlas*. Consistent with the Department's practice, import data from both NMEs (*i.e.*, the PRC) and countries deemed to have generally-available export subsidies (*i.e.*, Korea and Thailand) were not included in our calculation. Because this data is contemporaneous with the POI, no adjustment has been made for inflation/deflation. *See Factor Valuation Memo* at 3.

To value water, we used the water tariff rate, as reported on the Municipal Corporation of Greater Mumbai. This factor was reported in Indian rupees and converted into USD using the average exchange rate for the POI. Because this data is contemporaneous with the POI, no adjustment has been made for inflation/deflation. *See Factor Valuation Memo* at 3.

To value electricity, we used the 2000 total average price per kilowatt hour (kwh) for ''Electricity for Industry'' as reported in the International Energy Agency's publication, *Energy Prices and Taxes, Second Quarter*, 2002. This factor was reported in Indian rupees and converted into USD using the average exchange rate for the POI. We adjusted the average total surrogate cost of electricity to reflect inflation. We then multiplied the inflation factor by the surrogate value to derive the adjusted surrogate value. *See Factor Valuation Memo* at 4.

To value packing, we used a surrogate value, ''Tank, ET 50–300 Liter, Others,'' derived from India import statistics as published by the *Monthly Statistics of Foreign Trade of India* (''*Monthly Statistics*''), covering the period April 2002 through January 2003. *World Trade Atlas* reported the packing in USD. We multiplied the surrogate value, which was for one kilogram of a packing drum by the weight of the drum in kilograms to obtain a surrogate value for one drum. We used the value that petitioner provided in the petition for the weight of the barrel. *See* June 23, 2003 at Exhibit 9, page 7. We then multiplied the surrogate value per drum by the amount of drums used to pack one metric ton of THFA. *See Factor Valuation Memo* at 5.

To value truck freight, we used an average truck freight cost based on Indian market truck freight rates on a rupees per-metric ton per kilometer basis published in the *Iron and Steel Newsletter*, April 2002. We then inflated the rate using the WPI published by the International Monetary Fund. We then divided by the POI average exchange rate to obtain a factor value for truck freight in USD. *See Factor Valuation Memo* at 5.

In accordance with the decision of the Court of Appeals for the Federal Circuit in *Sigma Corporation v. United States*, 117 F. 3d 1401, 1407–08 (Fed. Cir. 1997), we added to surrogate values, as applicable, a surrogate freight cost using the shorter of the reported distances from either the closest PRC port of exportation to the factory, or from the domestic supplier to the factory. *See Factor Valuation Memo* at 5.

To value factory overhead, selling, general and administrative expenses (''SG&A''), and profit, the Department did not use the data from the financial statements of an Indian company, Delta Agro Chemicals Ltd. (''Delta''), because although it appeared initially to produce the comparable merchandise furfuryl alcohol as one of its main products, the FCS's cable, received on January 4, 2004, and a previous email, received on December 30, 2003, reported that Delta only manufactured the feedstock product, furfural. For a copy of the cable and email, *See Factor Valuation Memo*, at Attachment X. As the Department prefers the use of financial data from a producer of the comparable merchandise, use of this source is less than ideal. Therefore, to value factory overhead, selling, general and administrative expenses (''SG&A''), and profit, we calculated surrogate financial ratios based on the financial information from the Reserve Bank of India (''RBI''). *See Factor Valuation Memo* at 4 and 5.

For labor, consistent with 19 CFR 351.408(c)(3), we used the regression-based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in September 2002, and corrected in February 2003, (*see http://ia.ita.doc.gov/wages/corrected00wages/*). The source of the wage rate data on the Import Administration's Web site can be found in the Yearbook of Labour Statistics 2000, International Labor Office (Geneva: 2000), Chapter 5B: Wages in Manufacturing.

Catalyst

When determining whether an input should be treated as a factor of production or as an overhead item, the Department's practice is to consider inputs as part of overhead only when they are small in value relative to the total cost of manufacturing. *See Notice of Final Determination of Sales at Less Than Fair Value; Saccharin from the People's Republic of China*, 59 FR 58818, 58824, (November 15, 1994). The respondent reported that catalyst is used in the production process from furfuryl alcohol to THFA.[7] In determining how

[7] According to *The American Heritage Dictionary*, a catalyst is defined as a ''substance, usually present in small amounts relative to the reactants, that modifies and especially increases the rate of a chemical reaction without being consumed in the

Continued

the catalyst should be classified when calculating the factors of production for the THFA investigation, we examined what percentage of the total cost of manufacturing the catalyst represented. Accordingly, based on the normal value summary information submitted by the petitioner for India, the value of the catalyst used in the production process is less than 0.5% of the total cost of manufacturing of THFA. *See Petitioner's Antidumping Duty Investigation of Tetrahydrofurfuryl Alcohol from the People's Republic of China; Publicly Available Information to Value Factors of Production*, (December 16, 2003). Since the catalyst is an insignificant portion of the cost of manufacture, we maintain that it would typically be recorded as an overhead item in a company's books and records. Therefore, due to the insignificant cost impact of the catalyst, we are classifying this as overhead item rather than a separate factor of production.

Further, including the catalyst as a factor of production could, in this case, result in double counting the cost in one of two ways: (1) since the amount of the catalyst is insignificant, it is most likely accounted for as an indirect material and included in the surrogate company's overhead costs; or (2) if the surrogate company capitalizes the cost of the catalyst, then an allocated amount is already included in the overhead costs. If a company purchases property, plant or piece of equipment that benefits future periods, then it can capitalize the asset in accordance with its internal policy. Typically, companies set up an internal policy that dictates the threshold for capitalizing assets. Normally, if an asset is being depreciated, then it is considered to have a life in excess of one year and the cost is allocated over the life of the asset and is considered to be a part of fixed overhead. *See Antidumping Duty Investigation of Urea Ammonium Nitrate Solutions from Belarus and the Russian Federation: Classification of Catalysts as Overhead Expense, Memorandum from Paige Rivas, Team Leader, through Thomas F. Futtner, Program Manager, Group II, Office IV*, (September 26, 2002). Although we do not have information on the record to determine whether the catalyst cost for the surrogate companies data are included in overhead, record evidence indicates that this cost is included as an overhead cost by the respondent. In support of this, the Department points to the useful life of the catalyst as reported by the respondent, which although below the one year threshold, indicates that the catalyst is being capitalized over a long-term time period. Therefore, to avoid any double counting, for the analysis of factor of production data submitted in this antidumping investigation of THFA from the PRC, we are preliminarily treating the reported catalyst as an overhead expense.

process.'' *See The American Heritage Dictionary*, Houghton Mifflin Company, 1982

Weighted Average Dumping Margin

The weighted-average dumping margins are as follows:

Tetrahydrofurfuryl Alcohol from the PRC	
Producer/Manufacturer/ Exporter	Weighted-Average Margin (Percent)
Qingdao Wenkem (F.T.Z.) Trading-Company, Ltd.	31.33
PRC - Wide Rate	31.33

Verification

As provided in section 782(I)(1) of the Act, we intend to verify all company information relied upon in making our final determination.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the CBP to suspend liquidation of all imports of subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** with respect to QWTC. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds EP, as indicated above. With respect to all other PRC exporters, the Department will direct the CBP to suspend liquidation of all entries of THFA from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of publication in the **Federal Register** of our preliminary determinations in this investigation. CBP shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins reflected in the preliminary determination published in the **Federal Register**. The suspension of liquidation to be issued after our preliminary determination will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary affirmative determination of sales at less than fair value. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of THFA, or sales (or the likelihood of sales) for importation, of the subject merchandise.

Public Comment

In accordance with 19 CFR 351.301(c)(3) of the Department's regulations, interested parties may submit publicly available information to value the factors of production for purposes of the final determination within 40 days after the date of publication of this preliminary determination. Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than fifty days after the date of publication of this notice, and rebuttal briefs, whose content is limited to issues raised in case briefs, no later than fifty-five days after the date of publication of this preliminary determination. *See* 19 CFR 351.309(c)(1)(i); 19 CFR 351.309(d)(1). A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested , to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs.

If a request for a hearing is made, we will tentatively hold the hearing two days after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain: (1) the party's name,

address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief, and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: January 20, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–1697 Filed 1–26–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011204C]

Caribbean Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council's Habitat Advisory Panel (HAP), and the Scientific and Statistical Committee (SSC) will hold meetings.

DATES: The HAP/SSC meetings will be held on February 11–12, 2004. The HAP/SSC will convene on Wednesday, February 11, 2004, from 10 a.m. until 5 p.m., and will reconvene on Thursday, February 12, 2004, from 9 a.m. to 12 noon, approximately.

ADDRESSES: The meetings will be held at the Embassy Suites Hotel, #8000, Tartak St., Isla Verde, Carolina, Puerto Rico 00979.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920, telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The HAP and the SSC will meet to discuss the items contained in the following agenda:

1. Review draft response from the Caribbean Council and NOAA Fisheries to public comments, and recommend changes as appropriate to the essential fish habitat/environmental impact statement (EFH/EIS).

2. Review draft revisions to EIS, resulting from public comments and internal review, and recommend changes as appropriate to the EFH/EIS.

3. Other.

The meetings are open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico, 00918–1920, telephone (787) 766–5926, at least 5 days prior to the meeting date.

Dated: January 21, 2004.

Peter H. Fricke,

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

[FR Doc. 04–1692 Filed 1–26–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012104A]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Enforcement Oversight Committee and Advisory Panel in February, 2004. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held on Thursday, February 12, 2004 at 9:30 a.m.

ADDRESSES: The meeting will be held at the NMFS Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930; telephone: (978) 281–9300.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The panels will review and approve the Herring Enforcement Analysis and discuss other business.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: January 21, 2004.

Peter H. Fricke,

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

[FR Doc. 04–1693 Filed 1–26–04; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 04–C0002]

E&B Giftware, LLC, Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with E&B

Giftware, LLC., containing a civil penalty of $100,000.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by February 11, 2004.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to Comment 04–C0002, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Michelle F. Gillice, Trial Attorney, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7667.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: January 20, 2004.

Todd A. Stevenson,

Secretary.

Settlement Agreement and Order

1. E&B Giftware, LLC enters into this Settlement Agreement and Order (hereinafter, ''Settlement Agreement'' or ''Agreement'') with the staff of the Consumer Product Safety Commission (the ''Commission''), and agrees to the entry of the attached Order incorporated by reference herein. The Settlement Agreement settles the Commission staff's allegations set forth below.

I. The Parties

2. The Commission is an independent federal regulatory agency responsible for the enforcement of the Consumer Product Safety Act (''CPSA''), 15 U.S.C. 2051 *et seq.*

3.(a) E&B Giftware, LLC, established in June 2000, is a limited liability company, organized and existing under the laws of the State of Delaware, with its principal office located at 4 Executive Plaza, Yonkers, New York, 10701.

(b) Sun-It Corporation (''Sun-It'') was a partially-owned subsidiary of E&B Giftware, Inc. (''Giftware, Inc.'').

(c) E&B Giftware, Inc. owned 80% of the stock of Sun-It at the time of the events discussed in this Agreement. Without admitting that it is a successor in interest, E&B Giftware, LLC (hereinafter, ''Respondent'') agrees to be bound by and comply with this Settlement Agreement and Order.

II. Staff Allegations

4. Between February 1997 and September 1997, Sun-It (a subsidiary of E&B Giftware, Inc.) manufactured and distributed approximately 47,000 ''Money to Burn Torch'' citronella candles (''candles''), style number 330N.

5. The candles were sold to and/or used by consumers for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise and are, therefore, ''consumer products'' as defined in section 3(a)(1) of the CPSA, 15 U.S.C. 2052(a)(1). Sun-It was a ''manufacturer'' and ''distributor'' of the candles which were ''distributed into commerce'' as those terms are defined in sections 3(a)(4), (5), (11) and (12) of the CPSA, 15 U.S.C. 2052(a)(4), (5), (11) and (12).

6. The candle is defective because the wrapper which surrounds the candle traps a pool of hot wax which becomes super heated. Consumers were exposed to a burn risk because the candles could release molten wax when the consumer blew on the candle in an attempt to extinguish it, bumped into the candle, or when the candle unexpectedly flared up.

7. Between May 1997 and October 1997, E&B Giftware, Inc. through its subsidiary Sun-It, received notice of fourteen incidents in which consumers suffered serious burns. Several consumers reported that the burns left permanent scarring. One consumer reported receiving third degree burns.

8. In the fall of 1997, E&B Giftware, Inc. approved of Sun-It's decision to stop sale of the candles and notify retailers to return candles in their inventory. Sun-It contacted the retailers to recall the candles.

9. Respondent claims that 13,424 candles were returned and subsequently destroyed along with 3,382 units of unshipped inventory. E&B Giftware, Inc. received notice of another three incidents after its unilateral recall. In one of these post recall incidents, a consumer reported receiving third degree burns.

10. On August 24, 1999, the Commission contacted E&B Giftware, Inc. regarding two incidents that it had become aware of and requested that E&B Giftware, Inc. submit a full report pursuant to Section 15 of the CPSA.

11. E&B Giftware, Inc. provided a full report on September 27, 1999.

12. By the time E&B Giftware, Inc. initiated a stop sale and recall of inventory in the fall of 1997, it had obtained information which reasonably supported the conclusion that the candles described in paragraph 4 above contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury or death, but failed to report such information in a timely manner to the Commission as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. 2064(b)(2), (3).

13. By failing to provide the information to the Commission in a timely manner as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b), E&B Giftware, Inc. violated 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

14. E&B Giftware, Inc. committed this failure to report to the Commission ''knowingly'' as the term ''knowingly'' is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d), thus, subjecting E&B Giftware to civil penalties under section 20 of the CPSA, 15 U.S.C. 2069.

III. E&B Giftware LLC Response

15. Respondent denies the staff's allegations in paragraph 6 that the candles were defective and that it violates the CPSA as set forth in paragraphs 12 through 14.

IV. Agreement of the Parties

16. The Consumer Product Safety Commission has jurisdiction over this matter and over E&B Giftware, LLC under the Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*

17. This Agreement is entered into for settlement purposes only and does not constitute an admission by Respondent or a determination by the Commission that E&B Giftware, Inc. knowingly violated the CPSA's reporting requirement.

18. In settlement of the staff's allegations, Respondent agrees to pay a civil penalty of one hundred thousand and 00/100 dollars ($100,000.00), in full settlement of this matter, and payable within twenty (20) calendar days of receiving service of the final Settlement Agreement and Order, or by December 31, 2003, whichever occurs later.

19. Upon final acceptance of this Agreement by the Commission and issuance of the Final Order, Respondent knowingly, voluntarily, and completely waives any rights it may have in this matter (1) to an administrative hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Respondent failed to comply with CPSA and the underlying regulations, (4) to a statement of findings of fact and conclusions of law and (5) to any claims under the Equal Access to Justice Act.

20. Upon provisional acceptance of this Agreement by the Commission, this Agreement shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). If the Commission does not receive any written objections within 15

days, the Agreement will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register.**

21. The Commission may publicize the terms of the Settlement Agreement and Order.

22. The Commissioner's Order in this matter is issued under the provisions of the CPSA, 15 U.S.C. 2051 *et seq.* Violation of this Order may subject Respondent to appropriate legal action.

23. This Settlement Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations apart from those contained in this Settlement Agreement and Order may not be used to vary or contradict its terms.

24. The provisions of this Settlement Agreement and Order shall apply to E&B Giftware, LLC and each of its successors and assigns.

E&B Giftware, LLC.
Dated: November 10, 2003
Edward Sacks,
Chief Executive Officer.
William Walsh,
Esquire, Respondent's Attorney.
The U.S. Consumer Product Safety Commission.
Alan H. Schoem,
Director, Office of Compliance.
Eric L. Stone,
Director, Legal Division, Office of Compliance.
January 16, 2004.
Michelle F. Gillice,
Trial Attorney, Legal Division, Office of Compliance.

Order

Upon consideration of the Settlement Agreement between Respondent E&B Giftware, LLC and the staff of the Consumer Product Safety Commission, and the Commission having jurisdiction over the subject matter and over E&B Giftware LLC, and it appearing that the Settlement Agreement and Order is in the public interest, it is

Ordered that the Settlement Agreement be, and hereby is, accepted and it is

Further Ordered that E&B Giftware, LLC shall pay the United States Treasury a civil penalty in the amount of one hundred thousand and 00/100 dollars, ($100,000.00), payable within twenty (20) days of the service of the Final Order upon E&B Giftware, LLC, or by December 31, 2003, whichever occurs later.

Provisionally accepted and Provisional Order issued on the 20th day of January, 2004.

By Order of the Commission.

Todd A. Stevens,

Secretary, Consumer Product Safety Commission.

[FR Doc. 04–1607 Filed 1–26–04; 8:45 am]

BILLING CODE 6355–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Revision of Currently Approved Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. This form is available in alternate formats. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–5256 between the hours of 9 a.m. and 4:30 p.m. Eastern time, Monday through Friday.

Currently, the Corporation is soliciting comments concerning the revision of its AmeriCorps Alumni Profile Cards (OMB Control Number 3045–0048 Part A, Part B, and Part C with an expiration date of 03/31/2004). Copies of the information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by March 29, 2004.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Attn: Mr. Brian Harvey, AmeriCorps Recruitment, Selection and Placement Office, Room 8705–A, 1201 New York Avenue, NW., Washington, DC., 20525.

(2) By hand delivery or by courier to the Corporation's mailroom, Room 6010, at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) By fax to: (202) 565–2794, Attn: Mr. Brian Harvey, AmeriCorps Recruitment, Selection and Placement Office.

(4) Electronically through the Corporation's e-mail address system: *bharvey@cns.gov.*

FOR FURTHER INFORMATION CONTACT: Brian Harvey, (202) 606–5000, ext. 492, or e-mail to *bharvey@cns.gov*.

SUPPLEMENTARY INFORMATION: The Corporation 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;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including 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.

Background

The Corporation proposes to send out AmeriCorps Alumni Profile Cards to former AmeriCorps and VISTA members' home addresses requesting that they complete the card and return it to the AmeriCorps Recruitment Office. The card will be used by Corporation personnel and other organizations (only with the explicit written permission of the respondent). The purpose of the card is to enhance communications between the Corporation and former AmeriCorps members to provide them with information on Corporation activities, and to seek their assistance in volunteer recruitment activities.

Current Action

The Corporation proposes to revise the AmeriCorps Alumni Profile Card by changing the name to more accurately describe the information collection and to include the members who served in all AmeriCorps programs. In addition, the Corporation will deleting unused

information from the existing version of the card, such as removing questions pertaining to meeting facilities and housing and collecting the following data from the former member:

- The exact dates of service from the person filling out the AmeriCorps*VISTA Alumni Locator Card.
- Detailed information about the person's current interests, occupation and expertise.
- Collecting the person's cell phone number for those who prefer to be contacted in that manner.

The Corporation also plans to gather additional information about the former member's current education level. This will help the Corporation to more accurately gear communication to former members who may be interested in furthering their education or who may benefit from a particular new initiative.

The Corporation will continue to seek consent to release contact information, including a former member's name, address (including e-mail), and telephone number to the following groups:

1. Alumni Organizations.
2. Educational organizations that can accept the AmeriCorps education award.
3. Service organizations.

Further, the Corporation proposes to revise the AmeriCorps Alumni Locator Card by asking former members to identify his or her involvement with the Corporation or community.

Type of Review: Revision of a currently approved collection.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Alumni Profile Card. (Previously named the AmeriCorps*VISTA Locator Card.)

OMB Number: 3045–0048.

Agency Number: None.

Affected Public: Individuals and households.

Total Respondents: 12,000.

Frequency: Continuous.

Average Time Per Response: 4 minutes.

Estimated Total Burden Hours: 800 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: January 21, 2004.

Timothy McManus,

Director, AmeriCorps Recruitment, Selection and Placement.

[FR Doc. 04–1632 Filed 1–26–04; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Notice of Availability of 2004 AmeriCorps Application Guidelines and Technical Assistance Calls

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation'') announces the availability of its AmeriCorps application guidelines for the 2003–2004 program year. These guidelines set forth the policies, procedures, and timelines that will govern the allocation of all AmeriCorps resources in fiscal year 2004, in all of the following programs: AmeriCorps*State; AmeriCorps*U.S. Territories; AmeriCorps*Indian Tribes; AmeriCorps*South Dakota; AmeriCorps*Education Awards Program; and AmeriCorps*National (for nonprofit organizations operating a program in two or more states).

These guidelines establish requirements for organizations applying for funds, and provide the criteria that will be used in evaluating applicants. A Notice of Funds Availability will follow once the Corporation's fiscal year 2004 budget is finalized.

In addition, the Corporation will hold technical assistance conference calls for organizations applying directly to the Corporation for funding for AmeriCorps*National, AmeriCorps*U.S. Territories, AmeriCorps*Indian Tribes, AmeriCorps*South Dakota, and Education Awards Program applicants. Please check the AmeriCorps Web site at *http://www.americorps.org/resources/guidelines2004.html* for information concerning future technical assistance conference calls.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the 2004 AmeriCorps application guidelines by calling Nancy Talbot at (202) 606–5000 x470 (*ntalbot@cns.gov*). The TDD number is (202) 565–2799. Alternatively, you may download a copy of the 2004 guidelines from our Web site at *http://www.americorps.org/resources/guidelines2004.html.*

SUPPLEMENTARY INFORMATION:

How to register for conference calls: Conference call topics, dates, times, and registration information are posted on the AmeriCorps Web site. Please check the AmeriCorps Web site at: *http://www.americorps.org/resources/guidelines2004.html.* Participation in the calls is optional. All calls will be recorded and available for replay. Please contact your Program Officer if you are an existing grantee, or call ext. 417 if you have any questions.

Dated: January 21, 2004.

Nancy Talbot,

Director, Program Planning and Development.

[FR Doc. 04–1610 Filed 1–26–04; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Partnership Under a Cooperative Research and Development Agreement

AGENCY: Department of the Army, DoD.

ACTION: Notice

SUMMARY: Announcement is made of the Notice of Partnership under a Cooperative Research and Development Agreement (CRADA) to Innovative Biosensors, Inc., Gaithersburg, MD to work on a Development of Biosensor Detection System for West Nile Virus.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

DATES: Submit comments by February 11, 2004.

FOR FURTHER INFORMATION CONTACT: All comments should be addressed within 15 days from the date of this notice to Maryam Azarion, Office of Research and Technology Applications, 521 Fraim Street, Fort Detrick, MD 21702–5015 at (301) 619–5034.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 04–1725 Filed 1–26–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning Invaplex From Gram Negative Bacteria, Method of Purification and Method of Use

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent No. 6,680,374 entitled ''Invaplex from Gram Negative Bacteria, Method of Purification and Method of Use,'' filed January 31, 2001. The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Isolated antibodies to Invaplex; novel compositions comprising immunoglobulins directed to invasin proteins and LPS from gram negative bacteria that selectively bind to Invaplex, and do not bind to the individual components of Invaplex.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 04–1726 Filed 1–26–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License to Capewell, Inc.

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209(e) and 37 CFR 404.7 (a)(l)i), announcement is made of the intent to grant an exclusive, royalty-bearing, revocable license to U.S Patent No. 6,079,791 filed June 27, 2000 entitled ''Retractable Grappling Hook'', to Capewell, Inc. with its principal place of business at 105 Nutmeg Road South, South Windsor, CT 06074.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans at U.S. Army Soldier Systems Center (SSC), Kansas Street, Natick, MA 01760, Phone; (508) 233–4928 or E-mail *Robert.Rosenkrans@natick.army.mil.*

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted, unless within fifteen (15) days from the date of this published Notice, SSC receives written evidence and argument to establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 04–1724 Filed 1–26–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the U.S. Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

U.S. Patent No. 5,793,787: Type II Quantum Well Laser with Enhanced Optical Matrix, Navy Case No. 77,044/ /U.S. Patent No. 6,154,299: Modulating Retro-reflector Using Multiple Quantum Well Technology, Navy Case No. 78,582.

ADDRESSES: Requests for copies of the inventions cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW, Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Jane F. Kuhl, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW, Washington, DC 20375–5320, telephone (202) 767–7230. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, E-Mail: *kuhl@utopia.nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404)

Dated: January 20, 2004.

J.T. Baltimore,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 04–1656 Filed 1–26–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Austin AI, LLC

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Austin AI, LLC, a revocable, nonassignable, exclusive license to practice in the fields of (1) Environmental Soil Characterization, *e.g.* for the analysis of contaminated soils, sediments or sludge for the presence of heavy metals; (2) for Mineral Exploration, including use in exploratory, process and recovery mining and mineralogy specifically including sub-surface soil characterization for mineral exploration and three dimensional profiling/ analysis of tailings to determine the potential content of reprocessable metals; and (3) for use of Energy Dispersive X-ray Fluorescence (EDXRF) for Liquid Media Monitoring for (a) the petroleum and petrochemical industries specifically including in-tank monitoring of sulfur in oils, *e.g.* for grading of diesel fuels by sulfur content or for determination of sulfur levels during fuel blending and for a probe for analysis of lead in waste oil tanks, underground tanks of refueling facilities, storage tanks at refineries, diesel long-haul truck tanks, (b) for the wood treatment industry for use in or on tank monitors for storage, mixing or treatment tanks for analysis of copper, chromium, and/or arsenic, and (c) in the environmental testing/monitoring industry in the United States and certain foreign countries, the Government-owned invention described in U.S. Patent No. 6,097,785 entitled ''Cone Penetrometer Utilizing an X-Ray Fluorescence Metals Sensor'', Navy Case No. 77,638.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than February 11, 2004.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook

Avenue, SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Ms. Jane F. Kuhl,Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to U.S. Postal delays, please fax (202) 404–7920, E-Mail: *kuhl@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404)

Dated: January 20, 2004.

J.T. Baltimore,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 04–1657 Filed 1–26–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 26, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Melanie Kadlic, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Melanie_Kadlic@omb.eop.gov.*

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

Dated: January 21, 2004.

Angela C. Arrington,

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

Federal Student Aid

Type of Review: Reinstatement.

Title: Clearance Package for FSA Customer Satisfaction Surveys Master Plan.

Frequency: As needed.

Affected Public: Individuals or household; Businesses or other for-profit; Not-for-profit; institutions; State, Local, or Tribal, Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 12,000.

Burden Hours: 2,900.

Abstract: In order to redefine the planning and decision-making processes to improve the quality of Federal Student Aid products and services.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2370. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to (202) 708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–1597 Filed 1–26–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 26, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Melanie Kadlic, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Melanie_Kadlic@omb.eop.gov.*

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

Dated: January 21, 2004.

Angela C. Arrington,

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

Office of Vocational and Adult Education

Type of Review: Revision.

Title: The Smaller Learning Communities Program.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 400.

Burden Hours: 26,000.

Abstract: The Grant Application Package includes information for grant applicants, including priorities, selection criteria and requirements, along with relevant ED forms and non-regulatory guidance for the SLCP.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2441. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to (202) 708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Shelia Carey at her e-mail address *Shelia.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–1598 Filed 1–26–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Minority Science and Engineering Improvement Program (MSEIP); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.120A.

DATES:

Applications Available: January 28, 2004.

Deadline for Transmittal of Applications: March 12, 2004.

Deadline for Intergovernmental Review: May 11, 2004.

Eligible Applicants: There are three types of MSEIP projects, each with a different set of eligible applicants. For institutional, design, and special projects described in 34 CFR 637.12 through 637.14, eligible applicants include public and private nonprofit minority institutions of higher education as defined in Section 361(1) and (2) of the Higher Education Act of 1965, as amended (HEA) and described later in this notice. For special projects described in 34 CFR 637.14(b) and (c), eligible applicants include nonprofit science-oriented organizations, professional scientific societies, institutions of higher education, and consortia of organizations as defined in section 361(3) and (4) of the HEA and described later in this notice. For cooperative projects described in 34 CFR 637.15, eligible applicants include groups of nonprofit accredited colleges and universities whose primary fiscal agent is an eligible minority institution as defined in 34 CFR 637.4(b).

Note: A minority institution is defined in 34 CFR 637.4(b) as an accredited college or university whose enrollment of a single minority group or combination of minority groups exceeds 50 percent of the college's or university's total enrollment.

Estimated Available Funds: Although Congress has not enacted a final appropriation for FY 2004, the Department is inviting applications for this competition now so that it may be prepared to make awards following enactment of that final appropriation. Based on the congressional action to date, we estimate $4.6 million will be available for new awards under this program for FY 2004. The actual level of funding, if any, depends on final congressional action. Additional funding information is provided in the following chart.

Type of Project	Estimated Range of Awards	Estimated Average Size of Awards	Estimated Number of Awards
Institutional	$100,000 - $300,000	$112,000	26
Design	$19,000 - $20,000	$19,500	4
Special	$20,000 - $100,000	$28,000	10
Cooperative	$100,000 - $500,000	$200,000	7
Estimated Total for All Projects			47

Note: The Department is not bound by any estimates in this notice. Applicants should periodically check the MSEIP's Web site for further information on this program. The address is: *http://www.ed.gov/programs/iduesmsi/index.html*

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The MSEIP is designed to effect long-range improvement in science and engineering education at predominantly minority institutions and to increase the flow of underrepresented ethnic minorities, particularly minority women, into scientific and technological careers.

Program Authority: 20 U.S.C. 1067–1067k.

Applicable Regulations: (a) The Education Department General

Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 637.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: Although Congress has not enacted a final appropriation for FY 2004, the Department is inviting applications for this competition now so that it may be prepared to make awards following enactment of that final appropriation. Based on the congressional action to date, we estimate $4.6 million will be available for new awards under this program for FY 2004. The actual level of funding, if any, depends on final congressional action.

Estimated Range of Awards: See chart.

Estimated Average Size of Awards: See chart.

Estimated Total Number of Awards: See chart.

Note: The Department is not bound by any estimates in this notice. Applicants should periodically check the MSEIP's Web site for further information on this program. The address is: *http://www.ed.gov/programs/iduesmsi/index.html*

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* (a) For institutional, design, and special projects described in 34 CFR 637.12 through 637.14, eligible applicants include public and private nonprofit minority institutions of higher education as defined in Section 361(1) and (2) of the HEA. Section 361(1) and (2) define such institutions as:

(1) Public and private nonprofit institutions of higher education that:

(A) Award baccalaureate degrees; and

(B) Are minority institutions;

(2) Public or private nonprofit institutions of higher education that:

(A) Award associates degrees; and

(B) Are minority institutions that:

(i) Have a curriculum that includes science or engineering subjects; and

(ii) Enter into a partnership with public or private nonprofit institutions of higher education that award baccalaureate degrees in science and engineering;

(b) For special projects described in 34 CFR 637.14(b) and (c), eligible applicants include nonprofit science-oriented organizations, professional scientific societies, institutions of higher education, and consortia of organizations. Section 361(3) and (4) of the HEA describes these types of entities as:

(3) Nonprofit science-oriented organizations, professional scientific societies, and institutions of higher education that award baccalaureate degrees, that:

(A) Provide a needed service to a group of minority institutions; or

(B) Provide in-service training for project directors, scientists, and engineers from minority institutions; or

(4) Consortia of organizations that provide needed services to one or more minority institutions, the membership of which may include:

(A) Institutions of higher education that have a curriculum in science or engineering;

(B) Institutions of higher education that have a graduate or professional program in science or engineering;

(C) Research laboratories of, or under contract with, the Department of Energy;

(D) Private organizations that have science or engineering facilities; or

(E) Quasi-governmental entities that have a significant scientific or engineering mission.

(c) For cooperative projects described in 34 CFR 637.15, eligible entitles include groups of nonprofit accredited colleges and universities whose primary fiscal agent is an eligible minority institution as defined in 34 CFR 637.4(b).

Note: A minority institution is defined in 34 CFR 637.4(b) as an accredited college or university whose enrollment of a single minority group or combination of minority groups exceeds 50 percent of the total enrollment.

2. *Cost Sharing or Matching:* This program has no cost sharing or matching requirements.

IV. Application and Submission Information

1. *Address to Request Application Package:* Dr. Bennie Samuels, Ms. Mary Payne or Ms. Carolyn Proctor, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 1990 K Street, NW., 6th floor, Washington, DC 20006–8517. Telephone: (202) 502–7777 or by e-mail: *OPE_MSEIP@ed.gov*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact persons listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: We have established a mandatory page limit for the narrative portion for each type of project application. The page limits are as follows:

Design Project Application: The narrative portion must not exceed the equivalent of 10 double-spaced pages.

Institutional and Cooperative Project Application: The narrative portions must not exceed the equivalent of 20 double-spaced pages.

Special Project Application: The narrative portion must not exceed the equivalent of 15 double-spaced pages. You must use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles and headings. You may single space the abstract, footnotes, quotations, references, captions, tables, and forms (including the ED Forms), however, you must still use font size 12.
- Use a font that is size 12.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: January 28, 2004.

Deadline for Transmittal of Applications: March 12, 2004.

Deadline for Intergovernmental Review: May 11, 2004.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:*

(a) *Executive Order 13202.* Applicants that apply for construction funds under MSEIP must comply with Executive Order 13202, signed by President Bush on February 17, 2001 and amended on April 6, 2001. This Executive order provides that recipients of Federal Construction funds may not ''require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other construction project(s)'' or ''otherwise discriminate against bidders, offerors,

contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise adhere to agreements with one or more labor organizations, on the same or other construction project(s).'' However, the Executive order does not prohibit contractors or subcontractors from voluntarily entering into these agreements.

(b) We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this program. Application Procedures: The Government Paperwork Elimination Act (GPEA) of 1998 (Pub. L. 105–277) and the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

We are requiring that applications for grants under the MSEIP—CFDA Number 84.120A be submitted electronically using the Electronic Grant Application System (e-Application) available through the Department's e-GRANTS system. The e-GRANTS system is accessible through its portal page at: *http://e-grants.ed.gov*

If you are unable to submit an application through the e-GRANTS system, you may submit a written request for a waiver of the electronic submission requirement. In your request, you should explain the reason or reasons that prevent you from using the Internet to submit your application. Address your request to: Ms. Sandra Steed, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8517. Please submit your request no later than two weeks before the application deadline date.

If, within two weeks of the application deadline date, you are unable to submit an application electronically, you must submit a paper application by the application deadline date in accordance with the transmittal instructions in the application package. The paper application must include a written request for a waiver documenting the reasons that prevented you from using the Internet to submit your application.

Pilot Project for Electronic Submission of Applications: We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The MSEIP—CFDA 84.120A is one of the programs included in the pilot project. If you are an applicant under the MSEIP, you must submit your application to us in electronic format or receive a waiver.

The pilot project involves the use of e-Application. If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. The data you enter online will be saved into a database. We shall continue to evaluate the success of e-Application and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You must submit all documents electronically including the Application for Federal Assistance under MSEIP (OMB 1840–0109), Budget Information Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Assistance MSEIP, OMB 1840–0109, to the Application Control Center after following these steps:

1. Print the OMB 1840–0109, from e-Application.

2. The institution's Authorizing Representative must sign this form.

3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the OMB 1840–0109.

4. Fax the signed OMB 1840–0109 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of the e-Application system and you have initiated an e-Application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the persons listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the MSEIP at *http://e-grants.ed.gov*

Projects funded under MSEIP that include construction activity will be provided a copy of this Executive Order and will be asked to certify that they will adhere to it.

V. Application Review Information

Selection Criteria: The selection criteria for this program are in 34 CFR 637.32.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118 and 34 CFR 75.720.

VII. Agency Contact

For Further Information Contact: Dr. Bennie Samuels, Ms. Mary Payne, or Ms. Carolyn Proctor, Institutional Development and Undergraduate Education Services, U.S. Department of Education, 1990 K Street, NW., 6th floor, Washington, DC 20006–8517. Telephone: (202) 502–7777, or by e-mail: *OPE_MSEIP@ed.gov*

If you use a telecommunication device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact persons listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*

Dated: January 22, 2004.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 04–1727 Filed 1–26–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of the Secretary

Decision To Compete Management and Operating Contracts for Los Alamos National Laboratory, Ames National Laboratory, Lawrence Berkeley National Laboratory, Argonne National Laboratory, and Lawrence Livermore National Laboratory

Section 301(a) of the Energy and Water Development Appropriations Act, 2004, Public Law 108–137, provides that none of the funds appropriated for fiscal year 2004 or any previous fiscal year may be used for a ''noncompetitive management and operating contract'' unless the Secretary of Energy, within 60 days of enactment of the Act, publishes in the **Federal Register** and submits to the Appropriation Committees of the House of Representatives and the Senate ''a written notification, with respect to each such contract, of the Secretary's decision to use competitive procedures for the award of the contract, or to not renew the contract, once the term of the contract expires.'' Pursuant to section 301(a)(3), this requirement does not apply to ''an extension for up to 2 years of a noncompetitive management and operating contract, if the extension is for purposes of allowing time to award competitively a new contract, to provide continuity of service between contracts, or to complete a contract that will not be renewed.''

Paragraph (b)(1) of section 301 identifies the noncompetitive management and operating contracts subject to Secretarial review and decision as the contracts for the management and operation of Ames Laboratory, Argonne National Laboratory, Lawrence Berkeley National Laboratory, Lawrence Livermore National Laboratory, and Los Alamos National Laboratory. For purposes of section 301, paragraph (b)(2) of section 301 provides that the term ''competitive procedures'' has ''the meaning provided in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403) and includes the procedures described in section 303 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253) other than a procedure that solicits a proposal from only one source.''

Public Law 108–137 was enacted on December 1, 2003. Well before that time, on April 30, 2003, I announced my decision to use competitive procedures to award the Los Alamos National Laboratory management and operating contract when its term expires. In addition, I hereby announce my decision to use competitive procedures described in section 301 to award the Ames Laboratory, Argonne National Laboratory, Lawrence Berkeley National Laboratory, and Lawrence Livermore National Laboratory management and operating contracts. Decisions concerning the precise timing and form that these competitions will take are still under consideration and will be made in accordance with applicable law and regulation.

Dated: January 21, 2004.

Spencer Abraham,

Secretary of Energy.

[FR Doc. 04–1655 Filed 1–26–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Privacy Act of 1974; Notice To Amend An Existing System of Records

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a, and Office of Management and Budget (OMB) Circular A–130, the Department of Energy (DOE) is publishing a notice of a proposed amendment to an existing system of records. DOE proposes to amend the routine use provision for DOE–13 ''Payroll and Leave Records.'' The proposed amendment will allow disclosure of information to the Defense Finance and Accounting Service (DFAS) for the purpose of providing payroll services for the DOE.

DATES: The proposed amendment to an existing system of records will become effective without further notice, on

March 12, 2004, unless in advance of that date, DOE receives adverse comments and determines that this amendment should not become effective on that date.

ADDRESSES: Written comments should be directed to the following address: U.S. Department of Energy, Abel Lopez, Director, Freedom of Information Act and Privacy Act Group, ME–74, 1000 Independence Avenue, S.W., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Abel Lopez, Director, Freedom of Information Act and Privacy Act Group, ME–74, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585, 202–586–5955; Wendy L. Miller, Director, Capital Accounting Center, ME–14, 1000 Independence Avenue, S.W., Washington, DC 20585–1290, (301) 903–5858; and Isiah Smith, Office of the General Counsel, GC–77, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586–8618.

SUPPLEMENTARY INFORMATION: DOE proposes to amend the routine use provision for an existing system of records, DOE–13 ''Payroll and Leave Records.'' The new routine use is necessary because DOE has entered into a cross-servicing agreement with DFAS to provide payroll processing services to DOE. The proposed amendment will allow disclosure of information to DFAS for the purpose of processing DOE's payroll; the issuance of salary payments to employees and distribution of wages; and the distribution of allotments and deductions to financial and other institutions, many of which are through electronic funds transfer.

The proposed routine use is compatible with the purpose for which the information is being collected and maintained.

DOE is submitting the report required by OMB Circular A–130 concurrently with the publication of this notice. The text of this notice contains the information required by the Privacy Act, 5 U.S.C. 552a(e)(4).

Issued in Washington, DC on January 15, 2004.

James T. Campbell,

Acting Director, Office of Management, Budget and Evaluation/Acting Chief Financial Officer.

DOE–13

SYSTEM NAME:

Payroll and Leave Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585

U.S. Department of Energy, National Nuclear Security Administration (NNSA) Service Center Albuquerque, P.O. Box 5400, Albuquerque, NM 87185–5400

U.S. Department of Energy, Atlanta Regional Support Office, 730 Peachtree, NE., Suite 876, Atlanta, GA 30308

U.S. Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208

U.S. Department of Energy, Boston Regional Support Office, One Congress Street, Room 1101, Boston, MA 021144–2021

U.S. Department of Energy, Carlsbad Field Office, P.O. Box 3090, Carlsbad, NM 88221

U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439

U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401

U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, Idaho Falls, ID 83401

U.S. Department of Energy, National Energy Technology Laboratory (Morgantown), P.O. Box 880, Morgantown, WV 26507–0880

U.S. Department of Energy, National Energy Technology Laboratory (Pittsburgh), 626 Cochrans Mill Road, Pittsburgh, PA 15236–0940

U.S. Department of Energy, National Petroleum Technology Office, William Center Tower One, 1 West Third Street, Suite 1400, Tulsa, OK 74103

U.S. Department of Energy, Naval Petroleum and Oil Shale Reserves, 907 N. Poplar, Suite 150, Casper, WY 82601

U.S. Department of Energy, Naval Petroleum Reserves in California, 1601 New Stine Road, Suite 240, Bakersfield, CA 93309

U.S. Department of Energy, NNSA Service Center Nevada, P.O. Box 98518, Las Vegas, NV 89193–8518

U.S. Department of Energy, Oak Ridge Operations Office, P.O. Box 2001, Oak Ridge, TN 37831

U.S. Department of Energy, NNSA Service Center Oakland, 1301 Clay Street, Oakland, CA 94612–5208

U.S. Department of Energy, Office of Scientific & Technical Information, P.O. Box 62, Oak Ridge, TN 37831

U.S. Department of Energy, Ohio Field Office, P.O. Box 3020, Miamisburg, OH 45343

U.S. Department of Energy, Philadelphia Regional Support Office, 1880 John F. Kennedy Boulevard, Suite 501, Philadelphia, PA 19103–7483

U.S. Department of Energy, Pittsburgh Naval Reactors Office, P.O. Box 109, West Mifflin, PA 15122–0109

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352

U.S. Department of Energy, Rocky Flats Field Office, 10808 Highway 93, Unit A, Golden, CO 80403–8200

U.S. Department of Energy, Savannah River Operations Office, P.O. A, Aiken, SC 29801

U.S. Department of Energy, Seattle Regional Support Office, 800 Fifth Avenue, Suite 3950, Seattle, WA 98104

U.S. Department of Energy, Schenectady Naval Reactors Office, P.O. Box 1069, Schenectady, NY 12301

U.S. Department of Energy, Southeastern Power Administration, 1166 Athens Tech Road, Elberton, GA 30635–4578

U.S. Department of Energy, Southwestern Power Administration, Williams Tower One, One West Third Street, Tulsa, OK 74103

U.S. Department of Energy, Strategic Petroleum Reserve Project Office, 900 Commerce Road East, New Orleans, LA 70123

U.S. Department of Energy, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401

U.S. Department of Energy, Office of Repository Development, P.O. Box 364629, North Las Vegas, NV 89036–8629

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Energy (DOE), including National Nuclear Security Administration (NNSA) personnel and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Time and attendance records, earning records, payroll actions, deduction information requests, authorizations for overtime and night differential, and Office of Personnel Management (OPM) retirement records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; Privacy Act of 1974, Pub. L. 93–579 (5 U.S.C. 552a); General Accounting Office Policy and Procedures Manual; Personal Responsibility and Work Opportunity Reconciliation Act, Pub. L. 104–193.

PURPOSE(S):

The records are maintained and used by the DOE to document historical information on employee wages, deductions, retirement benefits, and leave.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use to the Department of Treasury to collect withheld taxes, process payroll payments, and issue savings bonds.

2. A record from this system may be disclosed as a routine use to the Internal Revenue Service to process Federal income tax payments and tax levies.

3. A record from this system may be disclosed as a routine use to state and local governments to process State and local income tax deductions and court ordered child support or alimony payments.

4. A record from this system may be disclosed as a routine use to OPM to establish and maintain retirement records and benefits.

5. A record from this system may be disclosed as a routine use to the Thrift Savings Board to update Section 401K type records and benefits.

6. A record from this system may be disclosed as a routine use to the Social Security Administration to establish Social Security records and benefits.

7. A record from this system may be disclosed as a routine use to the Department of Labor to process workmen's compensation claims.

8. A record from this system may be disclosed as a routine use to the Department of Defense to adjust military retirement.

9. A record from this system may be disclosed as a routine use to financial institutions to credit net deposits, savings allotments, and discretionary allotments.

10. A record from this system may be disclosed as a routine use to employee unions to credit accounts for employees with union dues deductions.

11. A record from this system may be disclosed as a routine use to health insurance carriers to process insurance claims.

12. A record from this system may be disclosed as a routine use to the General Accounting Office to verify accuracy and legality of disbursement.

13. A record from this system may be disclosed as a routine use to the Department of Veterans Affairs to evaluate veteran's benefits to which the individual may be entitled.

14. A record from this system may be disclosed as a routine use to States' departments of employment security to determine entitlement to unemployment compensation or other State benefits.

15. A record from the system may be disclosed as a routine use to the appropriate local, State or Federal agency when records alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

16. A record from the system may be disclosed as a routine use to a Federal, State, or local agency to obtain information relevant to a Departmental decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

17. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

18. A record from this system of records may be disclosed as a routine use to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member concerning the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

19. A record from this system may be disclosed as a routine use to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, Federal Parent Locator System (FPLS) and Federal Tax Offset System to locate individuals and identify their income sources to establish paternity, establish and modify orders of support, and for enforcement action.

20. A record from this system may be disclosed as a routine use to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, FPLS and Federal Tax Offset System, for release to the Social Security Administration to verify social security numbers in connection with the operation of the FPLS by the Office of Child Support Enforcement.

21. A record from this system may be disclosed as a routine use to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, FPLS and Federal Tax Offset System, for release to the Department of Treasury to administer the Earned Income Tax Credit Program (Section 32, Internal Revenue Code of 1986) and verify a claim with respect to employment in a tax return.

22. A record from this system may be disclosed as a routine use to the Defense Finance and Accounting Service (DFAS) so that DFAS may perform payroll processing services for DOE. These services may include the issuance of salary payments to employees and distribution of wages; and the distribution of allotments and deductions to financial and other institutions, many of which are through electronic funds transfer.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Records may be stored as paper records and electronic media.

RETRIEVABILITY:

Records may be retrieved by name, social security number, and payroll number.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: Director, Office of Management, Budget and Evaluation/ Chief Financial Officer, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The Managers of the DOE offices ''System Locations'' listed above are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, part 1008, a request by an individual to determine if a system of records contains information about him/ her should be directed to the Director, Headquarters Freedom of Information

Act and Privacy Act Group, U.S. Department of Energy, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' For records maintained by Laboratory or Site Office, the request should be directed to the Privacy Act Officer at the Operations Office that has jurisdiction over that office or facility. The request should include the requester's complete name, time period for which records are sought, and the office locations(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

The subject individual, supervisors, timekeepers, official personnel records, and the Internal Revenue Service.

SYSTEM EXEMPT FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 04–1551 Filed 1–26–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products: Representative Average Unit Costs of Energy

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: In this notice, the Department of Energy (DOE or Department) is forecasting the representative average unit costs of five residential energy sources for the year 2004 pursuant to the Energy Policy and Conservation Act. The five sources are electricity, natural gas, No. 2 heating oil, propane, and kerosene.

EFFECTIVE DATE: The representative average unit costs of energy contained in this notice will become effective February 26, 2004 and will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Samuel Johnson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–0854, *sam.johnson@ee.doe.gov.*

Francine Pinto, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0103, (202) 586–7432, *francine.pinto@hq.doe.gov.*

Thomas DePriest, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0103, (202) 586–2946, *thomas.depriest@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: Section 323 of the Energy Policy and Conservation Act (Act) (42 U.S.C. 6291–6309) requires that DOE prescribe test procedures for the determination of the estimated annual operating costs or other measures of energy consumption for certain consumer products specified in the Act. (42 U.S.C. 6293(b)(4)) These test procedures are found in 10 CFR part 430, subpart B.

Section 323(b) of the Act requires that the estimated annual operating costs of a covered product be calculated from measurements of energy use in a representative average use cycle or period of use and from representative average unit costs of the energy needed to operate such product during such cycle. (42 U.S.C. 6293(b)) The section further requires that DOE provide information to manufacturers regarding the representative average unit costs of energy. (42 U.S.C. 6293(b)(4)) This cost information should be used by manufacturers to meet their obligations under section 323 of the Act. Most notably, these costs are used to comply with Federal Trade Commission (FTC) requirements for labeling. Manufacturers are required to use the revised DOE representative average unit costs when the FTC publishes new ranges of comparability for specific covered products, 16 CFR part 305. Interested members of the public can also find information covering the FTC labeling requirements at *http://www.ftc.gov/appliances.*

The Department last published representative average unit costs of residential energy for use in the Energy Conservation Program for Consumer Products Other Than Automobiles on April 9, 2003 (68 FR 17361). Effective February 26, 2004, the cost figures published on April 9, 2003, will be superseded by the cost figures set forth in this notice.

The Department's Energy Information Administration (EIA) developed the representative average unit after-tax costs set forth in this notice. The representative average unit after-tax costs for electricity, natural gas, No. 2 heating oil, and propane are based on simulations used to produce the September 2003, EIA *Short-Term Energy Outlook*, and reflect the mid-price scenario. The representative average unit after-tax costs for kerosene are derived from EIA's prices relative to that of heating oil, based on 1998–2002 averages for these two fuels. The source for these price data is the August 2003, *Monthly Energy Review* DOE/EIA–0035(2003/08). The *Short-Term Energy Outlook* and the *Monthly Energy Review* are available at the National Energy Information Center, Forrestal Building, Room 1F–048, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8800. These publications also can be found on the EIA Web site at *http://www.eia.doe.gov.*

The 2004 representative average unit costs of energy under section 323(b)(4) of the Act are set forth in Table 1, and will become effective February 26, 2004. They will remain in effect until further notice.

Issued in Washington, DC, on January 22, 2004.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES (2004)

Type of energy	Per million Btu [1]	In commonly used terms	As required by test procedure
Electricity	$25.20	8.60¢/kWh [2,3]	$.0860/kWh
Natural Gas	9.10	91.0¢/therm [4] or $9.35/MCF [5,6]	.00000910/Btu
No. 2 Heating Oil	9.23	$1.28/gallon [7]	.00000923/Btu
Propane	13.46	$1.23/gallon [8]	.00001346/Btu

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES (2004)—Continued

Type of energy	Per million Btu [1]	In commonly used terms	As required by test procedure
Kerosene	11.41	$1.54/gallon [9]	.00001141/Btu

[1] Btu stands for British thermal units.
[2] kWh stands for kilowatt hour.
[3] 1 kWh = 3,412 Btu.
[4] 1 therm = 100,000 Btu. Natural gas prices include taxes.
[5] MCF stands for 1,000 cubic feet.
[6] For the purposes of this table, one cubic foot of natural gas has an energy equivalence of 1,028 Btu.
[7] For the purposes of this table, one gallon of No. 2 heating oil has an energy equivalence of 138,690 Btu.
[8] For the purposes of this table, one gallon of liquid propane has an energy equivalence of 91,333 Btu.
[9] For the purposes of this table, one gallon of kerosene has an energy equivalence of 135,000 Btu.

[FR Doc. 04–1646 Filed 1–26–04; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0084, FRL–7613–6]

Agency Information Collection Activities; Submission to OMB; Comment Request; Submission of Unreasonable Adverse Effects Information Under FIFRA Section 6(a)(2)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Submission of Unreasonable Adverse Effects Information under FIFRA Section 6(a)(2); EPA ICR No. 1204.09; OMB Control No. 2070–0039. The ICR, which is abstracted below, describes the nature of the information collection activity and its expected burden and costs.

DATES: Additional comments may be submitted on or before February 26, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OPP–2003–0084, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *opp-docket@epa.gov,* or by mail to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Mail Code: 7502C, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Nancy Vogel, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6475; fax number: (703) 305–5884; e-mail address: *vogel.nancy@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. The **Federal Register** document, required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on April 30, 2003 (68 FR 23128). EPA received no comments on this ICR during the 60-day comment period.

EPA has established a public docket for this ICR under Docket ID No. OPP–2003–0084, which 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. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. Please note, EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public 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 EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

ICR Title: Submission of Unreasonable Adverse Effects Information under FIFRA Section 6(a)(2).

ICR Status: This is a request for renewal of an existing approved collection that is currently scheduled to expire on January 31, 2004. EPA is asking OMB to approve this ICR for three years. Under 5 CFR 1320.12(b)(2), the Agency may continue to conduct or sponsor the collection of information while the submission is pending at OMB.

Abstract: Section 6(a)(2) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) requires pesticide registrants to submit any factual information to the Agency that they acquire which may be relevant to the balancing of the risks and benefits of a pesticide product, specifically, information regarding adverse effects associated with their pesticide products.

Burden Statement: The annual ''respondent'' burden for this ICR is estimated to be 155,639 hours, or 83

hours per response. According to the Paperwork Reduction Act, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For this collection, it is the time reading the regulations, planning the necessary data collection activities, conducting tests, analyzing data, generating reports and completing other required paperwork, and storing, filing, and maintaining the data. The agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection appears at the beginning and the end of this document. In addition OMB control numbers for EPA's regulations, after initial display in the final rule, are listed in 40 CFR part 9.

The following is a summary of the burden estimates taken from the ICR:

Respondents/affected entities: Pesticide registrants.

Estimated total number of potential respondents: 1,900.

Frequency of response: As needed.

Estimated total/average number of responses for each respondent: 24.

Estimated total annual burden hours: 155,639 hours.

Estimated total annual burden costs: $12,057,947.

Changes in the ICR Since the Last Approval: The total estimated annual respondent burden for this ICR has decreased by 10,627 hours (166,266 to 155,639), due mainly to a decrease in the number of responses expected. Estimated costs have decreased $356,121 (from $12,414,068 to $12,057,947) for the same reason. These decreases are explained more fully in the ICR.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this notice, as described above.

Dated: January 20, 2004.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 04–1677 Filed 1–26–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0076; FRL–7613–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; National Listing of Advisories, EPA ICR Number 1959.02, OMB Control Number 2040–0226

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on January 31, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before February 26, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OW–2003–0076, to (1) EPA online using EDOCKET (our preferred method), by email to *OW-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket (4101T), 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jeffrey D. Bigler, Program Manager, National Fish and Wildlife Contamination Program, OST/SHPD, (4305T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566–0389; fax number: (202) 566–0409; email address: *bigler.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 14, 2003, (68 *FR* 48605), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received only one comment and has addressed the comment received.

EPA has established a public docket for this ICR under Docket ID No. OW–2003–0076, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public 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 EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: National Listing of Advisories.

Abstract: The National Listing of Fish and Wildlife Advisories (NLFWA) Database contains information on the number of new advisories issued by each state, territory, or tribe annually. The advisory information collected identifies the waterbody under advisory, the fish or shellfish species and size ranges included in the advisory, the chemical contaminants and residue levels causing the advisory to be issued, the waterbody type (river, lake, estuary, coastal waters), and the target

populations to whom the advisory is directed. This information is collected under the authority of section 104 of the Clean Water Act, which provides for the collection of information to be used to protect human health and the environment. The information is collected from the states and tribes using a Web-based electronic questionnaire or paper questionnaires if the respondents do not have access to the Web. The results of the survey are shared with states, territories, tribes, other federal agencies, and the general public through the NLFWA database and the distribution of annual fish advisories fact sheets. The responses to the survey are voluntary and the information requested is part of the state public record associated with the advisories. No confidential business information is requested.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average approximately 39 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Administrators of Public Health and Environmental Quality Programs in 50 states, District of Columbia, 5 territories, and 36 tribal governments.

Estimated Number of Respondents: 92.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 3,565.

Estimated Total Annual Cost: $109,429, includes $529 annualized capital or O&M costs.

Changes in the Estimates: There is no change in the number of hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: January 13, 2004.

Deborah Williams,

Acting Director, Collection Strategies Division.

[FR Doc. 04–1678 Filed 1–26–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0020; FRL–7613–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Gasoline Distribution Facilities (Stage I) (40 CFR Part 63, Subpart R), EPA ICR Number 1659.05, OMB Control Number 2060–0325

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on February 29, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before February 26, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2003–0020, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Dan Chadwick, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–7054; fax number: (202) 564–0050; e-mail address: *chadwick.dan@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 19, 2003 (68 FR 27059), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2003–0020, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public 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 EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information

about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: NESHAP for Gasoline Distribution Facilities (Stage I) (40 CFR part 63, subpart R).

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP), for the regulations published at 40 CFR part 63, subpart R were promulgated on December 14, 1994 (59 FR 64318). The standards were revised on June 26, 1995 (60 FR 32913), to correct errors in the printing of the emission screening equation in the final standards, and amended on February 29, 1996 (61 FR 7723), to extend the initial compliance date for the equipment leak standard. The standards were amended again June 12, 1996 (61 FR 29875), to clarify the coverage of gasoline loading racks at refineries with through-puts greater than 75,700 liters/day. Updated direct final standards were promulgated on February 28, 1997 (62 FR 9092), to implement a proposed settlement with the American Petroleum Institute. These regulations apply to facilities that are new or existing pipeline breakout stations or bulk gasoline terminals with through-puts greater than 75,700 liters/day, commencing construction, modification or reconstruction after the date of proposal.

This ICR contains record keeping and reporting requirements that are mandatory for compliance with 40 CFR part 63, subpart R. Effective enforcement of this rule is necessary due to the hazardous nature of benzene (a known human carcinogen) and the toxic nature of the other 10 Hazardous Air Pollutants emitted from gasoline distribution facilities. In order to ensure compliance with the standards, adequate reporting and record keeping is necessary. This information enables the Agency to: (1) Identify the sources subject to the standard; (2) Ensure that leakage emissions from cargo tanks and process piping equipment components (both liquid and vapor) during loading are being minimized; (3) Ensure that emission control devices are being properly operated and maintained; and (4) Ensure that emissions from storage vessels are minimized and seal and fitting defects are repaired on a timely basis.

Responses to this information collection are deemed to be mandatory, per section 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined not to be private. However, any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information (see 40 CFR part 2; 41 FR 36902, September 1, 1976; amended by 43 FR 40000, September 8, 1978; 43 FR 42251, September 20, 1978; 44 FR 17674, March 23, 1979).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 62 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of facilities that are new or existing pipeline breakout stations or bulk gasoline terminals.

Estimated Number of Respondents: 263.

Frequency of Response: Semi-annually, annually and on occasion.

Estimated Total Annual Hour Burden: 32,575 hours.

Estimated Total Annual Cost: $2,940,000, includes $0 annualized capital/startup costs, $851,000 O&M costs and $2,089,000 labor costs.

Changes in the Estimates: There is no increase or decrease of hours in the total estimated burden currently identified in the OMB inventory of Approved ICR Burdens.

Dated: January 20, 2004.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 04–1679 Filed 1–26–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0030; FRL–7613–8]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NSPS for Nitric Acid Plants, EPA ICR Number 1056.08, OMB Control Number 2060–0019

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on January 31, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before February 26, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2003–0030, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov,* or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Enforcement and Compliance Docket and Information Center, EPA West, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs division, Mail Code 2223A, Office of Compliance, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 19, 2003 (68 FR 27059), EPA sought comments on this ICR pursuant

to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2003–0030, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center Docket is: (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public 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 EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: NSPS for Nitric Acid Plants (40 CFR part 60, subpart G).

Abstract: This ICR contains monitoring, recordkeeping and reporting requirements that are mandatory for compliance with this rule. This information is used by the Agency to identify sources subject to the standards to insure that the best demonstrated technology is being properly applied. The standards require periodic recordkeeping to document process information relating to the source's ability to meet the requirements of the standard and to note the operational conditions under which compliance was achieved.

Owners or operators of the affected facilities described must make the following one-time only reports: notification of the date of construction or reconstruction; notification of the actual dates of startup, notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the date of the initial performance test; and the results of the initial performance test.

Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, records and semiannual reports are required of all sources subject to NSPS.

In the Administrator's judgement, volatile organic compound (VOC) emissions from the nitric acid plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, NSPS were promulgated for this source category.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information are estimated to average 25 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Nitric Acid Plants.

Estimated Number of Respondents: 24.

Frequency of Response: Initial and semiannual.

Estimated Total Annual Hour Burden: 1,290.

Estimated Total Annual Costs: $2,549,639 which includes $68,000 annualized capital/startup costs, $2,400,000 annual O&M costs, and $81,639 respondent labor costs.

Changes in the Estimates: There is a decrease of 506 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This is due to a decrease in the number of sources.

Dated: January 15, 2004.

Deborah Williams,

Acting Director, Collection Strategies Division.

[FR Doc. 04–1680 Filed 1–26–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7614–3]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Susan Auby (202) 566–1672, or email at *auby.susan@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1353.07; Land Disposal Restrictions No-Migration Variances; in 40 CFR 268.6, 40 CFR 268.40; was approved 12/16/2003; OMB Number 2050–0062; expires 12/31/2006.

EPA ICR No. 1981.02; Distribution of Off-site Consequence Analysis Information under Section 112(r) (7) (H) of the Clean Air Act (CAA); in 40 CFR part 1400; was approved 12/15/2003; OMB Number 2050–0172; expires 12/31/2006.

EPA ICR No. 2046.02; NESHAP for Mercury Cell Chlor-Alkali Plants (Final Rule); in 40 CFR part 63, subpart IIIII; was approved 01/08/04; OMB Number 2060–0542; expires 01/31/2007.

EPA ICR No. 2096.02; NESHAP for Iron and Steel Foundries (Final Rule); 40 CFR part 63, subpart EEEEE; was approved 01/08/04; OMB Number 2060–0543; expires 01/31/2007.

EPA ICR No. 1739.04; NESHAP for the Printing and Publishing Industry; in 40 CFR part 63, subpart KK; was approved 01/08/2004; OMB Number 2060–0335; expires 01/31/2007.

EPA ICR No. 2050.02; NESHAP for Taconite Iron Ore Processing (Final Rule); in 40 CFR part 63, subpart RRRRR; was approved 01/06/04; OMB Number 2060–0538; expires 01/31/2007.

EPA ICR No. 0278.08; Notice of Supplemental Distribution of a Registered Pesticide Product; in 40 CFR 152.132; was approved 01/05/2004; OMB Number 2070–0044; expires 01/31/2007.

EPA ICR No. 2062.02; NESHAP: Site Remediation (Final Rule); in 40 CFR part 63, subpart GGGGG; was approved 12/24/2003; OMB Number 2060–0534; expires 12/31/2006.

EPA ICR No. 2098.02; NESHAP for Primary Magnesium Refining (Final Rule); in 40 CFR part 63, subpart TTTTT; was approved 01/05/2004; OMB Number 2060–0536; expires 01/31/2007.

EPA ICR No. 2044.02; NESHAP for Plastic Parts and Products Surface Coating (Final Rule); in 40 CFR part 63, subpart PPPP; was approved 01/06/2004; OMB Number 2060–0537; expires 01/31/2007.

EPA ICR No. 1686.05; NESHAP for the Secondary Lead Smelter Industry; in 40 CFR part 63, subpart X; was approved 12/29/2003; OMB Number 2060–0296; expires 12/31/2006.

EPA ICR No. 2072.02; NESHAP for Lime Manufacturing (Final Rule); in 40 CFR part 63, subpart WWWW; was approved 01/06/04; OMB Number 2060–0544; expires 01/31/2007.

Short Term Extensions

EPA ICR No. 1572.05; Hazardous Waste Specific Unit Requirements and Special Waste processes and Types; on 12/22/2003 OMB extended the expiration date to 03/31/2004.

Comment Filed

EPA ICR No. 1656.10; Risk Management Program Requirements and Petitions to Modify the List of Regulated Substances under Section 122(r) of the Clean Air Act (Proposed Rule); on 12/15/2003 OMB filed a comment.

EPA ICR No. 2047.01; Participation by Disadvantaged Business Enterprises in Procurement under Environmental Protection Agency (EPA) Financial Assistance Agreements in 40 CFR part 68; on 01/05/2004 OMB filed a comment.

Dated: January 20, 2004.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 04–1681 Filed 1–26–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0171; FRL–7614–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Recordkeeping and Reporting Requirements Regarding the Sulfur Content of Motor Vehicle Gasoline Under the Tier 2 Rule, EPA ICR Number 1907.03, OMB Control Number 2060–0437

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a renewal of an existing approved collection. This ICR is scheduled to expire on January 31, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before February 26, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2003–0171, to (1) EPA online using EDOCKET (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, Mail Code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Marilyn Bennett, Office of Transportation and Air Quality, Mail Code 6406J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9624; fax number: (202) 343–2802; e-mail address: *bennett.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On October 20, 2003, (68 FR 59934), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OAR–2003–0171, which is available for public viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material (CBI), or other information whose public 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 EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the

official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: Recordkeeping and Reporting Requirements Regarding the Sulfur Content of Motor Vehicle Gasoline Under the Tier 2 Rule.

Abstract: The requirements covered under this ICR are included in the final Tier 2 rule, published on February 10, 2000 (65 FR 6698). A minor additional ICR requirement was added to the Tier 2 rule on June 12, 2002 (67 FR 40169).

The scope of the recordkeeping and reporting requirements for each type of party (*e.g.*, refiners, importers, distributors, or retailers of gasoline), and therefore the cost to that party, reflects the party's opportunity to create, control or alter the sulfur content of gasoline. As a result, refiners and importers have significant requirements, which are necessary both for their own tracking and that of downstream parties, and for EPA enforcement, while parties downstream from the gasoline production or import point, such as retailers, have minimal burdens under the rule. Many of the reporting and recordkeeping requirements for refiners and importers regarding the sulfur content of gasoline on which the Tier 2 sulfur program relies currently exist under EPA's reformulated gasoline (RFG) and conventional gasoline (CG) anti-dumping programs. The ICR for the RFG/CG programs approved under OMB Control Number 2060–0277 covered the majority of the start-up costs associated with the reporting of gasoline sulfur content. Consequently, much of the cost associated with the sulfur-control requirements under the sulfur program has already been accounted for under the ICR for the RFG/CG programs.

The information under this ICR will be collected by EPA's Transportation and Regional Programs Division, Office of Transportation and Air Quality, Office of Air and Radiation (OAR), and by EPA's Air Enforcement Division, Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance (OECA). The information collected will be used by EPA to evaluate compliance with the gasoline sulfur control requirements under the Tier 2 rule. This oversight by EPA is necessary to ensure attainment of the air quality goals of the Tier 2 program. Proprietary information will be submitted by refiners and importers for demonstrating compliance with the sulfur standards, and for establishing baseline sulfur levels under the credit trading and hardship programs associated with the rule. Confidentiality is handled in accordance with the Freedom of Information Act and EPA regulations at 40 CFR part 2.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average between 12 and 500 hours per respondent, depending on the information collection requirements of the particular party. The average number of hours per response is approximately 1 hour. The total number of annual responses is estimated to be 37,818.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Refiners, Importers, Gasoline Terminals, Pipelines, Users of Research & Development Gasoline.

Estimated Number of Respondents: 1,380.

Frequency of Response: On occasion, monthly and annually.

Estimated Total Annual Hour Burden: 38,742.

Estimated Total Annual Cost: $2,405,185, includes $0 annualized capital/startup costs, $0 annual O&M costs, and $2,405,185 labor costs.

Changes in the Estimates: There is an increase of 26,210 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase reflects a change in the information collection burdens beginning on January 1, 2004. Some of the burdens associated with the initial phase of the program will not be required after January 1, 2004, while other burdens will be imposed beginning on January 1, 2004. The increase is largely due to a requirement that refiners and importers sample and test each batch of gasoline for compliance with the gasoline sulfur standards, which become effective on January 1, 2004. The difference in the total number of responses in the early years of the program (192,268) and subsequent years (37,818) is due to the large number of small gasoline distributors and retail gasoline service stations that needed to become familiar with the requirements of the new program. The new requirements, however, do not impose additional recordkeeping burdens on these parties beyond what they currently are required to keep under the reformulated gasoline program.

Dated: January 13, 2004.

Deborah Williams,

Acting Director, Collection Strategies Division.

[FR Doc. 04–1682 Filed 1–26–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0037; FRL–7614–1]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NESHAP for Flexible Polyurethane Foam Production (40 CFR Part 63, Subpart III), EPA ICR Number 1783.03, OMB Control Number 2060–0357

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on January 31, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before February 26, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2003–0037, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: María Malavé, Compliance Assessment and Media Programs Division, Mail Code 2223A, Office of Compliance, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–7027; fax number: (202) 564–0050; e-mail address: *malave.maria@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 19, 2003 (68 FR 27059), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2003–0037, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public 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 EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: NESHAP for Flexible Polyurethane Foam Production (40 CFR part 63, subpart III).

Abstract: The Maximum Achievable Control Technology (MACT) standards for Flexible Polyurethane Foam Production, published at 40 CFR part 63, subpart III, were proposed on December 27, 1996 and promulgated on October 7, 1998. These standards apply to owners or operators of new and existing facilities that engage in the manufacture of flexible polyurethane foam products which emit hazardous air pollutants (HAPs). This includes facilities making slabstock flexible polyurethane foam (''slabstock foam''), rebond flexible polyurethane foam (''rebond foam''), and/or molded flexible polyurethane foam (''molded foam'').

In general, all MACT standards require initial notifications, performance tests, and periodic reports. Owners or operators of flexible polyurethane foam production facilities to which this rule is applicable must choose one of the compliance options described in the standard or reduce HAP emissions to below the compliance level. Specifically, the rule requirements for slabstock foam producers include an initial notification, notification of compliance status, semiannual reports and annual compliance certifications. In addition, respondents are required to submit a pre-compliance report that describes the HAP compliance procedures, and recordkeeping procedures. Those electing to comply with the slabstock foam emission limitation using recovery devices must measure and record emissions as specified in § 63.1297 of the rule. The rule requirements for molded and rebond foam producers include a notification of a compliance status report and an annual compliance certification. These notifications, reports, and records are essential in determining compliance, and are required of all sources subject to MACT.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 43 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Slabstock and rebond/molded flexible polyurethane foam production facilities that emit hazardous air pollutants.

Estimated Number of Respondents: 132.

Frequency of Response: Initial, semiannual and annual.

Estimated Total Annual Hour Burden: 9,047 hours.

Estimated Total Cost: $572,000, includes $0 capital/startup costs, $0 O&M costs and $572,000 labor costs. There are no total capital/startup costs and operation and maintenance costs for this ICR due to the following assumptions: (1) No new sources will become subject to these standards; (2) the existing sources conducting modifications will not be purchasing new monitoring equipment; and (3) existing slabstock sources are complying with the source-wide emission limit and are not required to use bag leak detectors. The capital/startup cost and O&M cost for continuous parameter monitors (CPMs) are not attributed to this rule since sources already had the CPMs when the rule was promulgated.

Changes in the Estimates: There is an increase of 2,647 hours in the total

estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to the omission of the burden associated with annual compliance certifications in the active ICR which was corrected in its renewal. The slabstock foam producers are complying with the annual compliance certification requirement concurrently with the semiannual reports and therefore, do have an additional burden associated with it. However, the molded/rebond foam producers only have the annual compliance certification reporting requirement and its burden must be accounted for in the ICR separately.

Dated: January 13, 2004.

Deborah Williams,

Acting Director, Collection Strategies Division.

[FR Doc. 04–1683 Filed 1–26–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0085, FRL–7613–5]

Agency Information Collection Activities; Submission to OMB; Comment Request; Pesticide Product Registration Maintenance Fee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Pesticide Product Registration Maintenance Fee; EPA ICR Number: 1214.06; OMB Control Number: 2070–0100. The ICR, which is abstracted below, describes the nature of the information collection activity and its expected burden and costs.

DATES: Additional comments may be submitted on or before February 26, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OPP–2003–0085, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *opp-docket@epa.gov*, or by mail to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Mailcode: 7502C, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Nancy Vogel, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6475; fax number: (703) 305–5884; e-mail address: *vogel.nancy@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. The **Federal Register** document, required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on April 2, 2003 (68 FR 16023). EPA received no comments on this ICR during the 60-day comment period.

EPA has established a public docket for this ICR under Docket ID No. OPP–2003–0085, which 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. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. Please note, EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public 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 EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

ICR Title: Pesticide Product Registration Maintenance Fee (EPA ICR 1214.06, OMB Control No. 2070–0100).

ICR Status: This is a request for extension of an existing approved collection that is currently scheduled to expire on January 31, 2004. EPA is asking OMB to approve this ICR for three years. Under 5 CFR 1320.12(b)(2), the Agency may continue to conduct or sponsor the collection of information while the submission is pending at OMB.

Abstract: This information collection activity provides the Agency with the means to collect registration maintenance fees from pesticide registrants as required by law. Respondents complete and submit EPA Form 8570–30, indicating their liability for the registration maintenance fee. No changes in the substance or in the method of collection is proposed in this ICR renewal request. Each affected firm is required to complete the filing form and submit their fee payment by January 15 of each year.

Every year, the Agency provides registrants a list of the registered products currently registered with the Agency. Registrants are provided the opportunity to review the list, determine its accuracy, and remit payment of the maintenance fee. The list of products has space identified for marking those products to be supported and those products that are to be canceled. The registrants are also instructed to identify any products on the list which they believe to be transferred to another company, and to add to the list any products which the company believes to be registered that are not on the Agency-provided list. The failure to pay the required fee for a product will result in cancellation of that product.

Burden Statement: The annual ''respondent'' burden for this ICR is estimated to be 1,763 hours. According to the Paperwork Reduction Act, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For this collection, it is the time reading the regulations, planning the necessary data collection activities, conducting tests, analyzing data, generating reports and completing other required paperwork, and storing,

filing, and maintaining the data. The agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection appears at the beginning and the end of this document. In addition OMB control numbers for EPA's regulations, after initial display in the final rule, are listed in 40 CFR part 9.

The following is a summary of the burden estimates taken from the ICR:

- *Respondents/affected entities*: Pesticide registrants.
- *Estimated total number of potential respondents*: 1,900.
- *Frequency of response*: Annual.
- *Estimated total/average number of responses for each respondent*: 1.
- *Estimated total annual burden hours*: 1,763 hours.
- *Estimated total annual burden costs*: $178,690.

Changes in the ICR Since the Last Approval: The total estimated annual respondent cost for this ICR has decreased by 95 hours (from 1,858 to 1,763), due mainly to a decrease in the number of responses expected. Although the number of responses have decreased over those in the previous ICR, estimated costs have increased by about $820 (from roughly $177,871 to $178,690) because of an increase in the estimated labor rates for respondents. These changes are explained more fully in the ICR.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this notice, as described above.

Dated: January 20, 2004.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. E4–118 Filed 01–26–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7614–4]

Two Proposed Administrative Settlements Under the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.*, notice is hereby given that the United States Environmental Protection Agency is proposing to enter into an Agreement and Covenant Not to Sue (Prospective Purchaser Agreement) with Kelly Development LLC and a Settlement Agreement with responsible parties at the Frontier Hard Chrome National Priorities List Superfund Site.

The Frontier Hard Chrome Site is located at 113 Y Street in Vancouver, Washington. The Site is the location of the former Frontier Hard Chrome chrome-plating facility. Discharges of chrome-plating waste at the Site have resulted in a plume of chromium-contaminated groundwater. The Site was listed on the National Priorities List and is being remediated by EPA using Superfund money pursuant to an Amended Record of Decision issued on August 30, 2001.

The Property on which the chrome-plating facility was located is owned by Walter Neth, the Estate of Otto Neth, and the Lillian Mae Neth Family Trust (Settling PRPs). The Settling PRPs are seeking to sell the Property to Kelly Development LLC (Kelly). Kelly intends to purchase the Property, as well as the adjacent property, for development for light industrial uses, offices, and storage space.

The proposed Prospective Purchaser Agreement would resolve certain potential claims of the United States under sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), and section 7003 of RCRA, 42 U.S.C. 6973 against Kelly Development LLC that may otherwise result from Kelly acquiring Site property. It would also grant a waiver of any lien that EPA may have on the Property under section 107(r) of CERCLA, 42 U.S.C. 9607(r), as a result of response actions conducted by EPA on the Property. The proposed Settlement Agreement would resolve claims of the United States under sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a) against the Settling PRPs.

In exchange for its covenant not to sue in both agreements, EPA is receiving $180,000 less 87.5% of Settling PRPs' closing costs to be paid to a Superfund Special Account for use at the Site. Settling PRPs are also creating a Frontier Hard Chrome Environmental Trust (Trust), into which $30,000 will be paid. The total of $210,000 is 87.5% of the amount Kelly is paying to purchase the Site Property from the Settling PRPs. Settling PRPs are also funding the Trust with insurance policies covering the Site. The Trustee will pursue these policies and whatever proceeds are received will be transferred to the Superfund Special Account for the Site.

EPA is allowing thirty (30) days for public comments. For thirty calendar days following the date of publication of this notice, EPA will receive written comments relating to the proposed Prospective Purchaser Agreement and Settlement Agreement. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region 10, 1200 Sixth Ave., Seattle, WA 98101.

DATES: Comments must be submitted on or before February 26, 2004.

ADDRESSES: The proposed Prospective Purchaser Agreement, Settlement Agreement, and additional background documents relating to the settlements are available for public inspection at the Environmental Protection Agency, Region 10, 1200 Sixth Ave., Seattle, WA 98101. A copy of the proposed settlements may be obtained from Jennifer Byrne, Assistant Regional Counsel (ORC–158), Office of Regional Counsel, EPA Region 10, Seattle, WA 98101. Comments should reference ''Frontier Hard Chrome Settlements'' and ''Docket No. CERCLA–10–2003–0009'' and should be addressed to Jennifer Byrne at the above address.

FOR FURTHER INFORMATION CONTACT: Jennifer Byrne, Assistant Regional Counsel (ORC–158), Office of Regional Counsel, EPA Region 10, Seattle, WA 98101; phone: (206) 553–0050; fax: (206) 553–0163; e-mail: *byrne.jennifer@epa.gov.*

Dated: August 4, 2003.

L. John Iani,

Regional Administrator, Region 10.

[FR Doc. 04–1685 Filed 1–26–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7613–4]

Public Water Supply Supervision Program Revision for the State of New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Tentative Approval and Solicitation of Request for a Public Hearing for Public Water System Supervision Program Revision for the State of New Jersey.

SUMMARY: Notice is hereby given that the United States Environmental Protection Agency (EPA) has

determined to approve an application by the State of New Jersey to revise its Public Water System Supervision Primacy Program to incorporate regulations no less stringent than EPA's National Primary Drinking Water Regulations (NPDWR) for the following: Lead and Copper Rule Technical Correction; Final Rule, promulgated by EPA on June 30, 1994 (59 FR 33860), Analytical Methods Technical Corrections; Final Rule, promulgated by EPA on December 5, 1994 (59 FR 62456), Analytical Methods Technical Corrections; Final Rule, promulgated by EPA on June 29, 1995 (60 FR 34083), Analytical Methods for Radionuclides Technical Corrections, promulgated by EPA on March 5, 1997 (62 FR 10168), Revisions to State Primacy Requirements to Implement Safe Drinking Water Act Amendments; Final Rule (Primacy Revisions), promulgated by EPA on April 28, 1998 (63 FR 23362), Removal of Prohibition on the Use of Point of Use Devices for Compliance with the NPDWR, promulgated by EPA on June 11, 1998 (63 FR 31932), Revision of Existing Variance and Exemption Regulations To Comply With Requirements of the Safe Drinking Water Act; Final Rule, promulgated by EPA on August 14, 1998 (63 FR 43834), Consumer Confidence Reports; Final Rule, promulgated by EPA on August 19, 1998 (63 FR 44512), along with 6 separate Technical Corrections to the Consumer Confidence Reports, promulgated as follows: December 16, 1998 (63 FR 69475 and 63 FR 69516), June 29, 1999 (64 FR 34732), September 14, 1999 (64 FR 49671), May 4, 2000 (65 FR 25981), November 27, 2002 (67 FR 70850), and December 9, 2002 (67 FR 73011), the Disinfectants and Disinfection Byproducts; Final Rule, and Interim Enhanced Surface Water Treatment; Final Rule, both promulgated December 16, 1998 (63 FR 69390 and 63 FR 69478, respectively), the Suspension of Unregulated Contaminant Monitoring Requirements for Small Public Water Systems, promulgated by EPA January 8, 1999 (64 FR 1494), the Lead and Copper Rule Minor Revisions, promulgated by EPA January 12, 2000 (65 FR 1950), the Public Notification Rule, promulgated by EPA May 4, 2000 (65 FR 25982), along with 2 separate Technical Corrections to the Public Notification Rule, promulgated as follows: June 21, 2000 (65 FR 38629) and June 30, 2000 (65 FR 40520), the Radionuclide Rule, promulgated by EPA December 7, 2000 (65 FR 76708), Revisions to the Interim Enhanced Surface Water Treatment Rule and the Stage 1 Disinfectants and Disinfection Byproducts Rule and Revisions to State Primacy Requirements to Implement the Safe Drinking Water Act Amendments, Final Rule, promulgated by EPA January 16, 2001 (66 FR 3770), the Filter Backwash Recycling Rule, promulgated by EPA June 8, 2001 (66 FR 31086) and the Long Term 1 Enhanced Surface Water Treatment Rule, promulgated by EPA January 14, 2002 (67 FR 1812).

The application demonstrates that New Jersey has adopted drinking water regulations which satisfy the NPDWRs for the above. The USEPA has determined that New Jersey's regulations are no less stringent than the corresponding Federal Regulations and that New Jersey continues to meet all requirements for primary enforcement responsibility as specified in 40 CFR 142.10.

DATES: This determination to approve New Jersey's primacy program revision application is made pursuant to 40 CFR 142.12(d)(3). It shall become final and effective February 26, 2004 unless (1) a timely and appropriate request for a public hearing is received or (2) the Regional Administrator elects to hold a public hearing on her own motion. Any interested person, other than Federal Agencies, may request a public hearing. A request for a public hearing must be submitted to the Regional Administrator at the address shown below by February 26, 2004. If a substantial request for a public hearing is made within the requested thirty day time frame, a public hearing will be held and a notice will be given in the **Federal Register** and a newspaper of general circulation. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on her own motion, this determination shall become final and effective February 26, 2004.

Any request for a public hearing shall include the following information: (1) Name, address and telephone number of the individual, organization or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement on information that the requesting person intends to submit at such hearing; (3) the signature of the individual making the request or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: Requests for Public Hearing shall be addressed to: Regional Administrator, U.S. Environmental Protection Agency—Region 2, 290 Broadway, New York, New York 10007–1866.

All documents relating to this determination are available for inspection between the hours of 9 a.m. and 4:30 p.m., Monday through Friday, at the following offices: Bureau of Safe Drinking Water, Division of Water Resources, New Jersey Department of Environmental Protection, 401 East State Street, Floor 3, Trenton, New Jersey 08625–0426. U.S. Environmental Protection Agency—Region 2, 24th Floor Drinking Water Section, 290 Broadway, New York, New York 10007–1866.

FOR FURTHER INFORMATION CONTACT: Michael J. Lowy, Drinking Water Section, U.S. Environmental Protection Agency—Region 2, (212) 637–3830.

Authority: (Section 1413 of the Safe Drinking Water Act, as amended, 40 U.S.C. 300g–2, and 40 CFR 142.10, 142.12(d) and 142.13).

Anthony Canco,

Acting Regional Administrator, Region 2.

[FR Doc. 04–1684 Filed 1–26–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Statement of Federal Financial Accounting and Auditing Technical Release 3; Revised

AGENCY: Federal Accounting Standards Advisory Board

ACTION: Notice.

Notice of Statement of Federal Financial Accounting and Auditing Technical Release 3 (revised), *Auditing Estimates for Direct Loan and Loan Guarantee Subsidies Under the Federal Credit Reform Act (Amendments to Technical Release 3: Preparing and Auditing Direct Loan and Loan Guarantee Subsidies Under the Federal Credit Reform Act,* and *Preparing Estimates for Direct Loan and Loan Guarantee Subsidies Under the Federal Credit Reform Act (Amendments to Technial Release) 3: Preparing and Auditing Direct Loan and Loan Guarantee Subsidies Under the Federal Credit Reform Act).*

Board Action: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, section 10(a)(2), and the FASAB Rules Of Procedure, as amended in October, 1999, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued Statement of

Federal Financial Accounting and Auditing Technical Release 3 (revised), Auditing Estimates for Direct Loan and Loan Guarantee Subsidies Under the Federal Credit Reform Act (Amendments to Technical Release 3: Preparing and Auditing Direct Loan and Loan Guarantee Subsidies Under the Federal Credit Reform Act), and Statement of Federal Financial Accounting and Auditing Technical Release 6, Preparing Estimates for Direct Loan and Loan Guarantee Subsidies Under the Federal Credit Reform Act (Amendments to Technical Release 3: Preparing and Auditing Direct Loan and Loan Guarantee Subsidies Under the Federal Credit Reform Act.

Copies of the Statements can be obtained by contacting FASAB at (202) 512–7350 or *valentinem@fasab.gov.* Additionally, the Statements will be available on FASAB's home page *http://www.fasab.gov/.*

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., NW., Mail Stop 6K17V, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463.

Dated: January 23, 2004.

Wendy M. Comes,

Executive Director.

[FR Doc. 04–1672 Filed 1–26–04; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL COMMUNICATIONS COMMISSION

[RM–10803; DA 03–3911]

Broadcasters' Service to Their Local Communities

AGENCY: Federal Communications Commission.

ACTION: Notice of meeting.

SUMMARY: The Federal Communications Commission will hold a Localism Task Force hearing in San Antonio, Texas, on January 28, 2004, on localism in the broadcast industry. The purpose of the hearing is to gather information from a variety of sources, including consumers, industry, and civic organizations on broadcasters' service to their local communities.

DATES: The hearing will be held on Wednesday, January 28, 2004, from 5:30 p.m. to 9:30 p.m.

ADDRESSES: The hearing will be held at the City Council Chamber in the Municipal Plaza Building, located at 103 Main Plaza, San Antonio, Texas 78205.

FOR FURTHER INFORMATION CONTACT: Elizabeth Valinoti, 202–418–2330.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) will hold a Localism Task Force hearing on the subject of localism, to be held on January 28, 2004, in San Antonio, Texas. Several FCC Commissioners will preside. The hearing is open to the public, and seating will be available on a first-come, first-served basis. The purpose of the hearing is to gather information from consumers, industry, civic organizations, and others on broadcasters' service to their local communities. The San Antonio hearing will begin with a number of invited guests making brief introductory remarks and will be followed by presentations from a variety of panelists. The Commissioners will then have an opportunity to ask the panelists questions or comment on the subject of localism. Finally, the general public will be afforded time to register their views through an ''open microphone'' format.

2. Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Please include a description of the accommodation needed, providing as much detail as you can, as well as contact information in case additional information is needed. Please make your request as early as possible. Last minute requests will be accepted, but may be impossible to fulfill. Please send a request by e-mail to *fcc504@fcc.gov,* or call the Consumer & Governmental Affairs Bureau. For sign language interpreters, CART, and other reasonable accommodations, call (202) 418–0530 (voice) or (202) 418–0432 (TTY). For accessible format material (Braille, large print, electronic files, and audio format), call (202) 418–0531 (voice) or (202) 418–7365 (TTY).

3. The hearing will be recorded, and the record will be available to the public. The public may also file comments or other documents with the Commission. Filing instructions are provided at *http://hraunfoss.fcc.gov/edocs.public/attachmatch/DOC–239578A1.doc.*

Federal Communications Commission.

P. Michele Ellison,

Deputy General Counsel, Office of the General Counsel.

[FR Doc. 04–1749 Filed 1–26–04; 8:45 am]

BILLING CODE 6712–01–P

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 Web site at *http://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 February 20, 2004.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Managing Examiner) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Mainsource Financial Group, Greensburg, Indiana; to acquire 100 percent of the voting shares of Peoples Financial Corporation, Linton, Indiana, and thereby indirectly acquire Peoples Trust Company, Linton, Indiana.

Board of Governors of the Federal Reserve System, January 21, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–1608 Filed 1–26–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Revised Jurisdictional Thresholds for Section 8 of the Clayton Act

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission announces the revised thresholds for interlocking directorates required by the 1990 amendment of section 8 of the Clayton Act. Section 8 prohibits, with certain exceptions, one person from serving as a director or officer of two competing corporations if two thresholds are met. Competitor corporations are covered by Section 8 if each one has capital, surplus, and undivided profits aggregating more than $10,000,000, with the exception that no corporation is covered if the competitive sales of either corporation are less than $1,000,000. Section 8(a)(5) requires the Federal Trade Commission to revise those thresholds annually, based on the change in gross national product. The new thresholds, which take effect immediately, are $20,090,000 for section 8(a)(1), and $2,009,000 for section 8 (a)(2)(A).

EFFECTIVE DATE: January 27, 2004.

FOR FURTHER INFORMATION CONTACT: James F. Mongoven, Bureau of Competition, Office of Policy and Evaluation, (202) 326–2879.

Authority: 15 U.S.C. 19(a)(5).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–1689 Filed 1–26–04; 8:45 am]

BILLING CODE 6750–01–M

GENERAL ACCOUNTING OFFICE

Advisory Council on Government Auditing Standards; Notice of Meeting

The Advisory Council on Government Auditing Standards will meet Monday, February 9, 2004, from 8:30 a.m. to 5 p.m., in room 7C13 of the General Accounting Office building, 441 G Street, NW., Washington, DC.

The Advisory Council on Government Auditing Standards will hold a meeting to discuss issues that may impact government auditing standards. The meeting is open to the public. Council discussions and reviews are open to the public. Members of the public will be provided an opportunity to address the Council with a brief (five minute) presentation on Monday afternoon.

Any interested person who plans to attend the meeting as an observer must contact Sharon Chase, Council Assistant, (202) 512–6428. A form of picture identification must be presented to the GAO Security Desk on the day of the meeting to obtain access to the GAO Building. For further information, please contact Ms. Chase. Please check the Government Auditing Standards Web page *http://www.gao.gov/govaud/ybk01.htm)* one week prior to the meeting for a final agenda.

Jeanette M. Franzel,

Director.

[FR Doc. 04–1647 Filed 1–26–04; 8:45 am]

BILLING CODE 1610–02–M

GENERAL SERVICES ADMINISTRATION

Maximum Per Diem Rates for Georgia; G–8 Summit

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice of Per Diem Bulletin 04–2, temporarily revised continental United States (CONUS) per diem rates.

SUMMARY: As a result of the G–8 Summit, lodging and meal rates have increased in Sea Island, St. Simons Island and Jekyll Island (Glynn County) and Savannah (Chatham County), Georgia. A special per diem rate has been established that will apply to claims for reimbursement covering travel during the period February 1, 2004, through August 1, 2004, for U.S. Government employees and members of the uniformed services attending and/or participating in the G–8 Summit. The special per diem rate prescribed in bulletin 04–2 may be found at *http://www.gsa.gov/perdiem.*

DATES: This notice is effective from February 1, 2004, to August 15, 2004, and applies to travel during the period of February 1 through August 1, 2004.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Patrick McConnell, Office of Governmentwide Police, Travel Management Policy, at (202) 501–2362. Please cite Notice of Per Diem Bulletin 04–2.

SUPPLEMENTARY INFORMATION: Title 5 United States Code, section 5702 permits the Administrator of General Services to establish per diem rates for official travel within the continental United States. The head of an agency may request the establishment of a higher rate when special or unusual circumstances result in an extreme increase in subsistence costs for a temporary period. This higher rate temporarily changes the maximum per diem amounts announced in the **Federal Register** at 68 FR 52035, August 29, 2003, for the following locations:

State of Georgia

Sea Island, St. Simons Island and Jekyll Island, including Glynn County. Savannah, including Chatham County.

Dated: January 8, 2004.

Becky Rhodes,

Deputy Associate Administrator.

[FR Doc. 04–1599 Filed 1–26–04; 8:45 am]

BILLING CODE 6820–14–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Amendment To Extend the January 24, 2003, Declaration Regarding Administration of Smallpox Countermeasures

AGENCY: Office of the Secretary (OS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: Concern that terrorists may have access to the smallpox virus and attempt to use it against the American public and United States Government facilities abroad continues to exist. The January 24, 2003, declaration regarding administration of smallpox countermeasures is revised to incorporate statutory definitions from the Smallpox Emergency Personnel Protection Act of 2003 and extended for one year until and including January 23, 2005.

DATES: This notice and the attached amendment are effective as of January 24, 2004.

FOR FURTHER INFORMATION CONTACT: William F. Raub, PhD, Acting Assistant Secretary for the Office of Public Health Emergency Preparedness, Office of the Secretary, Department of Health and Human Services, 200 Independence Avenue, SW., Washington, DC 20201, Telephone (202) 690–5760 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 224(p) of the Public Health Service Act, which was established by section 304 of the Homeland Security Act of 2002 and amended by section 3 of the Smallpox Emergency Personnel Protection Act of 2003 (''SEPPA''), is intended to alleviate certain liability concerns associated with administration of smallpox countermeasures and, therefore, ensure that the countermeasures are available and can be administered in the event of a smallpox-related actual or potential

public health emergency such as a bioterrorist incident.

On January 24, 2003, due to concerns that terrorists may have access to the smallpox virus and attempt to use it against the American public and U.S. Government facilities abroad, the Secretary issued a declaration making section 224's legal protections available. The declaration was effective until and including January 23, 2004; it included in section VI a number of definitions, which are no longer appropriate because of the statutory amendments in section 3 of SEPPA. The Secretary issues the amendment below to: (1) Delete the section VI definitions, and (2) extend the January 24, 2003, declaration pursuant to section 224(p)(2)(A) of the Public Health Service Act. In deleting the definitions, the Secretary does not intend to adopt an interpretation of the statutory amendments as limiting or denying the remedy of section 224(a) in any situation where it would have been available under the statute as originally enacted and the January 24, 2003, declaration.

Amendment To Extend January 24, 2003 Declaration Regarding Administration of Smallpox Countermeasures

I. *Policy Determination:* The underlying policy determinations of the January 24, 2003 declaration continue to exist, including the heightened concern that terrorists may have access to the smallpox virus and attempt to use it against the American public and U.S. Government facilities abroad.

II. *Amendment of Declaration:* I, Tommy G. Thompson, Secretary of the Department of Health and Human Services, have concluded, in accordance with the authority vested in me under section 224(p)(2)(A) of the Public Health Service Act, that a potential bioterrorist incident makes it advisable to extend the January 24, 2003 declaration regarding administration of smallpox countermeasures until and including January 23, 2005. The January 24, 2003, declaration as hereby amended may be further amended as circumstances require.

III. *Definitions:* The definitions of the January 24, 2003 declaration are deleted; terms that are used in the declaration and that are defined in section 224(p) of the Public Health Service Act shall have the meanings given in those definitions.

IV. *Effective Dates:* This extension is effective January 24, 2004 until and including January 23, 2005. The effective period may be extended or shortened by subsequent amendment to the January 24, 2003, declaration as hereby amended.

Dated: January 21, 2004.

Tommy G. Thompson,

Secretary.

[FR Doc. 04–1631 Filed 1–26–04; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0575]

Agency Information Collection Activities; Proposed Collection; Comment Request; 2004 National Tracking Survey of Prescription Drug Information Provided to Patients

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on a national tracking survey, conducted every 2 years, of prescription drug information received by patients.

DATES: Submit written or electronic comments on the collection of information by March 29, 2004.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

2004 National Tracking Survey of Prescription Drug Information Provided to Patients

FDA implements the provisions of the Federal Food, Drug, and Cosmetic Act (the act) designed to assure the adequate labeling of prescription (Rx) drugs. Under section 502(a) of the act (21 U.S.C. 352(a)), a drug product is misbranded if its labeling is false or misleading in any particular, and under section 201(n) of the act (21 U.S.C. 321(n)), a drug's labeling is misleading if its labeling or advertising fails to reveal material facts. FDA also has the authority to collect this information under Title VI of Public Law 104–180 (Related Agencies and Food and Drug Administration) section 601 (Effective Medication Guides), which directs the development of ''a mechanism to assess periodically * * * the frequency with which the [oral and written prescription] information is provided to consumers.''

To assure that Rx drugs are not misbranded, FDA has historically asserted that adequate labeling requires certain information be provided to patients. In 1982, when FDA revoked a planned initiative to require mandatory patient package inserts for all Rx drugs

in favor of private sector initiatives, the agency indicated that it will periodically conduct surveys to evaluate the availability of adequate patient information on a nationwide basis. In addition, FDA has been responsible for setting and tracking Healthy People 2010 goals for the receipt of medication information by patients.

Surveys of consumers about their receipt of Rx drug information were carried out in 1992, 1994, 1996, 1998, and 2001. This notice is in regard to conducting the survey in 2004.

The survey is conducted by telephone on a national random sample of adults who received a new prescription for themselves or a household member within the past 4 weeks. The interview assesses the extent to which information was received from the doctor, the pharmacist, and other sources. Survey respondents are also asked attitudinal questions, and demographic and other background characteristics are obtained. The survey enables FDA to determine the frequency with which such information is provided to consumers. Without this information, the agency would be unable to assess the degree to which adequate oral patient information about Rx drugs is provided.

Respondents to this collection of information are adults (18 years or older) in the continental United States who have obtained a new (nonrefill) prescription at a pharmacy for themselves or a member of their household in the last 4 weeks.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Year	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Screener					
2004	15,319	1	15,319	02	306
Survey					
2004	1,000	1	1,000	.32	320

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

This total estimate of 626 total annual burden hours is based on the 2001 survey administration, in which 15,319 potential respondents were contacted to obtain 1,000 interviews.

Dated: January 16, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–1586 Filed 1–26–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0425]

Agency Information Collection Activities; Proposed Collection; Comment Request; Adverse Event Pilot Program for Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing information collection, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting requirements related to the adverse event pilot program for medical devices.

DATES: Submit written or electronic comments on the collection of information byMarch 29, 2004.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Adverse Event Pilot Program for Medical Devices—(OMB Control Number 0910–0471—Extension)

FDA is requesting approval from OMB for clearance to continue to conduct a pilot project to evaluate aspects of a national reporting system mandated by the Food and Drug Modernization Act (FDAMA) of 1997. Under section 519(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(i)(b)), FDA is authorized to require manufacturers to report medical device related deaths, serious injuries, and malfunctions; user facilities (hospitals, nursing homes, ambulatory surgical facilities and outpatient diagnostic and treatment facilities) to report device-related deaths directly to FDA and to manufacturers, and to report serious injuries to the manufacturer. Section 213 of FDAMA amended section 519(b) of the Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360i(b)). This amendment legislated the replacement of a universal user facility reporting by a system that is limited to a ''* * * subject of user facilities that constitutes a representative profile of user reports'' for device related deaths and serious injuries. This amendment is reflected in section 519(b)(5)(A) of the act.

FDA is the regulatory agency responsible for the safety and effectiveness of medical products including medical devices and radiological products. Important questions about medical devices, such as those concerning user experience, durability, and rare effects may not be answered until after the device has been marketed. To protect the public health, FDA must be able to rapidly collect information pertaining to adverse events associated with medical devices after they have been marketed. This system is called the Medical Product Surveillance Network (MedSun). The current universal reporting system remains in place during the pilot stages of the new program, and until FDA implements the new national system by regulation. This legislation provides FDA with the opportunity to design and implement a national surveillance network, composed of well-trained clinical facilities, to provide high quality data on medical devices in clinical use.

Before writing a regulation to implement the large-scale national MedSun reporting system, FDA has been conducting a pilot project to ensure all aspects of the new system address the needs of both the reporting facilities and FDA. This pilot project began with a small sample (approximately 25) and was planned to increase to a larger sample of approximately 250 facilities over a period of approximately 3 years. Data collection began in February 2002 and has been increasing since that time. FDA has achieved its recruitment goals each year, reaching 180 sites at the end of fiscal year (FY) 2003. FDA will reach a total of 240 for FY 2004 and will reach the final goal of 250 by FY 2005. The program has proven to be very popular with sites as FDA has gained a national reputation, with hospitals waiting in line to join. However, FDA's current resources will not permit FDA to expand beyond 250 sites at this time.

The pilot originally had 3 parts to the data collection: (1) Collecting demographic profile information about the participation facilities, (2) implementing an electronic version of the portions of the MedWatch form (FDA Form No. 3500A, OMB control number 0910–0291) used to report adverse events occurring with medical devices, and (3) adding additional voluntary questions to the data collection. To date, these 3 features remain unchanged. However, there has been an addition to the data collection that was approved by OMB in the spring of 2004. Therefore, the fourth part of the collection system is the Medical Device Engineering Network (M–DEN)—a place on the MedSun software for the reporters to share information with each other.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

Data Type	Number of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
MedSun	250	8	2,000	.75	1,500
M–DEN	83	10	830	.50	415
Total					1,915

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Currently, FDA has 180 sites participating in MedSun pilot program, but expects to have 250 sites over the next 2 years. The frequency of response reflects what FDA has actually been receiving as the average number of submissions in the MedSun Program. While 6 is the actual average for submissions, FDA hopes to increase this number to 8 once their educational materials reach potential respondents. The time estimated to respond is based on feedback FDA has received from current MedSun reporters.

At this time, FDA estimates that 1/3 of the total number of respondents will access M–DEN aspect of the MedSun software, or approximately 83 persons per year. Each respondent is expected to post 5 problems and respond to 5 problems posted by other MedSun participants for a total of 10 responses per year. It is expected that each visit to the bulletin will not take longer than 30 minutes.

Dated: January 16, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–1587 Filed 1–26–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0014]

Draft Guidance for Industry on Information Program on Clinical Trials for Serious or Life-Threatening Diseases and Conditions; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Information Program on Clinical Trials for Serious or Life-Threatening Diseases and Conditions.'' FDA is revising its March 2002 guidance

for industry of the same title to include guidance for sponsors who will be submitting information required by the Best Pharmaceuticals for Children Act (BPCA). The BPCA amended the Public Health Service Act (PHS Act) to require that additional information be included in the Clinical Trials Data Bank established as required by the Food and Drug Administration Modernization Act of 1997 (Modernization Act). This draft guidance explains how to provide that information.

DATES: Submit written or electronic comments on the draft guidance by March 29, 2004. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857 or to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. The draft guidance may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Theresa Toigo, Office of Special Health Issues (HF–12), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4460.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Information Program on Clinical Trials for Serious or Life-Threatening Diseases and Conditions'' to assist sponsors who will be submitting information to the Clinical Trials Data Bank established by section 113 of the Modernization Act (42 U.S.C. 282). This draft guidance revises the guidance of the same title issued in March 2002 (67 FR 12022, March 18, 2002) to include assistance on submitting information required by the BPCA (Public Law 107–109). This draft guidance updates the March 2002 guidance.

The BPCA amends section 402(j)(3)(A) of the PHS Act (42 U.S.C. 282(j)(3)(A)) to require that additional information be included in the Clinical Trials Data Bank established as required under section 113 of the Modernization Act. Additional information to be submitted includes a description of whether, and through what procedure, the manufacturer or sponsor of an investigation of a new drug will respond to requests for a protocol exception, with appropriate safeguards, for single-patient and expanded access use of the investigational drug, particularly in children.

Section 113 of the Modernization Act, enacted November 21, 1997, directs the Secretary of Health and Human Services (the Secretary), acting through the Director of the National Institutes of Health (NIH), to establish, maintain, and operate a data bank of information on clinical trials for drugs to treat serious or life-threatening diseases and conditions. The Clinical Trials Data Bank is intended to be a central resource, providing current information on clinical trials to individuals with serious or life-threatening diseases or conditions, to other members of the public, and to health care providers and researchers.

Specifically, section 113 of the Modernization Act requires that the Clinical Trials Data Bank contain the following information: (1) Information about Federally and privately funded clinical trials for experimental treatments (drug and biological products) for patients with serious or life-threatening diseases or conditions, (2) a description of the purpose of each experimental drug, (3) patient eligibility criteria, (4) a description of the location of clinical trial sites, and (5) a point of contact for patients wanting to enroll in the trial. Section 113 of the Modernization Act also requires that information provided through the Clinical Trials Data Bank be in a form that can be readily understood by the public (42 U.S.C. 282(j)(3)(A)). The BPCA, signed by the President on January 4, 2002, requires that the Clinical Trials Data Bank contain additional information including a description of whether, and through what procedure, the manufacturer or sponsor of an IND will respond to requests for protocol exception, with appropriate safeguards, for single-patient and expanded access use of the investigational drug, particularly in children.

The NIH, through its National Library of Medicine (NLM) and with input from FDA and others, developed the Clinical Trials Data Bank. The first version of the Clinical Trials Data Bank was made available to the public on February 29, 2000, on the Internet at *http://clinicaltrials.gov*. At that time, the data bank included primarily NIH-sponsored trials.

Shortly thereafter, FDA made available two draft guidances. The first draft guidance provided recommendations for industry on the submission of protocol information to the Clinical Trials Data Bank. It included information about the types of clinical trials for which submissions are required under section 113 of the Modernization Act as well as information about the content of those submissions. The second draft guidance addressed procedural issues, including how to submit required and voluntary protocol information to the Clinical Trials Data Bank. It also discussed issues related to submitting certification to the Secretary that disclosure of information for a particular protocol would substantially interfere with the timely enrollment of subjects in the clinical investigation. The second draft guidance also proposed a timeframe for submitting the information. The March 2002 guidance combined the two draft guidances into a single guidance (available at *http://www.fda.gov/cder/guidance/4856fnl.htm* or *http://www.fda.gov/cber/gdlns/clintrial.htm*).

This draft guidance updates the March 2002 guidance to include information on how to comply with new statutory requirements contained in the BPCA, for submitting details about single-patient use and expanded access use contained in the BPCA. This draft guidance also includes several minor updates to the information in it and to the format. Additional updates on procedural issues not related to the BPCA will be discussed in future revisions to the guidance.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on the information program on clinical trials for serious or life-threatening diseases and conditions. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic

comments on the draft guidance. Submit two copies of mailed comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/cder/guidance/index.htm*, *http://www.fda.gov/cber/guidelines.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: January 20, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–1591 Filed 1–26–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Multi-Center Clinical Trial for Aids.

Date: March 8, 2004.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Shamala K. Srinivas, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8133, Bethesda, MD 20892, 301–594–1224.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 16, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1708 Filed 1–26–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Prevention Research and Epidemiology.

Date: March 2–4, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Mary Jane Slesinski, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8045, Bethesda, MD 20892, 301/594–1566.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 16, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1709 Filed 1–26–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4), and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel SPORE in Head and Neck Cancer.

Date: March 2–3, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Timothy C. Meeker, MD, Scientific Review Administrator, Special Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8088, Rockville, MD 20852, 301/594–1279.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 16, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1710 Filed 1–26–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Behavioral Research in Cancer Control.

Date: March 16, 2004.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Mary Jane Slesinski, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8045, Bethesda, MD 20892, (301) 594–1566.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 16, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1716 Filed 1–26–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Innovative Toxicology Models for Drug Evaluation.

Date: April 19–20, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Thomas M. Vollberg, PhD, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 7142, Bethesda, MD 20892, (301) 594–9582, *vollbert@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 16, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1717 Filed 1–26–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Virtual Microscopy for the Early Detection of Cancer.

Date: February 18, 2004.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6130 Executive Blvd., Rockville, MD 20852 (Telephone conference call.)

Contact Person: Kenneth L. Bielat, PhD., Scientific Review Administrator, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 7147, Bethesda, MD 20892. (301) 496–7576, *bielak@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 21, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1722 Filed 1–26–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group, Heart, Lung, and Blood Program Project Review Committee.

Date: March 18, 2004.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Jeffrey H. Hurst, PhD, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892, (301) 435–0303.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 21, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1718 Filed 1–26–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Human Genome Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Human Genome Research.

Date: February 9–10, 2004.

Open: February 9, 2004, 8:30 a.m. to 12 p.m.

Agenda: To discuss matters of program relevance.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Closed: February 9, 2004, 1 p.m. to adjournment on February 10, 2004.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mark S. Guyer, Director for Extramural Research, Assistant Director for Scientific Coordination, National Human Genome Research Institute, 31 Center Drive, MSC 2033, Building 31, Room B2B07, Bethesda, MD 20892, (301) 435–5536, *guyerm@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://www.genome.gov/11509849,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172 Human Genome Research, National Institutes of Health, HHS)

Dated: January 16, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1713 Filed 1–26–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: NIDCR Special Grants Review Committee; Review of Fs, Ks, and RO3s.

Date: February 19–20, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Lynn M. King, PhD, Scientific Review Administrator, Scientific Review Branch, 45 Center Dr., Rm 4AN–38K, National Institute of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, (301) 594–5006.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 16, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1699 Filed 1–26–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(b)(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Program Projects.

Date: March 5, 2004.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Democracy One, Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20854 (Telephone Conference Call).

Contact Person: Aftab A. Ansari, PhD., Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS.)

Dated: January 20, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1700 Filed 1–26–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Spine Patient Outcomes Research Trials.

Date: February 26, 2004.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville MD 20852.

Contact Person: Teresa Nesbitt, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin diseases, National Institutes of Health, 6701 Democracy Blvd., Suite 800, Bethesda, MD 20892, (301) 594–4958.

(Catalogue of Federal domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: January 20, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1701 Filed 1–26–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Biopsychosocial Aspects of Rheumatic and Musculoskeletal Diseases.

Date: February 13, 2004.

Time: 1 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Glen H. Nuckolls, PhD, Scientific Review Administrator, National Institutes of Health, National Institute of Arthritis, Musculoskeletal and Skin Diseases, 6701 Democracy Boulevard, Bldg. 1, Ste 800, Bethesda, MD 20892, (301) 594–4974, *nuckollg@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: January 20, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1702 Filed 1–26–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Mycology Research Units.

Date: February 11–13, 2004.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Hagit S. David, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–402–4596, *hdavid@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 16, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1705 Filed 1–26–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Cooperative Research for the Development of Vaccines, Adjuvants, Therapeutics, Immunotherapeutics & Diagnostics for Biodefense (VATID).

Date: February 17–19, 2004.

Time: 8:30 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Gaithersburg Washingtonian, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Lynn Rust, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities,

NIAID/NIH/DHHS, Room 3120, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 402–3938, *Ir228v@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 16, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1706 Filed 1–26–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Review of 1 CIPRA R03 application from Cameroon.

Date: February 3, 2004.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Eleazar Cohen, PhD, Scientific Review Administrator, Scientific Review Program, National Institute of Allergy and Infectious Diseases, DEA/NIH/DHHS, 6700 B Rockledge Drive, MSC 7616, Room 3112, Bethesda, MD 20892–7616, 301–435–3564, *ec17w@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 16, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1707 Filed 1–26–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Rapid Assessment Post-Impact of Disaster Research (RAPID).

Date: January 30, 2004.

Time: 4 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Marina Broitman, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, 301–402–8152, *mbroitma@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 16, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1711 Filed 1–26–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel CONTRACT Topic 026: Science Education Materials Development for Kindergarten-12th grade ZAA1 HH (41).

Date: January 27, 2004.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jeffrey I. Toward, Ph.D, Scientific Review Administrator, National Institutes of Health, National Institute on Alcoholism Abuse and Alcoholism, Extramural Project Review Branch, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, (301) 435–5337.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: January 16, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1712 Filed 1–26–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Initial Review Group, Services Research Review Committee.

Date: February 11–12, 2004.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., RM. 6150, MSC 9608, Bethesda, MD 20892–9608, (301) 443–7216, *hhaigler@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Depression Related Studies.

Date: February 26, 2004.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, (301) 443–7861, *dsommers@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 16, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1714 Filed 1–26–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice if hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Turns and SBIR Contracts.

Date: February 13, 2004.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Benjamin Xu, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6143, MSC 9608, Bethesda, MD 20892–9608, (301) 443–1178, *benxu1@ mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 16, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1715 Filed 1–26–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Review of Research Program Projects.

Date: March 16, 2004.

Time: 8:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Aftab A. Ansari, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: January 21, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1719 Filed 1–26–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Program Projects to Study Molecular Motors.

Date: February 13, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Teresa Nesbitt, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institutes of Health, 6701 Democracy Blvd., Suite 800, Bethesda, MD 20892, (301) 594–4958.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: January 21, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1720 Filed 1–26–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Arthritis and Musculoskeltal and Skin Diseases Special Grants Review Committee, February 6, 2004, 8 a.m. to February 6, 2004, 5 p.m., Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815 which was published in the **Federal Register** on January 14, 2004, 69 FR 2148.

The meeting location has been changed to the Marriott Bethesda Suites, 6711 Democracy Blvd., Bethesda, Maryland 20817. The date and time have not changed. The meeting is closed to the public.

Dated: January 21, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1721 Filed 1–26–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Cancellation of Meeting

Notice is hereby given of the cancellation of the Cancer Genetics Study Section, February 12, 2004, 8 a.m. to February 13, 2004, 5 p.m., Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009 which was published in the **Federal Register** on January 14, 2004, 69 FR 2151–2153.

The meeting is cancelled due to a lack of quorum.

Dated: January 20, 2004

Laverne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1703 Filed 1–26–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provision set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Transplantation Immunology.

Date: February 4, 2004.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Gerald W. Becker, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892. (301) 435–1170.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Human Brain Project/BIST.

Date: February 5–6, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter B. Guthrie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7850, Bethesda, MD 20892. (301) 435–1239; *guthriep@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Clinical Neuroscience and Disease Study Section.

Date: February 9–10, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: David M. Armstrong, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892. (301) 435–1253, *armstrda@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Central Visual Processing Study Section.

Date: Februrary 11–12, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Michael A. Steinmetz, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892. (301) 435–1247; *steinmem@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CG (01): Cancer Genetics.

Date: February 12–13, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Zhiqiang Zou, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7804, Bethesda, MD 20892. (301) 435–2398; *zouzhiq@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CMAD 01 Q:Cellular Mechanisms in Aging & Development Quorum.

Date: February 17–18, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: James P. Harwood, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health,6701 Rockledge Drive, Room 5168, MSC 7843, Bethesda, MD 20892. (301) 435–1256; *harwood;@csr.nih.gov*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–SSS–X 50B: Bioengineering Nanotechnology Initiative.
Date: February 17, 2004.
Time: 7 p.m. to 7:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Catamaran Resort Hotel, 3999 Mission Blvd., San Diego, CA 92109.
Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892. (301) 435–1171; *rosenl@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Drug Discovery and Molecular Pharmacology Study Section.
Date: February 18–20, 2004.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Wyndham Washington, DC, 1400 M Street, NW., Washington, DC 20005.
Contact Person: Morris I. Kelsey, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892. (301) 435–2477; *kelseym@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Epidemiology of Clinical Disorders and Aging Study Section.
Date: February 18–20, 2004.
Time: 6 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Mary Ann Guadagno, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7770, Bethesda, MD 20892. (301) 435–8011.

Name of Committee: Center for Scientific Review Special Emphasis Panel, The Sleep Heart Health Study.
Date: February 19, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Mary Ann Guadagno, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7770, Bethesda, MD 20892. (301) 435–8011.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Microbial Genetics.
Date: February 19–20, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Swissotel Washington, the Watergate.
Contact Person: 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808, Bethesda, MD 20892. (301) 435–1150; *politisa@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ARG1 DEV–1 01 Q: Development 1: Quorum.
Date: February 19–20, 2004.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.
Contact Person: Sherry L. Dupere, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7843, Bethesda, MD 20892. (301) 435–1021; *duperes@csr.nih.gov.*

Name of Committee: Cell Development and Function Integrated Review Group, Cell Development and Function 3.
Date: February 19–20, 2004.
Time: 8:30 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Gerhard Ehrenspeck, PhD, Scientific Review Administrator, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 5138, MSC 7840, Bethesda, MD 20892. (301) 435–1022; *ehrenspg@csr.nih.gov.*

Name of Committee: Hematology Integrated Review Group Hemostasis and Thrombosis Study Section.
Date: February 19–20, 2004.
Time: 8:30 a.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7802, Bethesda, MD 20892. (301) 435–1739; *gangulyc@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Clinical Oncology Study Section.
Date: February 22–24, 2004.
Time: 5:30 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Laguna Cliffs Marriott Resort & Spa, 25135 Park Lantern, Danna Point, CA 92629.
Contact Person: John L. Meyer, PhD, Scientific Review Administrator, ONC IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6198, MSC 7804, Bethesda, MD 20892. (301) 435–1213; *meyerjl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSSW 10B:Small Business:Cardiovascular Devices.
Date: February 23–24, 2004.
Time: 8 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Roberto J. Matus, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health,

6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 208892. (301) 435–2204; *matusr@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Reproductive Biology Study Section.
Date: February 23–24, 2004.
Time: 8 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Dennis Leszczynski, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892. (301) 435–1044.

Name of Committee: Digestive Sciences Integrated Review Group, Gastrointestinal Cell and Molecular Biology Study Section.
Date: February 23–24, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.
Contact Person: Najma Begum, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2175, MSC 7818, Bethesda, MD 20892. (301) 435–1243; *begumn@csr.nih.gov.*

Name of Committee: Digestive Sciences Integrated Review Group, Xenobiotic and Nutrient Disposition and Action Study Section.
Date: February 23–24, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.
Contact Person: Rass M. Shayiq, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892. (301) 435–2359; *shayiqr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Gastrointestinal Mucosal Pathobiology; Quorum.
Date: February 23–24, 2004.
Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Peter J. Perrin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2183, MSC 7818, Bethesda, MD 20892. (301) 435–0682; *perrinp@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Radiation Therapeutics and Biology Study Section.

Date: February 23–24, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Swissotel Washington, the Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Paul K. Strudler, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6186, MSC 7816, Bethesda, MD 20892. (301) 435–1716. *strudler@csr.nih.gov.*

Name of Committee: Digestive Sciences Integrated Review Group, Clinical and Integrative Gastrointestinal Pathobiology Study Section .

Date: February 23–24, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC., 2401 M Street, NW., Washington, DC 20037.

Contact Person: Mushtaq A. Khan, PhD, DVM, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rocklege Drive, Room 2176, MSC 7818, Bethesda, MD 20892. (301) 435–1778; *khanm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 ACTS 01Q: Arthritis, Connective Tissue, and Skin: Quorum.

Date: February 23–24, 2004.

Time: 8:30 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Harold M. Davidson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892. (301) 435–1776; *davidson@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Neurodifferentiation, Plasticity, and Regeneration Study Section.

Date: February 24–25, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Joanne T. Fujii, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5204, MSC 7850, Bethesda, MD 20892. (301) 435–1178; *fujiij@csr.nih.gov.*

Name of Committee: Infectious Disease and Microbiology Integrated Review Group, Microbial Physiology and Genetics Subcommittee 1.

Date: February 24–25, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Diane L. Stassi, PhD, Scientific Review Administrator, IDM IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892. (301) 435–2514; *stassi@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Nursing Science: Adults and Older Adults Study Section.

Date: February 24–25, 2004.

Time: 8 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Tysons Corner, 1960 Chain Bridge Road, McLean, VA 22102.

Contact Person: Gertrude K. McFarland, DNSC, FAAN, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7770, Bethesda, MD 20892. (301) 435–1784; *mcfarlag@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Virology Study Section.

Date: February 24–25, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Joanna M. Pyper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892. (301) 435–1151; *pyperj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSSW 50R:PA02–125: Bioengineering Nanotechnology Initiative.

Date: February 24, 2004.

Time: 3 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Roberto J. Matus, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892. (301) 435–2204; *matusr@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Developmental Therapeutics Study Section.

Date: February 25–27, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, 1250 22nd Street, NW., Washington, DC 20037.

Contact Person: Sharon K. Gubanich, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892. (301) 435–1767; *gubanics@csr.nih.gov.*

Name of Committee: Respiratory Sciences Integrated Review Group, Lung Cellular, Molecular, and Immunobiology Study Section.

Date: February 25–26, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Washington, DC, 1400 M Street, NW., Washington, DC 20005.

Contact Person: George M. Barnas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892. (301) 435–0696; *george_barnas@nih.gov.*

Name of Committee: Respiratory Sciences Integrated Review Group, Lung Injury, Repair, and Remodeling Study Section.

Date: February 25–26, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Washington, DC, 1400 M Street, NW., Washington, DC 20005.

Contact Person: George M. Barnas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892. (301) 435–0696; *george_barnas@nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Cancer Immunopathology and Immunotherapy Study Section.

Date: February 25–26, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6206, MSC 7804, Bethesda, MD 20892. (301) 435–1719.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Biological Rhythms and Sleep Study Section, BRS S Biological Rhythms and Sleep.

Date: February 25, 2004.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Richard Marcus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892. (301) 435–1245; *richard.marcus@nih.gov.*

Name of Committee: Center for Scientific Review Special emphasis Panel, Small Business: Endocrinology, Metabolism, Nutrition and Reproductive Sciences.

Date: February 25–26, 2004.

Time: 7 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Krish Krishnan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892. (301) 435–1041; *krishnak@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 16, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–1704 Filed 1–26–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2004–16877]

Cabrillo Port Liquefied Natural Gas Deepwater Port License Application

AGENCY: Coast Guard, DHS. Maritime Administration, DOT.

ACTION: Notice of application.

SUMMARY: The Coast Guard and the Maritime Administration (MARAD) give notice, as required by the Deepwater Port Act of 1974, as amended, that they have received an application for the licensing of a deepwater port, and that the application appears to contain the required information. This notice summarizes the applicant's plans and the procedures that will be followed in considering the application.

DATES: Any public hearing held in connection with this application must be held no later than September 23, 2004, and it would be announced in the **Federal Register**. A decision on the application must be made within 90 days after the last public hearing held on the application.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2004–16877 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Web Site: *http://dms.dot.gov.*

(2) Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

(3) Fax: (202) 493–2251.

(4) 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. The telephone number is (202) 366–9329.

(5) Federal eRulemaking Portal: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call Lieutenant Commander Kevin Tone at 202–267–0226, or email at: *ktone@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone (202) 366–0271.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

You may submit comments concerning this application. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use their Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this rulemaking (USCG–2004–16877), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 81/2 by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in 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.

Privacy Act: Anyone can 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 the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Receipt of application; determination. On September 3, 2003, the Coast Guard and MARAD received an application from BHP Billiton LNG International Inc. (''Port Cabrillo''), 1360 Post Oak Boulevard, Suite 150, Houston, Texas 77056–3020 for all federal authorizations required for a license to own, construct and operate a deepwater port off the coast of California. Supplemental information was furnished at our request on December 9, 2003. On January 5, 2004, we determined that the application contains all information required by the Deepwater Port Act. The application and related documentation supplied by the applicant (except for certain protected information specified in 33 U.S.C. 1513) may be viewed in the public docket (see **ADDRESSES**).

Background. According to the Deepwater Port Act of 1974, as amended (the Act; 33 U.S.C. 1501 *et seq.*), a deepwater port is a fixed or floating manmade structure other than a vessel, or a group of structures, located beyond State seaward boundaries and used or intended for use as a port or terminal for the transportation, storage, and further handling of oil or natural gas for transportation to any State.

A deepwater port must be licensed, and the Act provides that a license applicant submit detailed plans for its facility to the Secretary of Transportation, along with its application. The Secretary has delegated the processing of deepwater port applications to the Coast Guard and MARAD. The Act allows 21 days following receipt of the application to determine if it contains all required information. If it does, we must publish a notice of application in the **Federal Register** and summarize the plans. This notice is intended to meet those requirements of the Act and to provide general information about the procedure that will be followed in considering the application.

Application procedure. The application is considered on its merits. Under the Act, we must hold at least one public hearing within 240 days from the date this notice is published. A separate **Federal Register** notice will

be published to notify interested parties of any public hearings that are held. At least one public hearing must be held in each adjacent coastal state. Pursuant to 33 U.S.C. 1508, we designate California as an adjacent coastal state for this application. Other states may apply for adjacent coastal state status in accordance with 33 U.S.C. 1508(a)(2). After the last public hearing, Federal agencies have 45 days in which to comment on the application, and approval or denial of the application must follow within 90 days of the last public hearing. Details of the application process are described in 33 U.S.C. 1504 and in 33 CFR part 148.

Summary of the application. The application plan calls for construction of a deepwater port and associated anchorages in an area situated in the Pacific Ocean, approximately 14 miles offshore of Ventura County, California, between the cities of Oxnard and Port Hueneme. There are no Mineral Management Service lease blocks involved with this project and the nearest lease block is Lease OCS–P 0202, Platform Gina, which is located in OCS waters 3.7 miles offshore of Port Hueneme. The facility would be adjacent to the existing San Pedro Channel shipping lane.

Port Cabrillo's terminal would be a turret moored, ship hull-like offshore Floating, Storage and Regasification Unit (FSRU), and an interconnected send-out pipeline that would tie into the existing onshore natural gas distribution system of Southern California Gas (SoCalGas). The FSRU would include three independent Moss spherical storage tanks mounted within the vessel's hull, which would provide a total storage capacity of 276,000 cubic meters of LNG. The FSRU's deck would support LNG receiving and submerged combustion vaporization equipment and utilities, berthing accommodations for personnel, ship berthing and mooring system, and facilities for delivery of natural gas to a 30″ pipeline. The pipeline would be 21 miles in length and connect onshore at Ormond Beach (near Oxnard, CA) to an existing gas supply for distribution throughout the Southern California region.

The mooring turret would be fixed to the seabed with an 8-point anchoring system, and consist of 3 flexible riser pipes and a Pipeline Ending Manifold (PLEM).

The facility would be able to receive LNG carriers between 100,000 and 220,000 cubic meter capacities. All marine systems, communication, navigation aids and equipment necessary to conduct safe LNG carrier operations and receipt of product during specified atmospheric and sea states would be provided at the port. LNG offload would be accomplished through use of up to 4, 16″ diameter standard loading arm connections, and at a rate of up to 80,000 gallons per minute.

The regasification process would consist of lifting the LNG from storage tanks, pumping the cold liquid to pipeline pressure, subsequent vaporization across heat exchanging equipment and, finally, send-out through an interconnected pipeline. No gas conditioning would be required for the terminal since the incoming LNG would be pipeline quality. Port Cabrillo expects the terminal would vaporize and deliver up to 0.9 billion cubic feet per day (Bcfd) of natural gas to the pipeline.

Dated: January 12, 2004.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security, and Environmental Protection, Coast Guard.

Raymond R. Barberesi,

Director, Office of Ports and Domestic Shipping, U.S. Maritime Administration.

[FR Doc. 04–1614 Filed 1–26–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker Permit

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker local permits are canceled without prejudice.

Name	Permit No.	Issuing port
Peter J. Michalczyk	065	Great Falls.
Albert J. Marino	52–03–ATL	Miami.
AIT Customs Brokerage, Inc	20508	Philadelphia.
Holland Customs Brokers, Inc	01–17–007	Atlanta.
DHL Airways Inc	F11	Miami.
International Cargo Exchange Logistics, Inc	17–02	Atlanta.
George William Rueff, Inc	19–03–407	Mobile.
GPS Customhouse Brokerage, Inc	53–03–W22	Houston.
Terry W. Barnes	96–20–003	New Orleans.
Rialto, Inc	079	Seattle.
Malu Maria Perez	FQ8	Miami.
Global Transportation Services, Inc	52–2002–015–H41	Miami.
USF Worldwide	M34	Miami.
Savino del Bene USA (California), Inc	10157	San Francisco.
Savino del Bene (Texas), Inc	97–008	Houston.
Savino del Bene International Freight Forwarders, Inc	04–0144	Boston.
Savino del Bene (Florida), Inc	5201AS7	Miami.

Dated: January 14, 2004.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 04–1627 Filed 1–26–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Cancellation of Customs Broker License Due to Death of the License Holder

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: General Notice.

SUMMARY: Notice is hereby given that, pursuant to Title 19 of the Code of Federal Regulations at section 111.51(a), the following individual Customs broker license and any and all permits have been cancelled due to the death of the broker:

Name	License #	Port Name
George Parisian	10423	Champlain.
Antonio Villarreal	06624	Laredo.
Amy E. Rowan	15085	Miami.
Louis Irizarry	03797	New York.

Dated: January 14, 2004.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 04–1628 Filed 1–26–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker License

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker license are canceled without prejudice.

Name	License #	Issuing port
Rialto, Inc.	11784	Seattle.
ADESA Importation Services, Inc.	21103	Detroit.
International Service Group, Inc.	5488	San Francisco.
Savino del Bene USA (California), Inc.	10157	San Francisco.
Savino del Bene (Texas), Inc.	15919	Houston.
Savino del Bene International Freight Forwarders, Inc.	17397	Boston.
Savino del Bene (Florida), Inc.	20581	Miami.
Durad T. Gruelle	7891	Chicago.
Durad T. Gruelle	7863	New York.
Arthur Spiegel	5463	Champlain.

Dated: January 14, 2004.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 04–1630 Filed 1–26–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker National Permit

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker national permit is canceled without prejudice.

Name	Permit #	Issuing Port
Savino del Bene USA Inc.	99–00536	Headquarters.
Welco International Services	99–00294	Headquarters.
Savino del Bene New York Inc.	99–00346	Headquarters.
ADESA Importation Services Inc.	99–00428	Headquarters.

Dated: January 14, 2004.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 04–1629 Filed 1–26–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1506–DR]

American Samoa; Amendment No. 1 to Notice of a Major Disaster Declaration

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

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Territory of American Samoa (FEMA–1506-DR), dated January 13, 2004, and related determinations.

EFFECTIVE DATE: January 20, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Territory of American Samoa is hereby amended to include the Individual Assistance program, Categories C through G under the Public Assistance program, and the Hazard Mitigation Grant Program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 13, 2004:

The Island of Tutuila for Individual Assistance and Categories C through G under the Public Assistance program (already designated for debris removal (Category A) and emergency protective measures (Category B), including direct Federal assistance under the Public Assistance program.)

The Manu'a Islands for Individual Assistance and Public Assistance.

All islands in the Territory of American Samoa are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–1621 Filed 1–26–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1506–DR]

American Samoa; Major Disaster and Related Determinations

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

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Territory of American Samoa (FEMA–1506–DR), dated January 13, 2004, and related determinations.

EFFECTIVE DATE: January 13, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 13, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the Territory of American Samoa, resulting from high winds, high surf and heavy rainfall associated with Tropical Cyclone Heta, on January 2–6, 2004, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the Territory of American Samoa.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for debris removal and emergency protective measures (Categories A and B), including direct Federal Assistance, under Public Assistance in the designated areas, and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Direct Federal Assistance will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act and Hazard Mitigation are later warranted, Federal funding under these programs will also be limited to 75 percent of the total eligible costs. You are authorized to make adjustments as warranted to the non-Federal cost shares as provided under the Insular Areas Act, 48 U.S.C. 1469a(d).

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Thomas J. Costello, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the Territory of American Samoa to have been affected adversely by this declared major disaster:

The Island of Tutuila for debris removal (Category A) and emergency protective measures (Category B), including direct Federal assistance under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–1622 Filed 1–26–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1498–DR]

California; Amendment No. 4 to Notice of a Major Disaster Declaration

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

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA–1498–DR), dated October 27, 2003, and related determinations.

EFFECTIVE DATE: January 14, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that for this disaster, the incident period is reopened as October 21, 2003, through and including February 2, 2004, and the incident type expanded specifically for flooding, mudflow and debris flow directly related to the wildfires. During the expanded incident period, only those areas within the designated areas specifically determined by the Federal Coordinating Officer to be damaged or adversely affected as a direct result of the compromised watershed conditions and fire-generated debris caused by the wildfires will be considered eligible for assistance on a case-by-case basis.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–1620 Filed 1–26–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1505–DR]

California; Major Disaster and Related Determinations

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

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of California (FEMA–1505–DR), dated January 13, 2004, and related determinations.

EFFECTIVE DATE: January 13, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 13, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of California, resulting from an earthquake on December 22, 2003, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of California.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas, and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Peter Martinasco, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of California to have been affected adversely by this declared major disaster:

San Luis Obispo County for Individual Assistance.

San Luis Obispo and Santa Barbara Counties for Public Assistance.

All counties within the State of California are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–1623 Filed 1–26–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2001–11334]

Notice of Intent To Request Approval From the Office of Management and Budget (OMB) for a Public Collection of Information; Aviation Security Infrastructure Fee Records Retention

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: TSA invites public comment on the information collection requirement described in this notice, which will be submitted to the Office of Management and Budget (OMB) for approval in compliance with the Paperwork Reduction Act of 1995. The information collection would require the retention of certain information

necessary for TSA to help set the Aviation Security Infrastructure Fee (ASIF), including information about air carriers' and foreign air carriers' costs related to screening passengers and property in calendar year 2000.

DATES: Send your comments by March 29, 2004.

ADDRESSES: Comments may be mailed or delivered to Conrad Huygen, Privacy Act Officer, Information Management Programs, TSA–17, Office of Finance and Administration, Transportation Security Administration HQ, Floor 4, West Building, 601 South 12th Street, Arlington, VA 22202–4220.

FOR FURTHER INFORMATION CONTACT: For Paperwork Reduction Act issues: Conrad Huygen at the above address or by telephone at (571) 227–1954; facsimile (571) 227–2912. For other issues: Randall Fiertz, Director, Office of Revenue, Transportation Security Administration Headquarters, West Building, Floor 5, TSA–14, 601 South 12th Street, Arlington, VA 22202; e-mail: TSA-Fees@dhs.gov, telephone: (571) 227–2323.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a valid OMB control number. Therefore, in preparation for submission for OMB clearance of the information collection discussed in this notice, TSA solicits comments in order to—

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

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

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Background

To help defray TSA's costs of providing civil aviation security services, and as authorized by 49 U.S.C. 44940, TSA published in the **Federal Register** on February 20, 2002, an interim final rule adding part 1511 to the Transportation Security Regulations, which imposed a fee known as the Aviation Security Infrastructure Fee (ASIF) on certain air carriers and foreign air carriers. *See* 67 FR 7926, as codified at 49 CFR part 1511. The amount of ASIF collected by TSA from the carriers, both overall and per carrier, is based upon the carriers' aggregate and individual costs, respectively, for screening passengers and property in calendar year 2000. 49 U.S.C. 44940(a)(2)(B)(i), (ii).

In conjunction with the issuance of part 1511, TSA requested OMB approval to collect information necessary for TSA to establish the ASIF, including information about the carriers' individual and aggregate costs related to screening passengers and property in calendar year 2000. This information collection included submissions to TSA of data on the carriers' screening-related costs and also of independent audits of that data. On February 28, 2002, TSA published in the **Federal Register** a notice that OMB had approved the required collection and submission of this information under control number (2110–0002). *See* 67 FR 9355.

Purpose of Information Collection

Under Part 1511, carriers must retain any and all documents, records, or information related to the amount of the ASIF, including all information applicable to the carrier's calendar year 2000 security costs and information reasonably necessary to complete an audit. The information collection proposed under this notice is intended to apply to the retention requirement of 49 CFR 1511.9. This requirement includes retaining the source information for the calendar year 2000 screening costs reported to TSA; the calculations and allocations performed to assign costs submitted to TSA; information and documents reviewed and prepared for the required independent audit; the accountant's working papers, notes, worksheets, and other relevant documentation used in the audit; and, if applicable, the specific information leading to the accountant's opinion, including any determination that the accountant could not provide an audit opinion.

Description of Information Collection

The information collection, submission, and retention requirement applies to each air carrier and foreign air carrier that incurred costs for the screening of passengers and property in calendar year 2000. It is estimated that the 195 respondent air carriers and foreign air carriers will each on average incur $330.60 annually, which includes $180.60 in records storage related costs and $150 in labor costs for 6 hours of records identification and management at $25 per hour. Based on these estimates, the aggregate total for all air carriers will be $64,467 during the first year. In subsequent years, each air carrier will incur $104.60 per year, which includes $54.60 in records storage and $50 in labor costs for 2 hours of records management at $25 per hour. For each subsequent year, the total burden for 195 air carriers is estimated at $20,397 per year. Thus, the annual average burden related to this requirement for all respondents combined over a three-year period is at a cost of $35,087. The subject records may be used by TSA to make determinations regarding security-related costs in calendar year 2000, including conducting reviews and otherwise ensuring compliance with part 1511.

Issued in Arlington, Virginia, on January 21, 2004.

Susan T. Tracey,

Chief Administrative Officer.

[FR Doc. 04–1616 Filed 1–26–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

All-Cargo International Security Procedures for Foreign Air Carriers

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice of issuance.

SUMMARY: TSA is providing notice that we have issued All-Cargo International Security Procedures to all foreign air carriers that perform all-cargo operations to, from, within, or overflying the United States that are not otherwise regulated under title 49 of the Code of Federal Regulations part 1546, Foreign Air Carrier Security. TSA has issued these procedures to respond to vulnerabilities in air cargo security.

FOR FURTHER INFORMATION CONTACT: Robert Baker, TSA–7, Office of Aviation Operations, Transportation Security Administration HQ, 3rd Floor, East Building, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–3506, facsimile (571) 227–1947, e-mail *Robert.Baker2@dhs.gov*.

SUPPLEMENTARY INFORMATION: On November 17, 2003, the Department of Homeland Security's Transportation Security Administration (TSA) issued All-Cargo International Security Procedures (ACISP) for foreign air carriers that perform all-cargo operations using aircraft with a maximum certificated takeoff weight of

12,500 pounds or more, to, from, within, or overflying the United States that are not otherwise regulated under title 49 of the Code of Federal Regulations (49 CFR) part 1546. TSA issued the ACISP pursuant to 49 CFR 1550.7, to respond to vulnerabilities in air cargo security.

The term ''overflying'' includes any flight departing from an airport or other location outside the United States, its territories or possessions, which transits the territorial airspace of the United States enroute to an airport or other location outside the United States, its territories, or possessions. The territorial airspace of the United States includes the airspace over the United States, its territories and possessions, and the airspace overlying the territorial waters between the U.S. coast and 12 nautical miles from the U.S. coast.

The U.S. Intelligence Community continues to receive and evaluate a high volume of reporting indicating possible threats against U.S. interests. This reporting, combined with recent terrorist attacks, has created an atmosphere of concern. While the ability to conduct multiple, near simultaneous attacks against several targets is not new for such terrorist groups as Al-Qaeda, the manner in which these attacks are being conducted indicates refined capabilities and sophisticated tactics. The Department of Homeland Security remains concerned about Al-Qaeda's continued interest in aviation, including using cargo jets to carry out attacks on critical infrastructure. In recognition of this threat, TSA has made a determination that these circumstances require immediate action to ensure safety in air transportation.

The ACISP includes requirements that the foreign air carrier must conduct random inspections of certain air cargo, verify the identities of persons with access to these flights, ensure the security of the aircraft, and have in place procedures to respond to certain threats. Affected foreign air carriers must implement the procedures set forth in the ACISP which is available by contacting Mr. Robert Baker at the Transportation Security Administration: telephone (571) 227–3506, facsimile (571) 227–1947, e-mail *Robert.Baker2@dhs.gov*. The ACISP is an interim measure to respond to the concerns set forth above.

Issued in Arlington, Virginia, January 20, 2004.

David M. Stone,

Acting Administrator.

[FR Doc. 04–1615 Filed 1–26–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Geological Survey

National Cooperative Geologic Mapping Program (NCGMP) Advisory Committee

AGENCY: U.S. Geological Survey.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 108–148, the NCGMP Advisory Committee will meet in Room 7000 A of the Main Interior Building, 1849 C Street, NW., Washington, DC. The Advisory Committee, composed of scientists from Federal Agencies, State Agencies, academic institutions, and private companies, will advise the Director of the U.S. Geological Survey on planning and implementation of the geologic mapping program.

Topics to be reviewed and discussed by the Advisory Committee include the:

- Progress of the NCGMP towards fulfilling the purposes of the National Geologic Mapping Act of 1992.
- Updates on the Federal, State, and educational components of the NCGMP.
- Strategic Goals.

DATES: February 10–11, commencing at 9 a.m. on February 10 and adjourning by 5 p.m. on February 11.

FOR FURTHER INFORMATION CONTACT: Laurel Bybell, U.S. Geological Survey, 908 National Center, Reston, Virginia 20192 (703) 648–5281.

SUPPLEMENTARY INFORMATION: Meetings of the National Cooperative Geologic Mapping Program Advisory Committee are open to the Public.

P. Patrick Leahy,

Associate Director for Geology, U.S. Geological Survey.

[FR Doc. 04–1638 Filed 1–26–04; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–930–6333 PH COMP, HAG 04–0075]

Notice of Availability of the Supplemental Environmental Impact Statement for Management of Port-Orford-Cedar in Southwest Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: The Forest Service (FS) and Bureau of Land Management (BLM) have prepared a Final Supplemental Environmental Impact Statement (FSEIS) for management of Port-Orford-cedar in southwest Oregon. The Agencies are supplementing the analyses contained in the Final EISs for the Resource Management Plans for the Coos Bay, Medford, and Roseburg BLM Districts (1995) and the Land and Resource Management Plan for the Siskiyou National Forest (1988), generally federally managed forestlands in southwest Oregon.

The FSEIS is now available to the public. Requests to receive copies of the FSEIS should be sent to the address listed below. Alternately, the FSEIS is available on the Internet at *http://www.or.blm.gov/planning/Port-Orford-cedar_SEIS/*. Copies are also available for inspection at FS and BLM offices in southwestern Oregon and northwestern California, public libraries within the range of the cedar, and in the BLM Oregon State Office reading room at 333 SW. First Avenue, Portland, Oregon. All submissions from organizations or businesses will be made available for public inspection in their entirety. Individuals may request confidentiality with respect to their name, address, and phone number. If you wish to have your name or street withheld from public review, or from disclosure under the Freedom of Information Act, the first line of the comment should start with the words ''CONFIDENTIALITY REQUESTED'' in uppercase letters in order for BLM to comply with your request. Such request will be honored to the extent allowed by law. Comment contents will not be kept confidential.

DATES: Publication of the Environmental Protection Agency (EPA) Notice of Availability and filing of the FSEIS in the **Federal Register** initiates a 30-day Protest Period for the Bureau of Land Management (see 43 CFR § 1610.5–02) . The EPA Notice of Availability appeared in the **Federal Register** on January 23, 2004. An appeal period for the Forest Service will be initiated with the signing of the Record of Decision.

ADDRESSES: To request copies of the document, or to add your name to the mailing list, contact: Port-Orford-Cedar SEIS Team, P.O. Box 2965, Portland, Oregon 97208; or e-mail to *ORPOCEIS@or.blm.gov*; or FAX to (503) 326–2396 and specify POC SEIS Team.

FOR FURTHER INFORMATION CONTACT: Ken Denton, SEIS Team Leader, P.O. Box 2965, Portland, Oregon 97208; telephone (503) 326–2368.

SUPPLEMENTARY INFORMATION: Port-Orford-cedar is killed by an exotic root disease (*Phytophthora lateralis*) that is linked, at least in part, to transport of spore-infested soil by human and other vectors. Waterborne spores then readily spread the disease down slope and downstream.

Six alternatives are considered in detail in the FSEIS. Alternative 1, no action, continues the current direction of implementing available disease-management practices based on site-specific analysis. Alternative 2 uses the same management practices but adds a risk key to clarify the environmental conditions that require implementation of additional site-specific practices, and identifies and emphasizes protection within uninfested 7th field watersheds. Alternative 3 includes almost all elements of Alternative 2 and adds additional protections for 32 currently uninfested 6th field watersheds. Alternative 4 removes existing disease management practices but accelerates the resistant breeding program to provide resistant stock for all areas within ten years. Alternative 5 also removes existing disease management practices and stops development of resistant seed for remaining undeveloped breeding zones. Alternative 6 incorporates all elements of Alternative 2 and adds additional protections for uninfested 7th field watersheds. The preferred alternative is Alternative 2. A decision to select one of the action alternatives would amend the management direction in one FS Land and Resource Management Plan and three BLM Resource Management Plans in the planning area.

The FSEIS addresses deficiencies identified in a February 12, 2003, U.S District Court decision, which held the Resource Management Plan EIS for the Coos Bay District and a related project Environmental Assessment did not adequately analyze the cumulative effects of management activities on the health of Port-Orford-cedar outside the project area.

The analysis considers the entire natural range of Port-Orford-cedar, but only plans within the Oregon portion of the range are proposed for amendment at this time. The responsible official for lands administered by the Forest Service is the Forest Supervisor for the Siskiyou and Rogue River National Forests. The responsible official for public lands administered by the BLM is the State Director, Oregon State Office.

Dated: January 15, 2004.

A. Barron Bail,

Associate State Director, Oregon and Washington, Bureau of Land Management.

[FR Doc. 04–1795 Filed 1–26–04; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0006).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under ''30 CFR 256, Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf,'' and related forms. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by February 26, 2004.

ADDRESSES: You may submit comments either by fax (202) 395–6566 or e-mail (*OIRA_DOCKET@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0006). Mail or hand carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to e-mail your comments to MMS, the address is: *rules.comments@mms.gov.* Reference Information Collection 1010–0006 in your subject line and mark your message for return receipt. Include your name and return address in your message text.

FOR FURTHER INFORMATION CONTACT: Arlene Bajusz, Rules Processing Team (703) 787–1600. You may also contact Arlene Bajusz to obtain a copy, at no cost, of the regulations and forms that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 256, Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf.

OMB Control Number: 1010–0006.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition. The Energy Policy and Conservation Act of 1975 (EPCA) prohibits certain lease bidding arrangements (42 U.S.C. 6213 (c)).

The Independent Offices Appropriations Act of 1952 (IOAA), 31 U.S.C. 9701, authorizes Federal agencies to recover the full cost of services that provide special benefits. Under the Department of the Interior's (DOI) policy implementing the IOAA, MMS is required to charge the full cost for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those that accrue to the public at large. Instruments of transfer of a lease or interest are subject to cost recovery, and MMS regulations specify filing fees for these transfer applications.

The MMS uses the information required by 30 CFR 256 to determine if applicants are qualified to hold leases in the OCS. Specifically, MMS uses the information to:

- Verify the qualifications of a bidder on an OCS lease sale. Once the required information is filed with MMS, a qualification number is assigned to the bidder so that duplicate information is not required on subsequent filings.
- Develop the semiannual List of Restricted Joint Bidders. This identifies parties ineligible to bid jointly with each other on OCS lease sales, under limitations established by the EPCA.
- Ensure the qualification of assignees. Once a lease is awarded, the transfer of a lessee's interest to another qualified party must be approved by an MMS regional director.
- Obtain information and nominations on oil and gas leasing, exploration, and development and production. Early planning and consultation ensure that all interests and concerns are communicated to us for future decisions in the leasing process.
- Document that a leasehold or geographical subdivision has been surrendered by the record title holder.
- Verify that lessees have adequate bonding coverage. Respondents must submit their bonds certification forms:

Form MMS–2028, ''Outer Continental Shelf Mineral Lessee's and Operator's Bond,'' and Form MMS–2028A, ''Outer Continental Shelf Mineral Lessee's and Operator's Supplemental Plugging & Abandonment Bond.'' The MMS uses these documents to hold the surety libel for the obligations and liability of the principal/lessee or operator.

Frequency: The frequency of reporting is annual and on occasion.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas or sulphur lessees, as well as the affected States and local governments.

Estimated Reporting and Recordkeeping ''Hour'' Burden: The estimated annual ''hour'' burden for this information collection is a total of 19,668 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, MMS assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR part 256	Reporting requirement	Hour burden	Average number annual responses	Annual burden hours
Subparts A, C, E, H, L, M	None	Not applicable		0
Subparts G, H, I, J: 256.37, 256.53, 256.68, 256.70, 256.71, 256.72, 256.73.	Request approval for various operations or submit plans or applications.	Burden included with other approved collections in 30 CFR Part 250 (1010–0049, 1010–0114, 1010–0058, 1010–0141, 1010–0142)		0
Subpart B: 256.16, 256.17, 256.20. **Subpart D:** All sections.	Submit response to request/call for information, comments, and interest in areas for mineral leasing, including information from States/local governments.	4	1 response	4
Subpart F: 256.31	States or local governments submit comments/recommendations on size, timing or location of proposed lease sale.	4	10 responses	40
Subpart G: 256.35, 256.46(d), (e).	Establish a Company File for qualification; submit updated information, submit qualifications for lessee/bidder, request exception.	2	495 responses	990
256.41, 256.43, 256.46(g)	Submit qualification of bidders for joint bids and statement or report of production/appeal.	2	200 responses	400
256.44, 246.46	Submit bids and required information	5	2,000 bids	10,000
256.47(c)	File agreement to accept joint lease on tie bids	3½	2 agreements	7
256.47(e)(1), (e)(3)	Request for reconsideration of bid rejection	Exempt as defined in 5 CFR 1320.3(h)(9).		0
256.47(f), (i), 256.50	Execute lease (includes submission of evidence of authorized agent and request for dating of leases).	1	852 leases	852
Subpart I: 256.54	OCS Mineral Lessee's and Operator's Bond (form MMS–2028).	¼	228 forms	57
256.54	OCS Mineral Lessee's and Operator's Supplemental Plugging & Abandonment Bond (form MMS–2028A).	¼	162 forms	*41
256.52(f(2), (g)(2)	Submit authority for Regional Director to sell Treasury or alternate type of securities.	2	10 submissions	20
256.53(c), (d), (f); 256.54(d)(3)	Demonstrate financial worth/ability to carry out present and future financial obligations, request approval of another form of security, or request reduction in amount of supplemental bond required.	3½	165 submissions	*578
256.55	Notify MMS of any lapse in previous bond/action filed alleging lessee, surety, or guarantor is insolvent or bankrupt.	1	3 notices	3
256.56	Provide plan/instructions to fund lease-specific abandonment account and related information; request approval to withdraw funds.	12	7 submissions	84

Citation 30 CFR part 256	Reporting requirement	Hour burden	Average number annual responses	Annual burden hours
256.57	Provide third-party guarantee, indemnity agreement, financial information, related notices, and annual update; notify MMS if guarantor becomes unqualified.	19	32 submissions	608
256.57(d)(3), 256.58	Notice of and request approval to terminate period of liability, cancel bond, or other security.	½	305 requests	*153
256.59(c)(2)	Provide information to demonstrate lease will be brought into compliance.	16	5 responses	80
Subpart J: 256.62, 256.64, 256.65, 256.67.	File application and required information for assignment or transfer for approval/comment on filing fee.	1	2,725 applications	2,725
256.64(a)(7)	File required instruments creating or transfering working interests, etc., for record purposes.	1	2,738 filings	2,738
256.64(a)(8)	Submit non-required documents, for record purposes, which respondents want MMS to file with the lease document.	Accepted on behalf of lessees as a service, but MMS does not require nor need the filings.		0
Subpart K: 256.76	File written request for relinquishment	1	275 relinquishments	275
256.77(c)	Comment on lease cancellation (MMS expects 1 in 10 years).	1	1	1
All Subparts	General departure and alternative compliance requests not specifically covered elsewhere in Part 256.	4	3	12
Total Reporting		10,219 Responses		19,668

*Rounded.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: The estimated ''non-hour cost'' burden for this information collection is a total of $577,575 rounded to $578,000. This cost burden is for filing fees associated with submitting requests for approval of instruments of transfer ($185 per application) or to file nonrequired documents for record purposes ($25 per filing) according to § 256.64(a)(8).

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *''. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on September 10, 2003, MMS published a **Federal Register** notice (68 FR 53390) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 256.0 provides the OMB control number for the information collection requirements imposed by the 30 CFR 256 regulations. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. MMS has received no comments in response to these efforts.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by February 26, 2004.

Public Comment Policy: MMS's practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. MMS will honor the request to the extent allowable by the law; however, anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

MMS Federal Register Liaison Officer: Denise Johnson (202) 208–3976.

Dated: December 5, 2003.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 04–1730 Filed 1–26–04; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Kaloko-Honokohau National Historical Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Na Hoapili O Kaloko Honokohau, Kaloko-Honokohau National Historical Park Advisory Commission will be held at 10 a.m., February 6, 2004 at Kaloko-Honokohau National Historical Park headquarters, 73–4786 Kanalani St. Suite 14, Kailua-Kona, Hawaii.

The agenda will include Commission Membership, Alu Like Partnership, Resource and Educational Center, and various park projects.

The meeting is open to the public. Minutes will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. Transcripts will be available after 30 days of the meeting.

For copies of the minutes, contact Kaloko-Honokohau National Historical Park at (808) 329–6881.

Dated: December 29, 2003.

Geraldine K. Bell,

Superintendent, Kaloko-Honokohau National Historical Park.

[FR Doc. 04–1594 Filed 1–26–04; 8:45 am]

BILLING CODE 4312–6H–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 10, 2004. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, (202) 371–6447. Written or faxed comments should be submitted by February 11, 2004.

Carol D. Shull,

Keeper of the National Register of Historic Places.

COLORADO

Prowers County

Wiley Rock Schoolhouse, 603 Main St., Wiley, 04000057.

NORTH DAKOTA

Walsh County

Nordre Trefoldegheds Menigheds, 6 mi. W and 3/8 mi. S of jct. of U.S. 81 and Cty Rte. 9, Nash, 04000058.

OHIO

Cuyahoga County

Blossom, Elizabeth B. and Dudley S., Estate Service Compound, 24449 Cedar Rd., Lyndhurst, 04000059.

Noble County

Noble County Jail and Sheriff's Office, 419 West St., Caldwell, 04000060.

Richland County

Rock Road Bridge, Former Erie Railroad over Rock Rd., Ontario, 04000062.

Summit County

First Congregational Church, 292 E. Market St., Akron, 04000061.

PENNSYLVANIA

Clarion County

Sutton—Ditz House, 18 Grant St., Clarion, 04000063.

Luzerne County

Luzerne County Fresh Air Camp, Middle Rd., approx. 0.25 mi. NE of jct. of Middle Rd. and PA 3021, Butler Township, 04000064.

Montgomery County

Breyer, Henry W., Sr., House, 8230 Old York Rd., Elkins Park, Cheltenham, 04000065.

TEXAS

Comal County

Gruene Historic District (Boundary Increase), Gruene Rd. W. from Sequin St. to the W side of Gruene Bridge, New Braunfels, 04000066.

[FR Doc. 04–1595 Filed 1–26–04; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 3, 2004. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by February 11, 2004.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ARKANSAS

Garland County

Bellaire Court Historic District, (Arkansas Highway History and Architecture MPS), 637 Park Ave., Hot Springs, 04000007.

Butchie's Drive-In, (Arkansas Highway History and Architecture MPS), 534 Park Ave., Hot Springs, 04000004.

Cottage Courts Historic District, (Arkansas Highway History and Architecture MPS), 603 Park Ave., Hot Springs, 04000005.

Cove Tourist Court, (Arkansas Highway History and Architecture MPS), 771 Park Ave., Hot Springs, 04000008.

Langdon Filling Station, (Arkansas Highway History and Architecture MPS), 311 Park Ave., Hot Springs, 04000003.

Lynwood Tourist Court Historic District, (Arkansas Highway History and Architecture MPS), 857 Park Ave., Hot Springs, 04000010.

Mountainaire Hotel Historic District, (Arkansas Highway History and Architecture MPS), 1100 Park Ave., Hot Springs, 04000013.

Opal's Steak House, (Arkansas Highway History and Architecture MPS), 871 Park Ave., Hot Springs, 04000011.

Parkway Courts Historic District, (Arkansas Highway History and Architecture MPS), 815 Park Ave., Hot Springs, 04000009.

Perry Plaza Court Historic District, (Arkansas Highway History and Architecture MPS), 1007 Park Ave., Hot Springs, 04000012.

Wheatley Courts, (Arkansas Highway History and Architecture MPS), 811 Park Ave., Hot Springs, 04000006.

Saline County

Hester-Lenz House, 905 AR 5 N, Benton, 04000002.

CALIFORNIA

Los Angeles County

Ware, Henry A., House, (Residential Architecture of Pasadena: Influence of the Arts and Crafts Movement MPS), 460 Bellefontaine St., Pasadena, 04000015.

Madera County

North University Park Historic District, Roughly bounded by Hoover St., Adams Blvd, 28th St. and Magnolia Ave., Los Angeles, 04000016.

Orange County

St. Michael's Episcopal Church, 311 West South St., Anaheim, 04000017.

Placer County

Mountain Quarries Bridge, North Fork of the American River, Auburn, 04000014.

San Bernardino County

Beverly Rangh, 923 W. Fern Ave., Redlands, 04000018.

COLORADO

Sedgwick County

Union Pacific Railroad Julesburg Depot, 210 W. First St., Julesburg, 04000019.

FLORIDA

Seminole County

Lake Mary Chamber of Commerce Building, 158 N. Country Club Rd., Lake Mary, 04000022.

GEORGIA

Morgan County

Wilson—Finney—Land House, 1750 Bethany Rd., Madison, 04000021.

HAWAII

Honolulu County

Kyoto Gardens of Honolulu Memorial Park, 22 Craigside Place, Honolulu, 04000020.

MASSACHUSETTS

Hampshire County

Ringville Cemetery, Witt Hill Rd., Worthington, 04000024.

Suffolk County

Benedict Fenwick School, 150 Magnolia St., Boston, 04000023.
Rumney Marsh Burying Ground, Butler St. at Elm and Bixby Sts., Revere, 04000025.

NEVADA

Douglas County

TAHOE (Shipwreck), Lake Tahoe, Glenbrook, 04000026.

TENNESSEE

Williamson County

Natchez Street Historic District, Roughly bounded by Columbia Ave., Granbury St., and W. Main St., Franklin, 04000030.

VIRGINIA

Albemarle County

Scottsville Historic District (Boundary Increase), Roughly bounded by the James River, Town Limit, the Riverview and Mount Walla, Oakwood and Cliffside, and Chester, Scottsville, 04000034.

Arlington County

Buckingham Historic District (Boundary Increase), (Garden Apartments, Apartment Houses and Apartment Complexes in Arlington County, Virginia MPS), bounded by N. Oxford St., Fifth St. N, N. Henderson Rd., First St. N., N. Pershing, N. Thomas St., and Second St. N., Arlington, 04000048.
Columbia Forest Historic District, Bounded by 11th, S. Edison, S. Dinwiddie, S. Columbus, S. George Mason, and S. Frederick St., Arlington, 04000047.
Fort Ethan Allen, Address Restricted, Arlington, 04000052.
Glebe Center, 71–89 N. Glebe Rd., Arlington, 04000055.
Glebewood Village Historic District, N. Brandywine St. bet. Lee Hwy and 10th Place N, 21St Rd. bet. N. Brandywine St. and N. Glebe Rd., Arlington, 04000049.
Gray, Harry W., House, 1005 S. Quinn St., Arlington, 04000051.
Lomax African Methodist Episcopal Zion Church, 2704 24th Rd. S, Arlington, 04000038.

Brunswick County

St. Paul's School, (Rosenwald Schools in Virginia MPS), Brunswick Dr. at I–85, Meredithville, 04000037.

Caroline County

Jericho School, Jericho Rd., Ruther Glen, 04000041.
Chesapeake Independent City, Albermarle and Chesapeake Canal Historic District, Albemarle and Chesapeake Canal, Chesapeake (Independent City), 04000035.

Fauquier County

Ashville Historic District, Area including 4236–4130 Ashville Rd. and part of Old Ashville Rd., Marshall, 04000043.
Delaplane Historic District, Area including parts of Delaplane Grade Rd. and Rokeby Rd., Delaplane, 04000050.
Heflin's Store, 5310 Blantyre Rd., Little Georgetown, 04000046.
Morgantown Historic District, Roughly jct. of Freestate Rd. and Mount Nebo Church Rd., discont. cemetery approx. 0.2 Mme SE of Mount Nebo Church Rd., Marshall, 04000045.
New Baltimore Historic District, Area including parts of Old Alexandria Turnpike, Mason Ln., Georgetown Rd., and Beverley's Mill Rd., New Baltimore, 04000044.

Frederick County

Forge Farm, Old, 7326 Middle Rd., Middletown, 04000036.

Gloucester County

Woodville School, 4310 George Washington Mermorial Highway, Ordinary, 04000042.
Harrisonburg Independent City, Simms, Lucy F., School, 620 Simms Ave., Harrisonburg (Independent City), 04000040.

Loudoun County

Ellwood, 17360 Count Turf Place, Leesburg, 04000054.

Prince William County

Prince William County Courthouse, 9248 Lee Ave., Manassas, 04000039.

Westmoreland County

Bushfield, 367 Club House Loop, Mount Holly, 04000053.

WEST VIRGINIA

Berkeley County

Hollida, George Washington, House, 4781 Scabble Rd., Shepherdstown, 04000031.
Nadenbousch, Moses, House, 2540 Butler's Chapel Rd., Martinsburg, 04000032.
Robinson—Tabb House, 377 Holden Dr., Martinsburg, 04000028.
Snyder, Benjamin H., House, 1925 Douglas Grove Rd., Martinsburg, 04000029.
VanMetre, John, House, 177 Elsie Dr., Kearneysville, 04000033.

Wood County

Bickel, W.H., Estate, Number One Bickel Mansion Dr., Parkersburg, 04000027.

[FR Doc. 04–1596 Filed 1–26–04; 8:45 am]
BILLING CODE 4312–51–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(1)), the Attorney General shall, prior to issuing a regulation under this Section to a bulk manufacturer of a controlled substance in Schedule II and prior to issuing a registration under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with section 1301.34 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on October 29, 2003, Cambrex Charles City, Inc., 1205 11th Street, Charles City, Iowa 50616, made application by renewal to the Drug Enforcement Administration to be registered as an importer of Phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The firm plans to import the phenylacetone to manufacture amphetamine for distribution to its customers.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant

Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than February 26, 2004.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e) and (f) are satisfied.

Dated: December 19, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–1650 Filed 1–26–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on September 25, 2003, Cambrex North Brunswick, Inc., Technology Center of New Jersey, 661 Highway One, North Brunswick, New Jersey 08902, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of Sufentanil (9740), a basic class of Schedule II controlled substance.

The firm plans to manufacture Sufentanil to distribute in bulk to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than March 29, 2004.

Dated: December 19, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–1651 Filed 1–26–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on October 27, 2003, Cedarburg Pharmaceuticals, LLC, 870 Badger Circle, Grafton, Wisconsin 53024, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of Fentanyl (9801), a basic class of Schedule II controlled substance.

The firm plans to manufacture in bulk for distribution to customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than March 29, 2004.

Dated: December 19, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–1649 Filed 1–26–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on October 21, 2003, Noramco, Inc., 1440 Olympic Drive, Athens, Georgia 30601, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amphetamine (1100)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The firm plans to support its other manufacturing facility with manufacturing and analytical testing.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative Office of Chief Counsel (CCD) and must be filed no later than March 29, 2004.

Dated: December 24, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–1653 Filed 1–26–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufactuer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on November 23, 2003, Noramco, Inc., 500 Old Swedes Landing Road, Wilmington, Delaware 19801, made renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Morphine-N-Oxide (9307)	I
Codeine-N-Oxide (9053)	I
Codeine (9050)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II

The firm plans to manufacture the listed controlled substances for

distribution to its customers as bulk products.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than March 29, 2004.

Dated: December 24, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–1654 Filed 1–26–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on October 27, 2003, Novartis Pharmaceutical Corporation, Attn: Security Department, Building 103, Room 335, 59 Route 10, East Hanover, New Jersey 07936, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of Methylphenidate (1724), a basic class of Schedule II controlled substance.

The firm plans to produce bulk product and finished dosage units for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than March 29, 2004.

Dated: December 24, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–1652 Filed 1–26–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 20, 2003, Siegfried (USA), Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amphetamine (1100)	II
Methylphenidate (1724)	II
Ambobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutehimide (2550)	II
Codeine (9050)	II
Hydrocodone (9193)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II

The firm plans to manufacture the listed controlled substances for distribution as bulk products to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than March 29, 2004.

Dated: December 24, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–1648 Filed 1–26–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

TIME AND DATE: 8 a.m. to 5 p,m. on Monday, March 8, 2004, 8 a.m. to 12 noon on Tuesday, March 9, 2004.

PLACE: The Drake Hotel, 140 East Walton Place, Chicago, Illinois 60611.

STATUS: Open.

MATTERS TO BE CONSIDERED: Strategic planning Update; Safe Foundation Site Visit and Briefing: Division Reports; and Quarterly Report by Office of Justice Programs.

FOR FURTHER INFORMATION CONTACT: Larry Solomon, Deputy Director, (202) 307–3106, ext. 44254.

Morris L. Thigpen,

Director.

[FR Doc. 04–1641 Filed 1–26–04; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Knott County Mining Company

[Docket No. M–2003–096–C]

Knott County Mining Company, PO Box 102, Kite, Kentucky 41828 has filed a petition to modify the application of 30 CFR 75.900 (Low and medium-voltage circuits serving three-phase alternating current equipment; circuits breakers) to its Mine 582 (MSHA I.D. No. 15–18522) located in Knott County, Kentucky. The petitioner proposes to use contactors for under-voltage protection in lieu of using the required circuit breakers. The petitioner states that an additional ground fault protection device will be provided for the affected circuits; the hazards caused by personnel rushing to the remote locations to reset breakers will be eliminated; and travelways will be safer and the miners will not have to take risks out of a sense of urgency to resume production. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Knott County Mining Company

[Docket No. M–2003–097–C]

Knott County Mining Company, PO Box 102, Kite, Kentucky 41828 has filed a petition to modify the application of 30 CFR 75.900 (Low and medium-voltage circuits serving three-phase alternating current equipment; circuits breakers) to its Puncheon Branch Mine (MSHA I.D. No. 15–17110) located in Knott County, Kentucky. The petitioner proposes to use contactors for under-voltage protection in lieu of using the required circuit breakers. The petitioner states that an additional ground fault protection device will be provided for the affected circuits; the hazards caused by personnel rushing to the remote locations to reset breakers will be eliminated; and travelways will be safer and the miners will not have to take risks out of a sense of urgency to resume production. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Little Buck Coal Company

[Docket No. M–2003–098–C]

Little Buck Coal Company, 57 Lincoln Road, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 49.2(b) to its #2 Slope (MSHA I.D. No. 36–08299) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit the reduction of two mine rescue teams with five members and one alternate each, to two mine rescue teams of three members with one alternate for either team. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. River Hill Coal Company, Inc.

[Docket No. M–2003–099–C]

River Hill Coal Company, Inc., PO Box 69, 1686 Tipple Road, Karthaus, Pennsylvania 16845 has filed a petition to modify the application of 30 CFR 77.700–1(c) (Approved methods of grounding) to its River Hill Coal Company Mine (MSHA I.D. No. 36–00884) located in Clearfield County, Pennsylvania. The petitioner requests a modification of the existing standard to permit an alternative method of compliance for providing a safer means of grounding three phase portable water pumps. The petitioner proposes to build and maintain a three phase generator truck and pump unit that will eliminate any potential between the metal frames of the unit and earth. The petitioner states that that generator would be resistance grounded through a direct neutral and the generator frames, and the truck frame and the pump frame would be connected to the resistance grounded neutral. The petitioner has listed specific procedures in this petition that would be followed when its proposed alternative method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard with no diminution of safety to the miners.

5. L-Coal Company

[Docket No. M–2003–100–C]

L-Coal Company, RD #2, Box 630, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.332(b)(1) & (b)(2) (Working sections and working places) to its Lenig Tunnel Mine (MSHA I.D. No. 36–08288) located in Northumberland County, Pennsylvania. The petitioner proposes to use air passing through inaccessible abandoned workings and additional areas, which is not examined under other mandatory standards and is currently mixing with the air in the intake haulage slope, to ventilate the only active working sections; to ensure air quality by sampling intake air during pre-shift and on-shift examinations, not to exceed each 2 hours; and to suspend mine production when air quality fails to meet specified criteria. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

6. McElroy Coal Company

[Docket No. M–2004–001–C]

McElroy Coal Company, RD 1, Box 67A, Glen Easton, West Virginia 26039 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (Weekly examination) to its McElroy Mine (MSHA I.D. No. 46–01437) located in Marshall County, West Virginia. Due to deteriorating roof conditions in the Main East return air entries, traveling the entire entry from One North seals to the Preparation Plant exhaust fan bottom would be unsafe to make weekly examinations. The petitioner proposes to establish a check point on each side of the bad top area to monitor the return air in the affected area. These monitoring stations will be established at Station Number 1 located in the air leg outby the Number One Seal, and Station Number 2 located in the entry toward Main East inby the Number Six seal of One North Seals. The petitioner states that all monitoring stations and the approaches to such stations will be maintained in safe condition at all times; tests for methane and the quantity and quality of air will be determined by a certified person on a weekly basis at each monitoring station; the date, initials of the examiner, time, and results of the examinations will be recorded in a book or on a date board at the monitoring stations; and results of the examinations will also be recorded in a book that will be kept on the surface and made available to all interested parties. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to *comments@msha.gov*, or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before February 26, 2004. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 22nd day of January 2004.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 04–1637 Filed 1–26–04; 8:45 am]

BILLING CODE 4510–43–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet January 30, 2004 from 5 p.m. until 5:30 p.m. and continue on January 31, 2004, from 1:30 p.m. until conclusion of the Board's agenda.

LOCATION: January 30–31, 2004: The Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Corporation's General Counsel will report to the Board on litigation to which the Corporation is or may become a party, and the Board may act on the matters reported. The closing is authorized by 5 U.S.C. 552b(c)(2) and LSC's corresponding

regulation 45 CFR 1622.5(a); 5 U.S.C. 552b(c)(6) and LSC's corresponding regulation 45 CFR 1622.5(e); 5 U.S.C. 552b(c)(7) and LSC's implementing regulation 45 CFR 1622.5(f)(4), and 5 U.S.C. 522b(c)(9)(B) and LSC's implementing regulation 45 CFR 1622.5(g); and 5 U.S.C. 552b(c)(10) and LSC's corresponding regulation 45 CFR 1622.5(h). A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

(1) Approval of agenda.

(2) Chairman's introduction and welcome of Helaine Barnett, new President of LSC.

(3) Public comment.

(4)Consider and act on motion to recess meeting to Saturday, January 31, 2004.[1]

(5) Consider and act on nominations for the Chairmanship of the Board of Directors.

(6) Consider and act on nominations for the Vice Chairmanship of the Board of Directors.

(7) Approval of minutes of the Board's meeting of November 22, 2003.

(8) Approval of minutes of the Executive Session of the Board's meeting of November 22, 2003.

(9) Approval of minutes of the Executive Session of the Board's meeting of November 23, 2003.

(10) Chairman's Report.

(11) Members' Reports.

(12) President's Report.

(13) Acting Inspector General's Report.

(14) Consider and act on the report of the Board's Provision for the Delivery of Legal Services Committee.

(15) Consider and act on the report of the Board's Finance Committee.

a. Consider and act on space reallocation options at LSC Headquarters and related financial implications.

b. Consider and act on the President's and Acting Inspector General's recommendations for FY 2004 Consolidated Operating Budget or Revised Temporary Operating Budget.

(16) Consider and act on the report of the Board's Operations & Regulations Committee.

a. Consider and act on possible changes to LSC's organizational chart, lines of reporting and related position designations.

(17) Consider and act on the report of the Board's Search Committee for LSC President and Inspector General.

(18) Consider and act on proposed Resolution governing Board member compensation.

(19) Consider and act on proposed Resolution authorizing the Chairman to appoint a member to the Board of Directors of Friends of the Legal Services Corporation.

(20) Consider and act on Board's meeting schedule for the remainder of calendar year 2004.

(21) Consider and act on other business.

(22) Public comment.

(23) Consider and act on whether to authorize an executive session of the Board to address items listed below in Closed Session.

Closed Session

(24) Briefing[2] by the Acting Inspector General on the activities of the Office of Inspector General.

(25) Consider and act on General Counsel's report on potential and pending litigation involving LSC.

(26) Consider and act on motion to adjourn meeting.

FOR FURTHER INFORMATION CONTACT: Patricia D. Batie, Manager of Board Operations, at (202) 295–1500.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia D. Batie, at (202) 295–1500.

Dated: January 22, 2004.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel and Corporate Secretary.

[FR Doc. 04–1774 Filed 1–23–04; 11:12 am]

BILLING CODE 7050–01–P

[1] The OPEN session of the Board of Directors meeting will reconvene at 1:30 p.m., on Saturday, January 31, 2004, at the same location.

[2] Any portion of the closed session consisting solely of staff briefings and/or reports does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to any such portion of the closed session. 5 U.S.C. 552(b)(a)(2) and (b). *See also* 45 CFR 1622.2 and 1622.3.

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Finance Committee

TIME AND DATE: The Finance Committee of the Legal Services Corporation Board of Directors will meet January 30, 2004. The meeting will begin at 10 a.m. and continue until completion of the Committee's agenda.

LOCATION: The Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.

2. Approval of the minutes of the Committee's meeting of November 21, 2003.

3. Report on LSC's Temporary Operating Budget, Expenses and Other Funds Available through November 30, 2003.

4. Consider and act on the President's and Acting Inspector General's recommendations for FY 2004 Consolidated Operating Budget or Revised Temporary Operating Budget.

5. Consider and act on space reallocation options at LSC Headquarters and related financial implications.

6. Status report from the Inspector General on the Corporation's fiscal year 2003 annual audit.

7. Report from staff on results of survey of LSC recipients on Loan Repayment Assistant Programs and Retirement Programs.

8. Consider and act on other business.

9. Public comment.

10. Consider and act on adjournment of meeting.

FOR FURTHER INFORMATION CONTACT: Patricia D. Batie, Manager of Board Operations, at (202) 295–1500.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia D. Batie, at (202) 295–1500.

Dated: January 22, 2004.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel and Corporate Secretary.

[FR Doc. 04–1775 Filed 1–23–04; 11:13 am]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Search Committee for LSC President and Inspector General

TIME AND DATE: The Search Committee for LSC President and Inspector General of the Legal Services Corporation Board of Directors will meet January 30, 2004. The meeting will begin at 1:30 p.m. and continue until completion of the Committee's agenda.

LOCATION: The Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Consider and act on the process for the selection of an LSC Inspector General.
3. Public comment.
4. Consider and act on other business.
5. Consider and act on adjournment of meeting.

FOR FURTHER INFORMATION CONTACT: Patricia D. Batie, Manager of Board Operations, at (202) 295–1500.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia D. Batie, at (202) 295–1500.

Dated: January 22, 2004.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel and Corporate Secretary.

[FR Doc. 04–1776 Filed 1–23–04; 11:14 am]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Provision for the Delivery of Legal Services Committee

TIME AND DATE: The Provision for the Delivery of Legal Services Committee of the Legal Services Corporation Board of Directors will meet January 30, 2004. The meeting will begin at 2:30 p.m. and continue until completion of the Committee's agenda.

LOCATION: The Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of November 21, 2003.
3. Presentations on Quality in Legal Services:

a. Presentation by Randi Youells, LSC Vice President for Programs.

b. Presentations by Jeanne Charn, Director, Bellow-Sacks Access to Civil, Legal Services Project, Harvard Law School.

c. Presentation by Lillian Johnson, Executive Director, Community Legal Services (AZ).

d. Presentation by Alan Houseman, Executive Director, The Center for Law and Social Policy.

e. Presentation by Colline Meek, Executive Director, Oklahoma Indian Legal Services.

4. Consider and act on other business.
5. Public comment.
6. Consider and act on adjournment of meeting.

FOR FURTHER INFORMATION CONTACT: Patricia D. Batie, Manager of Board Operations, at (202) 295–1500.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia D. Batie, at (202) 295–1500.

Dated: January 22, 2004.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 04–1777 Filed 1–23–04; 11:14 am]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Operations and Regulations Committee

TIME AND DATE: The Operations and Regulations Committee of the Legal Services Corporation Board of Directors will meet January 31, 2004. The meeting will begin at 10 a.m. and continue until completion of the Committee's agenda.

LOCATION: The Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Approval of the Committee's meeting minutes of November 22, 2003.
3. Consider and act on possible changes to LSC's organizational chart, lines of reporting and related position designations.
4. Public comment.
5. Consider and act on other business.
6. Consider and act on adjournment of meeting.

FOR FURTHER INFORMATION CONTACT: Patricia D. Batie, Manager of Board Operations, at (202) 295–1500.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia D. Batie, at (202) 295–1500.

Dated: January 22, 2004.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 04–1778 Filed 1–23–04; 11:15 am]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–009]

National Environmental Policy Act; International Space Research Park at the John F. Kennedy Space Center, Florida

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of the Draft Environmental Impact Statement (DEIS) for the International Space Research Park (ISRP) at the John F. Kennedy Space Center (KSC) and notice of meeting.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and the National Aeronautics and Space Administration (NASA) policy and procedures (14 CFR part 1216 subparts 1216.1 and 1216.3), NASA has prepared, and is requesting comment on, a DEIS for the proposed ISRP at KSC, located in Florida. KSC is a major center within NASA for the Space Shuttle and International Space Station (ISS) activities and is adjacent to Cape Canaveral Air Force Station (CCAFS) from which many NASA missions are launched. The purpose of the proposed ISRP is to facilitate world-class research and development (R&D) in areas critical to the long-term success of KSC and its users and operators. NASA entered into an agreement with the State of Florida, through the Florida Space Authority (FSA), to jointly study the potential development of up to 160 ha (400 ac) of land on KSC as a research park. NASA in cooperation with FSA completed the *International Space Research Park Development Study.* As a result of the Development Study, NASA is proposing to lease approximately 142 ha (360 ac) in phases to the State of Florida (through the FSA), which would create an ISRP Authority (ISRPA) to

develop and manage the site for the ISRP. The DEIS describes the potential environmental impacts and proposed mitigation associated with development alternatives under the proposed concept as well as the no-action alternative.

NASA has included, as an appendix, and is requesting comment on, the Biological Assessment prepared pursuant to §§ 7(a)(2) and (b)(4) of the Endangered Species Act (ESA) (16 U.S.C. 1536(a)(2) and 16 U.S.C. 1536(b)(4)). NASA has also included in the appendix the U.S. Fish and Wildlife Service's (USFWS) Biological Opinion prepared under § 10(a)(1) of the ESA (16 U.S.C. 1539(a)(1)).

DATES: The agency must receive written or electronic mail comments on the DEIS and the other listed documents on or before 50 days from the date of publication in the Federal Register of the U.S. Environmental Protection Agency's notice of availability of the ISRP DEIS, whichever is later. Public meetings to receive comments on the DEIS will be held in the vicinity of KSC. The specific times and locations will be published in *Florida Today.*

ADDRESSES: The DEIS may be reviewed at the following locations of the Brevard County Library:

(a) Central Brevard Library & Reference Center, 308 Forrest Ave., Cocoa, FL 32922, (321) 633–1792;

(b) Cocoa Beach Branch Library, 550 North Brevard Ave., Cocoa Beach, FL 32931, (321) 868–1104;

(c) Melbourne Branch Library, 540 E. Fee Ave., Melbourne, FL 32901, (321) 952–4514;

(d) Merritt Island Branch Library, 1195 North Courtenay Parkway, Merritt Island, FL 32953, (321) 455–1369;

(e) St. Johns Branch Library, 6500 Carole Ave., Port St. John, FL 32927, (321) 633–1867;

(f) North Brevard Branch Library, 2121 S. Hopkins Ave., Titusville, FL 32780, (321) 264–5026.

The DEIS may also be examined at the following NASA locations by contacting the pertinent Freedom of Information Act Office:

(g) NASA, Ames Research Center, Moffett Field, CA 94035 (650–604–1181);

(h) NASA, Dryden Flight Research Center, P.O. Box 273, Edwards, CA 93523 (661–276–2704);

(i) NASA, Glenn Research Center at Lewis Field, 21000 Brookpark Road, Cleveland, OH 44135 (216–433–2755);

(j) NASA, Goddard Space Flight Center, Greenbelt Road, Greenbelt, MD 20771 (301–286–0730);

(k) NASA, Johnson Space Center, Houston, TX 77058 (281–483–8612);

(l) NASA, Langley Research Center, Hampton, VA 23681 (757–864–2497);

(m) NASA, Marshall Space Flight Center, Huntsville, AL 35812 (256–544–2030);

(n) NASA, Stennis Space Center, MS 39529 (228–688–2164). In addition, the DEIS may be examined at the following locations:

(o) NASA Headquarters, Library, Room lJ20, 300 E Street SW, Washington, DC, 20546 (202–358–0167);

(p) Jet Propulsion Laboratory, Visitors Lobby, Building 249, 4800 Oak Grove Drive, Pasadena, CA 91109 (818–354–5179).

The DEIS can be accessed electronically at *http://eis.ksc.nasa.gov/index.cfm*.

Limited copies of the DEIS are available, on a first request basis, by contacting Mr. Mario Busacca, NASA, Mail Code TA–C3, Kennedy Space Center, Florida, 32899; Telephone 321–867–8456; e-mail (*mario.busacca-1@nasa.gov*).

Submit all comments in writing to Mr. Mario Busacca, NASA, Mail Code TA–C3, Kennedy Space Center, Florida, 32899, or electronically to *mario.busacca-1@nasa.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Mario Busacca, NASA, Mail Code TA–C3, Kennedy Space Center, Florida, 32899; Telephone (321) 867–8456; e-mail (*mario.busacca-1@nasa.gov*).

SUPPLEMENTARY INFORMATION: The ISRP is intended to support NASA's mission, facilitate public-private collaboration, provide for complementary R&D objectives, and further space commercialization and development, consistent with the Space Act of 1958, as amended to authorize Enhanced Use Leasing (EUL) (42 U.S.C. 2459j). The mission of the FSA is to retain, expand, and diversify the State's space-related industry. As a center for R&D, the ISRP would bring together a dynamic mix of industry, academia, and government researchers to focus their combined strengths in areas of R&D critical to the long-term success of NASA and its partners, including, but not limited to, the FSA.

NASA KSC often collaborates with others in funding and implementing projects consistent with NASA's mission and the Space Act. Collaborators who would be located on KSC at the ISRP would be those whose activities require proximity to the launch and payload-processing infrastructure of KSC. Of these, non-governmental collaborators would need greater access and operational flexibility than is currently available at KSC. NASA has, therefore, determined a need to develop a site within KSC but outside the security fence that will provide the desired proximity and flexible operating environment. The proposed action is to lease approximately 142 ha (360 ac) in phases to the State of Florida (through the FSA), which would create an ISRPA to develop and manage the site as the ISRP. The lease period is proposed to be 50 years, after which NASA may extend the lease for an additional period of 25 years. Upon termination of the lease, the ISRPA would demolish the buildings and return the land unless reuse were negotiated. NASA would also retain the right to terminate the lease at any time to meet KSC requirements.

Study Area and Project Alternatives

Study Area: Kennedy Space Center occupies 56,500 ha (139,490 ac) of land located within Brevard and Volusia Counties and controlled by NASA. The study area includes KSC, Brevard County, and the five adjoining counties (Indian River, Orange, Osceola, Seminole, and Volusia). The alternative development sites proposed for the ISRP are located on KSC along the south portion of Kennedy Parkway South (also known as State Road 3). Kennedy Parkway South is the major north-south transportation arterial that allows public ingress and egress through KSC into Merritt Island and Titusville.

Project Alternatives: NASA evaluated the potential environmental impacts of three alternatives (Alternative 1, Alternative 2, and the No Action Alternative). The first two alternative actions involve developing and operating the ISRP at alternate locations on KSC and the associated environmental impacts of each option. The No Action Alternative was analyzed for the potential environmental consequences that may result if the proposed action is rejected (or not recommended) and present management of the study area continues.

Alternative 1 (Preferred Alternative): In Alternative 1, NASA proposes the development of the ISRP on approximately 142 ha (360 ac) of KSC property to the west of Kennedy Parkway South (State Road 3). Development and related construction activities would occur on land located immediately south of the KSC Visitors Complex along Space Commerce Way. Approximately 128 ha (316 ac) of the development (Phases A–E) would occur on the west side of Space Commerce Way. Phase F would occur on a 10 ha (24 ac) parcel east of Space Commerce Way, adjacent to and west of the Space Experiments Research and Processing Laboratory (SERPL). The larger area (Phases A–E) considered in Alternative

1 is dominated by citrus groves and includes remnant wetlands and disturbed habitats. The smaller area (Phase F) is undeveloped.

In Alternative 1, development would occur in 6 phases (Phases A–F) over 25 parcels, which would be serviced by approximately 4.5 kilometers (km) (2.8 miles (mi)) of roads. The parcels range from 1.8 to 10.2 ha (4.5 to 25.3 ac) in size with developable acreage between 1.8 and 6.2 ha (4.5 and 15.4 ac). Some parcels have dedicated no-build zones due to existing wetlands and stormwater ponds. The stormwater ponds would become part of the master stormwater system for the park. The proposed stormwater management system includes 10 connected treatment ponds for the collection and treatment of runoff generated from the developed parcels. Parcels would be developed to include 35 percent open space overall. The open space would include a central greenway, which would offer sidewalks and pedestrian access along wetlands and stormwater retention areas.

Alternative 2: Alternative 2 proposes construction and development of the ISRP in six phases on approximately 130 ha (321 ac) located northeast of the KSC south security gate (Gate #3) on Kennedy Parkway South (State Road 3), near B Avenue SW (or Tel-4 Road). This alternative, like Alternative 1, also considered Phase F development of 10 ha (24 ac) east of Space Commerce Way, adjacent to and west of the SERPL. The combined areas considered in Alternative 2 are undeveloped and characterized by high quality pine flatwoods and scrub habitat embedded with wetlands.

The area considered in Alternative 2 (including Phase F) is defined by 26 parcels, which would be serviced by approximately 4.2 (km) (2.6 (mi)) of roads. Of the 26 parcels, 25 parcels are proposed for development. These parcels range in size from 1.6 to 10.0 ha (4.0 to 24.0 ac) with developable acreage from 1.5 to 5.6 ha (3.7 to 13.8 ac). A 34.7 ha (85.7 ac) parcel has been established under this development plan to protect an extensive wetlands system. Four stormwater management ponds are proposed for the collection and treatment of runoff generated from the developed parcels. The Alternative 2 land use plan offers extensive greenways and sidewalks for pedestrian access along the wetland conservation area and between parcels.

Alternative 3 (No Action Alternative): Under the No Action Alternative, no new development would be proposed regarding the ISRP on KSC. This No Action Alternative would result in continuing the present management of the two proposed sites at KSC. Under the No Action Alternative, land currently managed by the USFWS would remain under USFWS management. Land leased through 2008 to the Kerr Foundation for citrus grove production would, after the lease expires, become part of the undeveloped KSC buffer, which is managed by the USFWS as part of the Merritt Island National Wildlife Refuge. The USFWS has long-term plans to restore the citrus groves to natural conditions.

Issues Identified During Scoping

Public involvement is a key element in the NEPA process. NASA initiated public involvement when it issued the October 8, 2002 Notice of Intent to prepare an EIS and conduct scoping meetings for the proposed action. All responses received from interested parties during the 45-day scoping period (October 8, 2002 through December 9, 2002) are presented in Appendix A of the DEIS. The primary concerns raised in public comments relate to traffic, socio-economics, housing, security, air quality, wetlands, and wildlife. These concerns were addressed in the DEIS. Impacts to soils from construction were indicated and thus were also analyzed.

Environmental Impacts

Traffic: The results of modeling studies of traffic, especially on north Merritt Island, showed that the implementation of either Alternative 1 or Alternative 2 would not result in significant degradation to traffic patterns or flows. Even at full build out of the ISRP, traffic would not be significantly degraded either on KSC or within Brevard County. To maintain acceptable levels of service after 2022 and with the existing roadway geometry, adjustments to traffic signal timing and other traffic management measures may be needed. Before such changes would be implemented, further environmental review would be conducted.

Socio-economics: The implementation of either Alternative 1 or Alternative 2 would draw major economic resources to the area, which would be positive and not adversely impact the growing regional economy.

Housing: The expected increase in demand for housing if the ISRP is implemented is consistent with planning within Brevard County and surrounding counties and is not expected to have a significant impact on the housing supply.

Security: The security issues raised during scoping have been addressed. NASA has constructed two new entrance gates, one on Kennedy Parkway and another on NASA Causeway respectively, to allow for 24-hour access through the Center via the new Space Commerce Way. These measures also allow the proposed ISRP, under both Alternatives 1 and 2, to be located outside of the secure areas of KSC.

Air Quality: Air quality would be impacted within the surrounding local area by construction and controlled burning activities and at KSC by increased traffic and associated emissions, especially of carbon monoxide. Construction activity would generate particulate matter (PM) and PM10 emissions that could significantly impact the quality of the air within the local region. Dust suppression methods and phasing of development would reduce the PM and PM10 emissions to well below the significance level of 5 tons per year, resulting in a negligible air quality impact.

Chapter 62–256 of the Florida Administrative Code (F.A.C.) allows the use of air curtain incinerators to dispose of ground cover and construction debris from land clearing activities. If an air curtain incinerator were properly used as prescribed in F.A.C. 62–256, the air emissions would remain minimal and thus have no significant impacts.

Although vehicular traffic would increase, the levels would not be expected to be larger than what has occurred in the past on the Kennedy Space Center in the 1970's at the height of the Apollo Program. In addition, the vehicles today are more efficient and have better emission controls. However, the increase in traffic could be expected to produce a significant impact to local air quality at KSC. This traffic would not have a significant negative impact on air quality outside KSC in Brevard County and the remaining study region. Because the potential significant decrease in air quality is estimated to be local to KSC and no justification or need currently exists to develop a regional mass transport systems plan, the ISRPA would encourage the use of the Brevard County sponsored commuter van pool systems and other public transportation systems such as Space Coast Area Transit, known locally as SCAT. As a part of the NASA and the FSA educational outreach activities, NASA would provide educational information on the value of reducing traffic and improving air quality within KSC. There are few direct mitigating actions that could be performed by NASA or FSA.

Wetlands and Hydrology: Construction and operation of the ISRP may alter surface water quality or hydrological processes, including impacts to Class II and III Waters, and

surface water flows. Surface water quality, hydrological processes, and surface water flows are regulated by the Florida Water Resources Act of 1972 (Part IV of Chapter 373, Florida Statues (F.S.) and Chapter 62–40 of the F.A.C.), Section 404 of the Clean Water Act, and NASA regulations at 14 CFR subpart 1216.2, implementing Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands. A Wetland Mitigation Plan would be required to address impacts related to wetland systems and stormwater flow within the alternative sites. The ISRPA or NASA as the landowner would obtain a Florida Environmental Resources Permit prior to any construction on the selected ISRP site, which would address issues of water quality, general hydrology, and surface water flow. Water quality monitoring may also be required to mitigate impacts. Low-impact Best Management Practices (BMP) and a Stormwater Management System would be implemented in the design, development, and operation of the ISRP.

Construction runoff into preserved wetlands could cause indirect impacts to water quality. To minimize disturbances to wetlands from construction-related runoff, construction would be avoided within the 7.6 m (25 ft) upland buffer extending from the delineated edge of preserved wetlands toward the upland. Standard BMPs would be implemented to minimize runoff into these protected areas. Dewatering into the sensitive hammock wetlands and swale marshes would be prohibited.

Wildlife: The cumulative effects of habitat fragmentation due to habitat loss from development, introduction of new roads, and increased human presence in either Alternative 1 or Alternative 2 could cause mortality or substantial harassment of individual eastern indigo snakes (*Drymarchon corais couperi.*), a species listed as threatened by the USFWS under the ESA, and thus be significant, unless mitigated. The USFWS has issued a Biological Opinion for Alternative 1, which is included in the appendixes to the DEIS. The Biological Opinion covers the eastern indigo snake, the only federally listed species that may be adversely affected by Alternative 1, the preferred alternative. The Biological Opinion indicates no jeopardy to the continued existence of the eastern indigo snake or adverse modification to critical habitat would occur if the recommended reasonable and prudent measures are taken to minimize the level of take of individuals of this species.

The indirect effects of habitat fragmentation, increased traffic on multiple roads, and increased human presence potentially resulting from implementation of the ISRP under Alternative 1 were determined in the Biological Assessment and Biological Opinion as ''likely to adversely affect'' the eastern indigo snake. The potential for the proposed action to result in incidental take of the indigo snake in the form of harm was considered significant. The USFWS Biological Opinion approved incidental take of all individuals.

The impact of habitat fragmentation and roads under Alternative 1 on Federal and State-listed threatened or endangered wading birds and the southeastern American kestrel (*Falco sparverius paulus*) would not be considered significant since the disturbed or artificial habitats being used are locally abundant and these species have a high opportunity to disperse.

If Alternative 2 were selected, several Federal and State-listed threatened or endangered species would be impacted. Both the Florida scrub-jay (*Aphelocoma coerulescens*) and the eastern indigo snake are federally listed threatened species. Direct and indirect effects would occur to individuals within these species due to development of the site under Alternative 2 and consequent loss of critical Florida scrub-jay and eastern indigo snake habitat, and habitat displacement and consequent increased risk of predation and vehicular collisions.

A Biological Opinion was not sought from the USFWS. If NASA selected Alternative 2, development could not proceed without obtaining a Biological Opinion from the USFWS for the eastern indigo snake and Florida scrub jay, and other federally listed threatened or endangered species, indicating no jeopardy to the species and no adverse modification of critical habitat, subject to limits on incidental take and implementation of recommended reasonable and prudent measures. The eastern indigo snake is also protected under Florida law.

The Biological Assessment determined that implementation of the proposed ISRP action on the Alternative 2 site would cause the direct loss of 73.4 ha (181.4 ac) of occupied Florida scrub-jay habitat resulting in incidental take, in the form of harm, of a minimum of eight Florida scrub-jay territories. Based on the long-term research of this local population the majority of the territories that would be impacted under this alternative are likely sources to the local KSC scrub-jay population. The Tel-4 Road (B Avenue SW) population is the only population on KSC that is not in decline and is known to be increasing. The proposed ISRP development on the Alternative 2 site has the potential to jeopardize core recovery efforts of this species at KSC. Development would not proceed on Alternative 2 without preparation of a new Biological Assessment, formal consultation with the USFWS, and procurement of a Biological Opinion, including a finding of ''no jeopardy'' and an Incidental Take Statement for this species. This potential impact would be considered significant.

Implementation of Alternative 2 would also have the potential to affect 125 to 206 gopher tortoises (*Gopherus polyphemus*), their habitat, and several commensals (species that benefit from co-existence with gopher tortoises, such as the Florida gopher frog (*Rana capito aesopus*), and the Florida mouse (*Podomys floridanus*). The gopher tortoise and other commensal species are protected under Florida State law. The direct and indirect effects of the loss or displacement of critical gopher tortoise habitat, destruction of occupied burrows, increased predation, and increased risk of vehicular collision could cause individual mortality of gopher tortoises and listed commensals.

Development could not proceed under Alternative 2 until a permit is secured pursuant to the requirements of Rules 68A–25.002 and 68A–27.005, F.A.C. authorizing the incidental take or relocation of gopher tortoises, including any encountered State-listed commensals.

Alternative 2 also has the potential, due to disturbance of soils and surface vegetation, to impact local and globally rare freshwater swale marshes, which harbor threatened populations of such species as Curtiss reedgrass (*Calamovilfa curtissii (Vasey) Scribn.*), a federally and State-listed threatened plant.

The potential exists for the effects of the various projects in the vicinity combined with the significant direct and indirect effects of the ISRP under Alternative 2 to result in highly significant impacts to biological resources. This finding considers the critical importance of the biological resources existing on and surrounding this site. The ability to provide adequate compensation for potential cumulative impacts would be of concern, particularly for impacts on the regionally important Tel-4 Road (B Avenue SW) Florida Scrub-jay population and the local and globally rare freshwater swale marshes, and

associated species such as Curtiss reedgrass.

Lighting along roads and around and within buildings within newly developed areas of Alternative 2 (Phases A–E) may impact the federally listed bald eagle (*Haliaeetus leucocephalus*) by disrupting movement and breeding behaviors. A monitoring program, conducted in accordance with Bald Eagle Monitoring Guidelines (USFWS 2002), for any development activities occurring within 1 km (0.6 mi) of a bald eagle nest tree would be implemented to determine the eagle's response to these potential impacts. If significant changes in behavior were identified, then mitigation actions would be employed. For example, construction would be prohibited during the nesting season or nighttime lighting would be reduced to levels tolerated by the species.

Cumulative impacts of habitat fragmentation from habitat loss and introduction of new roads and increased human presence under Alternative 2 could cause the mortality or substantial harassment of numerous individual indigo snakes. Over time, this impact could negatively influence population viability. To reduce the adverse effects of this cumulative impact NASA would: (1) create an education program aimed at informing employees about the indigo snake's protected status and consequences of violating applicable laws, the indigo snake's high susceptibility to road mortality, its beneficial roles, and its generally gentle disposition towards humans (Breininger *et al.* 1994); (2) design new roads and retrofit, where practicable, existing roads to provide underpasses for movement between habitats; and (3) establish a monitoring program that would evaluate the effectiveness of the underpasses and address needed demographic data gaps to enable future establishment of sound conservation strategies. The second action presented would be expected to benefit other important wide-ranging wildlife.

Soils: Construction of the proposed ISRP would change the soil composition, structure, and function only within the proposed ISRP site under Alternatives 1 and 2. Construction impacts to on-site soils are considered unavoidable since on-site soils would need to be moved and augmented to raise finish floor elevations of facilities to be constructed. Therefore, no mitigation measures are proposed for reducing impacts to on-site soils. No impacts to soils are expected to occur off site. Operation of the ISRP would not impact soils either on or off-site.

Under the No Action Alternative, no adverse impacts would result. The activities associated with the development and operation of the proposed ISRP would not occur, therefore, no additional activities would occur to produce such impacts or contribute to cumulative impacts. Alternative 1 (after the citrus grove leases expire) and Alternative 2 sites would continue to be part of the undeveloped buffer area at KSC and as such be managed by the USFWS as part of the Merritt Island National Wildlife Refuge.

Jeffrey E. Sutton,

Assistant Administrator for Management Systems.

[FR Doc. 04–1694 Filed 1–26–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–010]

NASA Advisory Council, Biological and Physical Research Advisory Committee Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Biological and Physical Research Advisory Committee.

DATES: Thursday, February 12, 2004, from 9 a.m. until 6 p.m. and Friday, February 13, 2004 from 8 a.m. until 12 Noon.

ADDRESSES: NASA Headquarters, 300 E Street SW, Room 9H40, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Bradley Carpenter, Code UG, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0826.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the meeting room. The agenda for the meeting is as follows:

- Review Recommendations
- Program Overview
- Implementation of the Administration Vision
- Division Reports
- International Space Station Research Status
- NASA 2004–2007 Strategic Planning Cycle

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information: Full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); employer/affiliation information (name of institution, address, county, phone); and title/position of attendee. To expedite admittance, attendees can provide identifying information in advance by contacting Dr. Brad Carpenter via e-mail at *bcarpent@hq.nasa.gov* or by telephone at (202) 358–0826. Persons with disabilities who require assistance should indicate this.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Michael F. O'Brien,

Assistant Administrator for External Relations, National Aeronautics and Space Administration.

[FR Doc. 04–1728 Filed 1–26–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL INDIAN GAMING COMMISSION

Fee Rates

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given, pursuant to 25 CFR 514.1(a)(3), that the National Indian Gaming Commission has adopted preliminary annual fee rates of 0.00% for tier 1 and 0.069% (.0069) for tier 2 for calendar year 2004. these rates shall apply to all assessable gross revenues form each gaming operation under the jurisdiction of the Commission. If a tribe has a certificate of self-regulation under 25 CFR part 518, the preliminary fee rate on class II revenues for calendar year 2004 shall be one-half of the annual fee rate, which is 0.0345% (.00345).

FOR FURTHER INFORMATION CONTACT: Bobby Gordon, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005; telephone (202) 632–7003; fax (202) 632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act established the National Indian Gaming Commission which is charged with, among other things, regulating gaming on Indian lands.

The regulations of the Commission (25 CFR part 514), as amended, provide for a system of fee assessment and payment that is self-administered by gaming operations. Pursuant to those regulations, the Commission is required to adopt and communicate assessment rates; the gaming operations are required to apply those rates to their revenues, compute the fees to be paid, report the revenues, and remit the fees to the Commission on a quarterly basis.

The regulations of the Commission and the preliminary rate being adopted today are effective for calendar year 2004. Therefore, all gaming operations within the jurisdiction of the Commission are required to self-administer the provisions of these regulations and report and pay any fees that are due to the Commission by March 31, 2004.

Gary Pechota,

Chief of Staff, National Indian Gaming Commission.

[FR Doc. 04–1723 Filed 1–26–04; 8:45 am]

BILLING CODE 7565–01–M

NATIONAL LABOR RELATIONS BOARD

Notice of Meeting

Agency Holding the Meeting: National Labor Relations Board.

Time and Date: Immediately following an 11 a.m. case adjudicatory meeting, Wednesday, January 21, 2004.

Place: Board Conference Room, Eleventh Floor, 1099 Fourteenth St., NW., Washington, DC 20570.

Status: Closed to public observation pursuant to 5 U.S.C. 552b(c)(2) (internal personnel rules and practices); (6) (personal information where disclosures would constitute a clearly unwarranted invasion of personal privacy); 9(B) (disclosure would significantly frustrate implementation of a proposed Agency action * * *); and/or (10) deliberation on adjudicatory matters).

Matters to be Considered: Internal administrative matters.

Contact Person for More Information: Lester A. Heltzer, Executive Secretary, Washington, DC 20570. Telephone: (202) 273–1067.

Dated: Washington, DC, January 21, 2004. By direction of the Board.

Lester A. Heltzer,

Executive Secretary, National Labor Relations Board.

[FR Doc. 04–1773 Filed 1–23–04; 10:47 am]

BILLING CODE 7545–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–03916]

Notice of Finding of No Significant Impact and Availability of Environmental Assessment for Amendment of License No. 08–00408–06, Department of Justice—Federal Bureau of Investigation, Washington, DC

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of environmental assessment and finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Kathy Dolce Modes, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, telephone (610) 337–5251, fax (610) 337–5269; or by e-mail: *kad@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to the Department of Justice—Federal Bureau of Investigation for Materials License No. 08–00480–06, to authorize release of its facility in Washington, DC for unrestricted use and has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate.

II. EA Summary

The purpose of the proposed action is to allow for the release of the licensee's Washington, DC facility for unrestricted use. The Department of Justice—Federal Bureau of Investigation was authorized by NRC from March 25, 1965, to use radioactive materials for research and development purposes at the site. On September 8, 2003, the Department of Justice—Federal Bureau of Investigation requested that NRC release the facility for unrestricted use. The Department of Justice—Federal Bureau of Investigation has conducted surveys of the facility and determined that the facility meets the license termination criteria in subpart E of 10 CFR part 20.

III. Finding of No Significant Impact

The NRC staff has evaluated the Department of Justice—Federal Bureau of Investigation's request and the results of the surveys and has concluded that the completed action complies with the criteria in subpart E of 10 CFR part 20. The staff has prepared the EA (summarized above) in support of the proposed license amendment to terminate the license and release the facility for unrestricted use. The staff has found that the environmental impacts from the proposed action are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities'' (NUREG–1496). On the basis of the EA, the NRC has concluded that the environmental impacts from the proposed action are expected to be insignificant and has determined not to prepare an environmental impact statement for the proposed action.

IV. Further Information

The EA and the documents related to this proposed action, including the application for the license amendment and supporting documentation, are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Accession Nos. ML032540763, ML033000506 and ML040150585). These documents are also available for inspection and copying for a fee at the Region I Office, 475 Allendale Road, King of Prussia, Pennsylvania, 19406. Persons who do not have access to ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

Dated in King of Prussia, Pennsylvania this 20th day of January, 2004.

For the Nuclear Regulatory Commission.

John D. Kinneman,

Chief, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I.

[FR Doc. E4–115 Filed 01–26–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–34655]

Notice of Finding of No Significant Impact and Availability of Environmental Assessment for Amendment of Materials License No. 37–30433–01, OSI Pharmaceuticals, Inc.

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of environmental assessment and finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Betsy Ullrich, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, telephone (610) 337–5040, fax (610) 337–5269; or by e-mail: *exu@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to OSI Pharmaceuticals, Inc. for Materials License No. 37–30433–01, to authorize release of its facility in Horsham, Pennsylvania for unrestricted use and has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate.

II. EA Summary

The purpose of the proposed action is to allow for the release of the licensee's Horsham, Pennsylvania facility for unrestricted use. OSI Pharmaceuticals, Inc. was authorized by NRC from March 9, 1998, to use radioactive materials for research and development purposes at the site. On July 10, 2003, OSI Pharmaceuticals, Inc. requested that NRC release the facility for unrestricted use. OSI Pharmaceuticals, Inc. has conducted surveys of the facility and determined that the facility meets the license termination criteria in subpart E of 10 CFR part 20.

III. Finding of No Significant Impact

The NRC staff has evaluated OSI Pharmaceuticals, Inc.'s request and the results of the surveys and has concluded that the completed action complies with the criteria in subpart E of 10 CFR part 20. The staff has prepared the EA (summarized above) in support of the proposed license amendment to terminate the license and release the facility for unrestricted use. The staff has found that the environmental impacts from the proposed action are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities'' (NUREG–1496). On the basis of the EA, the NRC has concluded that the environmental impacts from the proposed action are expected to be insignificant and has determined not to prepare an environmental impact statement for the proposed action.

IV. Further Information

The EA and the documents related to this proposed action, including the application for the license amendment and supporting documentation, are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm.html* (ADAMS Accession Nos. ML031970551, ML032340661 and ML040150859). These documents are also available for inspection and copying for a fee at the Region I Office, 475 Allendale Road, King of Prussia, Pennsylvania, 19406. Persons who do not have access to ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or (301) 415–4737, or by e-mail to *exu@nrc.gov*.

Dated in King of Prussia, Pennsylvania this 15th day of January, 2004.

For the Nuclear Regulatory Commission.

John D. Kinneman,

Chief, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I.

[FR Doc. E4–116 Filed 01–26–04;8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–7003]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Application for Usec Inc., Bethesda, MD

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of Environmental Assessment and Finding of No Significant Impact for license application.

FOR FURTHER INFORMATION CONTACT: Yawar Faraz, Project Manager, Special Projects and Inspection Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001. Telephone: (301) 415–8113; fax number: (301) 415–5390; e-mail: *yhf@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is prepared to issue Material License No. 70–7003 to United States Enrichment Corporation Inc. (USEC) (the applicant), to authorize possession and use of source and special nuclear material at the American Centrifuge Lead Cascade Facility (Lead Cascade) in Piketon, Ohio. NRC has prepared an Environmental Assessment (EA) in support of these actions in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The license will be issued following the publication of this notice.

II. EA Summary

The purpose of the proposed action is to authorize possession and use of source and special nuclear material at the applicant's Lead Cascade facility in Piketon, Ohio. The Lead Cascade facility would have up to 240 operable centrifuges for testing in order to provide reliability information on the machines and auxiliary systems for a commercial uranium enrichment facility. The Lead Cascade facility would recycle tails and product with no product withdrawals except for sampling. The applicant proposes to install the Lead Cascade facility in leased portions of the existing Department of Energy (DOE) Gas Centrifuge Enrichment Plant (GCEP) located at the Portsmouth Gaseous Diffusion Plant site in Piketon, Ohio. In the mid-1980's, DOE had produced enriched uranium using hundreds of centrifuges in it's GCEP facility.

On February 12, 2003, USEC Inc. requested that NRC approve the proposed application. USEC Inc.'s request for the proposed action was previously noticed in the **Federal Register** on April 9, 2003 (68 FR 17414), along with a notice of an opportunity to request a hearing. No requests for a hearing were submitted to the NRC.

The NRC has prepared an EA in support of the proposed license application. The NRC concludes that the proposed action complies with the applicable parts of title 10, Code of Federal Regulations (10 CFR) for adequate protection of the public health and safety, and protection of the environment. For example, NRC staff finds that public exposure to radiation from the proposed action will be less than 0.0001% of the limits in 10 CFR part 20. On the basis of the assessment, the NRC staff concludes that environmental impacts associated with the proposed action would not be significant and do not warrant the preparation of an Environmental Impact Statement (EIS). Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

III. Finding of No Significant Impact

On the basis of the EA, NRC has concluded that there are no significant environmental impacts from the

proposed action and has determined not to prepare an EIS for the proposed action.

IV. Further Information

The EA and the documents related to this proposed action, including the application for the license amendment and supporting documentation, are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Accession No. ML040210751). These documents may also be examined, and/or copied for a fee, at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852.

Dated in Rockville, Maryland this 21st day of January, 2004.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Chief, Special Projects and Inspection Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E4–117 Filed 01–26–04;8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of January 26, February 2, 9, 16, 23, March 1, 2004.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED

Week of January 26, 2004

There are no meetings scheduled for the Week of January 26, 2004.

Week of February 2, 2004—Tentative

There are no meetings scheduled for the Week of February 2, 2004.

Week of February 9, 2004—Tentative

There are no meetings scheduled for the Week of February 9, 2004.

Week of February 16, 2004—Tentative

Wednesday, February 18, 2004

9:30 a.m. Briefing on Status of Office of Chief Financial Officer Programs, Performance, and Plans (Public Meeting) (Contact: Edward L. New, 301–415–5646).

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

Week of February 23, 2004—Tentative

Wednesday, February 25, 2004

9:30 a.m. Discussion of Security Issues (Closed—Ex. 1).

Thursday, February 26, 2004

9:30 a.m. Meeting with UK Regulators to Discuss Security Issues (Closed—Ex. 1)

Week of March 1, 2004—Tentative

Tuesday, March 2, 2004

9:30 a.m. Meeting with Advisory Committee on the Medical Uses of Isotopes (ACMU) & NRC Staff (Public Meeting) (Contact: Angela Williamson, 301–415–5030).

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

Wednesday, March 3, 2004

9:30 a.m. 25th Anniversary Three Mile Island (TMI) Unit 2 Accident Presentation (Public Meeting) (Contact: Sam Walker, 301–415–1965).

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

2:45 p.m. Discussion of Security Issues (Closed—Ex. 1).

Thursday, March 4, 2004

1:30 p.m. Briefing on Status of Office of Nuclear Material Safety and Safeguards (NMSS) Programs, Performance, and Plans—Waste Safety (Public Meeting).

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Timothy J. Frye, (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary Washington, DC 20555 (301) 415–1969. In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: January 22, 2004.

Timothy J. Frye,

Technical Coordinator, Office of the Secretary.

[FR Doc. 04–1779 Filed 1–13–04; 11:15 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of a Revised Information Collection: SF 3104, SF 3104A and SF 3104B

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for reclearance of a revised information collection. SF 3104, Application for Death Benefits/Federal Employees Retirement System (FERS), is used by persons applying for death benefits which may be payable under FERS because of the death of an employee, former employee, or retiree who was covered by FERS at the time of his/her death or separation from Federal Service. SF 3104A, Survivor Supplement (FERS) (attached to the SF 3104) requests information from the survivor which is used by OPM to determine entitlement to a survivor annuity supplement (supplementary annuity). SF 3104B, Documentation and Elections in Support of Application for Death Benefits when Deceased was an Employee at the Time of Death, is used by applicants for death benefits under FERS if the deceased was a Federal employee at the time of death.

It is estimated that approximately 7,481 SF 3104s will be processed annually. This form requires approximately 60 minutes to complete. An annual burden of 7,481 hours is estimated. Approximately 3,366 SF 3104Bs are expected to be processed annually. It is estimated that the form requires approximately 60 minutes to complete. An annual burden of 3,366 hours is estimated. The total annual burden is 10,847.

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 on or before February 26, 2004.

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;
and
Joseph F. Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services, (202) 606–0623.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 04–1593 Filed 1–26–04; 8:45 am]

BILLING CODE 6325–50–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:
Rule 11Ac1–3; SEC File No. 270–382; OMB Control No. 3235–0435.

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 11Ac1–3 Customer Account Statements

Rule 11Ac1–3 requires disclosure on each new account and on a yearly basis thereafter, on the annual statement, the firm's policies regarding receipt of payment for order flow from any market makers, exchanges or exchange members to which it routes customers' order in national market system securities for execution; and information regarding the aggregate amount of monetary payments, discounts, rebates or reduction in fees received by the firm over the past year.

It is estimated that there are approximately 6,752 registered broker-dealers.[1] The staff estimates that the average number of hours necessary for each broker-dealer to comply with Rule 11Ac1–3 is 14 hours annually. Thus, the total burden is 94,528 hours annually. The average cost per hour is approximately $85. Therefore, the total cost of compliance for broker-dealers is $8,034,880.

Records generated by forms pursuant to this rule must be kept for three years. The records required by this rule are mandatory to assist the Commission in its regulatory role. This rule does not involve the collection of confidential information. Please note that 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, DC 20503; and (ii) R. Corey Booth, Director/Chief Information Officer, 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: January 20, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–1667 Filed 1–26–04; 8:45 am]

BILLING CODE 8010–01–P

[1] This estimate is based on FYE 2002 Focus Reports received by the Commission.

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 January 26, 2004:

A Closed Meeting will be held on Thursday, January 29, 2004 at 2 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) (3), (5), (7), (9B), and (10) and 17 CFR 200.402(a) (3), (5), (7), (9ii), and (10), 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 and that no earlier notice thereof was possible.

The subject matters of the Closed Meeting scheduled for Thursday, January 29, 2004 will be:

Formal orders of investigation;

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions;

Litigation matter; and

Adjudicatory matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: January 23, 2004.

Jonathan G. Katz,

Secretary.

[FR Doc. 04–1784 Filed 1–23–04; 11:56 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49105; File No. SR–BSE–2003–08]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Exchange's Instant Liquidity Access Service for Certain Limit Orders

January 20, 2004.

On July 14, 2003, the Boston Stock Exchange, Inc. (''BSE'' 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 add provisions to its rules governing a new service that will provide for the instant execution of certain limit orders of a specified size. On September 8, 2003, the Exchange submitted Amendment No. 1 to the proposed rule change.[3]

The proposed rule change was published for comment in the **Federal**

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from John Boese, Vice President, Legal and Compliance, BSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 5, 2003.

Register on October 15, 2003.[4] The Commission received no comments on the proposal.

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[5] and, in particular, the requirements of section 6 of the Act[6] and the rules and regulations thereunder. In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5)[7] of the Act because it should enable the Exchange to accommodate customers that seek immediate execution or cancel orders.

It is therefore ORDERED, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–BSE–2003–08), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–1662 Filed 1–26–04; 8:45 am]

BILLING CODE 8010–01–P

[4] *See* Securities Exchange Act Release No. 48596 (October 7, 2003), 68 FR 58435 (October 15, 2003).

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49107; File No. SR–CBOE–2003–37]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to the Appointment of the Members and Chairman of Its Governance Committee

January 20, 2004.

On September 5, 2003, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to 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 that would give the Chairman of the Board of Directors (''Board'') the authority to appoint the members and chairman of CBOE's Governance Committee. CBOE submitted Amendment No. 1 to the proposed rule change by facsimile on November 6, 2003.[3] The proposed rule change was published for comment in the **Federal Register** on November 18, 2003.[4] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[6] which requires, among other things, that CBOE's rules be designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest. The Commission notes that the proposed rule change makes the appointment process for the Governance Committee consistent with the process currently in place for other standing committees of the Board, and also eliminates a redundancy between the Exchange's Constitution and its rules with respect to the appointment process for the Audit and Compensation Committees.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change, as amended (SR–CBOE–2003–37) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–1664 Filed 1–26–04; 8:45 am]

BILLING CODE 8010–01–P

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Patrick Sexton, Assistant General Counsel, CBOE, to Gordon Fuller, Counsel to the Assistant Director, Division of Market Regulation, Commission, dated November 6, 2003 (''Amendment No. 1''). In Amendment No. 1, CBOE clarified the current procedure by which Governance Committee members are appointed, explained the reason for the proposed rule change, and revised a portion of the original proposed rule text.

[4] Securities Exchange Act Release No. 48913 (November 11, 2003), 68 FR 65975 (November 18, 2003).

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49100; File No. SR–DTC–2003–15]

Self-Regulatory Organizations; the Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Revisions to the Fee Schedule

January 20, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 29, 2003, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of revisions to DTC's fee schedule for services.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to adjust the fees DTC charges for various services so that the fees are aligned with DTC's estimated service costs for 2004, effective with respect to services provided on and after January 1, 2004.

DTC believes that the proposed rule change is consistent with the requirements of section 17A of the Act and the rules and regulations

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

[2] A copy of DTC's 2004 service fee revisions is attached as Exhibit 1.

[3] The Commission has modified parts of these statements.

thereunder applicable to DTC because fees will be more equitably allocated among users of DTC services.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes fees to be imposed by DTC, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [4] and Rule 19b–4(f)(2).[5] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR-DTC–2003–15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC and DTC's Web site at *www.dtc.org/impNtc/mor/index.html.* All submissions should refer to File No. SR–DTC–2003–15 and should be submitted by February 17, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Jill M. Peterson,

Assistant Secretary.

EXHIBIT 1.—2004 DTC SERVICE FEE REVISIONS

Service	Current fee	Proposed fee
ASSET Servicing Dividends		
P&I:		
Floating Payable Date Securities (ARPs, ARNs)	$1.31	$2.40
VRDO	2.40	2.90
DIVANN—Annual Fee	1,800.00	9,000.00
Reorg New Fees:		
Proxy Record Date Meetings	0.00	(1)
Dissent Letters/Shareholder Demands	0.00	(2)
Reorg Modified Fees:		
Full Prerefundings	0.00	7.00
Voluntary Exchange/Tender	35.00	(3)
Voluntary Dividend Reinvest Program	11.29	14.00
Remarketing Agent Fee	0.00	17.50
CRS Service Election	25.00	35.00
Custody Fee:		
COD/Pickup—Next Day.		
COD/Pickup— Next Day	16.91	30.00
COD/Ship	18.80	24.00
COD/Redeposit	15.35	24.00
Trailing Docs.	3.48	4.50
Certificate Copies—PINS	8.00	15.00
W/T's	25.69	30.00
Rush W/T's	46.69	65.00
COD/Partial	12.83	24.00
Reorg Rejects	37.93	50.00
Cancel Processing	12.67	16.00
Account No. Change	4.37	5.00
Non Securitized Rec.	3.09	4.50
Coupon Clipping	7.31	9.00
Custom/Mail Letter	4.72	5.50
COD/Pickup—Same Day	16.91	30.00
Non-Transferables (Long Position) Surcharge—Greater Than 6 Years	0.17	1.00
Deposits:		
DWAC	1.00	1.50
Rejects	41.00	50.00

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] 17 CFR 200.30–3(a)(12).

EXHIBIT 1.—2004 DTC SERVICE FEE REVISIONS—Continued

Service	Current fee	Proposed fee
Deposit Mail Charge	1.05	1.50
Research of CUSIP for Name Change	4.85	15.00
WTs:		
WT DMD	5.40	9.50
WT Delivery to the Participant	7.90	9.50
DWAC	1.00	1.50
WT DMD Mail Cost	2.50	3.00
WT Hold and Bust Feature	0.60	1.00
Rush WT Transfer	49.69	65.00
WT Mail Issue Surcharge for TA Outside of NYC	1.05	1.50
Rejects	41.00	50.00
WT DMA (Cert or DRS)	4.60	5.00
CODs:		
Critical COD (Cede and Co.)	46.69	75.00
DRS:		
DRS Certificate Surcharge (Cert. Disincentive)	1.00	5.00
DRS LPA Account Charge per Month	225.00	275.00
DRS LPA Application Fee	0.00	250.00
Securities Processing Research Fee	0.00	55.00
SETTLEMENT		
Deliveries:		
MMI Transactions	0.56	0.70
Day (Zone B) Receiving	0.26	0.27
Day (Zone B) Deliveries	0.44	0.45
Payment Orders	0.10	0.11
Memo Segregation	0.10	0.09
Institutional Deliveries	0.17	0.16
CNS Deliveries	0.17	0.16
New Issues:		
Basic BEO Eligibility	250.00	275.00
CD BEO Eligibility	90.00	125.00
Non-Receipt of Final Offering Docs	0.00	300.00
Multi Certificated	675.00	1,000.00
MMI Swings	0.00	250.00
Single Certificated	585.00	750.00
WUN Incentive Rebate	(4)	.....
INTERNATIONAL TAX SERVICES		
Foreign Tax Service (EDS)	27.00	(5)
DTax—PTS Inquiries	5.00	15.00
DTax—Web	1,500.00	5,000.00
DTax—CCF File	1,500.00	7,500.00
U.S. Tax Withholding—Minimum Annual Fee	N/A	5,000.00
U.S. Tax Withholding—Tax Adjustments	1.50	1.80
TRAINING		
E-Learning Courses (Per Course)	0.00	75.00
Instructor Led Course (Customer Site)	(6)	(7)
Instructor Led Course (Internet)	0.00	(8)
E-Learning Certification Exam	0.00	400.00

[1] $0.50 per participant record date position.
[2] $400 per dissent letter/shareholder demand processed.
[3] $35 per Letter of Transmittal, $20 offer service fee per position holder, and a voluntary offering instruction fee of $20 for the first 50 instructions, and $0.70 for each instruction over 50.
[4] A rebate of $52 for single CUSIP issues, and $107 for multi-CUSIP issues, will be applied if the issue is submitted via WUM.
[5] One half of one percent (.5%) of the tax relief secured by the participant. A minimum fee of $30 and a maximum fee of $500 per transaction will apply.
[6] Current fee is $1000 per day per customer visit.
[7] $750 per student with a two student minimum.
[8] $250 per student with a two student minimum.

[FR Doc. 04–1604 Filed 1–26–04; 8:45 am]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49099; File No. SR–NASD–2004–07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto by National Association of Securities Dealers, Inc. To Terminate Nasdaq's Application of the Primex Auction System

January 16, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 14, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. On January 16, 2004, the Nasdaq filed Amendment No. 1 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq is filing with the Commission a proposed rule change concerning its decision to terminate the Nasdaq Application of the Primex Auction System (''Primex'' or ''System''). Nasdaq has designated this proposal as non-controversial and requests that the Commission waive the 30-day pre-operative waiting period contained in Exchange Act Rule 19b–4(f)(6)(iii).[6] If the Commission grants the waiver, this rule proposal, which is effective upon filing with the Commission, shall become operative at the close of business on January 16, 2004, pursuant to SEC Rule 19b–4(f)(6).[7]

Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

[5010. NASDAQ Application of the PRIMEX AUCTION SYSTEM tm

5011. Definitions

For purposes of this Rule Series, unless the context requires otherwise:

(a) ''Application'' or ''Nasdaq Application'' as used in this Rule Series, and ''Nasdaq Application of the Primex Auction System'' as used throughout the NASD Rules means the voluntary Nasdaq trading service facility that permits NASD member firms, among other things, to submit orders in Primex Eligible Securities to be exposed to a Crowd of Participants in an electronic auction format for the purpose of obtaining an execution for their own account or the account of a customer; to have required reports of any resulting trades automatically disseminated to the public and the industry; and to ''lock in'' these trades as necessary by sending both sides to the applicable clearing agency designated by the Participants involved for clearance and settlement, all in accordance with this Rule Series and other applicable rules and policies of Nasdaq.

(b) ''Primex Auction System Participant,'' ''Participant,'' or ''Participant Firm'' means a broker-dealer registered with the NASD that, when authorized, can access and participate in the Application for its customers or its own account, consistent with this Rule Series. Participants access the Application through one or more Subscribers associated with that Participant within the Application.

(c) ''Subscriber'' means a user associated with a Participant who, when authorized, can access and participate in the Application on behalf of that Participant, consistent with this Rule Series. A user also can access and participate directly in the Application on its own behalf, but in the name of a Participant, subject to a sponsored arrangement with that Participant, and consistent with these Rules.

(d) ''Firm Administrator'' means a Subscriber who, for a particular Participant, is authorized among other things to: (1) Monitor and control access to and participation in the Application by all of that Participant's Subscribers, including establishing Credit Limits for each of the Participant's Subscribers who access and participate in the Application on behalf or in the name of that Participant; and (2) view the status of the Clearing Limits applicable to the Participant overall.

(e) ''Nasdaq Supervisor'' means the Nasdaq staff responsible for establishing and supervising certain operational functions with respect to the operation of the Application.

(f) Credit Limits'' means the dollar amount of aggregated purchases or sales established within the Application by a Participant's Firm Administrator for each of the Participant's Subscribers which, when reached, causes the Application to: (1) Inhibit any future executions or the entry of future interest for that Subscriber; (2) cancel any orders and withdraw any Indications resident within the Application for that Subscriber; and (3) send a notice to that Subscriber, its Firm Administrator, and the Nasdaq Supervisor. Credit Limits may be established, monitored, and modified by the Firm Administrator on a real-time basis directly through the Application.

(g) ''Clearing Limits'' means the dollar amount of aggregated purchases and sales (calculated separately and not netted) of all Subscribers, collectively for a Participant, effected through or in the name of that Participant, that is established within the Application for that Participant, which, when reached, causes the Application to: (1) Inhibit any future executions for all Subscribers associated with that Participant; (2) cancel any orders and withdraw any Indications resident within the Application for all Subscribers associated with that Participant; and (3) send a notice to that Participant's Firm Administrator, the Nasdaq Supervisor, and to the clearing broker for that Participant provided that the clearing broker also is a Participant. If the clearing broker is not a Participant in the Application, then the Nasdaq Supervisor will notify the clearing broker that the Clearing Limits have been reached as soon as practicable. Clearing Limits for a Participant may be monitored on a real-time basis by the Participant's Firm Administrator and can be established, monitored, and modified by the Firm Administrator of the Participant's clearing broker, provided the clearing broker also is a Participant. Clearing Limits also can be established and modified by the Nasdaq Supervisor on behalf of the clearing broker.

(h) ''Crowd,'' ''Primex Crowd'' or ''Crowd Participant'' means Primex Auction System Participants that, when authorized, can access and participate in the Application consistent with this Rule Series by: (1) Submitting orders to be exposed to other Participants; (2)

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

[2] 17 CFR 240.19b–4.

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

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* letter from Peter R. Geraghty, Assistant Vice President and Assistant General Counsel, Nasdaq to John Polise, Assistant Director, Division of Market Regulation, Commission, dated January 16, 2004.

[6] 17 CFR 240.19b–4(f)(6)(iii).

[7] 17 CFR 240.19b–4(f)(6).

viewing orders submitted by other Participants; and (3) submitting Responses and Indications for the purpose of interacting with the orders of other Participants.

(i) ''Watch List'' means the list of Primex Eligible Securities identified by a Crowd Participant for which the Crowd Participant will be notified by Nasdaq electronically when one or more orders in such securities is exposed in an Auction and made available for response by the Crowd.

(j) ''Primex Auction Market Maker'' means a Participant that, when authorized, may participate in the Application: (1) As a Primex Auction Market Maker consistent with Rule 5020 with respect to those Primex Eligible Securities for which the Participant is registered as a Primex Auction Market Maker; and (2) as a Crowd Participant consistent with Rule 5019 with respect to any Primex Eligible Security.

(k) ''Primex Eligible Security'' means any security listed on the Nasdaq Stock Market and any exchange-listed security eligible for participation in the Intermarket Trading System.

(l) Reserved

(m) ''Market Order'' means an order submitted to the Application to purchase or sell a security at the most advantageous price(s) obtainable, without a specified, fixed price.

(n) ''Fixed Price Order'' means an order submitted to the Application to purchase or sell a security at a specified, fixed price or better.

(o) ''Minimum Relative Price Improvement'' means a condition that a Participant may attach to a market order consistent with Rule 5014(a), expressed in terms of the minimum relative price improvement required to execute the order. This condition is expressed in terms relative to the best bid (for orders to sell) or best offer (for orders to buy) displayed in the NBBO at the time the order is eligible to be executed against within the Application. Neither the existence nor amount of any Minimum Relative Price Improvement condition is displayed, exposed or communicated to any Participant when attached to an order.

(p) ''Response'' means an instruction submitted to the Application by a Participant, for the purpose of responding to an order or orders being exposed to the Crowd, consistent with Rule 5018.

(q) ''Predefined Relative Indication'' or ''PRI'' means an instruction that a Participant can submit to the Application for the purpose of responding to an order(s) in an Auction, and which does not contain a specific, fixed price, but is expressed in terms relative to the best bid (for PRIs to buy) or offer (for PRIs to sell) publicly displayed for the security, consistent with Rule 5018. While resident within the Application, PRIs are ranked to respond to incoming orders in relative price/time priority, but are not displayed, exposed or communicated to any other Participant.

(r) ''Go-Along Indication'' means an instruction that a Participant can submit to the Application for the purpose of responding to an order(s) in an Auction, and which does not contain a specific, fixed price, consistent with Rule 5018. A Go-Along Indication will be triggered to respond to an Auction at a price equal to the best bid (for Go-Along Indications to buy) or best offer (for Go-Along Indications to sell) publicly displayed whenever there has been at least one contemporaneous Crowd execution at such bid or offer, provided there are no PRIs or other orders available to execute against the order(s) in the Auction. While resident within the Application, Go-Along Indications are not displayed, exposed or communicated to any other Participant.

(s) ''Auction'' means the automated process through which orders in Primex Eligible Securities are exposed to Crowd Participants. Orders for the same security being exposed simultaneously (*i.e.* those which have overlapping exposure periods) are available on an aggregate basis, in whole or in part, for interaction with other Crowd participants, but only during the period of overlapping exposure. An Auction begins when an order is accepted by the Application and exposed to the Primex Crowd, and ends whenever such order(s) (including any orders that subsequently join the Auction in progress) are completely executed or their exposure ceases.

(t) ''Public Order'' or ''Public Customer Order'' means an order for the account of a customer, and not for the account of a broker-dealer, regardless of whether the customer is that of the Participant entering the order or another firm that has routed the customer order to the Participant.

(u) ''Professional Order'' means an order for the proprietary account of a broker-dealer, regardless of whether the broker-dealer is a market maker or specialist, and regardless of whether it is the Participant's own order or the proprietary order of another broker-dealer routed to the Participant.

(v) ''Market Maker Guarantee'' means the feature within the Application that allows a Participant registered as a Primex Auction Market Maker to provide an automatic execution against public customer orders it submits to the Application for exposure in an Auction where such orders are not otherwise subject to an execution. The Application will automatically execute any unexecuted balance of the order against that Primex Auction Market Maker, after the Auction exposure period for the order has expired, consistent with Rule 5020. The Market Maker Guarantee shall be provided at a price equal to the best publicly quoted offer price (for orders to buy) or best publicly quoted bid price (for orders to sell) existing for the security at the time when such exposure period for the order has expired, for any amount of shares established by the Primex Auction Market Maker for the order.

5012. Access

(a) The Application shall be available on a voluntary basis to any NASD member in good standing that chooses to register as a Participant in the Primex Auction System. Such registration shall be conditioned upon the Participant's initial and continuing compliance with the following requirements:

(1) Execution of the necessary agreements with Nasdaq or its affiliate;

(2) Membership in, or access arrangement with a participant of, a clearing agency registered with the Commission that maintains facilities through which Primex Auction System compared trades may be settled;

(3) Compliance with all applicable rules and operating procedures of Nasdaq (including these rules) and the Commission;

(4) Maintenance of the physical security of the equipment located on the premises of the Participant to prevent the improper use or access to Nasdaq systems, including unauthorized entry of information into the Primex Auction System; and

(5) Acceptance and settlement of each trade that is executed through the facilities of the Primex Auction System, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such execution by the clearing member on the regularly scheduled clearing date.

(b) Non-NASD members may access the Application in the name of a Participant by becoming a sponsored Subscriber of the Participant, provided the Participant and sponsored Subscriber have executed the necessary agreements with Nasdaq or its affiliate, and the NASD member Participant assumes the responsibilities set forth in paragraph (a) of this Rule 5012 with respect to any activity conducted by the sponsored Subscriber.

(c) The Application may be made available:

(1) Through Nasdaq-provided network(s) via Primex Auction System Workstation Service;

(2) Through Nasdaq-provided network(s) via an Application Programming Interface (''API'');

(3) Through Nasdaq-provided network(s) via a FIX protocol interface; or

(4) Over the Internet, using Nasdaq-provided user interface. Certain functionality of the Application may be made available through Nasdaq-provided network(s) via Computer to Computer Interface (CTCI).

(d) (1) If a member fails to maintain a clearing relationship as required under paragraph (a)(2), it shall be removed from the Primex Auction System until such time as a clearing arrangement is reestablished.

(2) A member that is not in compliance with its obligations under paragraph (a)(2) of shall be notified when the Association exercises it authority under paragraph (b)(1).

(3) The authority and procedures contained in paragraph (b) do not otherwise limit the Association's authority, contained in other provisions of the Associations rules, to enforce its rules or impose any fitting sanction.

5013. Order Acceptance and Exposure

(a) Order Types

The Application shall accept the following types of orders in Primex Eligible Securities, subject to any conditions or match parameters attached thereto to the extent permitted by the Application and Rule 5014, and other rules applicable to Participants with respect to the entry of orders. Conditions and match parameters, to the extent attached to an order, are never communicated to any Participant:

(1) Market Orders;

(2) Fixed Price Orders, when the specified price is equal to or between the best bid or offer publicly displayed, or is a buy (sell) order priced higher (lower) than the best offer (bid) publicly displayed. Fixed Price Orders to buy (sell) priced below (above) the best bid (offer) publicly displayed will be rejected.

For example: if the best bid and offer publicly displayed in Nasdaq is $20—$20.10, then the Application will accept orders to buy priced at $20.00 and higher, including orders to buy priced higher than the offer of $20.10 (although no execution can take place outside of the NBBO prevailing at the time of execution). An order submitted to buy at $19.95, however, would not be accepted by the Application in this situation and will be returned to the Participant that entered it.

(b) Order Size

The Application will accept orders that are either round lots, or mixed lots. Odd lot orders will not be accepted.

(c) Exposure Times Available

(1) The Application allows Participants to expose orders to the Primex Crowd. Only the size associated with an order is communicated to the Crowd, and only for the time during which the order is available for execution. Crowd Participants may monitor the availability of orders exposed in an auction through the use of their Watch List.

(2) For each Market Order submitted to the Application, a Participant can specify a maximum exposure time of either 0 (*i.e.*, immediate), 15, or 30 seconds.

(3) Fixed Price Orders that are accepted by the Application can only be exposed for an immediate execution, in whole or in part).

5014. Conditions and Match Parameters

(a) For All Participants

Subject to any other rules applicable to Crowd Participants and Primex Auction Market Makers with respect to the entry of orders, any Participant may enter an order with the following condition attached:

Minimum Relative Price Improvement

Market Orders may be submitted with a condition for Minimum Relative Price Improvement. The Minimum Relative Price Improvement established for an order is the minimum amount of price improvement superior to the best bid or offer publicly displayed (as applicable) that the order must receive before it may be executed against in whole or in part by any interest from the Crowd. This condition must be attached before the order is entered into the Application. Such condition may be expressed only in terms relative to the best bid or offer on the opposite side of the market existing at such time when any Indication, Response, or other order is or becomes available to interact with the order in an Auction, as permitted by the Application and this Rule Series. Neither the existence nor amount of any Minimum Relative Price Improvement condition is displayed, exposed or communicated to any Participant when attached to an order. This condition shall not be available for orders submitted solely for the proprietary account of a Nasdaq market maker or CQS market maker (including Primex Auction Market Makers) and not involving a customer order.

For example: an order to buy 500 shares entered into the Application may contain a condition for Minimum Relative Price Improvement requiring that any Indication or Response (or sell order exposed in an Auction and which is available for a match) provide to that order at least a certain amount (*e.g.*, 3 cents) of price improvement superior to the best offer publicly displayed at such time the Indication, Response or sell order is available to be matched with the order to buy.

(b) For Primex Auction Market Makers Only

A Participant registered as a Primex Auction Market Maker for a particular security is entitled, but not required, to enter customer orders with any of the following match parameters as discussed below. These allow the Primex Auction Market Maker to provide liquidity in addition to that which may be provided by the Crowd. The match parameters contained in this paragraph are only available to Participants who are Primex Auction Market Makers, and only for those securities for which they are so registered. Neither the existence nor type of any match parameter associated with an order is displayed, exposed or communicated to any other Participant:

(1) Two Cent Match

A Participant registered as a Primex Auction Market Maker for a particular security may enter an order with the Two Cent Match parameter.

(A) If there is interest from the Crowd that can satisfy the order, the order entered with the Two Cent Match will be executed against such interest by the Crowd during its exposure, provided that such Crowd interest offers to provide price improvement greater than two cents superior to the best quote publicly displayed in the NBBO at the time such Crowd interest is available.

Note: Because the system will never execute an order at a price outside of the NBBO, any Crowd interest offering an amount of price improvement that would potentially be outside of the NBBO will be executed, if matched with an order, at a price bounded by the NBBO, in effect adjusting the execution price to allow for the maximum amount of price improvement within that NBBO without trading through the NBBO at that time. As a result, it is possible that an order subject to the Two Cent Match parameter may be matched with interest from the Crowd, and not the Primex Auction Market Maker that entered it, notwithstanding the fact that the actual execution price results in price improvement of two cents or less. This can happen, for example, where there is Crowd interest available that is offering three cents of

relative price improvement, but the Application causes the actual execution price to be equal to two cents of price improvement, due to a prevailing NBBO spread of two cents at the time of execution.

(B) If there is interest from the Crowd that can satisfy the order but such Crowd interest would only offer price improvement of two cents or less in relation to the best quote publicly available, then this will immediately cause the Application to execute the entire order against the Primex Auction Market Maker that entered it, and not against such Crowd interest, thereby allowing the execution of that order to be retained by the Primex Auction Market Maker. In this situation, the entire order will be executed with that Primex Auction Market Maker at the best price the Crowd interest would have otherwise provided, regardless of the size associated with such Crowd interest.

(C) Any unexecuted balance of the order remaining at the end of its exposure will be executed against the Primex Auction Market Maker. With respect to Market Orders, this execution price will be at the best quote then publicly displayed. With respect to Fixed Price Orders, the execution price will be the price specified in the Fixed Price Order, unless such price is outside the best quote publicly displayed, in which case the execution price will be at the best quote publicly displayed in the NBBO.

(D) A Primex Auction Market Maker may enter customer orders of any size with the Two Cent Match parameter.

(E) A Primex Auction Market Maker that enters a Market Order with the Two Cent Match parameter may elect immediate (''zero seconds''), 15 or 30 second maximum exposure duration for that order. A Fixed Price Order can be exposed only for an immediate ''zero second'' auction.

(2) 50% Match

A Participant registered as a Primex Auction Market Maker for a particular security may enter an order with a 50% Match parameter.

(A) Orders entered with the 50% Match parameter will be executed against any interest by the Crowd that satisfies the order during its exposure at the price(s) and size of such Crowd interest, for no more than 50% of the order. Any execution with the Crowd will immediately cause the Application to provide the order with an additional execution of like size and price against the Primex Auction Market Maker that entered the order.

(B) Any unexecuted balance of the order remaining at the end of its exposure will be automatically executed against the Primex Auction Market Maker. With respect to Market Orders, this execution price will be at the best quote then publicly displayed. With respect to Fixed Price Orders, the execution price will be at the price specified in the Fixed Price Order, unless such price is outside the best quote publicly displayed, in which case the execution price will be at the best quote publicly displayed.

(C) A Primex Auction Market Maker may enter customer orders of any size with the 50% Match parameter.

(D) A Primex Auction Market Maker that enters a Market Order with the 50% Match parameter may elect immediate (''zero seconds''), 15 or 30 second maximum exposure duration for that order. A Fixed Price Order can be exposed only for an immediate ''zero second'' auction. For example: The best bid and offer publicly displayed for a security is $20—20.10. A Primex Auction Market Maker for that security enters into the Application a Market Order to buy 2,000 shares for a customer and selects the 50% Match Parameter. The Participant selects an exposure time of 30 seconds. During its exposure, the order elicits the following executions by other Crowd Participants (which could be in the form of Indications, Responses, or contra-side orders to sell): 500 at $20.04, and 200 at $20.05. The Application will execute these transactions, and immediately match each one as they occur by executing an additional 500 and 200 shares, at $20.04 and $20.05, respectively, against the Primex Auction Market Maker entering the order. If there is no other interest from the Crowd at the end of the 30 second exposure period, the Application will cause the remaining balance of 600 shares to be automatically executed against the Primex Auction Market Maker entering the order at the best offer publicly displayed at that time. Assuming the best offer publicly displayed is still $20.10 at this time, this would result in the Primex Auction Market Maker selling the balance of 600 shares to the customer at $20.10.

(3) Block Facilitation Match

A Participant registered as a Primex Auction Market Maker for a particular security may enter an order with a Block Facilitation match parameter, provided the order is for at least 10,000 shares. The Primex Auction Market Maker may elect to expose the order in an Auction for a maximum of 0, 15, or 30 seconds. Any Crowd interest that executes against the order during the selected exposure period, up to a maximum of 50% of the order size, will be immediately matched with an execution of like size and price against the entering Participant until the order is fully executed. If any unexecuted portion remains at the end of the exposure period, it will be automatically executed against the entering Participant. With respect to Market Orders, the execution price will be the then existing best offer (for orders to buy) or best bid (for orders to sell) publicly displayed. With respect to a Fixed Price Order, the execution price will be the price specified in the Fixed Price Order, unless such price is outside of the best quote publicly displayed, in which case the execution price will be at the best quote publicly displayed.

For example: The best bid and offer publicly displayed is $20—20.10. A Participant enters into the Application an order to buy a block of 10,000 shares for a customer and selects the Block Facilitation Match Parameter. The Participant selects an exposure time of 15 seconds. During its exposure, the order elicits the following executions by other Crowd Participants (in the form of Indications, Responses, or contra-side orders to sell): 1000 at $20.05, and 2000 at $20.07. The Application will execute these transactions, and immediately match each one as they occur by executing an additional 1000 and 2000 shares, at $20.05 and $20.07, respectively, against the Participant entering the block order. If there is no other interest from the Crowd at the end of the 15 second exposure period, the Application will cause the remaining balance of 4000 shares to be automatically executed against the Participant entering the block order at the best offer publicly displayed at that time. Assuming the best offer publicly displayed is still $20.10 at this time, this would result in the Participant selling the balance of 4000 shares to the customer at $20.10.

(4) Clean Cross

A Participant registered as a Primex Auction Market Maker for a particular security may enter a Clean Cross order for the accounts of two separate customers where the order represents both sides of a cross for at least 10,000 shares to be exposed to the Crowd in an immediate, zero second Auction. The two sides will be executed against each other at the midpoint of the best bid and offer publicly displayed unless superior-priced interest within the Application breaks up one or both sides of the cross. In order to break up a side of the cross, there must be Crowd contra-side interest resident within the Application (*e.g.*, resident PRIs) that totals at least 10,000

shares in the aggregate at a price or prices that are all superior to the bid-ask midpoint by at least the nearest whole cent. Any portion of a side that is not executed against either the opposite side of the Clean Cross order or contra-side interest resident within the Application will be returned unexecuted.

5015. Public and Professional Orders

All orders submitted to the Application shall be identified as either a Public Order or a Professional Order, as those terms are defined in Rule 5011. This Public or Professional status is not displayed, exposed or communicated to any other Participant in the Application, but is used to determine whether an order is available to interact with the Response or Indication of a Crowd Participant. As indicated in Rule 5018(e), a Participant that responds to orders in an Auction can choose whether its Responses and Indications interact with all orders (both Public and Professional Orders) or just Public Orders. When entering an order, however, a Participant entering an order does not have the ability to select or control whether Public or Professional interest may interact with the order.

5016. Option to Route Orders Outside of the System After Exposure in the Application

(a)(1) All Market Orders submitted to the Application shall include an identifier as to whether any unexecuted balance, after the order is exposed to the Crowd, should be forwarded to the SuperSoes℠ version of the Nasdaq National Market Execution System, in the case of a Nasdaq security, or to ITS/CAES, in the case of an exchange-listed security, or whether the order should be returned to the entering Participant. This option to route orders outside of the Application to SuperSoes or ITS/CAES is available for Market Orders only. Orders submitted to the Application with a specified, fixed price cannot be automatically forwarded to SuperSoes or ITS/CAES. Routing identifiers are not displayed, exposed or communicated to any other Participant in the Application.

(2) For securities eligible for the SuperMontage version of the Nasdaq National Market Executions System, all orders submitted to the Application shall include an identifier as to whether any unexecuted balance, after the order is exposed to the Crowd, should be forwarded to SuperMontage, or whether the order should be returned to the entering Participant. Orders forwarded to SuperMontage will be treated as immediate or cancel orders. Routing identifiers are not displayed, exposed or communicated to any other Participant in the Application.

(b) With respect to exchange-listed securities, only Primex Auction Market Makers (which also must be ITS/CAES market makers with respect to these securities, as required by these rules) may elect to have Market Orders in exchange-listed securities routed out to ITS when there is a balance remaining following exposure in the System, provided, however, that customer orders so routed must first be exposed in the Application for at least 15 seconds. In addition, to the extent the best price publicly quoted at that time is available within Nasdaq's CAES system, regardless of whether the same price also is being publicly quoted by another ITS market center, such orders designated for routing to ITS/CAES will be delivered to CAES for execution up to the size publicly quoted by CAES participants and will not be routed out to another market center through ITS.

5017. Short Sales

(a) Participants must properly identify trading interest as a long sale, short sale, or short sale exempt.

(b) The Application will not process trading interest to sell short a Nasdaq-listed security if the execution of such trading interest will violate Rule 3350.

(c) The Application will reject trading interest identified as a short sale or short sale exempt in any exchange-listed security eligible for participation in the InterMarket Trading System.

5018. Responses and Indications

(a) General—Participants may submit Responses and Indications to the Application, consistent with this Rule Series, for the purpose of interacting with orders in an Auction, as described herein. Responses and Indications are not displayed, exposed or communicated to any Participant, except to the extent they result in an execution with an order. Responses and Indications cannot execute against other Responses or Indications.

(b) Responses—Responses are instructions submitted to the Application by Participants to interact with available orders exposed in an Auction. Responses may be either a Fixed Price Response (*e.g.* buy 1000 at $20) or a Relative Priced Response (*e.g.*, buy 1000 at the bid plus 3 cents). All Responses must be entered in an amount of at least one round lot, but also may be for a mixed lot.

(c) Indications—Indications are instructions, with the characteristics set forth below, submitted to the Application by Participants to interact with orders exposed in an Auction. An Indication may be a Predefined Relative Indication (''PRI'') or a Go-Along Indication.

(1) Predefined Relative Indications

(A) PRIs can be submitted to the Application for the purpose of automatically responding to an Auction at a point in time when one or more orders becomes available. PRIs have no specific, fixed price, but are expressed at time of entry in terms relative to the best bid or offer publicly displayed at such time when the Application activates the PRI against orders in an Auction. While resident within the Application, PRIs are ranked in relative price/time priority among all other PRIs resident within the Application and any same-side orders currently being exposed in an Auction, as indicated in paragraph (e) of this Rule. Neither the existence nor terms of a PRI are displayed, exposed or communicated to any other Participant while resident in the Application. When activated by the Application, a PRI will match against orders in an Auction at a price equal to the best bid (for PRIs to buy) or offer (for PRIs to sell) publicly displayed at that time in the NBBO, plus or minus (respectively) the relative price term associated with that PRI; provided that such price also satisfies any applicable condition associated with the order(s) in the Auction to which it is responding.

(B) At the time of its original entry, each PRI submitted to the Application must be for at least 100 shares.

(C) The Application will accept a PRI with the following amounts of relative price improvement:

(i) if the NBBO, at the time the PRI is submitted, has a spread equal to three cents or more, the PRI will be accepted if it offers any amount of price improvement between zero and the actual NBBO spread prevailing at that time;

(ii) if the NBBO, at the time the PRI is submitted, has a spread that is less than three cents, the PRI may offer any amount of price improvement between zero and three cents.

(D) Participants may elect to limit their exposure when using PRIs by entering a Per Auction Maximum size for each PRI submitted. The Per Auction Maximum represents the maximum share amount of a PRI available for a single Auction. It cannot be greater than the size of the PRI, but is subject to the same minimum values applicable to the original entry of a PRI with that relative price term. Once the Per Auction Maximum, if any, for a PRI is exhausted, the Participant will have 15 seconds to withdraw the PRI, during which time no further executions against that PRI will

occur. In the absence of a withdrawal during this period, the Application will restore the PRI up to the Per Auction Maximum and the PRI will become available again for any subsequent Auctions to the extent there is an eligible balance remaining for that PRI. For purposes of relative price/time priority, the restored PRI will receive a new timestamp within the Application.

(E) Participants may select a maximum residency period of one (1) or five (5) days, during which time the PRI remains resident within the Application unless fully executed or withdrawn. The Application will automatically withdraw any PRIs that remain at the end of the applicable residency period.

(2) Go-Along Indications

(A) A Go-Along Indication can be submitted to the Application for the purpose of automatically responding in an Auction at a point in time when one or more orders becomes available in an Auction and there has been at least one other contemporaneous Crowd execution within the Application at the NBBO; provided there are no PRIs available or orders being exposed in an Auction (executions resulting from a Primex Auction Market Maker Guarantee do not trigger Go-Along Indications). Go-Along Indications have no specific, fixed price when entered, but will match against orders at a price equal to the best bid (for Go-Along Indications to buy) or best offer (for Go-Along Indications to sell) that exists at such time the Go-Along Indication is activated. While resident within the Application, Go-Along Indications are not displayed, exposed or communicated to any other Participant.

(B) At the time of its original entry, each Go-Along Indication submitted to the Application must be for at least 10,000 shares.

(C) Participants may select a maximum residency period of one (1) or five (5) days, during which time the Go-Along Indication remains resident within the Application unless fully executed or withdrawn. The Application will automatically withdraw any Go-Along Indications that remain at the end of the applicable residency period.

(d) Executions Bounded by the NBBO—The Application will never execute an order outside of the NBBO prevailing at the time of execution. Indications such as PRIs that potentially would offer an amount of price improvement that could result in an execution outside of the NBBO will be priced at the NBBO if matched with an order, in effect providing the maximum amount of price improvement permissible within the NBBO at that time.

(e) Relative Priority Of Predefined Relative Indications and Orders—(1) While resident within the Application, Predefined Relative Indications are ranked in relative price/time priority while they await activation against incoming orders notwithstanding that PRIs have no specified, fixed price associated with them. For example, among resident PRIs for the same security on the same side of the market, PRIs offering greater relative price improvement are ranked ahead of PRIs offering less relative price improvement. PRIs offering the same relative amount of price improvement are ranked by time of entry (or the time the Indication was restored after exhausting its Per Auction Maximum).

(2) Market Orders being exposed within the Application also are ranked in relative price/time priority during the life of their exposure, notwithstanding that Market Orders have no specified, fixed price associated with them. For example, among Market Orders in the same security being exposed on the same side of the market, those orders not seeking any relative price improvement are ranked ahead of orders seeking some relative amount of Minimum Relative Price Improvement. Orders seeking a greater relative amount of Minimum Relative Price Improvement are ranked behind orders seeking a lesser relative amount of Minimum Relative Price Improvement. Orders seeking the same relative amount of price improvement are ranked by time of entry.

(3) Among and between Indications and orders on the same side of the market, the relative price/time priorities for each are integrated, based on their respective ranking relative to the best bid and offer publicly displayed. The Application recalculates and maintains these relative priorities whenever there is a change in the best bid or offer prices publicly displayed in the NBBO. Market Orders that are matched with other Market Orders being auctioned are executed at the midpoint of the best bid and offer publicly displayed, provided that such price satisfies any condition for Minimum Relative Price Improvement associated with each order.

(f) Responding to All Orders or Public Orders Only—All Responses and Indications shall include an identifier as to whether it may interact with either: (1) all available orders (both Public Orders and Professional Orders); or (2) Public Orders only. Such identifier is not displayed, exposed or communicated to any Participant at any time, but is used by the Application for determining the universe of orders with which the Response or Indication may interact.

5019. Crowd Participation

(a) There are two levels of participation in the Application: Crowd Participant and Primex Auction Market Maker. Becoming a Participant in the Application automatically entitles the Participant to be a Crowd Participant for any security, allowing participation consistent with this Rule 5019. A Crowd Participant may also choose to register as a Primex Auction Market Maker, but only on a security-by-security basis, as set forth in Rule 5020, and only consistent with the requirements for participation under that Rule.

(b) Unless otherwise specified, a Crowd Participant may enter orders, Indications, and Responses in any Primex Eligible Security at any time, for its own account or for the account of a customer. Crowd Participants have no mandatory obligation to submit to the Application any order at any time.

5020. Market Maker Participation

(a) A Participant may register as a Primex Auction Market Maker in one or more Primex Eligible Securities, and may maintain such registration while in compliance with the requirements of this Rule. Unless otherwise specified, a Primex Auction Market Maker is automatically subject to the same rights and obligations of Crowd Participants pursuant to Rule 5019 with respect to customer orders in any and all Primex Eligible Securities. In addition, a Primex Auction Market Maker is entitled, but not obligated, to use either of the following features of the Application when submitting customer orders, but only with respect to those securities in which it is currently registered as a Primex Auction Market Maker:

(1) A Primex Auction Market Maker, for securities in which it is registered as such, may submit customer orders to the Application with any of the available match parameters that enable the Primex Auction Market Maker to exercise certain matching rights facilitated by the Application, as set forth in Rule 5014(b). When associated with an order, these match parameters are not displayed, exposed or communicated to any other Participant; or

(2) A Primex Auction Market Maker, for securities in which it is registered as such, may submit customer orders to the Application with a Market Maker Guarantee enabling the Primex Auction Market Maker to guarantee an execution within the Application where such

orders are not otherwise subject to an execution as a result of either satisfactory Crowd interest or matching rights processing elected by the Primex Auction Market Maker pursuant to Rule 5014(b) for the order.

(i) Public customer orders of any size are eligible for the Market Maker Guarantee. The Application will facilitate the Market Maker Guarantee by automatically executing any unexecuted balance of the order against the Primex Auction Market Maker that submits the order, after the Auction exposure period for the order has expired.

(ii) The Market Maker Guarantee is automatically provided at a price equal to the best publicly quoted offer price (for orders to buy) or best publicly quoted bid price (for orders to sell) existing for the security at the time when such exposure period for the order has expired (including ''zero second'' auctions), for any amount of shares established by the Primex Auction Market Maker for the order.

(b) With respect to each security in which a Participant is registered as a Primex Auction Market Maker, the Participant shall:

(1) If the security is a Nasdaq-listed security, be registered as a Nasdaq market maker in such security (or become so registered), and at all times comply with all applicable NASD rules and interpretations relating to Nasdaq market makers, including the requirement to enter and maintain two-sided quotations in Nasdaq for such security, subject to the excused withdrawal procedures set forth in Rule 4619;

(2) if the security is an ITS/CAES eligible security, be registered as an ITS/CAES Market Maker (or become so registered) in such security, and at all times comply with all applicable NASD rules and interpretations relating to ITS/CAES Market Makers, including the requirement to enter and maintain two-sided quotations in CQS for such security, subject to the excused withdrawal procedures set forth in Rule 6350;

(3) not attach a condition for Minimum Relative Price Improvement to any order submitted to the Application solely for its own principal account and not involving a customer order.

5021. Reporting and Clearing

(a) After facilitating an execution, the Application will send an execution report to all Participants involved as soon as practicable. The execution report will indicate the details of the transaction, and contain the identity of the contra-party.

(b) Matches within the Application are executed and reported through Nasdaq systems for public tape reporting and forwarding to NSCC for clearing, where necessary. Participants (or their clearing brokers) are the parties responsible for the clearance and settlement of all trades executed through the Application. Once a transaction is executed, Participants do not have the ability within the Application to modify or reallocate any portion of the execution to a clearing broker other than the clearing broker that the Application associates with the transaction at the time of execution. Neither the NASD (and its affiliates) nor any operator or administrator of the Primex Auction System shall be directly or indirectly a party to any transaction entered into, matched, or otherwise effected through the Application.

5022. Credit Limits and Clearing Limits

(a) Credit Limits—The Application shall allow a Participant's Firm Administrator to establish Credit Limits for each of its associated Subscribers, including sponsored Subscribers, on an individual Subscriber basis. The limits are established as a dollar amount of aggregated purchases or sales which, when reached, causes the Application to: (1) Inhibit any future executions or the entry of future interest for that Subscriber; (2) cancel any orders and withdraw any Indications resident within the Application for that Subscriber; and (3) send a notice to that Subscriber, its Firm Administrator, and the Nasdaq Supervisor. Credit Limits may be monitored and modified by the Firm Administrator on a real-time basis directly through the Application.

(b) Clearing Limits—The Application shall allow a Participant's clearing broker to establish Clearing Limits within the Application for the Participant on a firm-wide basis. The limits are established as a dollar amount of both purchases and sales (calculated separately, and not netted) of all Subscribers, collectively for a Participant, effected within the Application through or in the name of that Participant. When the Clearing Limits for a Participant are reached, the Application will: (1) Inhibit any future executions for all Subscribers associated with that Participant; (2) cancel any orders and withdraw any Indications resident within the Application for all Subscribers associated with that Participant; and (3) send a notice to that Participant's Firm Administrator, the Nasdaq Supervisor, and to the clearing broker for that Participant provided that the clearing broker also is a Participant. Clearing Limits for a Participant may be monitored on a real-time basis by the Participant's Firm Administrator and can be established, monitored, and modified by the Firm Administrator of the Participant's clearing broker, provided the clearing broker also is a Participant. If the clearing broker is not a Participant in the Application, then the Nasdaq Supervisor will notify the clearing broker that the Clearing Limits have been reached as soon as practicable. Clearing Limits also can be established and modified by the Nasdaq Supervisor on behalf of the clearing broker.

5023. Hours of Operation

(a) The Application is available for executing securities transactions during regular Nasdaq trading hours whenever there is a free and open quote (*i.e.*, not locked or crossed), subject to the general authority and regulatory responsibilities of Nasdaq or its affiliates in operating the Application as a facility of Nasdaq or its affiliate (including but not limited to its authority to implement trading halts in one or more securities due to regulatory reasons, market-wide emergencies, and system malfunctions).

(b) Nasdaq may permit certain functionality of the Application to be available outside of the time period during which securities transactions may be effected through the Application, including but not limited to, the monitoring, entering, canceling, withdrawing, or modifying resident Indications, Credit Limits, or Clearing Limits.

5024. Limitation of Liability

(a) Neither Nasdaq, the NASD (including their affiliates), Primex Trading N.A., L.L.C. (including its affiliates) nor any other operator, licensor, or administrator (including their affiliates) of the Nasdaq Application of the Primex Auction System shall have any liability for any loss, damages, claim or expense arising from or occasioned by any inaccuracy, error or delay in, or omission of or from: (1) the Nasdaq Application; or (2) the collection, processing, reporting or dissemination of any information derived from the Nasdaq Application, resulting either from any act or omission by Nasdaq or any affiliate, or any operator, licensor, or administrator of the Nasdaq Application or from any act, condition or cause beyond the reasonable control of Nasdaq or any affiliate, operator, licensor or administrator of the Nasdaq Application, including, but not limited to, flood, extraordinary weather

conditions, earthquake or other act of nature, fire, war, insurrection, riot, labor dispute, accident, action of government, communications or power failure, or equipment or software malfunction. If a Participant that enters, authorizes its Subscribers (including sponsored Subscribers) to enter, or is authorized by other Participants to enter orders, Responses, or Indications that result in a transaction through the Application fails to perform its settlement or other obligations under the terms of such transaction, the NASD (and its affiliates) and Primex Trading N.A., L.L.C. (and its affiliates) shall have no liability for such failure to settle.

(b) Neither Nasdaq, the NASD (including their affiliates), Primex Trading N.A., L.L.C. (including its affiliates) nor any other operator, licensor, or administrator (including their affiliates) of the Nasdaq Application of the Primex Auction System makes any express or implied warranties or conditions to Participants or their associated Subscribers (including sponsored Subscribers) as to results that any person or party may obtain from the Nasdaq Application for trading or for any other purpose, and all warranties of merchantability or fitness for a particular purpose or use, title, and non-infringement with respect to the Nasdaq Application are hereby disclaimed.]

5400. NASDAQ STOCK MARKET AND ALTERNATIVE DISPLAY FACILITY TRADE REPORTING

* * * * *

5430. Transaction Reporting

(a) (No change).

(b) Which Party Reports Transactions and to Which Facility

(1)–(7) (No change).

(8) If a member simultaneously is a Registered Reporting Nasdaq Market Maker and a Registered Reporting ADF Market Maker, and has the trade reporting obligation pursuant to paragraphs (1), (2), (4), (5), (6), or (7), the member can report the trade using either ACT or TRACS, unless the trade is executed using ACES[;] *or* the Nasdaq National Market Execution System (''NNMS'')[; or the Primex Auction System (''Primex'')]. A trade executed using ACES must be reported using ACT, and trades executed using NNMS[, or Primex] will be reported to ACT automatically.

* * * * *

7000. CHARGES FOR SERVICES AND EQUIPMENTS

* * * * *

7010. System Services

* * * * *

(a)–(q) (No change).

(r) *Reserved* [Nasdaq Application of the Primex Auction System™

The following charges shall apply to the use of the Nasdaq Application of the Primex Auction System:

(1) Transaction Charges:

Execution Services—for all participants:
Order entry: No fee.
Auction Response (per share, per execution).* $.003.
Matching Rights—Primex Auction Market Makers (PAMMs) only:
50 Percent Match: No fee.
Two-Cent Match (per share, per retained order—$2.50 Maximum). ** $.0025
Revenue Sharing—PAMMs only:
Each order executed: *** 1/3 of transaction fee.

(2) Monthly Access fees

Software

Workstation license or unique logon:	Per workstation logon:
Stations/logons 1	No charge if firm uses a dedicated circuit
Stations/logons 2–11	$100
Stations/logons 11 and above.	$50
Proprietary interface license.	Per license:
API specification	$500
FIX (customized protocol).	$500
Network:	
Dedicated line	Per line:
256K	$1,781
64K with non-guaranteed 256K burst capacity.	$1,564
56K	$712
Installation/Uninstall	$1,000 per Nasdaq Staff site visit
Internet Access:	
Logons 1–10 (per firm).	$50
Logons 11 and up (per firm).	$25

(3) Waiver of Logon Fees

All monthly logon fees for the period of August 2002 through November 2002 are waived for those Primex Auction System participants that, in connection with their participation in the Primex Auction System during such period, were customers of the Brass Service Bureau and Order Management System.]

[*This fee applies to both Indications and ''real-time'' Responses. When two orders match directly, a fee is charged to the party that entered the second order.

**This fee is charged in the event a PAMM attaches its matching right to an order, and the crowd offers two cents or less price improvement to that order.

***Paid to a PAMM when it enters an order that interacts with crowd interest in the system. Revenue sharing applies only to orders in those securities in which the firm is registered as a PAMM. The revenue sharing amounts will be paid on a monthly basis.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

To streamline the number of systems it offers for trading Nasdaq and listed securities, Nasdaq is terminating its offering of the Primex trading system as of the close of business on January 16, 2004. Beginning on January 19, 2004, members will no longer be able to use the System. Nasdaq disseminated a notice of this decision on December 31, 2003.[8]

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,[9] in general, and with Section 15A(b)(6) of the Act,[10] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. A notice of the decision to terminate the System was disseminated on December 31, 2003.[11] In addition, Primex is a voluntary system and the

[8] Nasdaq issued a press release and a Head Trader Alert (Head Trader Alert 2003–179). The press release is available on *www.Nasdaqnews.com* and the Head Trader Alert is available on *www.Nasdaqtrader.com*

[9] 15 U.S.C. 78*o*–3.

[10] 15 U.S.C. 78*o*–3(6).

[11] *See supra* note 8.

proposal does not affect SuperMontage or ITS/CAES, Nasdaq's other trading systems.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, will result in any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has been filed by the NASD as ''non-controversial'' pursuant to Section 19(b)(3)(A) of the Act [12] and subparagraph (f)(6) of Rule 19b–4 thereunder.[13] Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for thirty days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4 thereunder.[15]

The Commission hereby waives the thirty-day operative waiting period. The Commission believes that the waiver would permit Nasdaq to terminate the System promptly, and would not significantly affect the protection of investors because a notice of the termination was issued on December 31, 2003.[16] In addition, the Commission believes that the proposal will not affect Nasdaq's other trading systems, SuperMontage and the InterMarket Trading System/Computer Assisted Execution System. The proposed rule change, as amended, became operative at the close of business on January 16, 2004, pursuant to SEC Rule 19b–4(f)(6).[17]

At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NASD–2004–07. The file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–NASD–2004–07 and should be submitted by February 17, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–1661 Filed 1–26–04; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4.

[16] *See supra* note 8.

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR.200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49106; File No. SR–NASD–2004–06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Related to the Entry of Locking or Crossing Bids or Offers by ECNs Participating in Nasdaq's SuperMontage System

January 20, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 13, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to allow Electronic Communications Networks (''ECNs'') voluntarily participating in the Nasdaq National Market Execution System (''NNMS'' or ''SuperMontage'') to post locking or crossing bids, or locking or crossing offers, in other display venues for Nasdaq securities operated by self-regulatory organizations (''SROs''). Nasdaq will implement the proposed rule change immediately.

Below is the text of the proposed rule change. Proposed new language is *italicized.*

* * * * *

4623. Alternative Trading Systems

(a) The Association may provide a means to permit alternative trading systems (''ATSs''), as such term is defined in Regulation ATS, and electronic communications networks (''ECNs''), as such term is defined in SEC Rule 11Ac1–1(a)(8),

(1) to comply with SEC Rule 301(b)(3);

(2) to comply with the terms of the ECN display alternative provided for in SEC Rule 11Ac1–1(c)(5)(ii)(A) and (B) (''ECN display alternatives''); or

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

[2] 17 CFR 240.19b–4.

(3) to provide orders to Nasdaq voluntarily.

In providing any such means, the Association shall establish a mechanism that permits the ATS or ECN to display the best prices and sizes of orders entered into the ATS or ECN by Nasdaq market makers (and other subscribers of the ATS or ECN, if the ECN or ATS so chooses or is required by SEC Rule 301(b)(3) to display a subscriber's order in Nasdaq), and allows any NASD member the electronic ability to effect a transaction with such priced orders that is equivalent to the ability to effect a transaction with a Nasdaq market maker quotation in Nasdaq operated systems.

(b) An ATS or ECN that seeks to utilize the Nasdaq-provided means to comply with SEC Rule 301(b)(3), the ECN display alternatives, or to provide orders to Nasdaq voluntarily shall:

(1) demonstrate to the Association that that it is in compliance with Regulation ATS or it qualifies as an ECN meeting the definition in the SEC Rule;

(2) be registered as a NASD member;

(3) enter into and comply with the terms of a Nasdaq Workstation Subscriber Agreement, as amended for ATSs and ECNs;

(4) agree to provide for Nasdaq's dissemination in the quotation data made available to quotation vendors the prices and sizes of Nasdaq market maker orders (and orders from other subscribers of the ATS or ECN, if the ATS or ECN so chooses or is required by SEC Rule 301(b)(3) to display a subscriber's order in Nasdaq), at the highest buy price and the lowest sell price for each Nasdaq security entered in and widely disseminated by the ATS or ECN, and prior to entering such prices and sizes, register with Nasdaq Market Operations as an ATS or ECN;

(5) provide an automated execution or, if the price is no longer available, an automated rejection of any order routed to the ATS or ECN through the Nasdaq-provided display alternative.

(6) not charge to broker-dealers that access the ATS or ECN through Nasdaq any fee that is inconsistent with the requirements of SEC Rule 301(b)(4).

(c) When a NASD member attempts to electronically access through a Nasdaq-provided system an ATS or ECN-displayed order by sending an order that is larger than the ATS's or ECN's Nasdaq-displayed size and the ATS or ECN is displaying the order in Nasdaq on a reserved size basis, the NASD member that operates the ATS or ECN shall execute such Nasdaq-delivered order:

(1) up to the size of the Nasdaq-delivered order, if the ATS or ECN order (including the reserved size and displayed portions) is the same size or larger than the Nasdaq-delivered order; or

(2) up to the size of the ATS or ECN order (including the reserved size and displayed portions), if the Nasdaq-delivered order is the same size or larger than the ATS or ECN order (including the reserved size and displayed portions).

No ATS or ECN operating in Nasdaq pursuant to this rule is permitted to provide a reserved-size function unless the size of the order displayed in Nasdaq is 100 shares or greater. For purposes of this rule, the term ''reserved size'' shall mean that a customer entering an order into an ATS or ECN has authorized the ATS or ECN to display publicly part of the full size of the customer's order with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part as the displayed part is executed.

Nothing in this Rule shall require the provision to Nasdaq of a locking or crossing bid or offer, if such locking or crossing bid or offer is instead provided to another display alternative operated by a national securities exchange or national securities association.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Rule 4623 requires ECNs quoting a security in Nasdaq to provide to Nasdaq their best-priced buy and sell prices in that security for dissemination to data vendors. This obligation creates issues for ECNs when those best prices would lock or cross either the inside bid or inside offer then being displayed in Nasdaq. In that situation, an ECN's re-entry of the locking or crossing quote/order subjects it to special SuperMontage processing that makes the ECN's quote/order eligible for automatic execution to ensure that a locked or crossed market in the Nasdaq system does not occur. Such processing contrasts with NNMS' normal method of interacting with ECNs in which Nasdaq delivers orders to the ECN for execution. The change in order processing to automatic execution from order delivery also impacts access fee and rebate arrangements between the submitting ECN and its subscribers as well as complicating the ECN's ability to avoid dual liability for executions simultaneously taking place in Nasdaq and the ECN's internal systems.

The above combination of the Nasdaq best-price rule requirement and the NNMS system's locked and crossed processing provides a disincentive to non-NNMS ECNs or ATSs to participate in the system and unduly restricts the ability of participating ECNs to manage their most aggressively priced subscriber orders. In response, Nasdaq is proposing a modification to its best-price rule requirement to provide ECNs with a limited exception that gives ECNs the option of posting locking or crossing trading interest (individual bids or offers) in other display trading venues operated by either a national securities association or a national securities exchange.[3] This modification will provide ECNs greater flexibility and choice in managing subscriber orders and enhance the voluntary nature of the SuperMontage system, while ensuring that the system continues to operate without locked or crossed markets. In addition, this limited exception to the best price requirement is consistent with other SuperMontage participants' ability to place locking or crossing quotes/orders in other display venues and Nasdaq's planned approach to linkage agreements with other markets that trade Nasdaq securities. As such, the proposal will increase competition among association and exchange quote display venues. Finally, Nasdaq notes that the requirement to display any locking or crossing bid or offer in a display venue for Nasdaq securities operated by an association or exchange will ensure that such bids or offers continue to be widely disseminated to data vendors.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[4] in

[3] Nasdaq will continue to require the submission of best-priced bids and offers that do not lock or cross the Nasdaq inside. It will be the obligation of an ECN electing to post a locking or crossing bid or offer in another venue to ensure that its activities are consistent with its obligations to display orders under Regulation ATS, SEC Rule 11Ac1–1, and any SEC no-action letter the ECN operates under.

[4] 15 U.S.C. 78o–3.

general and with section 15A(b)(6) of the Act,[5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has been filed by Nasdaq as a ''non-controversial'' rule change pursuant to section 19(b)(3)(A) of the Act[6] and subparagraph (f)(6) of Rule 19b–4 thereunder.[7] Consequently, because the foregoing rule change: (a) Does not significantly affect the protection of investors or the public interest; (b) does not impose any significant burden on competition; and (c) does not become operative for thirty days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4 thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)[8] normally does not become operative prior to thirty days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),[9] the Commission may designate a shorter operative date if such action is consistent with the protection of investors and the public interest. In addition, Rule 19b-4(f)(6)(iii) requires Nasdaq to provide the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Nasdaq seeks to have the proposed rule change become immediately operative and to waive the pre-filing notice requirement.

The Commission, consistent with the protection of investors and the public interest, has determined to waive the 30 day operative date.[10] As the entry of quotes that lock or cross another market already takes place in several venues that trade Nasdaq securities, the proposal does not significantly affect current levels of investor protection or harm the public interest. The proposal may also increase competition among market centers by allowing ECNs to choose among competing venues, including Nasdaq, to display bids or offers. The Commission also waives the requirement that Nasdaq provide the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change.

At any time within 60 days of the filing of a rule change the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NASD–04–006. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Nasdaq. All submissions should refer to file number SR–NASD–2004–06 and should be submitted by February 17, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–1663 Filed 1–26–04; 8:45 am]

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[5] 15 U.S.C. 78o–3(b)(6).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6).

[10] For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49109; File No. SR–NASD–2003–23]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change To Clarify the Applicability of the Nasdaq Corporate Governance Requirements During the Listing Review Process

January 21, 2004.

On February 26, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission''), 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 clarify the applicability of its corporate governance requirements during the listing review process. On October 10, 2003, NASD, through Nasdaq, submitted Amendment No. 1 to the proposed rule change.[3]

The proposed rule change, as amended, was published for comment in the **Federal Register** on October 23, 2003.[4] The Commission received no comments on the proposal.

The proposed rule change would amend NASD Rule 4810, concerning procedures for review of Nasdaq listing

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary M. Dunbar, Vice President and Deputy General Counsel, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated October 9, 2003. Amendment No. 1 replaced the original filing in its entirety.

[4] *See* Securities Exchange Act Release No. 48646 (October 16, 2003), 68 FR 60747.

determinations, to explicitly state that the Listing Hearing and Review Council (''Listing Council'') or the NASD Board, as part of its respective review, may consider, among other things, any action by an issuer during the review process that would have constituted a violation of Nasdaq's corporate governance requirements had the issuer's securities been listed on Nasdaq at the time.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD[5] and, in particular, the requirements of 15A(b)(6) of the Act[6] and the rules and regulations thereunder because it clarifies procedures for review of listing determinations. The proposed rule change is designed to place an issuer more clearly on notice that any action on its part during the review process that would constitute a violation of Nasdaq's corporate governance requirements, had the issuer's securities been listed on Nasdaq at the time, may be considered by the Listing Council or NASD Board as part of its respective review.

It is therefore ordered, pursuant to section 19(b)(2) of the Act[7], that the proposed rule change (File No. SR–NASD–2003–23) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–1665 Filed 1–26–04; 8:45 am]

BILLING CODE 8010–01–P

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78*o*–3(b)(6). Section 15A(b)(6) requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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.

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49110; File No. SR–NASD–2003–184]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Require Members To Review and Update Executive Representative Contact Information on a Quarterly Basis

January 21, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 8, 2003, the National Association of Securities Dealers, Inc. (''NASD''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to require members to review and, if necessary, update their executive representative (''Representative'') contact information on a quarterly basis. The text of the proposed rule change is below. Proposed new language is in italics.[3]

1000. MEMBERSHIP, REGISTRATION AND QUALIFICATION REQUIREMENTS

* * * * *

1150. Executive Representative

Each member must review and, if necessary, update its executive representative designation and contact information as required by Article IV, Section 3 of the NASD By-Laws within 17 business days after the end of each calendar quarter.

* * * * *

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

[2] 17 CFR 240.19b–4.

[3] The Commission notes that NASD filed the proposed rule change with a typographical error in the proposed rule text. In this instance, because the error was technical in nature, the Commission did not require NASD to file an amendment to the proposed rule change. In the future, the Commission expects that NASD will carefully review proposed rule changes before filing them with the Commission to ensure their accuracy.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Article IV, section 3 of the NASD By-Laws, members must appoint and certify to NASD one Representative to represent, vote, and act for the member in all affairs of NASD. The Representative must be a member of senior management and a registered principal of the member. In addition, the Representative is required to maintain an Internet electronic e-mail account for communication with NASD and must update firm contact information.

Given the important role of the Representative in representing, voting, and acting for the member, NASD believes that members should review and update the Representative designation and contact information periodically to ensure its accuracy. Accordingly, the proposed rule change would require that each member conduct a review and, if necessary, update its Representative information on a quarterly basis, specifically within 17 business days after the end of each calendar quarter. NASD is examining different methods of reminding members of their need to review and update their Representative information on a quarterly basis, including the possibility of a Web page linked to the act of filing the FOCUS report that would prompt members to update such designation and contact information and/or through e-mail reminders to the firm.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act[4], which requires, among other things, that NASD's rules be designed to prevent fraudulent and manipulative acts and

[4] 15 U.S.C. 78o–3(b)(6).

practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that this proposed rule change will ensure that members' Representative contact information is accurate and that NASD can timely contact members.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NASD–2003–184. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD–2003–184 and should be submitted by February 17, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–1666 Filed 1–26–04; 8:45 am]

BILLING CODE 8010–01–P

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49098; File No. SR–PHLX–2003–73]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 Thereto Relating to the Demutualization of the Philadelphia Stock Exchange, Inc.

January 16, 2004.

I. Introduction

On November 17, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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: (1) Amend its Certificate of Incorporation to eliminate a reference to ''not for profit'' and a restriction on the payment of dividends (''Plan of Conversion'' and such amendments to the Certificate of Incorporation, the ''Conversion Amendment''); and (2) merge a newly-created, wholly-owned shell subsidiary of the Phlx with and into the Phlx, with the Phlx surviving as a demutualized Delaware stock corporation (''Merger'' and together with the Plan of Conversion, the ''Plan of Demutualization'') pursuant to an Agreement and Plan of Merger (''Merger Agreement''). On November 24, 2003, the Phlx submitted Amendment No. 1 to the proposed rule change.[3] On November 26, 2003, the Phlx submitted Amendment No. 2 to the proposed rule change.[4] On December 3, 2003, the proposed rule change was published for comment in the **Federal Register**.[5] On December 29, 2003, the Phlx submitted Amendment No. 3 to the proposed rule change.[6] The Commission received one comment letter in response to the proposed rule change.[7] This order approves the proposed rule change.

II. Description of Proposed Rule Change

The purpose of the proposed rule change is to implement the Plan of Demutualization. In connection with the Plan of Demutualization, trading privileges will be separated from corporate ownership of the Phlx and will be made available exclusively through trading permits. [8]

As a result of the demutualization, a total of 50,500 shares of Class A Common Stock (100 shares per Seat) will be issued to existing equitable Seat holders and will represent 100% of the common equity ownership in the Phlx outstanding immediately after the demutualization. In addition, all Members and holders of equity trading permits (''ETPs'') who are affiliated with Member Organizations and are not suspended will be entitled to receive

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

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Edith Halihan, Deputy General Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated November 21, 2003. (''Amendment No. 1''). In Amendment No. 1, the Phlx made technical conforming changes to the exhibits to the proposed rule change.

[4] *See* Letter from Edith Halihan, Deputy General Counsel, Phlx, to Nancy Sanow, Assistant Director, Division, Commission, dated November 26, 2003 (''Amendment No. 2''). In Amendment No. 2, the Phlx amended the proposed rule change to reflect that on November 25, 2003, the members of the Phlx (as that term is defined in Section I–1(b) of the current By-laws of the Phlx, the ''Members'') approved the Plan of Conversion, the Merger, and all transactions to be effected in connection therewith. Also, on November 18, 2003, holders of equitable title (''Owners'') to memberships in the Phlx (each such membership a ''Seat'') voted to approve the Plan of Demutualization as a whole.

[5] *See* Securities Exchange Act Release No. 48847 (November 26, 2003), 68 FR 67720 (''Notice'').

[6] *See* Letter from Edith Halihan, Deputy General Counsel, Phlx, to Nancy Sanow, Assistant Director, Division, Commission, dated December 23, 2003 (''Amendment No. 3''). In Amendment No. 3 the Phlx formally submitted the Conversion Amendment as part of the proposed rule change.

[7] *See* Letter from Joseph Carapico, General Partner, Andrew W. Snyder, General Partner and Richard B. Feinberg, Limited Partner, Penn Mont Securities, to Jonathan G. Katz, Secretary, Commission, dated December 19, 2003 (''Penn Mont Letter'').

[8] The Exchange, however, plans to retain its existing Foreign Currency Option (''FCO'') participations (as defined in section 1–1(i) of the amended By-laws). After the demutualization, the ability to trade FCOs on the Phlx will also be available through a Series A–1 Permit, as set forth in proposed Rule 908(b).

new Series A–1 Permits (''Permits'') to enable them to continue their trading activities on the Exchange without interruption.[9] Similarly, Member Organizations will maintain their status as members of the Phlx upon their compliance with certain deposit and registration requirements.

The Exchange proposes to effect the Plan of Demutualization for a number of reasons, including to expand its sources of capital and revenue; to facilitate its ability to enter into relationships with strategic or financial partners who may be crucial for the Exchange's future development, capital formation and viability; to facilitate the introduction of new products and thus potentially increase transaction volume and Exchange revenues; and to better position itself to react to new opportunities and challenges.

The Exchange represents that, after the effective date of the demutualization, it will continue to be a national securities exchange registered under section 6 of the Act.[10] The Exchange also represents that, except as is necessary to implement the new permit structure to replace the existing structure of owning and leasing seats as a basis for trading rights and Exchange memberships, it is not proposing any significant changes to its existing operational and trading structure in connection with the demutualization. The Exchange further states that the demutualization will not affect its functions as a self-regulatory organization (''SRO'') and will not affect the designation of the Exchange as ''designated examining authority'' (''DEA'') for those Member Organizations for which the Exchange currently is the DEA. Moreover, the Exchange notes that it is not proposing any changes to its existing disciplinary system, fines or the related appellate process in connection with the Plan of Demutualization.[11]

A. Capital Structure of the Demutualized Phlx

Changes to the capital structure of the Phlx, as set forth in Article FOURTH of the proposed Certificate of Incorporation, generally reflect the proposed conversion of the Phlx from a non-stock Delaware corporation to a demutualized Delaware stock corporation.

Pursuant to Article FOURTH of the proposed Certificate of Incorporation, after the Merger, the authorized capital stock of the Phlx will consist of:

- 50,500 shares of Class A Common Stock;
- 949,500 shares of Class B Common Stock, par value $0.01 per share (''Class B Common Stock,'' and together with the Class A Common Stock, the ''Common Stock''); and
- 100,000 shares of preferred stock, par value $0.01 per share, one of which will be designated as ''Series A Preferred Stock.''

Upon consummation of the demutualization, the only capital stock outstanding will be the 50,500 shares of Class A Common Stock and the single share of Series A Preferred Stock. The Exchange proposes to authorize more shares of common stock (in the form of the Class B Common Stock) and preferred stock to allow for a more flexible approach to third-party investments and strategic relationships, which the Exchange believes will be critically important to its survival. The proposed Certificate of Incorporation will allow the Board of Governors to create and issue in the future additional classes or series of preferred stock without stockholder approval. In a separate undertaking, however, the Exchange has agreed to submit any such creation and issuance of additional classes or series of preferred stock to the Commission pursuant to section 19(b) of the Act.[12] The issuance and the sale, transfer or other disposition of the Exchange's capital stock will be subject to certain voting and ownership limitations, described below.

1. Common Stock

a. Class A Common Stock and Class B Common Stock

Pursuant to Article FOURTH (b)(i) of the proposed Certificate of Incorporation, the Class A Common Stock and the Class B Common Stock will be identical in all respects and will have equal rights and privileges, except for the right to receive the Contingent Dividend (as defined below). Pursuant to Article FOURTH (b)(vi) of the proposed Certificate of Incorporation, each share of Class A Common Stock will automatically convert into one share of Class B Common Stock on the third anniversary of the closing of the Plan of Demutualization (the ''Dividend Termination Date''). [13] The proposed Certificate of Incorporation will provide that, before the automatic conversion, the Exchange will have to notify the holders of the Class A Common Stock in accordance with certain specific requirements set forth in the Certificate of Incorporation.

b. Dividends (Including the Contingent Dividend)

Currently, the existing Certificate of Incorporation provides that the Phlx is ''not for profit'' and ''no capital stock shall ever be issued and no dividend shall ever be paid'' by the Phlx. After the demutualization, this restriction on paying dividends will be removed, and the Phlx's stockholders will have all dividend and other distribution rights of a stockholder in a Delaware stock corporation (except as may be limited by the rights any preferred stock may have, once issued).

Section 30–4 of the proposed By-laws, however, will prohibit the payment of dividends from any revenues the Phlx derives from regulatory fines, fees or penalties. The Exchange will apply this limitation to its net income, prospectively only, commencing with the fiscal year in which the Merger occurs.[14] To determine the amount of the limitation, the Phlx will first calculate: (i) the amount of regulatory fines, fees and penalties that it has accrued for the fiscal year in which the Merger occurs and later time periods (collectively, ''Regulatory Fee Amount'');[15] and (ii) the amount of

[9] Pursuant to Rule 23 of the current Phlx Rules, the Exchange has issued ETPs, four of which are currently outstanding. In the demutualization, these ETPs will be eliminated in accordance with current Rule 23 and pursuant to proposed Rule 971, and the rights and privileges of ETPs will be conferred on existing ETP holders by Permits.

[10] 15 U.S.C. 78f.

[11] On January 7, 2004 the Exchange filed a proposed rule change pursuant to section 19(b) of the Act, SR–Phlx–2004–02, to adopt fees applicable to Series A–1 Permits and to make conforming changes to its fee schedule as a result of the demutualization. The Merger Agreement provides that the effectiveness of the Merger (and thus the Plan of Demutualization in general), among other things, is conditioned upon such filing becoming effective or being approved by the Commission, as the case may be. This proposed rule change was filed as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act, 15 U.S.C. 78(s)(b)(3)(A)(ii).

[12] 15 U.S.C. 78s(b).

[13] The automatic conversion will be effected as a matter of administrative convenience to consolidate the Common Stock into a single class after the Contingent Dividend will no longer be potentially payable (*i.e.*, on the Dividend Termination Date). At the time of conversion, because the Contingent Dividend will no longer be potentially payable, the Class A Common Stock and the Class B Common Stock will have identical rights and privileges.

[14] The Exchange indicates that its rationales for applying this restriction prospectively are: (i) Prior to the effectiveness of the Conversion Amendment, the Exchange's Certificate of Incorporation has provided that the Exchange is ''not for profit'' and has prohibited the payment of dividends altogether; and (ii) the Exchange has not compiled, and could not reasonably reconstruct, the information necessary for determining Regulatory Costs and Regulatory Fee Amounts (as defined herein) for prior periods.

[15] According to the Exchange, regulatory fines and penalties will include such amounts imposed by the Business Conduct Committee and/or the Phlx's Board of Governors (''Board''), but not late charges or interest charged. Regulatory fees shall include the Exchange's fees relating to registered

Continued

regulatory costs and expenses[16] accrued for the same time period (collectively, ''Regulatory Cost Amount''). The Exchange will determine the applicable restriction by determining the excess, if any, of the Regulatory Fee Amount over the Regulatory Cost Amount, and applying that to the amount of its net income for the fiscal year in which the Merger occurs and later periods. The Exchange advises that this restriction concerning the payment of dividends shall not prevent it from paying dividends from: (i) Capital, surplus or retained earnings of the Exchange which were (without regard to this restriction) available for the payment of dividends at the time of the Merger; or (ii) capital contributions or other capital items, in each case, no portion of which is attributable to Regulatory Fees.

Pursuant to Article FOURTH (b)(ii) of the proposed Certificate of Incorporation, the Class A Common Stock will carry with it the right to a contingent dividend (the ''Contingent Dividend'') payable in cash if a Liquidity Event occurs on or before the Dividend Termination Date. A ''Liquidity Event'' will be any investment of net cash proceeds in the Phlx's capital or that of one of its subsidiaries, either by means of a public offering or private placement of the common or preferred stock of the Phlx or the common stock or other securities of the subsidiary. The amount payable as the Contingent Dividend will depend, as follows, on the aggregate amount of net cash proceeds received by the Phlx and/or the subsidiary from all Liquidity Events occurring on or before the Dividend Termination Date:

- If the aggregate net cash proceeds will be at least $50 million but less than $100 million, the amount payable as a Contingent Dividend will be $7,500 for each 100 shares of Class A Common Stock ($3,787,500 in the aggregate).
- If the aggregate net cash proceeds will be at least $100 million but less than $150 million, the amount payable as a Contingent Dividend will be $17,500 for each 100 shares of Class A Common Stock then outstanding ($8,837,500 in the aggregate).
- If the aggregate net cash proceeds will be at least $150 million, the amount payable as a Contingent Dividend will be $29,700 for each 100 shares of Class A Common Stock then outstanding ($14,998,500 million in the aggregate).

If no Liquidity Event occurs on or before the Dividend Termination Date, the right to receive the Contingent Dividend will terminate without further action on behalf of the Exchange and the Class A Common Stock will be automatically converted into Class B Common Stock, as indicated above.

c. Liquidation Rights and Preferences

Currently, Owners have the right to receive all distributions upon a liquidation of the Exchange, on the basis of their pro-rata interest in the Phlx, except as such right may be limited by certain rights of the holders of FCO participations. After the demutualization, the Phlx Common Stock will have the right to receive all distributions upon a liquidation of the Phlx, subject to the rights of any preferred stock that may be issued in the future and the rights of the holder of the Series A Preferred Stock.

d. Voting Rights/Election of Directors

Currently, non-Member Owners do not have voting rights under the Exchange's existing Certificate of Incorporation, By-laws and Rules with respect to any matters relating to the Exchange, with certain very limited exceptions.[17] After the demutualization, pursuant to Article FOURTH (b)(iii) of the proposed Certificate of Incorporation, the holders of Phlx Common Stock will vote on all matters on which stockholders are entitled to vote except for the election and removal of the On-Floor Governors, and, in the case of a contest for the position, the selection of the On-Floor Vice Chairman of the Exchange.

The holders of the Class A Common Stock and Class B Common Stock will vote together as a single class on all matters, except that: (i) any amendment, alteration or repeal of any of the provisions of the proposed Certificate of Incorporation that adversely affects the rights, powers or privileges of the Class A Common Stock (but not of the Class B Common Stock) will require the affirmative vote of a majority of the shares of the Class A Common Stock then outstanding, voting separately as a class; and (ii) any amendment, alteration or repeal of any of the provisions of the proposed Certificate of Incorporation that adversely affects the rights, powers or privileges of the Class B Common Stock (but not of the Class A Common Stock) will require the affirmative vote of a majority of the shares of Class B Common Stock then outstanding, voting separately as a class.

In addition, pursuant to Section 22–1 of the proposed By-laws, the By-Laws may be amended by the affirmative vote of a majority of the entire Board of Governors, or by the affirmative vote of the holders of a majority of the shares of common stock then issued and outstanding, at any regular or special meeting of the Board of Governors or the stockholders (as the case may be). Unlike pursuant to Section 22–1 of the existing By-laws, after the demutualization, Members (or Member Organizations) will have no right to vote in relation to By-law amendments or to propose By-law amendments. The Phlx states that such change is consistent with the Exchange's proposed post-demutualization structure as a Delaware stock corporation in accordance with applicable Delaware law.

With respect to management equity awards, Section 6–1 of the proposed By-laws provides that, the Exchange will not at any time adopt any stock incentive or option plan or arrangement, or any other equity based compensation plan or arrangement, for the benefit of its governors or officers that authorizes the issuance of stock, stock options or any other securities exercisable or exchangeable for or convertible into any equity interest in the Exchange representing more than 10% of the Common Stock outstanding at such time.

e. Voting Limitations Regarding the Common Stock

Article FOURTH (b)(iii)(A) of the proposed Certificate of Incorporation provides that each stockholder will be entitled to one vote for each share of Common Stock held of record on the books of the Phlx, subject to the applicable voting restrictions as described below. In connection with the demutualization, the Exchange proposes to include certain voting limitations as set forth in Article FOURTH (b)(iii)(B) of the proposed Certificate of Incorporation. The limitations will provide that, if any Person (as defined

representative registration (currently, initial, renewal and transfer fees), as well as its off-floor trader (currently, initial and annual) and examinations fees.

[16] In the Phlx's view, these amounts include costs reasonably related to the Exchange's regulatory function. Specifically, the Exchange intends to include the direct and allocated costs and expenses of the regulatory and enforcement groups as well as an allocation of the direct and allocated costs of technology, legal, compliance and other departments that support the regulatory and enforcement groups and work on regulatory projects. The Exchange's cost allocation methodology includes an employee's compensation and benefits-related costs and the overhead attributable to that employee, such as, for example, occupancy costs, office supplies, and administrative support and an allocation of management costs (again, adding, for example, the secretary's and managers' direct and allocated costs).

[17] In addition, existing contractual arrangements between Owners of Seats or Member Organizations, on the one hand, and non-Owner Members, on the other hand, such as leases or A–B–C agreements, in all but one case contain a provision that entitles the Seat Owner or the Member Organization, respectively, to direct the Member's vote with respect to the Plan of Demutualization.

below) either alone or together with its Related Persons (as defined below), at any time owns of record or beneficially, whether directly or indirectly, more than 20% of the then outstanding shares of Common Stock (such shares of Common Stock in excess of such 20% limit being hereinafter referred to as ''Excess Shares''), that Person and its Related Persons will not have any right to vote, or to give any consent or proxy with respect to, the Excess Shares, and the Excess Shares will be deemed not to be present for the purposes of determining whether a quorum is present at any meeting or vote of the stockholders of the Exchange. For purposes of the proposed Certificate of Incorporation, ''Related Persons'' means: (i) with respect to any Person, all ''affiliates'' and ''associates'' of such Person (as such terms are defined in Rule 12b–2 under the Act);[18] (ii) with respect to any natural person constituting a ''member'' (as such term is defined in the Act) of the Exchange, any broker or dealer with which such member is associated; and (iii) any two or more Persons that have any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, holding, voting or disposing of shares of common stock. The term ''Person'' will be defined in the proposed Certificate of Incorporation to mean an individual, partnership (general or limited), joint-stock company, corporation, limited liability company, trust or unincorporated organization, and a government or agency or political subdivision thereof.

Notwithstanding the foregoing, a Person, either alone or together with its Related Persons, owning of record or beneficially, whether directly or indirectly, more than 20% of the then outstanding shares of Common Stock will be allowed to exercise voting rights, and give proxies and consents, with respect to those shares exceeding 20%, provided that:

- such Person (and its Related Persons owning any Common Stock) has delivered to the Board of Governors a notice in writing, not less than 45 days (or any shorter period to which the Board of Governors shall expressly consent) before the proposed exercise of its voting rights, of its intention to do so; and
- before the intended exercise, the Board of Governors has adopted an amendment to the By-Laws adding a provision to expressly permit such Person's exercise of voting rights in excess of 20%; and the amendment has been filed with the Commission as a proposed rule change under Section 19(b) of the Act[19] and has become effective.

The Board of Governors will not be permitted to adopt any amendment to the proposed By-laws described in the foregoing paragraph unless the Board of Governors has determined that: (i) the exercise of those voting rights by the Person in question and/or its Related Persons will not impair the Exchange's ability to discharge its responsibilities under the Act and the rules and regulations thereunder and is otherwise in the best interests of the Exchange and its stockholders; (ii) the exercise of those voting rights by that Person and its Related Persons will not impair the Commission's ability to enforce the Act; and (iii) that Person and its relevant Related Persons are not subject to any applicable statutory disqualification. In making those determinations, the Board of Governors may impose on the Person in question and its Related Persons such conditions and restrictions as it may in its sole discretion deem necessary, appropriate or desirable in furtherance of the objectives of the Act and the governance of the Exchange. Under the proposed Certificate of Incorporation, however, in no event will a Person who is a Member of the Exchange, either alone or together with its Related Persons, be permitted to vote shares in excess of 20% of the outstanding Common Stock.[20]

f. Ownership Limitations, Notification Requirements and Transfer Requirements Regarding the Common Stock

Pursuant to Article FOURTH (b)(v) of the proposed Certificate of Incorporation, no Person, either alone or together with its Related Persons, will be allowed to own, of record or beneficially, directly or indirectly, more than 40% of the then outstanding shares of Common Stock of the Phlx and to the extent any Person (or its Related Persons) purports to own more than 40% of the then outstanding shares of common stock, that Person (and its Related Persons) will not be allowed to exercise any of the rights or privileges incident to the ownership of shares of common stock with respect to the shares exceeding the 40% limit, unless:

- such Person (as well as its Related Persons) has delivered to the Board of Governors a notice in writing, not less than 45 days (or such shorter period to which the Board of Governors expressly consents) before the acquisition of that ownership, of its intention to acquire the ownership; and
- before the intended exercise, the Board of Governors has adopted an amendment to the By-Laws, adding a provision to expressly permit that Person's ownership in excess of 40%, and the amendment has been filed with the Commission as a proposed rule change under Section 19(b) of the Act, which has become effective.

The Board of Governors will not be permitted to adopt any amendment to the proposed By-laws described in the foregoing paragraph unless the Board of Governors has determined that: (i) Such acquisition of such ownership by such Person in question and/or its Related Persons will not impair the Exchange's ability to discharge its responsibilities under the Act and the rules and regulations thereunder and is otherwise in the best interests of the Exchange and its stockholders; (ii) such acquisition of such ownership by such Person and its Related Persons will not impair the Commission's ability to enforce the Act; and (iii) that Person and its relevant Related Persons are not subject to any applicable statutory disqualification. In making those determinations, the Board of Governors may impose on the Person in question and its Related Persons such conditions and restrictions as it may in its sole discretion deem necessary, appropriate or desirable in furtherance of the objectives of the Act and the governance of the Exchange.

Unless the conditions specified above are met, if any Person exceeds the 40% threshold, either alone or together with its Related Persons, the Phlx will have the right, but not the obligation, to purchase from that Person and its Related Persons the shares of Common Stock that exceed the 40% threshold for a price equal to the par value of the shares of Common Stock.

In addition, pursuant to Article FOURTH (b)(v)(B) of the proposed Certificate of Incorporation, no Member, either alone or together with its Related Persons, will be allowed to own, of record or beneficially, directly or indirectly, more than 20% of the then outstanding shares of Common Stock of the Exchange. To the extent that any Member (or its Related Persons) purports to so own more than 20% of the then outstanding shares of Common Stock, that Member (and its Related Persons) will not be allowed to exercise any of the rights or privileges incident to the ownership of shares of Common Stock with respect to the shares exceeding the 20% limit.

[18] 17 CFR 240.12b–2.

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

[20] *See* Section II.A.1.f. for a discussion regarding the ownership limitations placed on Members under the proposed Certificate of Incorporation.

If any Member exceeds the 20% threshold, either alone or together with its Related Persons, the Phlx will have the right, but not the obligation, to purchase from that Member and its Related Persons the shares of Common Stock that exceed the 20% threshold for a price equal to the par value of the shares of Common Stock. Also, unlike ownership by non-Members in excess of 40%, the proposed Certificate of Incorporation does not contain a proviso allowing for Members to own shares in excess of 20% with appropriate notification and a By-law amendment sanctioned by the Commission.

In addition, pursuant to Article FOURTH (b)(iv) and (v) of the proposed Certificate of Incorporation, any Person, either alone or together with its Related Persons, that at any time owns (whether by acquisition or by a change in the number of shares outstanding) of record or beneficially, directly or indirectly, 5% or more of the then outstanding shares of Common Stock will be required, immediately upon so owning 5% or more of the then outstanding shares of Common Stock, to give the Board of Governors written notice of that ownership and will be required to update the notice promptly after any ownership change. However, an updated notice will not have to be provided to the Board of Governors in the event of an increase or decrease of less than 1% (of the then outstanding shares of Common Stock) in the ownership percentage so reported (for that purpose, the increase or decrease will be measured cumulatively from the amount shown on the immediately preceding report) unless such increase or decrease of less than 1% results in such Person's owning more than 20% or more than 40% of the shares of Common Stock then outstanding (at a time when such Person so owned less than those percentages) or results in such Person's owning less than 20% or less than 40% of the shares of Common Stock then outstanding (at a time when such Person so owned more than those percentages). These voting and ownership limitations, together with the notification requirements, are intended to establish a system of supervision and control to effectively prevent acquisition of voting power of or assertion of control over the Exchange without the approval of both the Board of Governors and the Commission. In addition, the proposed 20% threshold on member ownership is designed to prevent any Member Organization from dominating the Exchange. These notification requirements will also allow the Exchange to fulfill its reporting obligations to the Commission [21] and to better monitor the voting and ownership limitations in the proposed Certificate of Incorporation described above.

g. Transfer Restrictions

Pursuant to Section 29–1 of the proposed By-laws, no stockholder of the Exchange may sell, transfer (by operation of law or otherwise) or otherwise dispose of any shares of Class A Common Stock except in blocks of 100 shares per sale, transfer or disposition. This transfer restriction is intended to ensure that the number of holders of common stock of the Exchange will not exceed the threshold for having to register the Exchange with the Commission under Section 12 of the Act.[22] The Exchange believes that, at least for some period of time after the demutualization, the obligation of being a public reporting company would be overly burdensome on the Exchange as compared to the advantages conferred by that status.

In addition, the Phlx states that Article 29 of the proposed By-laws contains other restrictions typical for a Delaware stock corporation to ensure compliance with the Securities Act of 1933 (''Securities Act''),[23] and to allow for efficient future marketing of the capital stock by an underwriter in connection with and after a potential initial public offering of shares of capital stock of the Exchange.[24] Accordingly, Section 29–2 of the proposed By-laws provides that after the demutualization, no sale, transfer or other disposition of the capital stock of the Exchange may be effected except: (i) Pursuant to an effective registration statement under the Securities Act and in accordance with all applicable state securities laws; (ii) upon delivery to the Exchange of an opinion of counsel satisfactory to the Board that such sale, transfer or other disposition may be effected pursuant to a valid exemption from the registration requirements of the Securities Act and all applicable state securities laws; (iii) upon delivery to the Exchange of such certificates or other documentation as counsel to the Exchange shall deem necessary or appropriate in order to ensure that such sale, transfer or other disposition complies with the Securities Act and all applicable state securities laws; or (iv) pursuant to such procedures as the Chairman of the Board (or his designee) may adopt from time to time with respect to such transactions. In addition, no sale, transfer or other disposition of the capital stock of the Exchange may be effected by any holder of such stock until all amounts due and owing by such holder to the Exchange (whether any such amounts relate to such holder's status as a stockholder, Member, participant or Member (or participant) Organization of the Exchange or otherwise) shall have been paid in full.

In addition, Section 29–3 of the proposed By-laws provides that no stockholders, if requested by the Exchange or any underwriter of equity securities of the Exchange, may sell or otherwise transfer or dispose of any shares of capital stock of the Exchange held by such stockholder during the 180-day period following the effective date of a registration statement of the Exchange filed under the Securities Act in respect of that class of capital stock. If requested by the Exchange or any such underwriters, each stockholder will be required to execute an agreement to the foregoing effect. The Exchange may impose stop-transfer instructions with respect to the shares (or securities) subject to the foregoing restriction until the end of said 180-day period.

2. Series A Preferred Stock/Phlx Member Voting Trust

a. Designation and Issuance of Series A Preferred Stock to Phlx Member Voting Trust/Trust Agreement

Article FOURTH of the proposed Certificate of Incorporation will designate one share of preferred stock as the ''Series A Preferred Stock.'' The Series A Preferred Stock will have the sole power to: (i) Select the On-Floor Governors, and (ii) remove the On-Floor Governors in accordance with specified procedures in connection with the removal of Governors.

As set forth in the Trust Agreement, at the effective time of the Merger, the Exchange will issue the share of Series A Preferred Stock to the Trust. Pursuant to Section 4.1 of the Trust Agreement, the Trustee of the Trust will have to vote the share of Series A Preferred Stock with respect to the designated nominees for election as On-Floor Governors, or the removal of On-Floor Governors, as the case may be, as directed by the vote of the Member Organization Representatives of Member Organizations entitled to vote.

The single share of the Series A Preferred Stock, issued to the Trust governed by the Trust Agreement, is designed to facilitate the exercise by Members and Member Organizations of their rights to fair representation in the

[21] 17 CFR 249.1a.

[22] 15 U.S.C. 78*l*.

[23] 15 U.S.C. 77.

[24] The Phlx notes that no such transaction is currently contemplated at this time.

selection and removal of On-Floor Governors of the Exchange and to facilitate the administration of the affairs of the Exchange in accordance with the Act. The voting arrangements implemented through the Trust Agreement and the Series A Preferred Stock are designed to give ''members'' (as defined in Section 3(a)(3)(A) of the Act)[25] a voice in the management of the Exchange after the demutualization. These arrangements are necessary for two reasons: (i) Under Delaware law, only stockholders can elect the directors of a Delaware corporation; and (ii) after the demutualization, Members and Member Organizations that were not Owners at the time of the demutualization will not be stockholders of the Exchange.

b. Dividend Rights

Because the Series A Preferred Stock will be issued only to enable the non-stockholder Member Organizations to vote indirectly for the On-Floor Governors, Article FOURTH (a)(i) of the proposed Certificate of Incorporation will provide that the Series A Preferred Stock will not have the right to receive any dividends.

c. Liquidation Preferences

Pursuant to Article FOURTH (a)(ii) of the proposed Certificate of Incorporation, upon liquidation of the Phlx the holder of the share of Series A Preferred Stock will be entitled to receive an amount equal to the par value of the share of Series A Preferred Stock (or $0.01) held by the holder after the payment of, or provision for, obligations of the Phlx and any preferential amounts payable to holders of any other class or series of outstanding shares of preferred stock.

d. Transferability

Article FOURTH (a)(iv) of the proposed Certificate of Incorporation will provide that the Series A Preferred Stock will not be transferable (whether by sale, pledge, operation of law or any other disposition) without the prior written consent of the Board. If the Board determines that it is in the best interests of the Exchange or its stockholders for any holder of the share of Series A Preferred Stock to sell the share to the Exchange or any other person, the holder will be required under Article FOURTH (a)(iii) of the proposed Certificate of Incorporation to effect the sale as directed by the Board.[26]

[25] 15 U.S.C. 78c(a)(3)(A).

[26] Any proposal to sell the Series A Preferred Stock would have to be filed with the Commission pursuant to Section 19(b) of the Act.

B. Corporate Governance of the Demutualized Phlx

According to Article SIXTH of the proposed Certificate of Incorporation and Sections 4–1 and 4–4 of the proposed By-laws, the principal management of the Phlx after demutualization will continue to rest with the Board and the Standing Committees of the Exchange. To ensure compliance with the Act in the context of a demutualized Exchange, Article SIXTH of the proposed Certificate of Incorporation will provide that, in managing the business and affairs of the Phlx, the Governors will have to consider applicable requirements for registration as a national securities exchange under Section 6(b) of the Act,[27] including the requirements that: (i) the rules of the Phlx be designed to protect investors and the public interest, and (ii) the Phlx be so organized and have the capacity to carry out the purposes of the Act and (except as otherwise provided in the Act or the rules and regulations thereunder) to enforce compliance by its Members and persons associated with its Members with the Act, the rules and regulations thereunder, and the rules of the Phlx.

1. Board of Governors—Composition; Eligibility

Article SIXTH of the proposed Certificate of Incorporation, together with Section 4 of the proposed By-laws, will set forth the required number and composition of the Board. Pursuant to Section 4–1 of the proposed By-laws, the composition of the Board will be the same as before the demutualization and, as set forth in Section 4–3(b) of the proposed By-laws, will consist initially of the same individuals in office at the time of the demutualization. According to Article SIXTH (a) of the proposed Certificate of Incorporation, the Board will continue to have a total of 22 Governors and be composed as follows:

- the Chairman of the Board, who will be the individual then holding the office of Chief Executive Officer (''CEO'');
- 11 Non-Industry Governors (of whom at least five will have to be public Governors); and
- 10 Industry Governors (of whom five will have to be On-Floor Governors and five will have to be Off-Floor Governors).

The criteria set forth in the Exchange's current By-laws for eligibility of persons to serve as a Governor within each category of Governor will remain the same after demutualization.

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

2. Board of Governors—Classification and Term Limits

According to Section 4–3(a) of the proposed By-laws, the Board will remain classified, with Governors serving staggered three-year terms. Governors (other than the Chairman) may serve for up to two consecutive three-year terms starting from the effective time of the Merger. In order to preserve continuity post-demutualization, Section 4–3(b) of the proposed By-laws will provide that Governors who hold their positions at the effective time of the Merger will continue to hold those positions, in their respective classes, until their original terms expire and that the term limits will not take into consideration any service as Governor before the demutualization but will only apply from and after the effective time of the Merger. The Exchange believes that this provision serves to ensure continuity in the governing body of the Exchange through such a significant corporate event as the demutualization.

3. Nomination and Election of Governors

According to the Phlx, the Exchange's nomination and election procedures are revised to ensure continuing fair representation for Members and Member Organizations in the context of the demutualized Exchange, while at the same time adapting the Exchange to its proposed status as a demutualized business corporation with stockholders. Generally, the new nomination and election structure of the Exchange will be as follows:

- The Non-Industry Governors, Off-Floor Governors and the Chairman of the Board will continue to be nominated by the Nominating and Elections Committee and will be elected by the holders of the Common Stock at meetings of stockholders.
- Stockholders will be permitted to make independent nominations of Non-Industry and Off-Floor Governors upon written notice of the nominations not less than 90 nor more than 120 days before the first Monday in February of each year (or such other date as the Board may establish). These nominations will be subject to review by the Nominating and Elections Committee.

Member Organizations, as described below, will designate the On-Floor Governors in accordance with the following procedures:

- On-Floor Governors will be nominated by the Nominating and Elections Committee from recommendations made: (i) By members

of the Nominating and Elections Committee; or (ii) by any Member, participant or Member Organization Representative.

• Independent nominations by Member Organization Representatives will be valid only if signed by Member Organization Representatives representing no less than 50 votes.

• Member Organizations, through their authorized Member Organization Representative, will vote for designated On-Floor Governors among nominees so selected at the annual meeting of Members and Member Organizations.

• Nominees for Governors receiving the highest numbers of votes for the category of Governor for which they were respectively nominated as candidates will be declared the ''Designated Nominees'' for those offices. In case of a tie, the Nominating and Elections Committee will make the selection as to who among the tying nominees shall be designated.

• On-Floor Governors will then be elected by the Trust owning the share of Series A Preferred Stock based on the ''Designated Nominees'' elected by the Member Organization Representatives as described above.

4. Governors—Vacancies and Removal

In accordance with Section 3–8 of the proposed By-laws, vacancies (including vacancies created by increases in the size of the Board of Governors) will continue to be filled by the Nominating and Elections Committee, upon approval by a majority of the Governors. With respect to the removal of Governors, Article SIXTH (b) of the proposed Certificate of Incorporation and Sections 3–3 and 4–4 of the proposed By-laws will provide that Governors may be removed only for cause or, under certain circumstances, upon recommendation by a majority of the Board of Governors. In addition, Governors may be removed only by a 66⅔% vote of the group that elected them (*i.e.*, the holders of common stock, in the case of the Non-Industry or Off-Floor Governors, or the share of Series A Preferred Stock as instructed by a vote of the Member Organization Representatives, in the case of the On-Floor Governors).

An On-Floor Governor may be removed at any annual or special meeting. A special meeting for the removal of an On-Floor Governor may be called by the Chairman of the Board of Governors or the Board of Governors or, only in the case of a special meeting of Member Organization Representatives for the purpose of voting on the removal of an On-Floor Governor, by the Member Organization Representatives representing a majority of the then issued and outstanding permits. If such a meeting is proposed to be called by Member Organization Representatives, such Member Organization Representatives must provide the Chairman written notice prior to calling any such meeting stating in reasonable detail the basis for, and the facts and circumstances purported to warrant, such removal of the relevant On-Floor Governor.

5. Committees

No changes will be made in Board committee structure or composition as part of the demutualization process, except as follows:

• pursuant to Sections 10–6 and 10–17 of the proposed By-laws, respectively, at least half of the Admissions Committee and the Foreign Currency Options Committee, respectively, will have to be Members, participants or persons affiliated with Member Organizations or participant organizations;

• pursuant to Sections 10–20 and 10–16 of the proposed By-laws, respectively, at least half of the Options Committee and the Floor Procedure Committee, respectively, will have to be Members or persons affiliated with Member Organizations;

• pursuant to Section 10–6 of the proposed By-laws, the Business Conduct Committee will share with the Admissions Committee jurisdiction over the revocation of permits and foreign currency options participations in connection with disciplinary matters; and

• pursuant to Section 10–7(a) and (b) of the proposed By-laws, certain term limits applicable to members of the Allocations Committees will be eliminated.

The existing Certificate of Incorporation and By-laws do not include any specification as to the composition of the Admissions Committee, Foreign Currency Options Committee, the Options Committee or the Floor Procedure Committee and, therefore, do not require the committees to include any Industry Governors. Accordingly, the Phlx states that the proposed rule change will ensure participation of Industry Governors on each of these committees, thereby allowing Industry Governors to take part in decisions made in vital areas of day-to-day trading operations and membership matters. The elimination of term limits respecting the Allocations Committees is intended to achieve consistency with most other committees, which do not have such limits.

6. Management and Executive Officers

The management structure of the Exchange, including its executive officers, will remain unchanged in the demutualization in accordance with Article V of the proposed By-laws. The CEO position will continue to be a full-time position to be appointed by the Board, and the holder of this position will act as the Board's Chairman. The person acting as CEO at the time of the demutualization will be the only nominee for the position of Chairman of the Board, and will be elected by the votes of the holders of the Common Stock. The existing requirement that the CEO may not be a partner of a Member (or participant) Organization, nor an employee, agent, consultant, officer, director or stockholder of a Member (or participant) Organization will be retained. The CEO will appoint the other officers of the Exchange.

7. Limitation of Liability and Indemnification

Articles FIFTEENTH and SIXTEENTH of the proposed Certificate of Incorporation and Section 4–18 of the proposed By-laws will include provisions substantially similar to the Article EIGHTEENTH of the existing Certificate of Incorporation, in accordance with Section 145 of the Delaware General Corporation Law. Such provisions eliminate the personal liability of Governors (and other persons mentioned below) for monetary damages for breach of fiduciary duty as a Governor, except for liability:

• for any breach of the Governor's duty of loyalty to the Phlx or its stockholders;

• for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;

• under Section 174 of the Delaware General Corporation Law regarding unlawful dividends and stock purchases; or

• for any transaction from which the Governor obtained an improper personal benefit.

The proposed Certificate of Incorporation and By-laws will further permit the Phlx to indemnify to the fullest extent permitted under and in accordance with the laws of the State of Delaware any Governor (or director) or officer of the Phlx, and any person that is or was serving at the request of the Phlx as a Governor, committee member or in-house legal counsel, officer, director (or person in similar position), employee or agent of another corporation or of a partnership (general or limited), limited liability company,

joint venture, trust or other enterprise or business entity, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with any action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Phlx, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person's conduct was unlawful. The Phlx may also pay the expenses of indemnified persons incurred in defending a suit or proceeding in advance of the final disposition of the suit or proceeding. The proposed Certificate of Incorporation will also permit the Phlx to secure insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or her actions in that capacity. The Exchange believes that these indemnification provisions are substantially similar to those generally employed by other Delaware stock corporations and the scope of the persons covered is intended to continue to attract and retain qualified personnel.

C. Members and Member Organizations

1. Member Organizations and Member Organization Representatives

As under the current structure, a Member will continue to be permitted to be associated with more than one Member Organization.[28] In accordance with proposed Rule 908(c)(ii), each holder of a permit will be obliged, however, to designate only a single eligible organization with which the Member is associated as the Member's ''primary affiliation'' for the purposes of voting, as will be provided in Article III of the proposed By-laws. A Member will be allowed to qualify as a Member Organization only the entity the Member has designated as his or her primary affiliation. Accordingly, every Member shall have one primarily-affiliated Member Organization and may have more than one associated Member Organization.

Unlike the current Phlx regime, after demutualization, individual Members will not directly be accorded voting rights. Rather, in regard to the election and removal of On-Floor Governors, Member Organizations will be entitled to exercise voting rights in respect of the permits held by those Members who have designated the Member Organization as their primary affiliation. Specifically, pursuant to proposed Rule 921 and Section 12–8 of the proposed By-laws, each Member Organization will have to register with the Exchange and designate a single individual as its ''Member Organization Representative.'' The concept of a Member Organization Representative is designed to facilitate the post-demutualization voting process. Permit holders, or Members, themselves will not exercise any voting rights. Instead, voting rights associated with a permit will be exercised by the Member Organization with which the Member is primarily associated and, as noted above, will be exercised by the Member Organization's Member Organization Representative. The Member Organization Representative will be the only person who may exercise the voting rights in respect of the Member Organization in respect of matters on which Member Organizations may vote. Proposed Rule 921 also will provide that a Member Organization Representative will have to accept the designation by filling out a registration documentation required by the Exchange.

Pursuant to proposed Rules 921 and 972, with the exception of certain provisions in proposed Rule 921(c) retaining the existing concept of ''inactive nominees'' in order to alleviate hardships, failure to qualify a Member Organization Representative at any time will prevent a Member Organization from exercising any rights in connection with the Exchange, including the right to vote for designated On-Floor Governors as described below.

According to proposed Rule 924, Members[29] will be liable with respect to any fees, fines, dues, penalties or other amounts imposed by the Exchange in connection with such Member's permit or any activities conducted in connection with such permit, whether or not any such obligation was incurred on behalf of his account or on behalf of his Member Organization. In addition, proposed Rule 924 will provide that Member Organizations will be liable with respect to any fees, fines, dues, penalties or other amounts imposed by the Exchange in connection with such Member Organization and any Member associated with such Member Organization in connection with a permit or any activities conducted in connection with such permit by such Member on behalf or for the account of such Member Organization. Under proposed Rule 924(b), similar to the rule in effect today, Member Organizations will have the ability to allocate responsibilities among themselves regarding Members associated with more than one Member Organization, provided that any such arrangements have been provided to the Exchange in the form required by it at least 30 days prior to their desired effectiveness.

2. Voting Rights

After the demutualization, holders of permits will not have any voting rights. Member Organizations will have the right to:

- designate the five On-Floor Governors for election to the Board in accordance with Section 3–12 of the proposed By-laws;
- remove the On-Floor Governors in accordance with Sections 3–2(c) and 3–3 of the proposed By-laws (together with the right to designate the On-Floor Governors, the ''Designation Rights''); and
- designate the On-Floor Vice-Chair in a contested election as described below.

Each permit will carry one vote. As discussed above, the vote may be exercised only by the qualified Member Organization Representative of a Member Organization designated by a holder of a permit as its primary affiliation.

The Designation Rights will be exercised in accordance with the following procedure:

- based on input from the membership or others, the Nominating and Elections Committee will propose a slate of qualified On-Floor Governors;
- in addition, the Member Organization Representatives, representing at least 50 permits, will be permitted to propose qualified alternative candidates;
- the Member Organization Representatives, at an annual meeting of Members and Member Organizations, will then elect the designated On-Floor Governors from among the Nominating and Elections Committee's slate and any qualified individuals nominated by Member Organization Representatives in accordance with the nomination procedures.

The winners of this election will then be eligible for designation as On-Floor Governors. In compliance with Delaware corporate law, the designated On-Floor Governors will be formally elected by the Trust that holds the single outstanding share of Series A Preferred Stock in accordance with Article FOURTH (a)(iii) of the proposed Certificate of Incorporation.

[28] *See* Phlx Rule 793.

[29] This rule also applies to FCO participants and participant organizations with respect to FCO participations.

3. Contested Election of the On-Floor Vice Chairman

With respect to the election of the On-Floor Vice Chairman, Section 4–2 of proposed By-laws will provide that, if there is a contest for the position of On-Floor Vice Chairman of the Board, the On-Floor Vice Chairman of the Board may be selected from the On-Floor Governors by a vote of the Member Organization Representatives, as promptly as possible after the annual meeting of stockholders at a special meeting of Members and Member Organizations called for that purpose.

4. Voting Concentration Limits

In order to prevent any group of Members of Member Organizations from dominating elections of the Member Organization Representatives, the proposed By-laws will provide in Section 3–12(c) that if any Member Organization, directly or indirectly, possesses the right to vote more than 20% of the then outstanding permits, that Member Organization will not have any right to vote, or to give any consent or proxy with respect to, any permits exceeding the 20% (''Excess Permits''), and the Excess Permits will not be considered present for the purposes of determining whether a quorum is present at any meeting or vote of the Members or Member Organizations, and will not be entitled to vote in determining the number of permits required for a quorum or to be voted for approval of or to give consent with respect to any matter presented to the Members or the Member Organizations.

5. Member and Member Organization Meetings and Actions

Pursuant to Section 3–2 of the proposed By-laws, annual meetings of Members and Member Organizations will be held on the second Monday in March of each year to designate nominees for On-Floor Governors. Except with respect to a special meeting called for the purpose of removing an On-Floor Governor, special meetings of Members or the Member Organization Representatives may be called at any time only by the Chairman of the Board or by a majority of the Board.

At all meetings of Members and Member Organizations, each Member Organization Representative may cast his or her vote in person or by proxy, provided that no action will become effective unless there shall have been voted a majority of the number of permits outstanding at such time, not including any Excess Permits. Each Member Organization Representative may cast the number of votes equal to the number of permits held by Members having designated the Member Organization Representative's Member Organization as its primary affiliation (subject to the voting restrictions described above).

Section 3–11 of the proposed By-laws will provide that notice of any meeting of Members and Member Organizations must be given to each Member Organization Representative entitled to vote at such meeting not less than 10 days nor more than 50 days before the date of the meeting.

6. Disciplinary Actions and Appeal Process

The Exchange states that enforcement of any disciplinary action and appeals of any disciplinary action will be conducted in the same manner as before the demutualization.

D. Permits and Trading Rights

1. Issuance of Permits and Application Process

Under the proposed Plan of Demutualization, access to the Exchange facilities and the right to trade will be conferred by the newly-issued permits rather than by ownership or leasing of Seats of the Exchange. As discussed above, trading of foreign currency options will continue to be allowed through the existing FCO participations, but, following the demutualization, will also be permitted through permits, as will be provided in proposed Rule 908(c)(i).

Proposed Rule 971 will provide that all ETPs and ETP use agreements will terminate with immediate effect as of the close of trading on the day the Merger becomes effective without any further action on the part of any party thereto. Similarly, proposed Rule 971 will also provide that all leases of Seats and all leases and A–B–C agreements with respect to such Seats, will terminate with immediate effect as of the close of trading on the day the Merger becomes effective without any further action on the part of any party thereto. All provisions in the Certificate of Incorporation, By-laws and Rules relating to the transfer or lease of a Seat or A–B–C agreement, and all defined terms related thereto (such as ''Lessor'' and ''Lessee'') will be amended as necessary to reflect that, after the demutualization, these provisions and defined terms will only apply to FCO participations. These provisions will no longer be applicable to permits, because permits (including the Series A–1 Permits) will not constitute property that can be transferred by its holder (except within the same member Organization). Similarly, the provisions relating to ETPs, such as Rule 23, will be deleted.

To provide an orderly transition from Seats to permits, proposed Rule 972 will allow each Member (including, without limitation, each holder of an ETP), inactive nominee and Member Organization holding that status immediately before the effective time of the Merger that, at that time, is not subject to any suspension of that status, to maintain that status. All Members and ETP holders who fulfill the requirements described in the previous sentence will receive Series A–1 Permits immediately upon the demutualization.

Proposed Rule 972 will also provide that existing Member Organizations will maintain their status for a period of 15 days following the Merger. Each Member Organization, however, will have to provide to the Admissions Committee and the Exchange, as applicable, before the end of the 15-day period, the following:

- the security deposit or alternative compliance with proposed Rule 909 (the ''security requirement'') (as described below);
- the form to be filed by the Member Organization's qualifying permit holder; and
- the designation of the Member Organization's Member Organization Representative in the form prescribed by the Exchange.

If a Member Organization fails within that period to comply with the security requirement and/or to furnish the form to be filed by the Member Organization's qualifying Member, the Member Organization's status as such will immediately be suspended. If a Member Organization fails to designate a Member Organization Representative, the Member Organization may not exercise any voting rights with respect to any permits held by persons who are associated with the Member Organization.

2. Classes or Series of Trading Permits

Immediately after the demutualization, pursuant to Section 12–1 of the proposed By-laws and proposed Rule 908, there will be only one series of permit, called the ''Series A–1 Permit,'' which will confer upon its holder all the rights and privileges of a Member of the Exchange. An individual will be allowed to hold a Series A–1 Permit if he or she meets the qualification criteria that will be set forth in Article XII of the proposed By-laws and Rules 901 and 908 and/or may be imposed by the Admissions Committee (which criteria the Exchange intends will remain largely the same as

they were before the demutualization), including the requirements that a Member be an individual at least 21 years of age and be associated with a Member Organization.[30] Pursuant to Sections 12–1 and 12–4 of the proposed By-laws and proposed Rule 908(b), Series A–1 Permits will be limited or unlimited in number and may be issued from time to time by the Exchange, as determined by the Board in its sole discretion.

After demutualization, Section 12–1 of the proposed By-laws will empower the Board to:

- authorize the issuance of an unlimited or restricted number of additional permits;
- terminate or eliminate any class or series of permits; and
- create additional classes or series of permits.

The Exchange represents that any of these actions will continue to be subject to Commission review and/or approval. In accordance with Section 12–3 of the proposed By-laws, no person will be allowed to hold more than one permit.

3. Qualifications

Initially, except to the extent provided in applicable product and/or activity criteria set forth in the proposed Rules, qualifications and other requirements for Members to conduct certain activities (*e.g.*, to act as a specialist or a floor broker), to trade certain products (*e.g.*, special capital requirements for specialists for certain equity securities, allocation of books and Registered Options Trader assignments) or to use specific facilities of the Exchange (*e.g.*, testing requirements for use of certain Exchange technology) will remain largely the same as they were before the demutualization.

4. Security Requirement

According to proposed Rule 909, each Member Organization will have to provide to, and maintain security with, the Exchange (or alternative compliance) for the payment of any claims owed to the Exchange, to SCCP, and to Members and/or other Member Organizations. Currently, Section 14–5 of the By-laws provides that the Exchange (through the Admissions Committee) may dispose of any Seat upon written notice if amounts owed to the Exchange exceed a certain threshold amount and have been outstanding for at least one year. This possibility will be eliminated in connection with the elimination of Seats in the demutualization. Accordingly, the Exchange proposes the security requirement to protect itself in the case of non-payment of certain amounts owed. The proposed security requirement will consist of:

(i) excess net capital of at least the amount required by the Exchange, as will be published by the Exchange from time to time;[31]

(ii) an acceptable guaranty by a clearing Member Organization that is acceptable to the Exchange; or

(iii) a deposit with the Exchange in an amount not to exceed $50,000.

The amount of the security for a Member Organization will remain the same regardless of the number of permits issued to affiliates of the Member Organization. If a Member Organization's registration is terminated and no Members remain associated with the Member Organization, the Exchange will be permitted to apply the proceeds of any remaining security to the payment of any amounts owed by or on behalf of the Member Organization to, or claimed by, the Exchange, to SCCP, and to other Member Organizations, and any balance of the security thereafter remaining will be returned to the Member Organization or, in the case of a guaranty, the guaranty will be returned to the guarantor Member Organization.

The proposed By-laws will also provide in Section 12–9(b) that following the demutualization, Members, Member Organizations and holders of FCO participations will have to pledge in writing to abide by the proposed Certificate of Incorporation, the proposed By-laws, the proposed Rules and any other rules and regulations of the Exchange.

5. Term and Termination of Permits

Pursuant to proposed Rule 908(e), the holder of a permit will be allowed to terminate the permit at any time upon written notice to the Exchange. The Exchange will be allowed to terminate any individual permit in accordance with the By-laws and Rules of the Exchange only upon:

- the non-payment of any dues, foreign currency options users' fees, fees, fines, penalties, other charges, and/or other monies due and owed the Exchange;
- the insolvency of a Member or Member Organization (or if the Business Conduct Committee has determined the Member or Member Organization to be financially unsafe to continue trading); or
- the Exchange's imposition of a disciplinary sanction.

The terminating permit holder and each Member Organization with which the holder is associated will remain responsible for all obligations of the terminating Member, including, without limitation, all applicable dues, fees, charges, fines, penalties and other obligations arising from the holding or use of a permit before its termination.

Pursuant to proposed Rule 908(f), the Exchange will be able to terminate the entire series of Series A–1 Permits on no less than 60 days' notice to the permit holders.[32] If, however, within six months after any such termination of the entire series of Series A–1 Permits, the Exchange issues any other class or series of permit with respect to any securities product previously covered by the Series A–1 Permit, any permit holder of a terminated Series A–1 Permit, who meets the applicable eligibility requirements with respect to such new class or series of permit, will be entitled to receive on terms no less favorable than those applicable to other persons such new class or series of permit so long as such permit holder will trade with such new class or series of permit such product in the same capacity as he had done with a Series A–1 Permit before such termination (but only if he had continuously traded such product in such capacity for at least one year prior to such termination). In addition, such holder of the terminated Series A–1 Permit will be required to apply for such new permit within 30 days of the later to occur of: (i) The termination of the series of Series A–1 Permits; or (ii) the initial issuance of the new class or series of permit.

6. Transfer of Permits

Section 12–1(b) of the proposed By-laws, as well as proposed Rule 908(h), will provide that, unless the Board resolves otherwise, no permit may be sold, transferred (by operation of law or otherwise), leased or otherwise encumbered by any person to whom such permit is issued by the Exchange. However, proposed Rule 908(h) provides that the existing concept of ''inactive nominees'' will be retained to alleviate certain administrative hardships for Member Organizations,

[30] Under Sections 12–2 and 12–4 of the proposed By-laws, Stock Clearing Corporation of Philadelphia (''SCCP''), as an eligible corporation, may hold a permit but will continue not to be subject to the qualification criteria applicable to persons seeking a permit. SCCP, a subsidiary of the Phlx, is a registered clearing agency.

[31] In accordance with the By-laws and Rules, the Member Organization will be subject to monthly reporting obligations to evidence the maintenance of that excess net capital requirement.

[32] As noted above, the Exchange represents that certain actions with respect to the permits, including termination of any class or series of permits will be subject to Commission review and approval.

such that a permit can be transferred to and from an inactive nominee.

E. Fees, Dues and Charges

Currently, the Board of Phlx has the authority to set fees, dues and other charges [33] in its sole discretion, subject to the requirements under the Act, including filing requirements. Pursuant to lease agreements, Members who lease Seats from Owners are ordinarily required to make lease payments in respect of the lease.

After the demutualization, the Board of the Phlx will continue to have the authority to set Member fees, dues and other charges in its sole discretion in accordance with Section 14–1 of the proposed By-laws. However, seat leases and lease payments (other than with respect to FCO participations) will no longer exist. All other Exchange charges in effect at the time of the demutualization will continue to apply until changed.[34] The Exchange notes that all fees are subject to change, both before and after demutualization, subject to approval by the Board and filing with the Commission.

In connection with the demutualization, the Exchange proposes to make certain corresponding changes to the defined terms applicable to its By-laws and Rules. These changes, reflected in Section 1–1 of the existing and the proposed By-laws, as well as in Rules 1 through 21 of the existing Rules and 1 through 22 of the proposed Rules, are generally designed to adapt such defined terms to the proposed post-demutualization structure of the Exchange, as described herein.

F. Summary of Non-Demutualization-Related Changes

Certain aspects of the proposed rule change are not directly related to the Plan of Demutualization. According to the Exchange, these changes are principally of a clean-up nature and are intended to delete obsolete provisions that relate mainly to membership, to provide clarity and to avoid confusion following the demutualization.

1. Definition of Member Firm, Member Corporation and Member Organization

The Exchange proposes to harmonize the use of the defined terms Member Firm, Member Corporation and Member Organization throughout its By-laws and Rules by eliminating the separate defined terms ''Member Firm'' (Rule 3 of the existing Rules) and ''Member Corporation'' (Rule 4 of the existing Rules) and amending the defined term ''Member Organization'' (Rule 6 of the existing Rules and Rule 3 of the proposed Rules) to include any Member Firm and Member Corporation, as they were previously defined. Wherever such defined terms appear in either the By-laws or the Rules, the Exchange proposes to make the corresponding change to Member Organization. The Exchange believes that these changes eliminate certain definitional inconsistencies.

2. Convertible Memberships

The Exchange proposes to delete the parts of Article XII of the existing By-laws that relate to ''convertible memberships'' on the Exchange, together with any references to any classes of memberships that existed in connection with the Exchange's pre-1975 status as an unincorporated entity. No such convertible membership has been outstanding at any time and any transitional rules relating to the Exchange's previous unincorporated status are obviously no longer required.

3. Commissions

The Exchange proposes to delete Article XIX of the existing By-laws in its entirety, which relates to certain requirements for fixed rates of commissions for transactions effected on or by the use of the facilities of the Exchange. The Exchange believes these provisions do not comport with Section 6(e) of the Act.[35] To avoid confusion, the Phlx proposes that these provisions be deleted without replacement. The Exchange also proposes to delete related Rule 248.

4. Market-Maker Membership

The Exchange proposes to delete Article XXIII of the existing By-laws, relating to Market-Maker Memberships, in its entirety. The Phlx advises that no such Market-Maker Membership has been issued since the 1970s and none is currently outstanding. Following the demutualization, the Exchange is not initially proposing to create a specific permit for market-makers; any rights and privileges required to engage in market making on the Exchange initially will be granted through the proposed Series A–1 Permit. The Exchange also proposes to delete related Rules 456–459. The Phlx advises that these deletions are intended to avoid confusion with respect to these unused membership-related provisions.

5. Exchange Options Trading

The Exchange proposes to delete Article XXVI of the existing By-laws, relating to Exchange options trading through a classification of membership named ''Options Membership'' in its entirety. The Phlx states that no such Options Membership has at any time been issued and outstanding. Following the demutualization, the Exchange will not initially create a specific permit to trade options on the Exchange; any rights and privileges required to engage in trading options on the Exchange initially will be granted through the proposed Series A–1 Permit. Accordingly, this deletion is also intended to avoid confusion.

6. References to the Exchange's Constitution

The Exchange proposes to delete references to the ''Constitution of the Exchange'' from the Rules 111, 201A and 960.2, as well as from the Commentary to Rule 803. Where applicable, the references will be either deleted in their entirety or will be replaced by references to the Certificate of Incorporation. The Exchange advises that it has not had a Constitution since its incorporation in 1972 and, since that time, has been governed exclusively by its Certificate of Incorporation and By-laws.

7. References to the Exchange's President

The Exchange proposes to delete references to the Exchange's ''President'' from the Rules and replace such references with ''Chairman of the Board of Governors.'' The Exchange indicates that it has not established the position of a President and has no immediate plans to establish such a position after the demutualization.

8. Participation in Mandatory Decimalization Testing

The Exchange proposes to delete Rule 650 in its entirety, which relates to the mandatory participation of Members in certain programs concerning the testing of the Exchange's system in connection with decimalization. According to the Phlx, such tests have been performed, and, therefore, Rule 650 has become obsolete.

III. Summary of Comments

The Commission received one comment letter in response to the

[33] According to the Exchange, the existing and proposed By-laws and Rules may refer to ''dues, fees and other charges'' to cover various types of monies owed to the Exchange; however, no substantive difference is intended.

[34] Separately, with the elimination of Seats and leases thereof, the Exchange filed a proposed rule change pursuant to Section 19(b) of the Act to adopt fees applicable to Series A–1 Permits and to make conforming changes to its fee schedule as a result of the demutualization. *See supra* note 11.

[35] 15 U.S.C. 78f(e).

proposed rule change.[36] The Penn Mont Letter stated that the Plan of Demutualization was flawed for two reasons. First, the letter noted that, after the demutualization, members no longer would have the ability to propose and vote on rulemaking initiatives. Second, the Penn Mont Letter stated that, in light of the Commission's recent approval of the two-board structure for the New York Stock Exchange, Inc. (''NYSE''), the Phlx should adopt the same structure for its Board of Governors.

In responding to the Penn Mont Letter, the Exchange noted that the reason for eliminating Members' right to petition with respect to changes to the By-laws is that Delaware law requires that stockholders amend the By-laws.[37] The Phlx pointed out that Members will continue to have the same voice in rulemaking at the Exchange through the various committees of the Board of Governors. Specifically, the Phlx noted that Members, either by serving on such committees or by contacting committee members, can raise issues for discussion or rules for adoption. The Exchange noted that, in connection with the demutualization, it proposed to increase member involvement on several committees and that, in its view, the current and proposed committee structure and the Exchange's governance structure are consistent with the fair representation requirements of Section 6(b)(3) of the Act.[38]

Regarding the Penn Mont Letter's recommendation that the Phlx adopt the same dual-board structure that was recently approved for the NYSE, the Exchange noted its belief that at this time the governance structure proposed in its filing is consistent with the Act and the structures of other SROs and is appropriate on a going forward basis. The Exchange stated that both the NYSE's governance specifically and the governance structure of SROs in general are important policy issues, separate from the Exchange's immediate plan to demutualize. The Phlx noted that it would be unfair to delay its efforts to demutualize for this reason alone because the Exchange can and should continue to evaluate its governance structure in the future.

IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[39] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,[40] which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act. The Commission also finds that the proposed rule change is consistent with Section 6(b)(3) of the Act, which requires that the rules of a national securities exchange assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. Further, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[41] in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; 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.

A. Changes in Control of the Phlx

The proposed Certificate of Incorporation imposes limitations on direct and indirect changes in control of the Phlx through voting and ownership limitations placed on the Common Stock, and monitors potential changes in control through a notification requirement, once a threshold percentage of ownership of the Common Stock is reached. The Commission believes that the limitations on direct and indirect changes in control of the Phlx are sufficient to enable the Phlx to carry out its self-regulatory responsibilities, and to enable the Commission to fulfill its responsibilities under the Act.[42]

The proposed Certificate of Incorporation provides that, unless approved by the Board and effective under Section 19(b) of the Act, no Person, either alone or together with its Related Persons, has any right to vote, or to give any consent or proxy with respect to, more than 20% of the then outstanding shares of Common Stock (any shares of Common Stock owned in excess of 20% are referred to as ''Excess Shares''). In addition, such Excess Shares will be deemed not to be present for the purposes of determining whether a quorum is present at any meeting or vote of the stockholders of the Exchange.[43]

Moreover, no Person (either alone or together with its Related Persons, unless approved by the Board and effective under Section 19(b) of the Act) may own, of record or beneficially, whether directly or indirectly, more than 40% of the then outstanding shares of Common Stock of the Phlx. To the extent that such Person (or its Related Persons) purports to own more than 40% of the then outstanding shares of Common Stock, the Person (and its Related Persons) will not be entitled to exercise any rights and privileges incident to ownership of shares in excess of the 40% limit.[44] Finally, the Exchange has the right, but not the obligation, to purchase the shares in excess of the 40% threshold for a price equal to the par value of the Common Stock.

Article FOURTH of the Phlx Certificate of Incorporation will require the Board to approve a By-law amendment to permit any Person, together with its Related Persons, to exercise voting rights with respect to their excess shares or to own more than 40% of the outstanding shares. This amendment to the By-laws would have to be filed with the Commission pursuant to Section 19(b) of the Act. The proposed rule change would present the Commission with an opportunity to determine what additional measures, if any, might be necessary to provide sufficient regulatory jurisdiction over the proposed controlling persons.

The proposed Certificate of Incorporation provides that no Member (either alone or together with its Related Persons) will be allowed to own, of record or beneficially, whether directly or indirectly, more than 20% of the then outstanding shares of Common Stock of the Phlx.[45] To the extent any Member (or its Related Persons) purports to own more than 20% of the then outstanding shares of Common Stock, that Member (and its Related Persons) will not be allowed to exercise any of the rights or

[36] *See* Penn Mont Letter, *infra* note 7.

[37] Letter from Edith Hallahan, Deputy General Counsel, Phlx, to Nancy Sanow, Assistant Director, Division, Commission, dated January 11, 2004.

[38] 15 U.S.C. 78f(b)(3).

[39] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[40] 15 U.S.C. 78f(b).

[41] 15 U.S.C. 78f(b)(5).

[42] The Commission has not formally established the standards for control persons of shareholder-owned national securities exchanges. It expects, however, to consider providing guidance on this issue in the future.

[43] Phlx Certificate of Incorporate, Article FOURTH, paragraph (b)(iii)(B).

[44] Phlx Certificate of Incorporation, Article FOURTH, paragraph (b)(v)(A).

[45] Phlx Certificate of Incorporation, Article FOURTH, paragraph (b)(v)(B).

privileges incident to the ownership of shares of Common Stock with respect to the shares exceeding the 20% limit. If any Member exceeds the 20% threshold, the Phlx will have the right, but not the obligation, to purchase from that Person and its Related Persons either the shares of Common Stock that exceed the 20% threshold for a price equal to the par value of the shares of such Common Stock.

The Commission finds that the limitation on member ownership is consistent with the Act. Today, a member who trades on an exchange can have an ownership interest in the exchange. However, a member's interest could become so large as to cast doubt on whether the exchange can fairly and objectively exercise its self-regulatory responsibilities with respect to that member. A member that also is a controlling shareholder of an exchange might be tempted to exercise that controlling influence by directing the exchange to refrain from diligently surveiling the member's conduct or from punishing any conduct that violates the rules of the exchange or the federal securities laws. An exchange also might be reluctant to surveil and enforce its rules zealously against a member that the exchange relies on as its largest source of capital.

The proposed Certificate of Incorporation requires any Person (either alone or together with its Related Persons) that at any time owns (whether by acquisition or by a change in the number of shares outstanding) of record or beneficially, directly or indirectly, 5% or more of the then outstanding shares of the Common Stock to immediately give the Board of Governors written notice of that ownership and update the notice promptly after an ownership change of a specified percentage.[46] The Commission believes that this approach is consistent with the Act in that it allows the Phlx to comply with the reporting requirements of Form 1, the application for (and amendments to application for) registration as a national securities exchange. Exhibit K of Form 1 requires any exchange that is a corporation or partnership to list any persons that have an ownership interest of 5% or more in the exchange; and Rule 6a–2(a)(2) under the Act requires an exchange to update its Form 1 within ten days after any action that renders inaccurate the information previously filed in Exhibit K.[47] Exhibit K imposes no obligation on an exchange to report parties whose ownership interests in the exchange is less than 5%. Similarly, the proposed Certificate of Incorporation requires the Phlx to monitor changes in its ownership structure only when a Person acquires an interest that equals or exceeds 5%.[48]

B. Fair Representation

Section 6(b)(3) of the Act requires that the rules of an exchange assure fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, or with a broker or dealer.

Under the proposed Certificate of Incorporation, the Exchange will continue to have a total of 22 Governors and will be composed of 11 Non-Industry Governors (of whom at least five must be Public Governors); 10 Industry Governors (of whom five must be On-Floor Governors and five must be Off-Floor Governors); and the Chairman of the Board, who will be the individual then holding the office of CEO. The Non-Industry Governors, Off-Floor Governors, and the Chairman of the Board will continue to be nominated by the Nominating and Elections Committee and will be elected by the holders of the Common Stock. On-Floor Governors will be nominated by the Nominating and Elections Committee from recommendations made by members of that committee or by any Member, participant, or Member Organization Representative. Also, independent nominations by Member Organization Representatives will be valid if signed by Member Organization Representatives representing no less than 50 votes. Member Organizations, through their authorized Member Organization Representative, will vote for designated On-Floor Governors among nominees selected at the annual meeting of Member and Member Organizations. The nominees for On-Floor Governors who received the highest number of votes will be the Designated Nominees, who will then be elected by the Trust owning the share of Series A Preferred Stock

In addition, pursuant to the proposed By-laws, at least half of the Admissions Committee and the Foreign Currency Options Committee will have to be Members, participants or persons affiliated with Member Organizations and at least half of the Options Committee and the Floor Procedure Committee will have to be Members or persons affiliated with Member Organizations. Further, the proposed By-laws require that the Business Conduct Committee share jurisdiction over the revocation of permits and foreign currency options participations in connection with disciplinary matters with the Admissions Committee. The Commission finds that the selection of the five On-Floor Governors out of a total of 22 Governors of the Phlx Board and the manner in which such Governors will be nominated and elected, together with the representation of members on key committees, satisfies the fair representation requirements in Section 6(b)(3) of the Act.[49]

The Commission notes that the proposal does not require that holders of foreign currency options (''FCO'') participations expressly be represented on the committees or on the Board of Governors, although representation on various committees and on the Board as On-Floor Governors is open to them. According to the Phlx, members holding solely FCO participations represent a *de minimis* amount of the membership and most Members that trade foreign currency options also hold regular memberships. In addition, the Phlx will retain its Foreign Currency Options Committee, of which at least 50% of its members must be permit holders or participants or be associated with a member or participant organization. In light of these provisions and the small number of FCO participants currently at the Exchange, the Commission believes that the provisions relating to FCO participations are consistent with the fair representation requirements of the Act. The Commission also finds that the requirement that the Board be composed of 11 Non-Industry Governors, of whom at least five must be Public Governors, is consistent with Section 6(b)(3) of the Act, which requires that one or more directors be representative of issuers and investors.

The Commission also notes that the proposed Certificate of Incorporation expressly requires the Governors, in managing the business and affairs of the Phlx, to consider applicable requirements for registration as a national securities exchange under Section 6(b) of the Act, including the requirements that the rules of the Phlx be designed to protect investors and the public interest and the Phlx shall be so organized and have the capacity to carry

[46] Phlx Certificate of Incorporation, Article FOURTH, paragraph (b)(iv) and (v).

[47] 17 CFR 240.6a–2(a)(2).

[48] The Commission notes, however, that the Exchange should disclose periodically, or otherwise make available upon request, information regarding the number of outstanding shares of Common Stock, so that persons with a stake in the Common Stock can determine whether they are reaching or have reached any of the thresholds that restrict that person's ability to vote or own the shares.

[49] 15 U.S.C. 78f(b)(3).

out the purposes of the Act and (subject to exceptions set forth in the Act and rules and regulations thereunder) to enforce compliance with its members and persons associated with its members, with the provisions of the Act and rules and regulations thereunder and with the Phlx's rules. In the Commission's view, this provision will serve to remind the Governors that they must consider the requirements of the Act when taking actions on behalf of the Phlx.

The Penn Mont Letter, the sole comment letter received by the Commission on the proposal, pointed to the Commission's recent approval of a dual-board governance structure for the NYSE [50] and urged that the Exchange amend its filing to take into account this new structure. The Commission notes that SROs, such as the Phlx, just recently have had the opportunity to review and assess the governance changes made by the NYSE in light of their own governance structures. Although the Exchange should be assessing its own governance structure in light of the recently-approved changes for the NYSE and in light of governance reforms recently approved for listed issuers,[51] the Commission believes that these issues can be addressed separately from the demutualization.[52]

Finally, the Penn Mont Letter stated that the Plan of Demutualization is flawed because members no longer will have the ability to propose independent rulemaking based on a vote of the membership. The Commission believes that the Phlx's response to this comment is persuasive, namely, that Delaware law requires that stockholders amend the By-laws. Moreover, as the Exchange points out, Members will retain a voice in Exchange rulemaking through participation on various Board Committees, some of which now will require at least half of the Committees' composition be Members or persons affiliated with Member Organizations.

C. Dividends

With the demutualization, the holders of Common Stock will have the dividend and other distribution rights of a stockholder in a Delaware stock corporation (except as may be limited by the rights any preferred stock may have, if any such stock is issued). The proposed By-laws, however, will prohibit the payment of dividends from any revenues received by the Exchange from regulatory fines, fees or penalties.[53] In the proposed rule change, the Phlx describes the methodology it will use to determine the amount of regulatory fines, fees and penalties that are subject to the dividend limitation, taking into account the amount of regulatory costs and expenses. The Commission finds that the prohibition on the use of regulatory fines, fees or penalties to fund dividends is consistent with Section 6(b)(3) of the Act because it will ensure that the regulatory authority of the Exchange is not used improperly to benefit the shareholders.

V. Accelerated Approval of Amendment No. 3

The Commission finds good cause exists for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the amendment is published for comment in the **Federal Register**, pursuant to Section 19(b)(2) of the Act.[54] In Amendment No. 3, the Phlx formally submitted the Conversion Amendment as part of the proposed rule change in order to clarify that it is, in fact, a part of the proposed rule change. Also, the Phlx noted that the Conversion Amendment was briefly described in the proposed rule change and that it will be in effect just a very brief period of time prior to consummation of the Merger.

In the amendment, the Phlx also submitted copies of written comments received from market participants regarding the Plan of Demutualization after the Phlx had filed the proposed rule change with the Commission on November 17, 2003, and copies of the Exchange's responses to those comments.[55]

The Commission believes that acceleration of the amendment is appropriate. The Conversion Amendment was described in the Notice and the filing of its actual rule text presents no new issues.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3, including whether the amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–Phlx–2003–73. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to refer to File No. SR–Phlx–2003–73, and should be submitted by February 17, 2004.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[56] that the proposed rule change (SR–PHLX–03–73), as amended, be and hereby is, approved, and Amendment No. 3 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[57]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–1668 Filed 1–26–04; 8:45 am]

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[50] Securities Exchange Act Release No. 48946 (December 18, 2003), 68 FR 75012 (December 29, 2003).

[51] Securities Exchange Act Release No. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003).

[52] In March 2003, the Commission's Chairman sent a letter to the SROs, including the Phlx, asking that they review their own corporate governance practices in light of new listing standards for publicly traded companies. *See* Letter from William H. Donaldson, Chairman, Commission, to Meyer S. Frucher, Chairman and Chief Executive Officer, Phlx, dated March 26, 2003. In September 2003, the Commission's Chairman sent another letter to the SROs, including the Phlx, asking that they review the extent of public representation on their boards and key committees, decision-making processes relating to the nomination of directors and compensation of executives, and public disclosure of these processes and compensation arrangements. *See* Letter from William H. Donaldson, Chairman, Commission, to Meyer S. Frucher, Chairman and Chief Executive Officer, Phlx, dated September 23, 2003.

[53] Phlx By-Laws, Section 30–4.

[54] 15 U.S.C. 78s(b)(2).

[55] Instruction D to Form 19b–4 states that if, after the proposed rule change is filed but before the Commission takes final action, the SRO receives or prepares any correspondence or other communications reduced to writing (including any comment letters) to and from the SRO concerning the proposed rule change, copies of the communications must be filed in accordance with Instruction F to the form.

[56] 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49079; File No. SR–SCCP–2001–09]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing of Proposed Rule Change Relating to Establishing Risk Management Procedures for Short Settlement Transactions

January 14, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 30, 2001, the Stock Clearing Corporation of Philadelphia (''SCCP'') filed with the Securities and Exchange Commission (''Commission'') and on October 9, 2001[2] and September 20, 2002,[3] amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would require SCCP specialists and alternate specialists (''SCCP margin members'') to comply with certain procedures when engaging in short settlement transactions. These procedures would require the review of short settlement transactions by the SCCP Board of Directors or Operations Committee to determine whether additional margin will be required prior to settlement date from SCCP specialists and alternate specialists engaging in these transactions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[4]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to implement risk management procedures to protect SCCP from undue credit risk and short settlement risk when a SCCP margin member engages in a short settlement transaction.[5] In the absence of explicit risk management procedures, SCCP may face unlimited credit risk with its lending institutions and short settlement risk in connection with its clearance and settlement of transactions with the National Securities Clearing Corporation (''NSCC'') through its omnibus clearing and settlement account.

SCCP provides margin services to SCCP margin members in accordance with Rule 9 of SCCP's by-laws and procedures and Regulation T of the Board of Governors of the Federal Reserve System. Pursuant to current-Rule 9, SCCP guarantees the cash settlement obligations of the omnibus clearance and settlement account to NSCC.

If a SCCP margin member executes a short settlement transaction, SCCP is obliged by NSCC's rules and procedures to finance the covering transaction until settlement on T+2 or T+3 because the SCCP margin member has already received the proceeds from the opening transaction on T+1 or T+2, respectively.[6] This creates an additional cash settlement obligation from SCCP to NSCC which, for example in the case of large basket transactions, could be larger than the executing margin member's capital deposit with SCCP, and imposes additional market risk on SCCP should the securities decline in value prior to settlement. If SCCP does not have access to sufficient available funds through its existing credit facilities with its lending institutions, a short settlement transaction thereby exposes SCCP to credit risk that may result from the lack of available funds to cover the transaction. Additionally, if a SCCP margin member executes a short settlement transaction and SCCP cannot meet the cash settlement obligation to NSCC, under NSCC's rules and procedures NSCC is authorized to cease to act on SCCP's behalf and/or buy-in the open positions in the omnibus clearance and settlement account.[7] Such a risk to SCCP is called ''short settlement risk'' and includes exposure to market risk from a decrease in value of the securities during the financing period.

Currently, Rule 9 provides, in part, that SCCP will provide margin accounts for SCCP margin members that clear and settle their transactions through SCCP's omnibus clearance and settlement account. Pursuant to Rule 9, SCCP may issue margin calls to any SCCP margin member when the margin requirement exceeds the account equity. In addition, Rule 9 provides that SCCP may require adequate assurances or additional margin (in addition to minimum margin thresholds) payable in Federal funds in order to protect SCCP in issues deemed by SCCP to warrant additional protection.

Rule 9 also currently provides that any failure by a SCCP margin member to meet a margin call shall subject such delinquent SCCP margin member to the late margin call payment schedule contained in Rule 9 and to SCCP's Rule 22, which governs disciplinary proceedings and penalties. Moreover, pursuant to SCCP's Rules 9 and 15, SCCP may cease to act for the account of such delinquent SCCP margin member, and SCCP will retain a lien on all such SCCP margin member's accounts and securities therein to satisfy any capital deficiency of such margin member.

SCCP proposes to amend Rule 9 to expressly shift the credit risk and the short settlement risk from short settlement transactions from SCCP to the SCCP margin member. The proposed rule change sets forth procedures that would require a SCCP margin member to notify SCCP on trade date (T) whenever the SCCP margin member executes a short settlement transaction. The purpose of this notification is to put SCCP on notice that a short settlement transaction has been executed, to allow SCCP to verify the SCCP margin member's net capital and net settlement cap, and to allow SCCP to calculate any net settlement obligations to NSCC. The

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

[2] In October 2001, SCCP filed Amendment No. 1 to its original filing in order to replace its request for immediate effectiveness under Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(1) with a request for approval pursuant to Section 19(b)(2). Amendment No. 1 also revised Rule 9 to reflect the addition of the schedule for late margin call payments which had previously been approved by the Commission in another SCCP rule filing. Securities Exchange Act Release No. 44722 (Aug. 20, 2001), 66 FR 44661 (Aug. 24, 2001) [SR–SCCP–2001–04].

[3] In September 2002, SCCP filed Amendment No. 2 to its original filing whereby SCCP added the requirement that the SCCP Operations Committee or Board of Directors shall determine whether additional margin will be required prior to the settlement date for short settlement transactions.

[4] The Commission has modified text of the summaries prepared by SCCP.

[5] As defined in SCCP's proposed rule, ''a short settlement transaction occurs when, for example, the buy (or sell) side of the trade (''opening transaction'') settles on T+1 or T+2 and the sell (or buy) side of the trade (''covering transaction'') settles on T+2 or T+3.

[6] NSCC Rule 10, Section 4 and Rule 12, Section 1.

[7] NSCC's Rules 18 and 46.

proposed rule change would establish that there shall be a cap on net settlement obligations undertaken by any SCCP margin member of two times net capital. On the day following trade date (T+1), SCCP shall notify the SCCP margin member of any settlement obligations to NSCC exceeding the net settlement cap and whether the SCCP Board of Directors or Operations Committee has decided, in its sole discretion, that SCCP shall finance the increased settlement obligations on behalf of the SCCP margin member.

Under the proposed rule change, a SCCP margin member must obtain approval from the SCCP Board of Directors or Operations Committee to continue carrying any transactions having an aggregate value above the net settlement cap. The SCCP Board of Directors or Operations Committee has the sole discretion to approve whether a margin member may continue to carry any transactions that exceed the net settlement cap. A SCCP margin member may only carry a short settlement transaction with an aggregate value above the net settlement cap until the clearance and settlement of such transaction with NSCC. The SCCP Board of Directors or Operations Committee shall determine, in its sole discretion, whether SCCP will finance the short settlement transaction in excess of the margin member's net settlement cap. If the SCCP Board of Directors or Operations Committee, as the case may be, determines that SCCP will not finance such short settlement transaction, the SCCP margin member shall be required to pay 100 percent of its settlement obligations to SCCP above the net settlement cap. In this manner, SCCP will satisfy its obligations to NSCC for the additional clearing funds caused by a net settlement transaction.

The SCCP margin member shall have until 3 p.m. eastern time on the date following the initial notification (T+2) to provide sufficient funds to cover 100 percent of the settlement obligations above the SCCP margin member's net settlement cap. The net settlement cap related provisions are intended to require any SCCP margin member who executes a short settlement transaction to bear the credit risk from such transaction and to decrease associated risks to SCCP. Finally, the proposed rule change reminds SCCP margin members that SCCP has the authority to initiate a disciplinary proceeding or to cease to act on behalf of such SCCP margin member if sufficient funds are not provided by the T+2 deadline. These provisions currently appear in SCCP Rules 9 and 15.

No other aspect of Rule 9 is being modified. Rule 9 is being specifically interpreted to (i) Require notification of SCCP by the SCCP margin member in the event the SCCP margin member executes a short settlement transaction; (ii) require the SCCP margin member to finance 100 percent of the net settlement obligation in the event SCCP's Board of Directors or Operations Committee, as the case may be, elects not to finance the opening transaction; and (iii) clarify that SCCP is authorized to bring a disciplinary proceeding against the SCCP margin member and to cease to act on behalf of such SCCP margin member if the firm continues to carry the short settlement transaction without providing sufficient capital to cover the margin member's net settlement obligation.

SCCP believes that the proposed rule change should facilitate compliance with SCCP's rules regarding the carrying of securities in margin accounts and Regulation T and is, therefore, consistent with Section 17A(b)(3)(A) of the Act. In particular, SCCP believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act [8] which requires that the rules of a clearing agency be designed to promote the prompt and accurate settlement of securities transactions, to remove impediments to and perfect the mechanism of a national system, and to protect SCCP, its members, investors, and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which SCCP consents, the Commission will:

(a) By order approve the proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–SCCP–2001–09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at SCCP's principal office and on SCCP's Web site at *http://www.phlx.com/exchange/memos/SCCP/memindex_sccpproposals.html*. All submissions should refer to File No. SR–SCCP–2001–09 and should be submitted by February 17, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–1609 Filed 1–26–04; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3559]

Commonwealth of Puerto Rico (Amendment #4)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective January 20, 2004, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to February 4, 2004.

All other information remains the same, *i.e.*, the deadline for filing applications for economic injury the deadline is August 23, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: January 20, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–1606 Filed 1–26–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4584]

Presentation of DRAFT Report by Professor David Martin ''The U.S. Refugee Admissions Program: Reforms for a New Era of Refugee Resettlement.

SUMMARY: Professor David Martin will brief on his findings and on his draft report on Friday, February 6, 2004, from 1 p.m. to 3 p.m. Both documents are accessible at *http://www.state.gov/g/prm/refadm/rls/rpts/2003/28258.htm* (Draft Summary of Principal Findings); *http://www.state.gov/g/prm/refadm/rls/rpts/2003/28257.htm* (Draft Report). The meeting will be held at the Refugee Processing Center, 1401 Wilson Boulevard, Suite 700, Arlington, VA. The meeting's purpose is twofold: (1) Presentation of the draft report by Professor Martin, and (2) audience comments, suggestions and questions. Public input will be given careful consideration in preparation of the final report.

Seating is limited. Persons wishing to attend this meeting must notify the Bureau of Population, Refugees, and Migration at (202) 663–1481 by 5 p.m. (e.s.t.) Tuesday, February 3, 2004 (no exceptions), to arrange for admission (please provide full name and organization). Persons wishing to present oral comments at the open portion of the meeting or to submit written comments for consideration must provide them in writing by 5 p.m. (e.s.t.) February 3, 2004 (again, no exceptions). All comments may be faxed to (202) 663–1002 or to *gaertnernr@state.gov.*

Dated: January 21, 2004.

Margaret Pollack,

Director, Multilateral Coordination and External Relations, Bureau of Population, Refugees, and Migration, Department of State.

[FR Doc. 04–1688 Filed 1–26–04; 8:45 am]

BILLING CODE 4710–33–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST 96–1960]

Amendments to Air Carrier Family Assistance Plans Pursuant to Vision 100—Century of Aviation Reauthorization Act

AGENCY: Office of the Secretary, (OST) DOT.

ACTION: Notice.

SUMMARY: The Department is publishing the following notices regarding the obligation of air carriers to amend their Family Assistance Plans in accordance with section 809 of Vision 100—Century of Aviation Reauthorization Act (Pub. L. 108–176; 117 Stat. 2490, December 12, 2003).

FOR FURTHER INFORMATION CONTACT: Dayton Lehman, Jr., Deputy Assistant General Counsel, Office of Aviation Enforcement and Proceedings (C–70), 400 7th Street, SW., Washington, DC 20590, (202) 366–9349.

SUPPLEMENTARY INFORMATION:

Requirement That Air Carriers Amend Plans To Address the Needs of Families of Passengers Involved in Aircraft Accidents

This is to advise certificated air carriers that the Vision 100—Century of Aviation Reauthorization Act (Pub. L. 108–176, 117 Stat. 2490, December 12, 2003) amends 49 U.S.C. 41113(b) to require, among other things, that certificated air carriers submit to the Department of Transportation (Department) and the National Transportation Safety Board (NTSB) additional assurances for their respective plans to address the needs of families of passengers involved in aircraft accidents. The content and filing requirements for the update to the plans applicable to certificated air carriers are set forth in section 809 of Vision 100. A copy of section 809 and an electronic version of this document are available on the World Wide Web at *http://dms.dot.gov*.

The additional assurances required to be submitted are described in paragraph (a)(2) of section 809 of Vision 100. In accordance with paragraph (c), certificated air carriers must submit their updated plans to the Department and the NTSB within 90 days of the statute's enactment. Since Vision 100 was signed into law on December 12, 2003, updated plans are due to be filed not later than March 11, 2004. Plans should be submitted to the Department and the NTSB at the following addresses:

Dockets—Dockets OST 96–1960, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL 401, Washington, DC 20590.

Erik Grosof, Office of Transportation Disaster Assistance, National Transportation Safety Board, 490 L'Enfant Plaza, SW., Washington, DC 20594.

Each certificated air carrier should submit its plan in its entirety, that is, the plan as it exists with the new assurances as set forth in Vision 100. We expect each certificated air carrier to give a high priority to the timely preparation and submission of its updated plan. We note that the requirements of section 41113 apply to all certificated air carriers, including those holding cargo-only authority and those operating small aircraft. We also emphasize that, if a carrier chooses to contract with an outside source to act as a point of contact and to provide services covered in the assurances, full responsibility for complying with the provisions of the law nevertheless remains with the carrier.

We would also like to take this opportunity to request, on behalf of the NTSB, that each air carrier provide the NTSB an updated 24-hour telephone number for its operations center for use in the event of an emergency, and that the number be updated with the NTSB in the future as necessary.

Questions concerning contents of the plans may be addressed to Erik Grosof, Office of Transportation Disaster Assistance, NTSB, at (202) 314–6189. Questions concerning the applicability of the requirements of section 41113 to a particular air carrier should be addressed to Dayton Lehman, Jr., Deputy Assistant General Counsel for Aviation Enforcement and Proceedings, DOT, at (202) 366–9342.

Dated: January 20, 2004.

Samuel Podberesky,

Assistant General Counsel for Aviation Enforcement and Proceedings.

[FR Doc. 04–1639 Filed 1–23–04; 10:31 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST 98–3304]

Amendments to Foreign Air Carrier Family Assistance Plans Pursuant to Vision 100—Century of Aviation Reauthorization Act

AGENCY: Office of the Secretary, (OST), DOT.

ACTION: Notice.

SUMMARY: The Department is publishing the following notices regarding the obligation of foreign air carriers to amend their Family Assistance Plans in accordance with section 809 of Vision 100—Century of Aviation Reauthorization Act (Pub. L. 108–176; 117 Stat. 2490, December 12, 2003).

FOR FURTHER INFORMATION CONTACT: Dayton Lehman, Jr., Deputy Assistant General Counsel, Office of Aviation Enforcement and Proceedings (C–70), 400 7th Street, SW., Washington, DC 20590, (202) 366–9349.

SUPPLEMENTARY INFORMATION:

Requirement That Foreign Air Carriers Amend Plans To Address the Needs of Families of Passengers Involved in Aircraft Accidents

This is to advise foreign air carriers serving the United States that the Vision 100—Century of Aviation Reauthorization Act (Pub. L. 108–176, 117 Stat. 2490, December 12, 2003) amends 49 U.S.C. 41313(c) to require, among other things, that foreign air carriers submit to the Department of Transportation (Department) and the National Transportation Safety Board (NTSB) additional assurances for their respective plans to address the needs of families of passengers involved in aircraft accidents. The content and filing requirements for the update to the plans applicable to foreign air carriers are set forth in section 809 of Vision 100. A copy of section 809 and an electronic version of this document are available on the World Wide Web at *http://dms.dot.gov*.

The additional assurances required to be submitted are described in paragraph (b) of section 809 of Vision 100. In accordance with paragraph (c), foreign air carriers must submit their updated plans to the Department and the NTSB within 90 days of the statute's enactment. Since Vision 100 was signed into law on December 12, 2003, updated plans are due to be filed not later than March 11, 2004. Plans should be submitted to the Department and the NTSB at the following addresses:

Dockets—Dockets OST 98–3304, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL 401, Washington, DC 20590.

Erik Grosof, Office of Transportation Disaster Assistance, National Transportation Safety Board, 490 L'Enfant Plaza East, SW., Washington, DC 20594.

We note that the Department has exempted from the requirements of section 41313 those foreign air carriers that currently hold, or may subsequently receive, Departmental authority to conduct operations in foreign air transportation using only small aircraft. (Order 98–1–31, issued February 3, 1998.) For purposes of the exemption, small aircraft are those designed to have a maximum passenger capacity of not more than 60 seats or a maximum payload capacity of not more than 18,000 pounds. Unless a foreign air carrier falls within the above exemption, the requirements of section 41313 apply to all foreign air carriers that currently hold, or may subsequently receive, Departmental authority to conduct operations in foreign air transportation, including those holding only all-cargo authority.

Each foreign air carrier should submit its plan in its entirety, that is, the plan as it exists with the new assurances as set forth in Vision 100. We expect each affected foreign air carrier to give a high priority to the timely preparation and submission of its updated plan. We remind each foreign air carrier that, if it chooses to contract with an outside source to act as a point of contact and to provide services covered in the assurances, full responsibility for complying with the provisions of the law nevertheless remains with the foreign air carrier.

We would also like to take this opportunity to request, on behalf of the NTSB, that each foreign air carrier provide the NTSB an updated 24-hour telephone number for its operations center for use in the event of an emergency, and that the number be updated with the NTSB in the future as necessary.

Questions concerning contents of the plans may be addressed to Erik Grosof, Office of Transportation Disaster Assistance, NTSB, at (202) 314–6189. Questions concerning the applicability of the requirements of section 41313 to a particular foreign air carrier should be addressed to Dayton Lehman, Jr., Deputy Assistant General Counsel for Aviation Enforcement and Proceedings, DOT, at (202) 366–9342.

Dated: January 20, 2004.

Samuel Podberesky,

Assistant General Counsel for Aviation Enforcement and Proceedings.

[FR Doc. 04–1640 Filed 1–23–04; 10:31 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on October 15, 2003, and comments were due by December 15, 2003. No comments were received.

DATES: Comments must be submitted on or before February 26, 2004.

FOR FURTHER INFORMATION CONTACT: Celia Luck, Maritime Administration, MAR–810, 400 7th Street, SW., Washington, DC 20590. Telephone: (202) 366–3581; fax: (202) 366–6988; or e-mail: *celia.luck@marad.dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Intermodal Access to U.S. Ports and Intermodal Access to U.S. Marine Terminals Surveys.

OMB Control Number: 2133–0533.

Type of Request: Extension of currently approved collection.

Affected Public: U.S. Ports and Terminals.

Forms: Form MA–1024, MA–1024A.

Abstract: The Intermodal Access to U.S. Ports Survey and the Intermodal Access to U.S. Marine Terminals Survey were designed to be questionnaires of critical infrastructure impediments that impact the Nation's ports and marine terminals. The collection will provide

key highway, truck, rail and waterside access data and will highlight the access impediments that affect the flow of cargo through U.S. ports and terminals. The annual data received will be used to demonstrate statistically the change in access impediments to the Nation's ports and terminals.

Annual Estimated Burden Hours: 81 hours.

Addressee: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Dated: January 21, 2004.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–1600 Filed 1–26–04; 8:45 am]

BILLING CODE 4910–81–P

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

[Docket No. NHTSA–2004–16932]

Plan for Evaluating the Effectiveness of Vehicle and Behavioral Programs, Calendar Years 2004–2007

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments.

SUMMARY: This notice announces the publication by NHTSA of its Evaluation Program Plan for Calendar Years 2004–2007. The report describes the agency's ongoing and planned evaluations of its existing Federal Motor Vehicle Safety Standards [49 CFR part 571] and other vehicle-safety, behavioral-safety and consumer programs. It also summarizes the results of completed evaluations. The agency's evaluation program responds to Executive Order 12866, which provides for Government-wide review of existing significant Federal regulations. This notice solicits public review and comment on the evaluation plan. Comments received will be used to improve the plan.

DATES: Comments must be received no later than May 26, 2004.

ADDRESSES:

Report: The Evaluation Program Plan is available on the Internet for viewing on line in HTML format at *http://www.nhtsa.dot.gov/cars/rules/regrev/evaluate/809699.html* and in PDF format at *http://www.nhtsa.dot.gov/cars/rules/regrev/evaluate/pdf/809699.pdf*. You may obtain a copy of the plan free of charge by sending a self-addressed mailing label to Charles J. Kahane (NPO–321), National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

Comments: You may submit comments [identified by DOT DMS Docket Number NHTSA–2004–16932] by any of the following methods:

- Web Site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: (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 eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

You may call Docket Management at (202) 366–9324 and visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Charles J. Kahane, Chief, Evaluation Division, NPO–321, Office of Planning, Evaluation and Budget, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2560. Fax: (202) 366–2559. E-mail: *ckahane@nhtsa.dot.gov*.

For information about NHTSA's evaluations of the effectiveness of existing regulations and programs: Visit the NHTSA Web site at *http://www.nhtsa.dot.gov* and click ''Regulations & Standards'' underneath ''Car Safety'' on the home page; then click ''Regulatory Evaluation'' on the ''Regulations & Standards'' page.

SUPPLEMENTARY INFORMATION: NHTSA has rigorously evaluated its major programs as a matter of policy since 1970. The evaluation of the effectiveness of the Federal Motor Vehicle Safety Standards (FMVSS) began in 1975. The Government Performance and Results Act of 1993 and Executive Order 12866, ''Regulatory Planning and Review,'' issued in October 1993 (58 FR 51735), now oblige all Federal agencies to evaluate their existing programs and regulations. Previously, Executive Order 12291, issued in February 1981 (46 FR 13193), also required reviews of existing regulations. Even before 1981, however, NHTSA was a leader among Federal agencies in evaluating the effectiveness of existing regulations and technologies. There are large databases of motor vehicle crashes that can be analyzed to find out what vehicle and behavioral safety programs work best.

This four-year plan presents and discusses the vehicle and behavioral programs, regulations, technologies and related areas NHTSA proposes to evaluate, and it summarizes the findings of past evaluations. Depending on scope, evaluations typically take a year or substantially more, counting initial planning, contracting for support, OMB clearance for surveys, data collection, analysis, internal review, approvals, publication, review of public comments, and the last phase of preparing recommendations for subsequent agency action.

Most of NHTSA's crashworthiness and several crash avoidance standards have been evaluated at least once since 1975. A number of consumer-oriented regulations, *e.g.*, bumpers, theft protection, fuel economy and NCAP also have been evaluated. So have promising safety technologies that were not mandatory under Federal regulations, such as antilock brake systems for passenger vehicles. The plan for calendar years 2004–2007 includes evaluations of new and existing vehicle and behavioral safety programs, regulations, technologies and consumer information programs.

The plan will be periodically updated in response to public and agency needs, with a complete revision scheduled every five years. The most recent plan before this one was published on May 8, 1998 (63 FR 25543).

How Can I Influence NHTSA's Thinking on This Subject?

NHTSA welcomes public review of the evaluation plan and invites the reviewers to comment about the selection, priority, and schedule of the regulations to be evaluated. The agency

is interested in learning of any additional data that may be useful in the evaluations. NHTSA will submit to the Docket a response to the comments and, if appropriate, will supplement or revise the evaluation plan.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the Docket number of this document (NHTSA–2004–16932) in your comments.

Your primary comments must not be more than 15 pages long (49 CFR 553.21). However, you may attach additional documents to your primary comments. There is no limit on the length of the attachments.

Please send two paper copies of your comments to Docket Management, submit them electronically, fax them, or use the Federal eRulemaking Portal. The mailing address is U.S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. If you submit your comments electronically, log onto the Dockets Management System Web site at *http://dms.dot.gov* and click on ''Help & Information'' or ''Help/Info'' to obtain instructions. The fax number is 1–202–493–2251. To use the Federal eRulemaking Portal, go to *http://www.regulations.gov* and follow the online instructions for submitting comments.

We also request, but do not require you to send a copy to Charles J. Kahane, Chief, Evaluation Division, NPO–321, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW., Washington, DC 20590 (alternatively, fax to (202) 366–2559 or e-mail to *ckahane@nhtsa.dot.gov*). He can check if your comments have been received at the Docket and he can expedite their review by NHTSA.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NCC–01, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, SW., Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR Part 512).

In addition, send two copies from which you have deleted the claimed confidential business information to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit them electronically.

Will the Agency Consider Late Comments?

In our response, we will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

How Can I Read the Comments Submitted by Other People?

You may read the comments by visiting Docket Management in person at Room PL–401, 400 Seventh Street, SW., Washington, DC from 10 a.m. to 5 p.m., Monday through Friday.

You may also see the comments on the Internet by taking the following steps:

A. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov*).

B. On that page, click on ''search.''

C. On the next page (*http://dms.dot.gov/search/*) type in the four-digit Docket number shown at the beginning of this Notice (16932). Click on ''search.''

D. On the next page, which contains Docket summary information for the Docket you selected, click on the desired comments. You may also download the comments.

Authority: 49 U.S.C. 30111, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

Noble N. Bowie,

Associate Administrator for Planning, Evaluation and Budget.

[FR Doc. E4–114 Filed 01–26–04;8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34455]

Vermont Railway, Inc.—Modified Rail Certificate

On January 5, 2004, Vermont Railway, Inc. (VTR), a Class III rail carrier, filed a notice for a modified certificate of public convenience and necessity under 49 CFR part 1150, subpart C, *Modified Certificate of Public Convenience and Necessity,* to operate a 131-mile rail line owned by the State of Vermont (Vermont). The line extends from Burlington to Bennington, VT.

The Board's predecessor, the Interstate Commerce Commission (ICC), approved the line for abandonment by Rutland Railway Corp., in *Rutland Ry. Corp. Abandonment of Entire Line,* 317 I.C.C. 393 (1962). Subsequently, the ICC authorized acquisition of the line by Vermont and lease and operation of the line by VTR in *State of VT and Vermont Ry., Inc., Acquisition and Op.,* 320 I.C.C. 330 (1963). The original lease and subsequent amended lease between Vermont and VTR provide for renewal of the lease every 10 years. With ICC approval, the lease term was extended three times.[1] The current extension expired on January 5, 2004.

The last time the ICC approved an extension of the lease between Vermont and VTR, it noted that, if VTR were to file for a modified certificate of public convenience and necessity, the parties would no longer need to obtain approval for changes or extensions of their lease.[2]

The rail segment qualifies for a modified certificate of public convenience and necessity. *See Common Carrier Status of States, State Agencies and Instrumentalities and Political Subdivisions,* Finance Docket No. 28990F (ICC served July 16, 1981).

There is no operating subsidy involved. However, pursuant to the 1990 lease between VTR and Vermont, Vermont is required to pay for the maintenance of certain structures on the line.[3] VTR represents that it has

[1] The last extension was approved in *State of Vermont and Vermont Railway, Inc.—Acquisition and Operation in Vermont,* Finance Docket No. 22830 (ICC served Dec. 28, 1993) (*December 1993 Decision*). In that decision, the ICC also retroactively approved a revised lease signed by the parties in 1990.

[2] *See December 1993 Decision* at 1 n.1.

[3] Pursuant to 5 V.S.A. 3401–3409, the Vermont Agency of Transportation is authorized to administer State-owned railroad properties and to take necessary action to ensure continuity of service over such properties.

extensive insurance coverage for property damage and personal injury. There are no preconditions for shippers to meet in order to receive rail service.

This notice will be served on the Association of American Railroads (Car Service Division) as agent for all railroads subscribing to the car-service and car-hire agreement: Association of American Railroads, 50 F Street, NW., Washington, DC 20001; and on the American Short Line and Regional Railroad Association: American Short Line and Regional Railroad Association, 50 F Street, NW., Suite 7020, Washington, DC 20001.

Decided: January 20, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–1528 Filed 1–26–04; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub-No. 244X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Pike County, KY

Norfolk Southern Railway Company (NSR) has filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon a 8.74-mile line of railroad between milepost WP–2.20 at Toler and milepost WP–10.94 at Peg, in Pike County, KY.[1] The line traverses United States Postal Service Zip Code 41514.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 26, 2004, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by February 6, 2004. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 17, 2004, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NSR's representative: James R. Paschall, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

NSR has filed an environmental report which addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by January 30, 2004. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.) Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by January 27, 2005, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: January 20, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–1532 Filed 1–26–04; 8:45 am]

BILLING CODE 4915–00–P

[1] By letter filed January 8, 2004, NSR clarified that it does not seek exemption from the requirements of 49 U.S.C. 10904 or 49 U.S.C. 10905. The notice of exemption covers only an exemption from the requirements of 49 U.S.C. 10903.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury is soliciting comments concerning the Letterhead Applications and Notices Filed by Brewers.

DATES: Written comments should be received on or before March 29, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Sandra L. Turner, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Room 200 E, Washington DC 20226; telephone (202) 927–8210.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed Sandra L. Turner, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Room 200 E, Washington, DC 20226; telephone (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Letterhead Applications and Notices Filed by Brewers.

OMB Number: 1513–0005.

Form Number: TTB F 5130.10.

Recordkeeping Requirement ID Number: TTB REC 5130/2.

Abstract: The Internal Revenue Code requires brewers to file a notice of intent to operate a brewery. TTB F 5130.10 is similar to a permit and, when approved by TTB is brewer's authorization to operate. Letterhead applications and notices are necessary to identify brewery activities so that TTB may insure that proposed operations do not jeopardize Federal revenues. Brewers must keep general required records for ongoing brewery operations for a period of 3 years. However, the brewer must keep certain documents for an indefinite period. Qualifying documents are the permission to operate. So, as long as the brewery is in operation, the brewer must keep the pertinent qualifying documents, including the Brewer's Notice and other notices and applications.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,750.

Estimated Total Annual Burden Hours: 9,625.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 6, 2004.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 04–1634 Filed 1–26–04; 8:45 am]

BILLING CODE 4810–13–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury is soliciting comments concerning the Principal Place of Business on Beer Labels.

DATES: Written comments should be received on or before March 29, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Sandra L. Turner, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Room 200 E, Washington DC 20226; telephone (202) 927–8210.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Sandra L. Turner, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Room 200 E, Washington, DC 20226; telephone (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Principle Place of Business on Beer Labels.

OMB Number: 1513–0085.

Recordkeeping Requirement ID Number: TTB Reporting Requirement 5130/5.

Abstract: TTB regulations permit domestic brewers who operate more than one brewery to show as their address on labels and kegs of beer, their ''principal place of business'' address. This label option may be used in lieu of showing the actual place of production on the label or of listing all of the brewer's locations on the label.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,200.

Estimated Total Annual Burden Hours: One (1).

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 6, 2004.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 04–1635 Filed 1–26–04; 8:45 am]

BILLING CODE 4810–13–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM
FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. On November 8, 2002, the agencies requested public comment for 60 days on proposed

revisions to the Consolidated Reports of Condition and Income (Call Report), which are currently approved collections of information. After making certain modifications, some of these proposed revisions were adopted by the Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, approved by OMB, and took effect March 31, 2003. After considering the comments the agencies received on the other proposed revisions from the November 2002 proposal, the FFIEC has adopted these remaining revisions with certain changes and the agencies are submitting them to OMB for review and approval.

DATES: Comments must be submitted on or before February 26, 2004.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: Comments should be sent to the Public Information Room, Office of the Comptroller of the Currency, Mailstop 1–5, Attention: 1557–0081, 250 E Street, SW., Washington, DC 20219. Due to delays in paper mail delivery in the Washington area, commenters are encouraged to submit comments by fax or e-mail. Comments may be sent by fax to (202) 874–4448, or by e-mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Board: Written comments, which should refer to ''Consolidated Reports of Condition and Income, 7100–0036,'' may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Due to temporary disruptions in the Board's mail service, commenters are encouraged to submit comments by electronic mail to *regs.comments@federalreserve.gov*, or by fax to the Office of the Secretary at 202–452–3819 or 202–452–3102. Comments addressed to Ms. Johnson also may be delivered to the Board's mailroom between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room outside of those hours. Both the mailroom and the security control room are accessible from the Eccles Building courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments received may be inspected in room M–P–500 between 9 a.m. and 5 p.m. on weekdays pursuant to sections 261.12 and 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FDIC: Written comments should be addressed to Steven F. Hanft, Paperwork Clearance Officer, Room MB–3964, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. All comments should refer to ''Consolidated Reports of Condition and Income, 3064–0052.'' Commenters are encouraged to submit comments by electronic mail to *shanft@fdic.gov* or by fax to (202) 898–3838. Comments also may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503 or electronic mail to *jlackeyj@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: For further information about the revisions discussed in this notice, please contact any of the agency clearance officers whose names appear below. In addition, sample copies of Call Report forms can be obtained at the FFIEC's Web site (*http://www.ffiec.gov*).

OCC: John Ference, Acting OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Cynthia M. Ayouch, Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Steven F. Hanft, Paperwork Clearance Officer, (202) 898–3907, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Request for OMB approval to extend, with revision, the following currently approved collections of information:

Report Title: Consolidated Reports of Condition and Income.

Form Number: FFIEC 031 (for banks with domestic and foreign offices) and FFIEC 041 (for banks with domestic offices only).

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

For OCC:

OMB Number: 1557–0081.

Estimated Number of Respondents: 2,126 national banks.

Estimated Time per Response: 42.30 burden hours.

Estimated Total Annual Burden: 359,719 burden hours.

For Board:

OMB Number: 7100–0036.

Estimated Number of Respondents: 952 state member banks.

Estimated Time per Response: 48.35 burden hours.

Estimated Total Annual Burden: 184,117 burden hours.

For FDIC:

OMB Number: 3064–0052.

Estimated Number of Respondents: 5,332 insured state nonmember banks.

Estimated Time per Response: 32.95 burden hours.

Estimated Total Annual Burden: 702,758 burden hours.

The estimated time per response for the Call Report is an average, which varies by agency because of differences in the composition of the banks under each agency's supervision (*e.g.*, size distribution of institutions, types of activities in which they are engaged, and number of banks with foreign offices). For the Call Report as it would be revised, the time per response for a bank is estimated to range from 15 to 600 hours, depending on individual circumstances.

General Description of Report

These information collections are mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), and 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks, and for all banks for deposit information). Except for selected items, these information collections are not given confidential treatment.

Abstract

Banks file Call Reports with the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of reporting banks and the industry as a whole. In addition, Call Reports provide the most current statistical data available for identifying areas of focus for both on-site and off-site examinations, for evaluating bank corporate applications such as mergers, and for monetary and other public policy purposes. Call Reports are also used to calculate all banks' deposit insurance and Financing Corporation assessments and national banks' semiannual assessment fees.

Current Actions

On November 8, 2002, the OCC, the Board, and the FDIC jointly published a

notice soliciting comments for 60 days on proposed revisions to the Call Report (67 FR 68229). The agencies' notice addressed a number of different types of changes to the Call Report requirements. These changes related to the content of the Call Report itself, the submission deadline for certain banks, and the agencies' process for validating and publicly releasing the data that banks report.

After considering the comments the agencies received on the November 2002 proposal, the FFIEC and the agencies adopted some of the proposed revisions after making certain modifications to them, submitted them to OMB for review with a request for public comment on them (68 FR 10310), and received OMB approval to implement them as of March 31, 2003. The agencies' notice also explained that the FFIEC and the agencies were continuing to evaluate three other elements of their November 2002 proposal:

(1) A reduction from 45 to 30 days in the Call Report filing period for banks with more than one foreign office,[1]

(2) The creation of a supplement to the Call Report that would enable the agencies to collect a limited amount of data from certain banks in the event of an immediate and critical need for specific information, and

(3) The establishment of edit criteria that would have to be met in order for a bank's Call Report data to be accepted beginning upon implementation of the agencies' new business model for collecting and validating Call Reports in 2004.

The FFIEC and the agencies have concluded their evaluations of these three elements of their November 2002 proposal and have decided to proceed with them in modified form as more fully discussed below. In addition, in preparation for the implementation of the agencies' new Call Report business model, banks will begin to provide contact information for the authorized officer who signs their Call Report as part of their submission of the report. The contact information would be afforded confidential treatment and includes the officer's name, title, phone number, e-mail address, and fax number. This revision would take effect with the Call Report for March 31, 2004.

Type of Review: Revisions of currently approved collections.

[1] Because the agencies had proposed in November 2002 to reduce this filing period effective June 30, 2003, their notice requesting comment on the revisions submitted to OMB for review stated that any reduction in the filing period would not take effect until after June 30, 2003.

Comments Received on the Agencies' Proposal

In response to their November 8, 2002, notice, the agencies received 13 comment letters, eight from banks and banking organizations, three from bankers' associations, one from a governmental entity, and one from a trade group outside the banking industry. The FFIEC and the agencies have considered the comments received from these 13 respondents as they relate to the revisions that are the subject of this notice.

Reduction in the Filing Period for Banks with More Than One Foreign Office—Of the 13 commenters, 8 addressed the proposed reduction from 45 to 30 days in the filing period for banks with more than one foreign office. One bankers' association observed that its member banks generally did not perceive this proposed change to be a problem. However, five large banks and two other bankers' associations objected to this proposed change. These commenters indicated that, compared to other banks of similar size that have a 30-day filing deadline, banks with multiple foreign offices are more heavily involved in certain activities, such as securitizations, credit enhancements, and fiduciary activities, which affect the amount and complexity of the information these banks must report in the Call Report. In addition, foreign office data often must be translated from another currency into U.S. dollars and converted from local accounting principles to U.S. accounting principles. These commenters therefore expressed concern about the cost and burden of a shorter filing period, which would require affected banks to modify their reporting systems and processes and add or reallocate staff. They further stated that an earlier filing deadline could adversely affect data quality, at least in part by limiting the amount of time available for the review of Call Report data prior to submission.

Commenters suggested alternatives to the agencies' proposal to reduce the filing period for banks with multiple foreign offices to 30 days beginning June 30, 2003. One alternative would be for the agencies to implement a staggered submission process for banks with multiple foreign offices under which these banks would file a preliminary balance sheet, income statement, and domestic office deposit data within 30 days followed by complete Call Report data within 45 days. Another alternative would be for the agencies to adopt a three-year phased-in approach like the Securities and Exchange Commission (SEC) did in August 2002 when it shortened the filing period for larger public companies' quarterly reports on Form 10-Q from 45 to 35 days. Finally, commenters suggested that if the filing period for the Call Report data is reduced, the filing periods for other regulatory reports that banking organizations submit to the agencies should be lengthened.

In proposing to reduce the filing period for the approximately 40 banks with more than one foreign office, a group that includes the largest banks in the industry, the agencies noted that more timely receipt of Call Report data from all institutions would enable the agencies to make these data, and the agencies' analyses thereof, available to bankers and the marketplace earlier than at present. The agencies' proposal also cited the SEC's August 2002 decision to accelerate the filing period for quarterly and annual reports required from larger public companies under the federal securities laws as evidence of the importance of earlier public availability of information to decision-making. At the same time, the FFIEC and the agencies understand the concerns expressed by commenters about the impact that an almost immediate one-third reduction in the filing period would have on the systems and staffs of affected banks. The FFIEC and the agencies have considered these concerns and the alternatives suggested by commenters as well as the Board's March 2003 decision concerning the shortening of the filing deadline for the bank holding company report on form FR Y–9C (68 FR 15725). As a result, the FFIEC and the agencies have modified their original proposal and, similar to the actions by the SEC and Board, are adopting a phased-in approach for the Call Report. For banks with more than one foreign office, the filing deadline will be reduced to 40 calendar days from 45 calendar days starting with the June 2004 Call Report and to 35 calendar days starting with the June 2005 Call Report. These reduced filing periods will apply to each quarterly Call Report, including the year-end report. For all other banks, the Call Report filing deadline will remain 30 calendar days.

The changes in Call Report requirements that OMB approved for implementation as of March 31, 2003, included authorization for the FDIC to contact not more than 20 banks with more than one foreign office on or about each May 1 and November 1 if their March 31 and September 30 Call Reports had not been received in order to obtain certain deposit data needed to estimate insured deposits. As approved by OMB, the FDIC is permitted to

survey these banks as long as the current 45-day filing period remains in effect. However, under the current statutory and regulatory timeframes for setting the semiannual deposit insurance assessment rates, the FDIC Board is required to announce the assessment rate schedules on approximately May 15 and November 15 each year. In order to do so, the FDIC Board must meet to decide on the rate schedule for the next semiannual period in early May and November. Thus, the reduction in the Call Report filing period to 35 days, rather than to 30 days as the agencies proposed in November 2002, does not eliminate the need for the FDIC's limited-scope deposit data survey. Accordingly, as long as the Call Report filing period for banks with multiple foreign offices exceeds 30 days, the FDIC is seeking ongoing authority to contact not more than 20 banks of these banks by telephone on or about each May 1 and November 1 if their March 31 and September 30 Call Reports have not been submitted. The FDIC would then receive the requested information on the amount of domestic office deposits and estimated uninsured deposits from the surveyed banks over the telephone, by e-mail, or by fax.

Call Report Supplement—Two banks and two bankers'' associations offered comments on the proposed addition to the Call Report of a supplement that the agencies would expect to use in the infrequent event of an immediate and critical need to collect certain information from a segment of the banking industry.[2] The November 2002 proposal noted that the Paperwork Reduction Act of 1995 has emergency procedures for obtaining OMB approval to collect information on a one-time basis, but stated the agencies' preference to take a proactive approach and obtain authority to collect critical data in advance of such a future need. The Board currently has comparable authority to collect a supplement to the FR Y–9C bank holding company report (Supplement to the Consolidated Financial Statements for Bank Holding Companies; FR Y–9CS; OMB No. 7100–0128).

One commenter questioned whether the agencies' proposed addition of a supplement to the Call Report had satisfied applicable Administrative Procedure Act requirements because the proposal lacked sufficient specificity, made no provision for confidential treatment of the data that would be collected, and the burden estimate was without foundation. Rather than creating a Call Report supplement, this commenter recommended that the agencies should rely on the existing emergency provisions of the Paperwork Reduction Act should they be confronted with an *ad hoc* need for critical information.

Two other commenters sought clarification of the frequency with which the Call Report supplement would be collected and magnitude of the data that would be requested because of the cost and burden to banks should the agencies overuse their authority for this supplement. One of these commenters also expressed concern about the absence of a prior opportunity to evaluate and comment on the data to be collected on the supplement, which led the commenter to recommend that such data be accorded confidential treatment. In contrast, the other commenter recommended that the agencies should permit institutions to request confidential treatment for their data. Finally, both of these commenters, as well as the fourth commenter, questioned what the submission deadline for the supplement would be. In addition, the fourth commenter recommended that the agencies set specific criteria for identifying the banks that must complete the supplement and limit the data to be collected to specific predefined items. This commenter also sought clarification of the circumstances in which there would be an ''immediate and critical need'' for data.

The Paperwork Reduction Act of 1995 and OMB's implementing regulation (5 CFR 1320) establish procedures for obtaining OMB approval for information collections. The November 2002 notice that the agencies published in the **Federal Register** seeking public comment on the proposed Call Report supplement is sufficiently specific to meet the standards established in that law and regulation. The notice and comment requirements of the Administrative Procedure Act do not apply to the proposed supplement. The Paperwork Reduction Act does not require that burden estimates for collections of information meet a specified level of precision, accuracy, and reliability. It requires only that the agencies make explicit the assumptions they used to estimate the number of respondents and the time needed to respond. The assumptions underlying the burden estimate associated with the proposed supplement have a degree of reliability that is typical for collections of this nature.

Furthermore, the agencies believe that they established appropriate constraints in their proposal with respect to their use of a Call Report supplement in order to limit the frequency of its use and the resulting reporting burden. In this regard, to limit the potential for overuse of the Call Report supplement, the agencies proposed that the members of the Federal Financial Institutions Examination Council would be required to approve the specific use of the supplement. Thus, the Examination Council's Reports Task Force would not have the delegated authority to institute a data collection using the Call Report supplement. The agencies note that the Board has used its authority to collect the bank holding company supplement (FR Y–9CS) only twice over the last 18 years, and its most recent use was to capture information on new activities authorized by the Gramm-Leach-Bliley Act of 1999.

In their November 2002 proposal, the agencies also stated that in any quarter in which the supplement were to be collected, no more than 10 percent of the banks under each agency's supervision would be required to complete the supplement and the reporting burden imposed on these banks would not exceed one hour per quarter. This is based on the assumption that the event giving rise to an immediate and critical data need would have a significant effect on a limited number of institutions. Thus, if the agencies were confronted with an immediate and critical need for data from more than 10 percent of their supervised banks or if the collection of such data would impose a reporting burden greater than one hour per quarter, the agencies would have to request OMB approval to use the Call Report supplement to collect the data. Otherwise, the agencies would need to follow the emergency procedures established under the Paperwork Reduction Act for obtaining the authority to collection the data on a one-time basis. Should there be a continuing need for data reported on the supplement or collected under emergency authority, the agencies would have to adhere to the standard Paperwork Reduction Act procedures for revising an existing approved information collection.

As for the circumstances in which the agencies would envision an ''immediate and critical need'' for data, the proposal cited as examples an unexpected market event or change in credit conditions that materially affects certain institutions as well as a statutory change. Another example would be a material change in accounting standards. If and when an

[2] One other bank briefly referred to the creation of this supplement in conjunction with its comments concerning the reduction in the filing period.

immediate and critical need for data were to arise and the Examination Council members approved the use of the Call Report supplement, the supplement would consist of specifically defined items (and related instructions) and specific criteria would be established for identifying the banks required to complete the supplement. The supplement normally would be collected as part of the next quarterly Call Report and the submission deadline for the supplement would be the same as for the Call Report (unless the Examination Council approved a later deadline). Accordingly, the ''as of'' date for the items on the supplement typically would be the Call Report date (or a period ending as of the report date). The Examination Council's approval to collect the supplement also would specify whether the reported data would be accorded confidential treatment on an individual institution basis, taking into consideration the nature of the data and the limited number of banks from which it would be collected. The FFIEC and the agencies would advise all banks about the supplemental reporting requirement at the earliest practicable date, and the notification would contain the information discussed above in this paragraph.

Criteria for Acceptance of Call Report Data—In August 2002, the FFIEC, on behalf of the agencies, issued a Request for Proposal for the design and implementation of a new business model for processing Call Report data. In June 2003, the FFIEC awarded a contract for the development of this new business model, a principal feature of which is a central data repository (CDR) to collect, validate, manage and distribute Call Report information. As part of the introduction of this new business model, currently targeted for implementation with the September 2004 Call Report, the agencies would change the validation process for Call Report data.

At present, a bank's completed Call Report data are subjected to numerous edit checks to assess the accuracy and reasonableness of the reported data after the data have been electronically submitted to the agencies. If the agencies' validation process identifies any edit failures or exceptions in a bank's reported data, an agency Call Report analyst normally contacts the bank, typically by telephone, to obtain either an explanation of the facts and circumstances that support the correctness of data as reported or any necessary corrections. This follow-up with a bank takes place anywhere from one day to four weeks after a bank has submitted its data.

Under the new business model, the validation process will take place in conjunction with a bank's submission of its Call Report data to the agencies. The CDR will contain all of the edit criteria and formulas, where they would be publicly available. Call Report preparation software into which the edits have been incorporated will identify any edit failures or exceptions while a bank is completing its report. The bank will then be able to correct its data to eliminate any validity edit failures, which are mathematical and logical tests. The software will also provide a method for the bank to supply explanatory comments concerning any quality edit exceptions, which are tests of the reasonableness of the data, including tests against historical performance and other relational tests.

Upon implementation of the CDR, the agencies proposed to not accept a bank's Call Report submission if it contains any validity edit failures and lacks explanatory comments for any quality edit exceptions. Because a bank would be aware of any edit failures or exceptions as it completes its Call Report, edit failures and exceptions will be addressed immediately rather than after-the-fact as they are under the agencies' current approach to data validation. Although banks will still have to correct validity edit failures and provide explanations for quality edit exceptions that support their reported data, the planned shift in the validation process should reduce the agencies' subsequent questions about these data. The new process also should result in quicker validation, acceptance, disclosure, and use of individual bank Call Report data.

Three banks and two bankers' associations commented on several matters relating to this aspect of the November 2002 proposal. Four of these commenters stated that the proposed requirement for a bank to provide explanatory comments for quality edit exceptions by the submission deadline for its Call Report data, rather than in response to an agency inquiry after the data have been filed and edited, will necessitate more work on the bank's part before it files its data than under the current processing system. They indicated that this has the potential to increase reporting burden and reduce the time available to a bank to ensure the accuracy of its reported data. The fifth commenter stated that the quality edits must be logical and reasonable in number so that banks do not spend an unreasonable amount of time and effort providing explanatory comments.

The agencies acknowledge that the change in the timing of when banks need to address edit failures and exceptions means that banks will need to allot time prior to the Call Report submission deadline to address any edit failures or exceptions identified by their Call Report preparation software. However, under the agencies' current validation process, the average number of edit exceptions identified upon receipt of Call Report data is from 3 to 4 per bank. The actual number of edit exceptions varies from none for about 35 percent of all banks to an average of about 12 for the largest banks with foreign offices. The number of edit exceptions per bank is not expected to change with the introduction of the CDR. Thus, the number of explanations that most banks will need to provide as part of their Call Report submission under the new business model should not be excessive. Furthermore, one of the purposes for implementing the new process is to ensure that banks are accountable for the quality and accuracy of their data so that the data validation process can be completed sooner, which will enable the data to be made available to users within the agencies and to the public earlier.

Four of the commenters sought assurance from the agencies that banks' explanatory comments for quality edit exceptions would be accorded confidential treatment. Reasons given for this request included the following: (1) Public disclosure of explanatory comments could place banks at a competitive disadvantage compared to other companies not subject to such disclosure requirements; (2) the explanatory comments are of a supervisory nature and are supplemental to the Call Report data; (3) the comments may be misinterpreted by the public; and (4) edit exceptions may occur as a result of institution-specific business strategies or transactions.

Under the agencies' current data validation approach, agency Call Report analysts record the explanations they obtain from banks concerning edit exceptions that are identified when their Call Report data are processed after they have been submitted to the agencies. Obtaining these after-the-fact explanations is an element of the agencies' overall supervision of banks and, as commenters observed, the explanations currently receive confidential treatment. The agencies' adoption of the new business model will simply shift the timing of receipt of the explanations that banks will provide to support the correctness of the data they have reported. Accordingly, the agencies will continue to treat banks'

explanatory comments that address any quality edit exceptions as confidential. Should the agencies seek to make the explanatory comments publicly available in the future, they will propose a change in their policy and request public comment.

Five commenters recommended that the agencies disclose the quality edits they plan to implement in advance of their effective date so that banks can evaluate and comment on them. All but one of these commenters suggested that the issuance of these edits take place at least two quarters in advance. Another commenter expressed concern that because explanatory comments about edit exceptions would be an integral part of a bank's Call Report submission, the edits themselves would be considered part of the reporting requirements, which would make them subject to notice and comment. The agencies believe that both they and banks will benefit from the release of planned edits prior to their implementation date. The implementation of revisions to the data collected in the Call Report normally takes place as of the March 31 report date. The agencies' timeline for the introduction of reporting revisions under the new business model calls upon them to make the edits associated with reporting revisions available to banks, software vendors, and other interested parties for review on the CDR Web site five and one half months before the customary March 31 effective date.[3] Banks and other parties could then submit any questions or comments about these edits to the agencies. The final version of these edits would be available on the CDR Web site three and one half months before the effective date. Banks also would be free to provide the agencies with their views on specific Call Report edits at any other time. In this regard, the agencies note that, for more than one year, they have published the Call Report edits currently in use on the FFIEC's Web site (*http://www.ffiec.gov/ffiec_report_forms.htm*) for banks' reference.

Two commenters indicated that some banks on occasion have triggered certain validity edit failures due to unusual circumstances and not because of inaccurately reported data. These commenters expressed concern that there would be situations in which the agencies would not accept a bank's Call Report data due to a validity edit failure caused by a problem with the edit itself rather than with the data. This could result in the late filing of an institution's data, which could subject the institution to monetary penalties. These two commenters as well as a third recommended that the agencies' new business model include an override feature that would allow them to accept data as reported when a validity edit problem exists. The agencies are reviewing their validity edits to ensure that they are properly designated as such. Any that are more properly considered quality edits will be redesignated accordingly. In addition, once the new business model is implemented, should the agencies find that an edit contained within the CDR is not performing properly, they will be able to override the edit until the problem is resolved.

Two commenters also requested that, when a bank has reached the Call Report submission deadline but its data contain one or more quality edit exceptions, the bank should be allowed to file its data while indicating that the exception is still under investigation. From the agencies' perspective, a key reason for requiring banks to provide explanatory comments concerning quality edit exceptions is to hold banks accountable and responsible for the quality of the Call Report data that they submit. When a bank prepares its data, it will need to complete its internal review process at an early enough date prior to the submission deadline so that if changes to the bank's Call Report data arise from the final review of the data and trigger edit exceptions, the bank has sufficient time to do any necessary research. Therefore, the agencies do not believe it is appropriate for a bank to file its Call Report with an explanatory comment stating that it is investigating the reason for an edit exception. In addition, as noted above, the average number of edit exceptions per bank Call Report under the agencies' existing validation process is low.

Two commenters noted that there are quality edit exceptions that recur from quarter to quarter and suggested that the new business model should permit some flexibility in responding to quality edit exceptions. One possible means for doing so would be by providing a method that would enable banks to carry quality edit explanations forward from one quarter to the next so that they can avoid reentering the same explanation in successive quarters. The agencies recognize that such a method would aid in reducing burden, but they are also concerned about the potential for a bank to carry forward the prior quarter's explanation when that explanation does not fit the circumstances giving rise to the quality edit exception in the current quarter. Nevertheless, the Call Report software vendors are aware of this matter and each vendor will determine the level of service that it will make available to its bank customers in its software.

In addition, two commenters sought a better explanation of what constitutes a quality edit for which an explanation would be required in order for a bank's Call Report data to be accepted. More specifically, one commenter asked whether the quality edits include edits that compare a bank's currently reported data to data reported in a prior period and to data reported in another regulatory report, *e.g.*, the bank holding company report on the Board's form FR Y–9C. As previously mentioned, the Call Report edits currently in use are posted on the FFIEC's Web site for banks' reference. The agencies currently employ and will continue to use edits that perform comparisons between current and prior period data. As for comparisons between data from the Call Report and data from another regulatory report, edits of this nature will not at this time be included among the quality edits the agencies' new business model will use to determine whether to accept a bank's Call Report data. Nevertheless, the agencies may use edits of this nature in their analyses of individual banks' Call Report data after the data has been submitted to the CDR and accepted by the agencies.

Finally, one commenter recommended that the agencies not immediately finalize their proposal to not accept a Call Report submission that contains any validity edit failures and lacks explanatory comments for any quality edit exceptions, but to continue to work with the banking industry to ensure that the Call Report acceptance process is workable and secure before implementing it. In the time since this comment was received in January 2003, the agencies have established a collaborative working group of representatives from banking institutions and industry trade groups. This group serves as a two-way vehicle for gaining input from, and responding to, banks concerning all aspects of the new business model, including the criteria for acceptance of Call Report submissions. Through meetings and conference calls, the agencies are in frequent communication with industry representatives. The collaborative process will also entail voluntary testing of the new CDR system in three phases prior to industry-wide implementation: A functional pilot test beginning in approximately April 2004, an end-to-end test beginning in approximately May 2004, and a volume test beginning

[3] These edits would not be published for comment in the **Federal Register**.

in approximately August 2004. Following the successful completion of testing, the agencies will proceed with global enrollment so that all banks are ready to submit their Call Report data using the new CDR system, which is scheduled to be implemented as of the September 30, 2004, report date. The Call Report acceptance process will begin as proposed at that time.

Request for Comment

Comments are invited on:

(a) Whether the proposed revisions to the Call Report collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this notice will be shared among the agencies. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden as well as other relevant aspects of these information collection requests.

Dated: January 20, 2004.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, January 14, 2004.

Jennifer J. Johnson,

Secretary of the Board.

Dated in Washington, DC, this 22nd day of January, 2004.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 04–1729 Filed 1–26–04; 8:45 am]

BILLING CODE 4810–33–P, 6210–01–P and 6714–01–P

Corrections

Federal Register

Vol. 69, No. 17

Tuesday, January 27, 2004

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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15465; Airspace Docket No. 03–AGL–11]

Modification of Class E Airspace; Chicago, IL

Correction

In rule document 03–31739 beginning on page 74472 in the issue of Wednesday, December 24, 2003, make the following correction:

On page 74472, in the second column, under the heading **History**, in the first line, ''September 29, 3003,'' should read, ''September 29, 2003.''

[FR Doc. C3–31739 Filed 1–26–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
January 27, 2004

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 42, 47, 52, and 53

Federal Acquisition Regulation; Transportation: Standard Industry Practices; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 42, 47, 52, and 53

[FAR Case 2002–005]

RIN 9000–AJ84

Federal Acquisition Regulation; Transportation: Standard Industry Practices

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement changes to the Interstate Transportation Act, which abolished tariff-filing requirements for motor carriers of freight and the Interstate Commerce Commission. Also, the rule implements changes resulting from the Federal Management Regulation amendments that require use of commercial bills of lading for domestic shipments.

DATES: Interested parties should submit comments in writing on or before March 29, 2004, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*farcase.2002-005@gsa.gov.*

Please submit comments only and cite FAR case 2002–005 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Jeritta Parnell, Procurement Analyst, at (202) 501–4082. Please cite FAR case 2002–005.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends the FAR to implement changes to the Interstate Transportation Act. The Act has been substantially amended in recent years, most notably by the Trucking Industry Reform Act of 1994, which abolished tariff-filing requirements for motor carriers of freight, and by the Interstate Commerce Commission (ICC) Termination Act of 1995 (Pub. L. 014–88), which abolished the ICC. Also, the rule implements changes resulting from the Federal Management Regulation amendments that require use of commercial bills of lading for domestic shipments. This rule proposes to—

- Move FAR Subpart 42.14, Traffic and Transportation Management, to FAR Part 47, Transportation;
- Delete the clauses at FAR 52.242–10 and FAR 52.242–11, and revise and relocate FAR clause 52.242–12 to FAR 52.247–68;
- Add definitions of ''Bill of lading,'' ''Commercial bill of lading,'' and ''Government bill of lading'' and clarify the usage of each term throughout FAR Part 47;
- Add definitions of ''Government rate tenders,'' ''Household goods,'' ''Noncontiguous domestic trade,'' and ''Release/declared value''
- Require the use of commercial bills of lading for domestic shipments;
- Revise the references to ''49 U.S.C. 10721'' to read ''49 U.S.C. 10721 and 13712'' throughout FAR Part 47 to make it clear that government rate tenders can be used in certain situations for the transportation of household goods by rail carrier (authorized by 49 U.S.C. 10721), as well as by motor carriers, water carrier, and freight forwarder (authorized by 49 U.S.C. 13712 and the definition of ''carrier'' at 49 U.S.C. 12102);
- Update the fact that the Federal Motor Carrier Safety Administration prescribes commercial zones at 49 CFR part 372, subpart B; and
- Make other conforming and editorial changes to FAR Part 47 and related clauses.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only clarifies and updates the coverage to reflect the latest changes of the referenced Federal Management Regulation and statutes. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 42, 47, 52, and 53 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2002–005), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 42, 47, 52, and 53

Government procurement.

Dated: January 20, 2004.

Laura Auletta,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 42, 47, 52, and 53 as set forth below:

1. The authority citation for 48 CFR parts 42, 47, 52, and 53 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

Subpart 42.14—[Reserved]

2. Remove and reserve Subpart 42.14.

PART 47—TRANSPORTATION

3. Amend section 47.000 by revising paragraph (a)(2) to read as follows:

47.000 Scope of subpart.

(a) * * *

(2) Acquiring transportation or transportation-related services by contract methods other than bills of lading, transportation requests, transportation warrants, and similar transportation forms. Transportation and transportation services can be obtained by acquisition subject to the FAR or by acquisition under 49 U.S.C. 10721 or 49 U.S.C. 13712. Even though the FAR does not regulate the acquisition of transportation or transportation-related services when the bill of lading is the contract, this contract method is widely used and, therefore, relevant guidance on the use of the bill of lading is provided in this part (see 47.104).

* * * * *

4. Amend section 47.001 by adding, in alphabetical order, the definitions

''Bill of lading'', ''Government rate tender'', ''Household goods'', ''Noncontiguous domestic trade'', and ''Release/declared value'' to read as follows:

47.001 Definitions.

* * * * *

Bill of lading, means a transportation document, used as a receipt of goods, as documentary evidence of title, for clearing customs, and generally used as a contract of carriage.

(1) *Commercial bill of lading (CBL)*, unlike the GBL, the CBL is not an accountable transportation document.

(2) *Government bill of lading (GBL)* is an accountable transportation document, authorized and prepared by a Government official.

* * * * *

Government rate tender under 49 U.S.C. 10721 and 13712 means an offer by a common carrier to the United States at a rate below the regulated rate offered to the general public.

Household goods in accordance with 49 U.S.C. 13102 means personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of such dwelling, and similar property if the transportation of such effects or property is arranged and paid for by—

(1) The householder, except such term does not include property moving from a factory or store, other than property that the householder has purchased with the intent to use in his or her dwelling and is transported at the request of, and the transportation charges are paid to the carrier by, the householder; or

(2) Another party.

Noncontiguous domestic trade means transportation (except with regard to bulk cargo, forest products, recycled metal scrap, waste paper, and paper waste) subject to regulation by the Surface Transportation Board involving traffic originating in or destined to Alaska, Hawaii, or a territory or possession of the United States (see 49 U.S.C. 13102(15)).

Release/declared value means the assigned value of the cargo for reimbursement purposes, not necessarily the actual value of the cargo. Released value may be more or less than the actual value of the cargo. The released value is the maximum amount that could be recovered by the agency in the event of loss or damage for the shipments of freight and household goods.

5. Revise section 47.002 to read as follows:

47.002 Applicability.

All Government personnel concerned with the following activities shall follow the regulations in part 47 as applicable:

(a) Acquisition of supplies.

(b) Acquisition of transportation and transportation-related services.

(c) Transportation assistance and traffic management.

(d) Administration of transportation contracts, transportation-related services, and other contracts that involve transportation.

(e) The making and administration of contracts under which payments are made from Government funds for—

(1) The transportation of supplies;

(2) Transportation-related services; or

(3) Transportation of contractor personnel and their personal belongings.

6. Amend section 47.101 by—

a. Redesignating paragraphs (a), (b), (c), (d), and (e) as (c), (d), (e), (f), and (g), respectively; and adding new paragraphs (a), (b), and (h); and

b. Amending newly designated paragraph (d)(2) introductory text by removing ''subparagraph (b)(1) above'' and adding ''paragraph (d)(1) of this section'' in its place. The added text reads as follows:

47.101 Policies.

(a) For domestic shipments, the contracting officer shall authorize shipments on commercial bills of lading (CBL's). Government bills of lading (GBL's) may be used for international or noncontiguous domestic trade shipments or when otherwise authorized.

(b) The contract administration office (CAO) shall ensure that instructions to contractors result in the most efficient and economical use of transportation services and equipment. Transportation personnel will assist and provide transportation management expertise to the CAO. Specific responsibilities and details on transportation management are located in the Federal Management Regulation at 41 CFR parts 102–117 and 102–118. (For the Department of Defense, DoD 4500.9–R, Defense Transportation Regulation.)

* * * * *

(h) When a contract specifies delivery of supplies f.o.b. origin with transportation costs to be paid by the Government, the contractor shall make shipments on bills of lading, or on other shipping documents prescribed by Military Traffic Management Command in the case of seavan containers, either at the direction of or furnished by the CAO or the appropriate agency transportation office.

7. Revise section 47.103 and add sections 47.103–1 and 47.103–2 to read as follows:

47.103 Transportation Payment and Audit Regulation.

47.103–1 General.

(a)(1) Regulations and procedures governing the bill of lading, documentation, payment, and audit of transportation services acquired by the United States Government are prescribed in 41 CFR part 102–118, Transportation Payment and Audit.

(2) For DoD shipments, corresponding guidance is in DoD 4500.9–R, Defense Transportation Regulation, Part II.

(b) Under 31 U.S.C. 3726, all agencies are required to establish a prepayment audit program. For details on the establishment of a prepayment audit, *see* 41 CFR part 102–118.

47.103–2 Contract clause.

Complete and insert the clause at 52.247–67, Submission of Transportation Documents for Audit, in solicitations and contracts when a cost-reimbursement contract is contemplated and the contract or a first-tier cost-reimbursement subcontract thereunder will authorize reimbursement of transportation as a direct charge to the contract or subcontract.

8. Revise sections 47.104 through 47.104–5 to read as follows:

47.104 Government rate tenders under sections 10721 and 13712 of the Interstate Commerce Act (49 U.S.C. 10721 and 13712).

(a) This subpart explains statutory authority for common carriers subject to the jurisdiction of the Surface Transportation Board (motor carrier, water carrier, freight forwarder, rail carrier) to offer to transport persons or property for the account of the United States without charge or at ''a rate reduced from the applicable commercial rate''. Reduced rates are offered in a Government rate tender. Additional information for civilian agencies is available in the Federal Management Regulation (41 CFR chapter 102) and for DoD in the Defense Transportation Regulation (DoD 4500.9–R).

(b) Reduced rates offered in a Government rate tender are authorized for transportation provided by a rail carrier, for the movement of household goods, and for movement by or with a water carrier in noncontiguous domestic trade.

(1) For Government rate tenders submitted by a rail carrier, ''a rate reduced from the applicable commercial rate'' is a rate reduced from a rate regulated by the Surface Transportation Board.

(2) For Government rate tenders submitted for the movement of household goods, ''a rate reduced from the applicable commercial rate'' is a rate reduced from a rate contained in a published tariff subject to regulation by the Surface Transportation Board.

(3) For Government rate tenders submitted for movement by or with a water carrier in noncontiguous domestic trade, ''a rate reduced from the applicable commercial rate'' is a rate reduced from a rate contained in a published tariff required to be filed with the Surface Transportation Board.

47.104–1 Government rate tender procedures.

(a) 49 U.S.C. 10721 and 13712 rates are published in Government rate tenders and apply to shipments moving for the account of the Government on—

(1) Commercial bills of lading endorsed to show that total transportation charges are assignable to, and will be reimbursed by, the Government (see the clause at 52.247–1, Commercial Bill of Lading Notations); and

(2) Government bills of lading.

(b) Agencies may negotiate with carriers for additional or revised 49 U.S.C. 10721 and 13712 rates in appropriate situations. Only personnel authorized in agency procedures may carry out these negotiations. The following are examples of situations in which negotiations for additional or revised 49 U.S.C. 10721 and 13712 rates may be appropriate:

(1) Volume movements are expected.

(2) Shipments will be made on a recurring basis between designated places, and substantial savings in transportation costs appear possible even though a volume movement is not involved.

(3) Transit arrangements are feasible and advantageous to the Government.

47.104–2 Fixed-price contracts.

(a) *F.o.b. destination.* 49 U.S.C. 10721 and 13712 rates do not apply to shipments under fixed-price f.o.b. destination contracts (delivered price).

(b) *F.o.b. origin.* If it is advantageous to the Government, the contracting officer may occasionally require the contractor to prepay the freight charges to a specific destination. In such cases, the contractor shall use a commercial bill of lading and be reimbursed for the direct and actual transportation cost as a separate item in the invoice. The clause at 52.247–1, Commercial Bill of Lading Notations, will ensure that the Government in this type of arrangement obtains the benefit of 49 U.S.C. 10721 and 13712 rates.

47.104–3 Cost-reimbursement contracts.

(a) 49 U.S.C. 10721 and 13712 rates may be applied to shipments other than those made by the Government if the total benefit accrues to the Government, *i.e.*, the Government shall pay the charges or directly and completely reimburse the party that initially bears the freight charges. Therefore, 49 U.S.C. 10721 and 13712 rates may be used for shipments moving on commercial bills of lading in cost reimbursement contracts under which the transportation costs are direct and allowable costs under the cost principles of Part 31.

(b) 49 U.S.C. 10721 and 13712 rates may be applied to the movement of household goods and personal effects of contractor employees who are relocated for the convenience and at the direction of the Government and whose total transportation costs are reimbursed by the Government.

(c) The clause at 52.247–1, Commercial Bill of Lading Notations, will ensure that the Government receives the benefit of lower 49 U.S.C. 10721 and 13712 rates in cost-reimbursement contracts as described in paragraphs (a) and (b) of this subsection.

(d) Contracting officers shall—

(1) Include in contracts a statement requiring the contractor to use carriers that offer acceptable service at reduced rates if available; and

(2) Ensure that contractors receive the name and location of the transportation officer designated to furnish support and guidance when using Government rate tenders.

(e) The transportation office shall—

(1) Advise and assist contracting officers and contractors; and

(2) Make available to contractors the names of carriers that provide service under 49 U.S.C. 10721 and 13712 rates, cite applicable rate tenders, and advise contractors of the statement that must be shown on the carrier's commercial bill of lading (see the clause at 52.247–1, Commercial Bill of Lading Notations).

47.104–4 Contract clauses.

(a) In order to ensure the application of 49 U.S.C. 10721 and 13712 rates, where authorized (see 47.104(b)), insert the clause at 52.247–1, Commercial Bill of Lading Notations, in solicitations and contracts when the contracts will be—

(1) Cost-reimbursement contracts, including those that may involve the movement of household goods (see 47.104–3(b)); or

(2) Fixed-price f.o.b. origin contracts (other than contracts at or below the simplified acquisition threshold) (see 47.104–2(b) and 47.104–3).

(b) The contracting officer may insert the clause at 52.247–1, Commercial Bill of Lading Notations, in solicitations and contracts made at or below the simplified acquisition threshold when it is contemplated that the delivery terms will be f.o.b. origin.

47.104–5 Citation of Government rate tenders.

When 49 U.S.C. 10721 and 13712 rates apply, transportation offices or contractors, as appropriate, shall identify the applicable Government rate tender by endorsement on bills of lading.

47.105 [Amended]

9. Amend section 47.105 in the last sentence of paragraph (b) by removing the words ''appropriate area headquarters of the''.

10. Amend section 47.200 by revising paragraphs (b)(3), (d), and (e) to read as follows:

47.200 Scope of subpart.

* * * * *

(b) * * *

(3) Household goods for which rates are negotiated under 49 U.S.C. 1072 and 13712; or

* * * * *

(d) The procedures in this subpart are applicable to the transportation of household goods of persons being relocated at Government expense except when acquired—

(1) Under the commuted rate schedules as required in the Federal Travel Regulation (41 CFR chapter 302);

(2) By DoD under DoD 4500.9–R, Defense Transportation Regulation; or

(3) Under 49 U.S.C. 10721 and 13712 rates.

(e) Additional guidance for DoD acquisition of freight and passenger transportation is in the Defense Transportation Regulation.

47.201 [Amended]

11. Amend section 47.201 by removing the definition ''Household goods''.

47.203 [Reserved]

12. Remove and reserve section 47.203.

13. Amend section 47.207–9 by revising the last sentence of paragraph (a) to read as follows:

47.207–9 Annotation and distribution of shipping and billing documents.

(a) * * * *See* 41 CFR part 102–118, Transportation Payment and Audit.

* * * * *

14. Add sections 47.207–10 and 47.207–11 to read as follows:

47.207–10 Discrepancies incident to shipments.

Discrepancies incident to shipment include overage, shortage, loss, damage, and other discrepancies between the quantity and/or condition of supplies received from commercial carrier and the quantity and/or condition of these supplies as shown on the covering bill of lading or other transportation document. Regulations and procedures for reporting and adjusting discrepancies in Government shipments are in 41 CFR parts 102–117 and 102–118. (For the Department of Defense (DoD), see DoD 4500.9–R, Defense Transportation Regulation, Part II, Chapter 210.)

47.207–11 Volume movements within the continental United States.

(a) For purposes of contract administration, a volume movement is—

(1) In DoD, the aggregate of freight shipments amounting to or exceeding 25 carloads, 25 truckloads, or 500,000 pounds, to move during the contract period from one origin point for delivery to one destination point or area; and

(2) In civilian agencies, 50 short tons (100,000 pounds) in the aggregate to move during the contract period from one origin point for delivery to one destination point or area.

(b) Transportation personnel assigned to or supporting the CAO, or appropriate agency personnel, shall report planned and actual volume movements in accordance with agency regulations. DoD activities report to the Military Traffic Management Command (MTMC) under DoD 4500.9–R, Defense Transportation Regulation. Civilian agencies report to the local office of GSA's Office of Transportation (*see http://www.fss.gsa.gov* (click on Related Links, FSS contracts)).

15. Add sections 47.208, 47.208–1 and 47.208–2 to read as follows:

47.208 Report of shipment (REPSHIP).

47.208–1 Advance notice.

Military (and as required, civilian agency) storage and distribution points, depots, and other receiving activities require advance notice of shipments en route from contractors' plants. Generally, this notification is required only for classified material; sensitive, controlled, and certain other protected material; explosives, and some other hazardous materials; selected shipments requiring movement control; or minimum carload or truckload shipments. It facilitates arrangements for transportation control, labor, space, and use of materials handling equipment at destination. Also, timely receipt of notices by the consignee transportation office precludes the incurring of demurrage and vehicle detention charges.

47.208–2 Contract clause.

The contracting officer shall insert the clause at 52.247–68, Report of Shipment (REPSHIP), in solicitations and contracts when advance notice of shipment is required for safety or security reasons, or where carload or truckload shipments will be made to DoD installations or, as required, to civilian agency facilities.

16. Amend section 47.303–1 by revising paragraphs (a)(4) and (b)(5)(v) to read as follows:

47.303–1 F.o.b. origin.

(a) * * *

(4) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (the Federal Motor Carrier Safety Administration prescribes commercial zones at Subpart B of 49 CFR part 372).

(b) * * *

(5) * * *

(v) Special instructions or annotations requested by the ordering agency for commercial bills of lading; *e.g.*, ''This shipment is the property of, and the freight charges paid to the carrier(s) will be reimbursed by, the Government''; and

* * * * *

17. Amend section 47.303–3 by revising paragraph (a)(1)(iv) to read as follows:

47.303–3 F.o.b. origin, freight allowed.

(a) * * *

(1) * * *

(iv) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (the Federal Motor Carrier Safety Administration prescribes commercial zones at Subpart B of 49 CFR part 372); and

* * * * *

18. Amend section 47.303–4 by revising paragraph (a)(1)(iv) to read as follows:

47.303–4 F.o.b. origin, freight prepaid.

(a) * * *

(1) * * *

(iv) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (the Federal Motor Carrier Safety Administration prescribes commercial zones at Subpart B of 49 CFR part 372); and

* * * * *

19. Amend section 47.303–5 by revising paragraph (a)(1)(iv); and in paragraph (c) by removing ''The contracting officer shall insert'' and adding ''Insert'' in its place. The revised text reads as follows:

47.303–5 F.o.b. origin, with differentials.

(a) * * *

(1) * * *

(iv) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract; and

* * * * *

47.303–13 [Amended]

20. Amend section 47.303–13 in paragraph (a) by removing''*C.&f. destination*'' and adding ''*C.&f. (cost & freight) destination*'' in its place.

47.303–15 [Amended]

21. Amend section 47.303–15 in paragraph (b)(3) by removing the word ''Government''.

47.305–3 [Amended]

22. Amend section 47.305–3 in the first sentence of the introductory paragraph by removing '', and to 42.1404–2, where the use of bills of lading, parcel post, and indicia mail is prescribed''.

47.305–6 [Amended]

23. Amend section 47.305–6 by—

a. Removing ''c.i.f. destination'' from the introductory text of paragraph (a)(4) and adding ''c.i.f. (cost, insurance, freight) destination'' in its place;

b. Removing ''MILSTAMP'' from paragraph (f)(1)(i) and adding ''DoD 4500.9–R, Defense Transportation Regulation, Part II,'' in its place; and revising the parenthetical in paragraph (f)(1)(ii) to read ''(see DoD 4500.9–R, Defense Transportation Regulation, Part II)''; and

c. Removing ''(*see* MILSTAMP at 47.301–3)'' from paragraph (g).

47.305–13 [Amended]

24. Amend section 47.305–13 in paragraph (b)(3) by removing the last sentence.

47.504 [Amended]

25. Amend section 47.504 in paragraph (a) by removing ''of the Panama Canal Commission or''.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES 52.242–10, 52.242–11, AND 52.242–12 [RESERVED]

26. Remove and reserve sections 52.242–10, 52.242–11, and 52.242–12.

52.247–1 [Amended]

27. Amend section 52.247–1 by revising the date of the clause to read ''(Date)''; and by removing the word ''If'' from the introductory paragraph of the clause and adding ''When'' in its place.

52.247–3 [Amended]

28. Amend section 52.247–3 by—

a. Revising the date of the clause to read ''(Date)'';

b. Removing ''Interstate Commerce Commission'' from the end of paragraph (a) of the clause and adding ''Surface Transportation Board'' in its place; and

c. Removing ''(see 49 CFR 1048)'' from the second sentence of paragraph (b)(2) of the clause and adding ''(see Subpart B of 49 CFR part 372)'' in its place.

29. Amend section 52.247–29 by revising the date of the clause and paragraphs (a)(4) and (b)(5)(v) to read as follows:

52.247–29 F.o.b. Origin.

* * * * *

F.O.B. ORIGIN (DATE)

(a) * * *

(4) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (the Federal Motor Carrier Safety Administration prescribes commercial zones at Subpart B of 49 CFR part 372).

(b) * * *

(5) * * *

(v) Special instructions or annotations requested by the ordering agency for commercial bills of lading; *e.g.*, ''This shipment is the property of, and the freight charges paid to the carrier(s) will be reimbursed by, the Government''; and

* * * * *

(End of clause)

30. Amend section 52.247–30 by revising the date of the clause and paragraph (b)(5)(v) to read as follows:

52.247–30 F.o.b. Origin, Contractor's Facility.

* * * * *

F.O.B. ORIGIN, CONTRACTOR'S FACILITY (DATE)

(b) * * *

(5) * * *

(v) Special instructions or annotations requested by the ordering agency for bills of lading; *e.g.*, ''This shipment is the property of, and the freight charges paid to the carrier(s) will be reimbursed by, the Government''; and

* * * * *

(End of clause)

31. Amend section 52.247–31 by revising the date of the clause and paragraphs (a)(1)(iv) and (b)(5)(v) to read as follows:

52.247–31 F.o.b. Origin, Freight Allowed.

* * * * *

F.O.B. ORIGIN, FREIGHT ALLOWED (DATE)

(a) * * *

(1) * * *

(iv) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (the Federal Motor Carrier Safety Administration prescribes commercial zones at Subpart B of 49 CFR part 372); and

* * * * *

(b) * * *

(5) * * *

(v) Special instructions or annotations requested by the ordering agency for commercial bills of lading; *e.g.*, ''This shipment is the property of, and the freight charges paid to the carrier(s) will be reimbursed by, the Government''; and

* * * * *

(End of clause)

32. Amend section 52.247–32 by revising the date of the clause and paragraph (a)(1)(iv); removing the word ''commercial'' from the first sentence of the introductory text of paragraph (b)(5); and revising paragraph (b)(5)(v) to read as follows:

52.247–32 F.o.b. Origin, Freight Prepaid.

* * * * *

F.O.B. ORIGIN, FREIGHT PREPAID (DATE)

(a) * * *

(1) * * *

(iv) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (the Federal Motor Carrier Safety Administration prescribes commercial zones at Subpart B of 49 CFR part 372); and

* * * * *

(b) * * *

(5) * * *

(v) Special instructions or annotations requested by the ordering agency for bills of lading; *e.g.*, ''This shipment is the property of, and the freight charges paid to the carrier(s) will be reimbursed by, the Government''; and

* * * * *

(End of clause)

33. Amend section 52.247–33 by revising the date of the clause and paragraphs (a)(1)(iv), (b)(5)(v), and the second sentence of (c)(2) to read as follows:

52.247–33 F.o.b. Origin, with Differentials.

* * * * *

F.O.B. ORIGIN, WITH DIFFERENTIALS (DATE)

(a) * * *

(1) * * *

(iv) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (the Federal Motor Carrier Safety Administration prescribes commercial zones at Subpart B of 49 CFR part 372); and

* * * * *

(b) * * *

(5) * * *

(v) Special instructions or annotations requested by the ordering agency for bills of lading; *e.g.*, ''This shipment is the property of, and the freight charges paid to the carrier will be reimbursed by, the Government''; and

* * * * *

(c)(1) * * *

(2) * * * If, at the time of shipment, the Government specifies a mode of transportation, type of vehicle, or place of delivery for which the offeror has set forth a differential, the Contractor shall include the total of such differential costs (the applicable differential multiplied by the actual weight) as a separate reimbursable item on the Contractor's invoice for the supplies.

* * * * *

(End of clause)

52.247–38 [Amended]

34. Amend section 52.247–38 by revising the date of the clause to read ''(DATE)''; and in paragraph (b)(2) of the clause by adding ''or other transportation receipt'' after the word ''lading''.

52.247–43 [Amended]

35. Amend section 52.247–43 by revising the date of the clause to read ''(DATE)''; and removing the word ''Government'' from paragraph (b)(3) of the clause.

52.247–52 [Amended]

36. Amend section 52.247–52 by—

a. Revising the date of the clause to read ''(DATE)'';

b. Removing ''49 CFR 170–179'' from paragraph (a)(3)(vi) of the clause and adding ''49 CFR 173.403'' in its place;

c. Removing ''MILSTAMP'' from paragraph (f)(1) of the clause and adding ''transportation responsibilities under DoD 4500.9–R, Defense Transportation Regulation,'' in its place; and

d. Removing the word ''commercial'' from paragraphs (h)(1) and (h)(2) of the clause.

52.247–64 [Amended]

37. Amend section 52.247–64 by revising the date of the clause to read ''(DATE)''; and removing ''of the Panama Canal Commission or'' from paragraph (e)(1) of the clause.

38. Amend section 52.247–67 by—

a. Revising the section heading;

b. Revising the clause heading, paragraph (a)(1) introductory text, and (a)(2), and adding paragraph (a)(3);

c. Revising paragraphs (b) and (c); and

d. Removing the word ''Contractor'' from the first sentence of paragraph (d) and paragraph (d)(1) and adding ''specified agency'' in its place. The revised text reads as follows:

52.247–67 Submission of Transportation Documents for Audit.

* * * * *

SUBMISSION OF TRANSPORTATION DOCUMENTS FOR AUDIT (DATE)

(a)(1) In accordance with paragraph (a)(2) of this clause, the Contractor shall submit to the address identified below, for prepayment audit, transportation documents on which the United States will assume freight charges that were paid—

* * * * *

(2) Cost-reimbursement Contractors shall only submit for audit those bills of lading with freight shipment charges exceeding $100. Bills under $100 shall be retained on-site by the Contractor and made available for on-site audits. This exception only applies to freight shipment bills and is not intended to apply to bills and invoices for any other transportation services.

(3) Contractors shall submit the above-referenced transportation documents to—

_____

_____

_____

(*To be filled in by Contracting Officer*)

(b) The agency designated in paragraph (a)(3) of this clause shall forward original copies of paid freight bills/invoices, bills of lading, passenger coupons, and supporting documents as soon as possible following the end of the month, in one package, for postpayment audit to the—General Services Administration, ATTN: FBA, 1800 F Street, NW., Washington, DC 20405. The specified agency shall include the paid freight bills/invoices, bills of lading, passenger coupons, and supporting documents for first-tier subcontractors under a cost-reimbursement contract. If the inclusion of the paid freight bills/invoices, bills of lading, passenger coupons, and supporting documents for any subcontractor in the shipment is not practicable, the documents may be forwarded to GSA in a separate package.

(c) Any original transportation bills or other documents requested by GSA shall be forwarded promptly. The specified agency shall ensure that the name of the contracting agency is stamped or written on the face of the bill before sending it to GSA.

* * * * *

(End of clause)

39. Section 52.247–68 is added to read as follows:

52.247–68 Report of Shipment (REPSHIP).

As prescribed in 47.208–2, insert the following clause:

REPORT OF SHIPMENT (REPSHIP) (DATE)

Unless otherwise directed by the Contracting Officer, the Contractor shall send a prepaid notice of shipment to the consignee transportation officer for all shipments of classified material, protected sensitive, and protected controlled material; explosives and poisons, classes A and B; radioactive materials requiring the use of a III bar label; or when a truckload/carload shipment of supplies weighing 20,000 pounds or more, or a shipment of less weight that occupies the full visible capacity of a railway car or motor vehicle, is given to any carrier (common, contract, or private) for transportation to a domestic (*i.e.*, within the United States, excluding Alaska or Hawaii, or if shipment originates in Alaska or Hawaii, within Alaska or Hawaii, respectively) destination (other than a port for export). The notice shall be transmitted by rapid means to be received by the consignee transportation officer at least 24 hours before the arrival of the shipment. The bill of lading or letter or other document that contains all of the following shall be addressed and sent promptly to the receiving transportation officer. This document shall be prominently identified by the Contractor as being a ''Report of Shipment'' or ''REPSHIP FOR T.O.''

(a) Message example:

REPSHIP FOR T.O. 81 JUN 01
TRANSPORTATION OFFICER
DEFENSE DEPOT, MEMPHIS, TN.
SHIPPED YOUR DEPOT 1981 JUN 1 540 CTNS MENS
COTTON TROUSERS, 30,240 LB, 1782 CUBE, VIA XX–YY*
IN CAR NO. XX 123456**–GBL***–C98000031****
CONTRACT DLA___ETA*****–JUNE 5
JONES & CO., JERSEY CITY, N.J.

*Name of rail carrier, trucker, or other carrier.

**Vehicle identification.

***Bill of lading.

****If not shipped by BL, identify lading document and state whether paid by contractor.

*****Estimated time of arrival.

(End of clause)

PART 53—FORMS

40. Revise section 53.247 to read as follows:

53.247 Transportation (Commercial Bill of Lading).

The commercial bill of lading is the preferred document for the transportation of property, as specified in 47.101.

[FR Doc. 04–1507 Filed 1–26–04; 8:45 am]

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Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 12, 14, 15, and 52

Federal Acquisition Regulation; Electronic Representations and Certifications; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12, 14, 15, and 52

[FAR Case 2002–024]

RIN 9000–AJ80

Federal Acquisition Regulation; Electronic Representations and Certifications

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to require offerors to submit representations and certifications electronically via the Business Partner Network (BPN), unless certain exceptions apply. The BPN is a grouping of systems that follow vendor data. Online Representations and Certifications Application (ORCA) is one application on the BPN to replace the paper based Representations and Certifications (Reps and Certs) process.

DATES: Interested parties should submit comments in writing on or before March 29, 2004, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*farcase.2002–024@gsa.gov*.

Please submit comments only and cite FAR case 2002–024 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Jeritta Parnell, Procurement Analyst, at (202) 501–4082. Please cite FAR case 2002–024.

SUPPLEMENTARY INFORMATION:

A. Background

Under current FAR regulations, offerors are required, for each solicitation issued, to complete certain provisions that require representations and certifications. One of the e-Government Integrated Acquisition Environment's (IAE) initiatives is to eliminate the administrative burden on offerors who must submit the same information to various contracting offices. Representations and certifications that are completed on-line can then be accessed by procurement offices across the Federal government. As part of this process, the software will use certain information that a contractor has already provided in the Central Contractor Registration (CCR) database. Therefore, this requirement only applies to offerors that also are required to register in the CCR database. FAC 16 published in the **Federal Register** at 68 FR 56668, October 1, 2003, mandates FAR Case 2002–018, Central Contractor Registration, as a requirement to contractors doing business with executive agencies. Implementation of the CCR rule should be accomplished by December 2003.

This proposed rule amends FAR parts 12, 14, 15, and 52 to require offerors to—

(1) Provide representations and certifications electronically via the BPN Web site at *www.bpn.gov*;

(2) Update the representations and certifications as necessary, but at least annually to ensure they are kept current, accurate, and complete; and

(3) Make changes that affect only one solicitation by completing the appropriate section of certain solicitation provisions.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the FAR requires small businesses to provide representations and certifications for individual solicitations. However, FAR 15.209(g) and FAR 14.213 do permit annual submissions if authorized by individual agencies. This rule will establish a requirement for annual submissions by electronic means.

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. The analysis is summarized as follows:

The FAR requires small businesses to provide representations and certifications for individual solicitations. However, FAR 15.209(g) and FAR 14.213 do permit annual submissions if authorized by individual agencies. This rule will establish a requirement for annual submissions by electronic means.

In an effort to broaden use and reliance upon e-business applications, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are working with the Office of Federal Procurement Policy to eliminate the need to maintain paper-based sources of contractor information. The objective of this rule is to eliminate the need for offerors to submit the same information (*i.e.*, representations and certifications) to different Government contracting offices. By the offerors providing this information to a centralized location, it is anticipated that this rule will have a significant positive impact on small businesses by reducing their overall administrative burden.

The rule will apply to small business offerors that also are required to register in the Central Contractor Registration (CCR) database. The reason for the link with CCR is that, as part of the on-line representations and certifications process, the software will use information that an offeror has already provided into the CCR database. The offeror will provide the additional information needed. Therefore, small businesses that are exempted from registering in the CCR database are also exempted from submitting representations and certifications electronically.

Based on Governmentwide data, approximately, 20,825 small businesses were awarded contracts of $25,000 or more in fiscal year 2002. It is estimated that a majority of them will be subject to the rule. Many of these businesses are already among the over 240,000 registrants in CCR.

Administrative or financial personnel that have general knowledge of the contractor's business are able to register by providing the pertinent information into the BPN Web site.

The proposed rule when finalized will not duplicate, overlap, or conflict with any other Federal rules.

There are no significant practical alternatives that will accomplish the objective of this rule. Continued reliance on a paper-based system would unnecessarily promote inefficiency associated with paper-based processes. The successful phase-in of CCR by the Department of Defense demonstrates that the Federal contracting community, including small businesses, is successfully transitioning to greater use of electronic tools and their associated efficiencies to conduct business.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR parts 12, 14, 15, and 52 in accordance with 5 U.S.C. 610. Comments must be submitted separately and should cite 5 U.S.C 601, *et seq.* (FAR case 2002–024), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the proposed rule contains information collection requirements. The rule requires offerors to—

(1) Provide representations and certifications electronically via the BPN Web site;

(2) Update the representations and certifications as necessary, but at least annually to ensure they are kept current, accurate, and complete; and

(3) Make changes that affect only one solicitation by completing the appropriate section of certain solicitations.

The requirement to submit certain representations and certifications on line—

(a) Eliminates the administrative burden for the offeror of submitting the same information to various contracting offices; and

(b) Allows access by procurement offices across the Federal Government.

Individual FAR clearances are assigned to the majority of the representations and certifications listed in the rule. Four of the representations and certifications are managed under other agencies' clearances. The FAR clearances impacted by this rule are 9000–0018, 9000–0097, 9000–0094, 9000–0047, 9000–0150, 9000–0155, 9000–0134, 9000–0139, 9000–0024, 9000–0130, 9000–0025, and 9000–0090. The clearance associated with another agency is 1215–0072. It is a DoL clearance.

The above FAR clearances have been revised to reflect a ''percentage of responses submitted electronically'' of 75%, which in turn decreases the total annual hours associated with each burden. In accordance with (b)(1)(iv) of section 1320.3, Definitions, of 5 CFR 1320.3(b)(1)(iv), the definition of Burden includes ''* * * *developing, acquiring, installing, and utilizing technology and systems for the purpose of disclosing and providing information* * * *''. As a result, the subject FAR clearances have been revised to show a total decrease of 35% in burden hours associated with the proposed rule's requirements. The ''total annual hours'' of the subject FAR clearances have been revised as shown:

OMB clearance	Previous ''total annual hours''	Revised ''total annual hours''	Previous ''% of responses collected electronically''	Actual % of burden reduced (total of 35%)	Revised ''% of responses collected electronically''
9000–0018	12850	8352	0	35	75
9000–0097	300000	195000	0	35	75
9000–0094	91667	59584	0	35	75
9000–0047	77810	50577	0	35	75
9000–0150	383007	268102	5	30	75
9000–0155	250	162	0	35	75
9000–0134	32175	20914	0	35	75
9000–0139	83744	58621	5	30	75
9000–0024	9785	6361	0	35	75
9000–0130	952	666	5	30	75
9000–0025	1904	1238	0	35	75
9000–0090	29970	19480	0	35	75

D. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than March 29, 2004, to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control Numbers 9000–0018, 9000–0097, 9000–0094, 9000–0047, 9000–0150, 9000–0155, 9000–0134, 9000–0139, 9000–0024, 9000–0130, 9000–0025, and 9000–0090, Electronic Representations and Certifications.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requester may obtain a copy of the information collection package(s) from the General Services Administration, FAR Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Numbers 9000–0018, 9000–0097, 9000–0094, 9000–0047, 9000–0150, 9000–0155, 9000–0134, 9000–0139, 9000–0024, 9000–0130, 9000–0025, and 9000–0090, Electronic Representations and Certifications, in all correspondence.

List of Subjects in 48 CFR Parts 12, 14, 15, and 52

Government procurement.

Dated: January 20, 2004.

Laura Auletta,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 12, 14, 15, and 52 as set forth below:

1. The authority citation for 48 CFR parts 12, 14, 15, and 52 are revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

2. Amend section 12.301 by adding a sentence after the second sentence in paragraph (b)(1) to read as follows:

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(b) * * * Use the provision with its Alternate I in solicitations when an exception to Central Contractor Registration at FAR 4.1102(a) applies. * * *

* * * * *

PART 14—SEALED BIDDING

3. Amend section 14.201–5 by revising paragraph (a) to read as follows:

14.201–5 Part IV—Representations and instructions.

* * * * *

(a) *Section K, Representations, certifications, and other statements of bidders.* (1) Include in this section those solicitation provisions that require representations, certifications, or the submission of other information by bidders.

(2) FAR clause 52.214–30, Annual Representations and Certifications—Sealed Bidding, shall be included in the solicitation to permit electronic submission of certain representations and certification under the circumstances prescribed at 14.201–6(u).

* * * * *

4. Amend section 14.201–6 by revising paragraph (u) to read as follows:

14.201–6 Solicitation provisions.

* * * * *

(u) Insert the provision at 52.214–30, Annual Representations and Certifications—Sealed Bidding, in invitations for bids that contain the clause at 52.204–7, Central Contractor Registration (*see* 14.213).

* * * * *

5. Revise section 14.213 to read as follows:

14.213 Annual submission of representations and certification.

(a) Offerors shall submit electronic annual representations and certifications via the Business Partner Network (BPN) at *http://www.bpn.gov* in conjunction with registration in the Central Contractor Registration database unless an exception listed at FAR 4.1102(a) applies.

Offerors shall update the representations and certifications as necessary, but at least annually to ensure they are kept current, accurate, and complete. The representations and certifications are effective until one year from date of submission or update.

(b) If FAR clause 52.214–30 is included in the solicitation, do not include the following representations and certifications in the solicitation:

(1) 52.203–2, Certificate of Independent Price Determination.

(2) 52.203–11, Certification and Disclosure Regarding Payments to Influence Certain Transactions.

(3) 52.204–3, Taxpayer Identification.

(4) 52.204–5, Women-Owned Business (Other Than Small Business).

(5) 52.209–5, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.

(6) 52.214–14, Place of Performance Sealed Bidding.

(7) 52.215–6, Place of Performance.

(8) 52.219–1, Small Business Program Representations (Basic & Alternate I).

(9) 52.219–2, Equal Low Bids.

(10) 52.219–19, Small Business Concern Representation for the Small Business Competitiveness Demonstration Program.

(11) 52.219–21, Small Business Size Representation for Targeted Industry Categories Under the Small Business Competitiveness Demonstration Program.

(12) 52.219–22, Small Disadvantaged Business Status (Basic & Alternate I).

(13) 52.222–18, Certification Regarding Knowledge of Child Labor for Listed End Products.

(14) 52.222–22, Previous Contracts and Compliance Reports.

(15) 52.222–25, Affirmative Action Compliance.

(16) 52.222–48, Exemption from Application of Service Contract Act Provisions for Contracts for Maintenance, Calibration, and/or Repair of Certain Information Technology, Scientific and Medical and/or Office and Business Equipment Contractor Certification.

(17) 52.223–4, Recovered Material Certification.

(18) 52.223–9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (Alternate I only).

(19) 52.223–13, Certification of Toxic Chemical Release Reporting.

(20) 52.225–2, Buy American Act Certificate.

(21) 52.225–4, Buy American Act, North American Free Trade Agreement—Israeli Trade Act Certificate (Basic, Alternate I & II).

(22) 52.225–6, Trade Agreements Certificate.

(23) 52.226–2, Historically Black College or University and Minority Institution Representation.

(24) 52.227–6, Royalty Information (Basic & Alternate I).

(25) 52.227–15—Representation of Limited Rights Data and Restricted Computer Software.

(c) Offerors that have submitted annual representations and certifications shall complete the appropriate section of the provision at 52.214–30, Annual Representations and Certifications Sealed Bidding to—

(1) Affirm in their bids that the representations and certifications they have posted to the BPN are current for the purposes of the solicitation; or

(2) Make changes that affect only one solicitation.

PART 15—CONTRACTING BY NEGOTIATION

6. Amend section 15.204–5 by revising paragraph (a) to read as follows:

15.204–5 Part IV—Representations and Instructions.

* * * * *

(a) *Section K, Representations, certifications, and other statements of offerors.* (1) Include in this section those solicitation provisions that require representations, certifications, or the submission of other information by offerors.

(2) FAR clause 52.215–7, Annual Representations and Certifications—Negotiation, shall be included in the solicitation to permit electronic submission of certain representations and certifications via the BPN at *http://www.bpn.gov* in conjunction with registration in the Central Contractor Registration database under the circumstances prescribed at 15.209(g)(1).

* * * * *

7. In section 15.209 revise paragraph (g) to read as follows:

15.209 Solicitation provisions and contract clauses.

* * * * *

(g)(1) Insert the provision at 52.215–7, Annual Representations and Certifications—Negotiation, in solicitations that contain the clause at FAR 52.204–7, Central Contractor Registration (*see* 14.213).

(2) If the provision at 52.215–7 is included in the solicitation, do not include the representations and certifications at 14.213(b) in the solicitation.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Amend section 52.212–1 by revising the date of the provision and paragraph (b)(8); and adding Alternate I to read as follows:

52.212–1 Instructions to Offerors Commercial Items.

* * * * *

Instructions to Offerors—Commercial Items (Date)

* * * * *

(b) *Submission of offers.* * * *

(8) A completed copy of the representations and certifications at FAR 52.212–3 (*see* FAR 52.212–3(j)) for those representations and certifications that the offeror shall complete electronically);

* * * * *

(End of provision)

Alternate I (Date). As prescribed in 12.301(b)(1), substitute the following paragraph (b)(8) for paragraph (b)(8) of the basic provision:

(8) A completed written copy of the representations and certifications at FAR 52.212–3 excluding paragraph (j).

9. Amend section 52.212–3 by revising the date of the provision; adding an introductory paragraph; and revising paragraph (j) to read as follows:

52.212–3 Offeror Representations and Certifications.

Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (Date)

An offeror shall complete only paragraph (j) of this provision if the offeror has completed the annual representations and certifications electronically via the Business Partner Network (BPN) (but see paragraph (j)(2)). If an offeror has not completed the annual representations and certifications electronically via the BPN, the offeror shall complete only paragraphs (b) through (i) of this provision.

* * * * *

(j) *Annual Representations and Certifications* [*Do not complete if solicitation includes 52.212–1, Alternate I. Any changes provided by the offeror in (j)(2) of this provision do not automatically change the representations and certifications posted on the BPN*]. The offeror has completed the annual representations and certifications electronically via the BPN Web site at *http://www.bpn.gov.* After reviewing the BPN database information, the offeror verifies that the representations and certifications currently posted electronically at FAR 52.212–3, Offeror Representations and Certifications—Commercial Items [*check the appropriate block*]:

[ ] (1) Are current, accurate, and complete as of the date of this offer and are incorporated in this offer by reference.

[ ] (2) Are current, accurate, and complete as of the date of this offer and are incorporated in this offer by reference, except for paragraphs _____.

[*Identify the applicable paragraphs at (b) through (i) of this provision that the offeror has completed for the purposes of this solicitation only.*]

These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

(End of provision)

* * * * *

10. Revise section 52.214–30 to read as follows:

52.214–30 Annual Representations and Certification—Sealed Bidding.

As prescribed in 14.201–6(u), insert the following provision:

Annual Representations and Certifications—Sealed Bidding (Date)

The bidder has completed the annual representations and certifications electronically via the Business Partner Network (BPN) Web site at *http://www.bpn.gov.* After reviewing the BPN database information, the bidder verifies that the representations and certifications currently posted electronically [*check the appropriate block*]:

[ ] (a) Are current, accurate, and complete as of the date of this offer and are incorporated in this bid by reference (*see* FAR 14.213(b)).

[ ] (b) Are current, accurate and complete as of the date of this bid and are incorporated in this bid by reference, except for the changes identified below [*insert changes, identifying change by clause number, title, date*].

These amended representation(s) and/or certification(s) are also incorporated in this bid and are current, accurate, and complete as of the date of this bid.

Far clause no.	Title	Date	Change

Any changes provided by the bidder do not automatically update the representations and certifications posted on the BPN.

(End of provision)

11. Revise section 52.215–7 to read as follows:

52.215–7 Annual Representations and Certifications Negotiation.

As prescribed in 15.209(g), insert the following provision:

Annual Representations and Certifications—Negotiation (Date)

The offeror has completed the annual representations and certifications electronically via the Business Partner Network (BPN) Web site at *http://www.bpn.gov.* After reviewing the BPN database information, the offeror verifies that the representations and certifications currently posted electronically [*check the appropriate block*]:

[ ] (a) Are current, accurate, and complete as of the date of this offer and are incorporated in this offer by reference (*see* FAR 14.2113(b)).

[ ] (b) Are current, accurate, and complete as of the date of this proposal and are incorporated in this offer by reference, except for the changes identified below [*insert changes, identifying change by clause number, title, date*].

These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this proposal.

Far clause No.	Title	Date	Change

Any changes provided by the offeror do not automatically update the representations and certifications posted on the BPN.

(End of provision)

[FR Doc. 04–1512 Filed 1–26–04; 8:45 am]

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Federal Register

Tuesday,
January 27, 2004

Part IV

Securities and Exchange Commission

17 CFR Parts 240 and 249
Collection Practices under Section 31 of the Exchange Act; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–49104; File No. S7–05–04]

Collection Practices Under Section 31 of the Exchange Act

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is proposing new procedures that would govern the calculation, payment, and collection of fees and assessments on self-regulatory organizations pursuant to section 31 of the Securities Exchange Act of 1934. Under these new procedures, a national securities exchange or national securities association would provide the Commission with data on its securities transactions, the Commission would calculate the amount of fees and assessments due based on the volume of those transactions, and the Commission would bill the national securities exchange or national securities association that amount.

DATES: Comments must be received by February 26, 2004.

ADDRESSES: To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. All comments concerning this proposal should be submitted in triplicate to Jonathan G. Katz; Secretary; U.S. Securities and Exchange Commission; 450 5th Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov.* All comments should refer to File No. S7–05–04; this file number should be included on the subject line if e-mail is used. The Commission will make comment letters available for inspection and copying in its Public Reference Room at the same address. The Commission will post electronically submitted comments on its internet Web site (*http://www.sec.gov*). Personal identifying information, such as names or e-mail addresses, will not be edited from electronic submissions. Submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Michael Gaw, Special Counsel, 202–942–0158; or Christopher Solgan, Attorney, 202–942–7937; Division of Market Regulation; Securities and Exchange Commission; 450 5th Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Background and Summary

Pursuant to Section 31 of the Securities Exchange Act of 1934 (''Exchange Act''),[1] the Commission collects fees and assessments on securities transactions occurring on national securities exchanges and by or through members of national securities associations (collectively, ''self-regulatory organizations'' or ''SROs''). The largest source of the Commission's fee collections is Section 31 fees.[2] The Commission has not to date adopted formal rules prescribing procedures for the SROs to calculate the amount of their payments. The Commission recently completed a review of its collections policies and procedures in preparing its first audited financial statements.[3] Based on that review, the Commission now believes that it is necessary and appropriate to propose rules to establish formal procedures. Therefore, the Commission is proposing to require the SROs to provide the Commission with data on all securities transactions subject to fees or assessments under Section 31 and to use that data to calculate the total amount due from each SRO.

II. Discussion

A. Requirements of the Statute

Paragraph (b) of Section 31 requires each national securities exchange to ''pay to the Commission a fee [at a specified rate] of the aggregate dollar amount of sales of securities (other than bonds [and certain other enumerated securities]) transacted on such national securities exchange.''[4] Paragraph (c) requires each national securities association to ''pay to the Commission a fee [at a specified rate] of the aggregate dollar amount of sales transacted by or through any member of such association otherwise than on a national securities exchange of securities (other than bonds [and certain other enumerated securities]) registered on a national securities exchange or subject to prompt last sale reporting pursuant to the rules of the Commission or a registered national securities association.''[5] The fee rate established in paragraphs (b) and (c) is $15 per $1 million of the aggregate dollar amount of the subject sales,[6] but paragraph (j) of Section 31[7] directs the Commission to adjust the fee rate if certain criteria are met.

Paragraph (d) requires each national securities exchange and national securities association to ''pay to the Commission an assessment[8] equal to $0.009 for each round turn transaction (treated as including one purchase and one sale of a contract of sale for future delivery) on a security future traded on such national securities exchange or by or through any member of such association otherwise than on a national securities exchange.''[9]

Paragraph (e) stipulates that the fees required by paragraphs (b) and (c) and the assessments required by paragraph (d) of Section 31 shall be paid: ''(1) on or before March 15, with respect to transactions and sales occurring during the period beginning on the preceding September 1 and ending at the close of the preceding December 31; and (2) on or before September 30, with respect to transactions and sales occurring during the period beginning on the preceding January 1 and ending at the close of the preceding August 31.''[10]

Paragraph (f) provides that ''[t]he Commission, by rule, may exempt any sale of securities or any class of sales of securities from any fee or assessment imposed by this section, if the Commission finds that such exemption is consistent with the public interest, the equal regulation of markets and brokers and dealers, and the development of a national market system.''[11] The Commission has exercised this authority to create exemptions for several types of transactions. These exemptions are

[1] 15 U.S.C. 78ee.

[2] The Commission anticipates that, consistent with federal agency financial accounting practices, these fees and assessments will be treated as ''revenue'' in the Commission's financial statements. Section 31(i) of the Exchange Act, 15 U.S.C. 78ee(i), requires that the fees and assessments collected by the Commission be ''deposited and credited as offsetting collections to the account providing appropriations to the Commission.'' The Commission can spend fees only to the extent Congress allows.

[3] The Accountability of Tax Dollars Act of 2002, Pub. L. 107–289, 31 U.S.C. 3515, now requires each Federal executive agency with appropriated budget authority of more than $25 million to prepare annual audited financial statements. The Commission is subject to this requirement.

[4] 15 U.S.C. 78ee(b).

[5] 15 U.S.C. 78ee(c).

[6] in addition, paragraph (h) of Section 31, 15 U.S.C. 78ee(h), provides that ''[t]he rates per $1,000,000 required by this section shall be applied pro rata to amounts and balances of less than $1,000,000.''

[7] 15 U.S.C. 78ee(j).

[8] Funds collected by the commission pursuant to paragraphs (b) and (c) of section 31 are termed ''fees,'' while funds collected pursuant to paragraph (d) are termed ''assessments.'' The term ''Section 31 fees'' will be used throughout this release to refer to both fees and assessments.

[9] 15 U.S.C. 78ee(d). For fiscal year 2007 and each succeeding fiscal year, the assessment will be $0.0042 for each such transaction. *See id.*

[10] 15 U.S.C. 78ee(e).

[11] 15 U.S.C. 78ee(f).

codified in existing Rule 31–1 under the Exchange Act.[12]

B. Existing Practices under Section 31

The statute does not stipulate how the ''aggregate dollar amount of sales''—as used in paragraphs (b) and (c) of Section 31—is to be calculated or who should do the calculation. The Commission has not previously defined this term by rule or mandated a formal procedure whereby the SROs must calculate and pay their Section 31 fees, instead permitting the SROs to develop their own procedures. As a result, the SROs have developed various means for determining the amounts owed:

• Two exchanges, the New York Stock Exchange (''NYSE'') and the American Stock Exchange (''Amex''), rely on a practice known as ''self-reporting.'' The exchanges do not independently calculate the aggregate dollar amount of sales on which they owe Section 31 fees. Instead, they rely on each clearing member firm to ''self-report'' the aggregate dollar amount of its sales, to multiply that amount by the fee rate, and to pay the exchange the resulting amount due. Each exchange aggregates the funds submitted by its clearing member firms and forwards this sum to the Commission.

• The National Association of Securities Dealers (''NASD'') determines the ''aggregate dollar amount of sales'' based on the transaction volume reported by NASD members to the Automated Confirmation Transaction Service (''ACT''). The NASD multiplies each clearing member's amount of sales by the fee rate and bills the member the result. However, the ACT data do not capture all sales on which Section 31 fees are due. Therefore, the NASD relies on member self-reporting with respect to certain odd-lot sales (*i.e.*, sales involving fewer than 100 shares), sales occurring in the Alternative Display Facility (''ADF''),[13] and sales resulting from the exercise of an over-the-counter option.

• The other equities exchanges calculate the aggregate dollar amount of sales that are subject to Section 31 fees based on the amount of each clearing member's transactions that are reported to the consolidated tape.[14] The exchange multiplies that amount by the fee rate and bills each clearing member the resulting amount due. The exchange aggregates the funds collected from its clearing members and forwards this sum to the Commission.

• The Options Clearing Corporation (''OCC'') pays Section 31 fees on behalf of the five options exchanges and Section 31 assessments on behalf of the two security futures exchanges. OCC calculates the aggregate dollar amount of sales, and the total number of round turn transactions on security futures, of each clearing member that is also an OCC participant and multiplies that number by the applicable rate under Section 31. OCC then deducts the amounts due for those transactions from each participant account, aggregates the funds collected from the participants, and forwards the sum to the Commission. OCC submits a single lump-sum payment to the Commission on behalf of these seven exchanges. OCC does not stipulate the amount paid on behalf of each exchange.

The Commission believes that the current arrangements may create uncertainties about whether the proper amounts due pursuant to Section 31 are being paid to the Commission. With proposed Rules 31 and 31T and Form R31, the Commission seeks to establish the total amounts payable under Section 31 with more reliable methods.

C. Definition of Terms Used in Proposed Rule 31

The proposed rule would require national securities exchanges and national securities associations to provide data on all of their securities transactions that are subject to Section 31. Based on that data, the Commission would calculate the amount owed by each SRO and issue bills twice per year.[15] Proposed Rule 31 would define and interpret certain terms used in the statute and create and define other terms to facilitate the new procedures.

Proposed Rule 31 would introduce the concepts of ''covered sales'' and ''covered round turn transactions.'' A covered sale would be a securities transaction subject to fees pursuant to paragraphs (b) or (c) of Section 31. As such, the term would not include any transactions in security futures, which are subject to assessments pursuant to paragraph (d) of Section 31. Paragraph (a)(6) of proposed Rule 31 would define ''covered sale'' to mean a sale of a security, other than an ''exempt sale'' or a sale of a security future, occurring on a national securities exchange or by or through any member of a national securities association otherwise than on a national securities exchange. The term ''exempt sale,'' defined in paragraph (a)(11) of proposed Rule 31, would include a sale exempted from fees by Section 31 itself or a sale that the Commission previously has exempted by rule.

A ''covered round turn transaction'' would be a securities transaction on which an assessment is owed pursuant to paragraph (d) of Section 31. Paragraph (a)(7) of proposed Rule 31 would define ''covered round turn transaction'' to mean a round turn transaction on a security future, other than a round turn transaction in a future on a narrow-based security index, occurring on a national securities exchange or by or through any member of a national securities association otherwise than on a national securities exchange. Paragraph (a)(14) of proposed Rule 31 would define ''round turn transaction on a security future'' as one purchase and one sale of a contract of sale for future delivery.

Proposed Rule 31 would impose a new duty on ''covered SROs'' to report to the Commission data on all of their covered sales and covered round turn transactions. The term ''covered SRO'' would include ''covered exchanges'' and ''covered associations.'' Paragraph (a)(5) of proposed Rule 31 would define ''covered exchange'' to mean a national securities exchange on which covered sales or covered round turn transactions occur. Currently, there are 11 national securities exchanges that would be covered exchanges under proposed Rule 31:

• Nine national securities exchanges registered pursuant to Section 6(a) of the

[12] 17 CFR 240.31–1. *See also* Securities Exchange Act Release No. 12624 (July 14, 1976), 41 FR 30587 (July 26, 1976) (adopting what are currently paragraphs (a) through (e) of rule 31–1); Securities Exchange Act Release No. 45371 (January 31, 2002), 67 FR 5199 (February 5, 2002) (adopting what are currently paragraphs (f) and (g) of rule 31–1).

[13] The ADF is a pilot program that the NASD operates members that choose to quote or effect trades in Nasdaq securities otherwise than on the Nasdaq Stock Market or an exchange. *See* Securities Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49821 (July 31, 2002) (approving ADF pilot). the Commission conditioned its approval of the SuperMontage facility on the NASD's establishment of the ADF. *See* Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001). In the SuperMontage proposal, several commenters expressed concern that SuperMontage would become the only execution system through which substantially all displayed trading interest in the over-the-counter (''OTC'') markets could be reached. in response to these concerns, the NASD agreed to provide an alternative quotation and transaction reporting facility (now the ADF) that would, in effect, make participation in SuperMontage voluntary. *See* 66 FR at 8024. the ADF permits NASD members to comply with their obligations under Commission and NASD rules (including Rule 11Ac1–1(c)(5) under the Exchange Act, 17 CFR 11Ac1–1(c)(5), and Regulation ATS, 17 CFR 242.300 *et seq.*) without participating in SuperMontage.

[14] *See infra* note 21.

[15] *See* Section 31(e) of the Exchange Act, 15 U.S.C. 78ee(e) (establishing two annual due dates for Section 31 fees).

Exchange Act[16] that may trade any type of security;[17] and

• Two national securities exchanges registered pursuant to Section 6(g) of the Exchange Act[18] that may trade no securities other than security futures.[19]

Paragraph (a)(4) of proposed Rule 31 would define ''covered association'' to mean any national securities association by or through any member of which covered sales or covered round turn transactions occur otherwise than on a national securities exchange. Currently, there is one national securities association, the NASD, that would be a covered association under the proposed rule.[20]

D. Collecting Data on Covered Sales and Covered Round Turn Transactions

To calculate the fees owed by each covered SRO pursuant to Section 31, the Commission would need to know the aggregate dollar amount of each SRO's covered sales. Unfortunately, there is currently no single source for this information. As described below, covered sales are reported, cleared, and settled in a variety of ways and data on covered sales exist in a variety of sources. Proposed Rule 31 and Form R31 would attempt to capture relevant information about all covered sales through the most reliable of the available sources. Data on covered round turn transactions could, however, be obtained from a single source.

1. Post-Trade Processing Generally

a. Equities

i. Exchange Trades of Equity Securities

A trade occurring on an exchange generally must be reported to that exchange for dissemination to the public and to begin the process of clearance and settlement. Exchanges have automated systems to receive and process these reports. If a trade occurs on a trading floor, exchange rules generally require both the buyer and the seller to submit a record of the trade to the exchange. The exchange attempts to match the records submitted by the buyer and the seller and to resolve any discrepancies (*e.g.*, in size or price). If the trade occurs through an electronic execution system of the exchange, the system ''locks'' a buy and a sell order together to create the trade, and further action generally is not necessary since all relevant details about the orders and the counterparties have already been entered into the system.

Once a record of a locked-in, two-sided transaction has been established, the exchange reports the trade to a system known as the ''consolidated tape.''[21] In addition, the exchange generally submits a record of its locked-in transactions to a clearing agency registered with the Commission under Section 17A of the Exchange Act[22] for clearance and settlement. The National Securities Clearing Corporation (''NSCC'') clears and settles transactions in debt and equity securities (other than security futures), and OCC clears and settles transactions in options and security futures.

The exchanges usually forward to the appropriate registered clearing agency a record of each individual locked-in transaction, even if a particular transaction would not result in any net change in the accounts maintained by the clearing agency.[23] If a transaction is subsequently broken[24] or recorded in error, the SRO on which the transaction occurred would submit a second instruction (generally known as a ''reversal'') to the clearing agency to delete the earlier record. If the details of the trade were revised, the exchange would then submit a third instruction showing the corrected information. If the trade were canceled, no additional instruction would be submitted.

There are a few exceptions to the general rule that the exchanges report all of their transactions to a clearing agency. For example, some exchanges have rules that allow their members to clear and settle transactions outside of the regular clearing system (so-called ''ex-clearing'' transactions).[25] As their name indicates, such trades are not reported to a clearing agency. The Commission has been informed that the number of ex-clearing transactions occurring on the exchanges is very small.

In addition, an exchange may allow an entity known as a ''qualified special representative'' (''QSR'') to report certain equity trades directly to NSCC for clearing. A QSR is an NSCC member that operates, has an affiliate that operates, or clears for a broker-dealer that operates, an automated execution system where the NSCC member is on the contraside of every transaction.[26] NSCC rules do not prohibit a QSR from summarizing and netting its trades before reporting to NSCC, resulting in fewer reports to NSCC and a corresponding reduction in the amount

[16] 15 U.S.C. 78f(a).

[17] These exchanges are Amex, the Boston Stock Exchange (''BSE''), the Chicago Board Options Exchange (''CBOE''), the Chicago Stock Exchange (''CHX''), the International Securities Exchange (''ISE''), the National Stock Exchange (''NSX'') (formerly known as the Cincinnati Stock Exchange), the NYSE, the Pacific Exchange (''PCX''), and the Philadelphia Stock Exchange (''PHLX'').

[18] 15 U.S.C. 78f(g).

[19] These exchanges are NQLX and OneChicago.

[20] The National Futures Association (''NFA'') is also registered with the Commission as a national securities association, but it would not be a ''covered association'' under proposed Rule 31. The only securities that NFA members trade are security futures. Currently, all trading in security futures occurs on the national securities exchanges. These exchanges incur liability to the Commission for such transactions under paragraph (d) of Section 31. There are no transactions in security futures by or through an NFA member otherwise than on a national securities exchange. Therefore, the NFA itself does not incur any liabilities under Section 31 and would not, therefore, be considered a covered association.

[21] The consolidated tape—which derives its name from its historical antecedent, the tickertape—refers to a set of three regulatory plans established by the SROs and approved by the Commission pursuant to Section 11A of the Act, 15 U.S.C. 78k–1, and Rule 11Aa3–2 thereunder, 17 CFR 240.11Aa3–2: (1) The Consolidated Tape Association (''CTA'') plan for equity securities listed on the NYSE, Amex, and the regional equities exchanges that meet Amex listing criteria; (2) the OTC/UTP plan for securities listed on the Nasdaq Stock Market; and (3) the Options Price Reporting Authority plan for exchange-listed options. These plans require individual SROs to transmit information to a processor, which consolidates the information for dissemination to vendors. The vendors, in turn, disseminate the information to the public.

[22] 15 U.S.C. 78q–1.

[23] Generally, only broker-dealers, banks, and other institutions are permitted to have accounts with a registered clearing agency. Therefore, a customer's interest in a particular security is created by a record on the books of its broker-dealer, not by a record kept by the clearing agency. If the orders of two customers who have the same broker-dealer are executed against each other or ''cross,'' the customers' accounts held by the broker-dealer would be adjusted to effect the transaction. The clearing agency, on the other hand, would take no action to effect the transaction because there is no net change in position in the account of the broker-dealer held at the clearing agency.

[24] Exchanges often have rules that allow a trade to be ''broken'' or voided in certain circumstances. *See, e.g.*, Amex Rule 135 (Cancellation of, and Revisions in, Transactions); PCX Equities Rule 7.11 (Clearly Erroneous Policy); ISE Rule 720 (Obvious Errors).

[25] *See, e.g.*, Amex Rule 722 (Comparison of Transaction Through a Registered Clearing Agency) (''This rule shall not apply if it is stipulated in the bid or offer that a transaction is to be completed ex-clearing or if it [*sic*] otherwise agreed by the parties thereto''); NYSE Rule 130(c) (Overnight Comparison of Exchange Transactions) (''each member or member organization which is a party to the contract shall submit, or cause to be submitted, such trade data as may be required by the Exchange or the Qualified Clearing Agency it selects, in such form as the Exchange or the Qualified Clearing Agency shall prescribe, . . . in the case where a Qualified Clearing Agency will not be used to compare or settle the transaction, to the party or parties on the other side of the trade''); PHLX Rule 6 (Trade Reporting and Confirmation of Transactions) (''SCCP shall transmit all Participant transactions, except ex-clearing transactions, to NSCC for clearance and settlement''; PHLX Rule 11 (Ex-Clearing Accounts) (''In an Ex-Clearing Account, SCCP records and confirms a transaction, whereby both sides have agreed to settle the transaction outside any registered clearing agency mechanism'').

[26] *See* NSCC Rule 39. As discussed below, QSRs also may report to NSCC equity trades occurring in the over-the-counter market.

of the QSR's clearing fees. NSCC records the net changes in positions and moves funds and securities between accounts of NSCC members accordingly, but it is unlikely to have a record of each of the trades underlying the QSR report.

ii. OTC Trades of Equity Securities

In the OTC market in equities, trades generally must be reported to either ACT or—if the transaction occurs in the ADF—to the Transaction Reporting and Comparison Service (''TRACS''). ACT is a transaction reporting and comparison system operated by the Nasdaq Stock Market,[27] which is currently a subsidiary of the NASD.[28] If a trade occurs through a Nasdaq execution system, the system automatically forwards to ACT a record showing a locked-in, two-sided transaction. Otherwise, NASD rules specify which party must report the trade to ACT, when the party must report it, and what information about the trade must be included.[29] Upon receiving data from NASD members, ACT attempts to lock in the trade.[30] If a record of a locked-in, two-sided transaction is established, ACT can forward the trade to NSCC for clearance and settlement. However, because of the nature of OTC trading, some transactions reported to ACT are not submitted by ACT to NSCC. Internalized trades, for example, are generally not reported to NSCC even though they must be reported to ACT.[31] In addition, an NASD member may instruct ACT not to report a trade to NSCC if the trade will be reported to NSCC directly by a QSR.

ACT is the trade reporting system for all OTC equity markets except for the ADF. The NASD has developed a separate trade reporting system, known as TRACS, for trades occurring in the ADF. TRACS is modeled after and operates in a manner similar to ACT.[32]

b. Options and Security Futures

The process whereby reports of transactions in options and security futures are matched and locked in is very similar to that for equity trading on the exchanges. The post-trade processing of options and security futures trading on national securities exchanges differs slightly, however, in that the exchanges forward reports of all such trades to a registered clearing agency (OCC), whereas with equities some trades are not reported to NSCC by the exchange itself (in the case of trades reported to a designated clearing agency by a QSR) or not reported at all (in the case of ex-clearing trades). Exchange-listed options and security futures do not trade over-the-counter; therefore, no national securities association would incur a liability to the Commission under Section 31 for such trading.

In addition, some non-exchange-listed options trade over-the-counter, but a national securities association would not incur any liability to the Commission under Section 31 for such trading because OTC options are not ''registered on a national securities exchange or subject to prompt last sale reporting pursuant to the rules of the Commission or a registered national securities association.''[33] Section 6(h)(1) of the Exchange Act makes it illegal to trade security futures that are not listed on a national securities exchange;[34] therefore, no trading of such security futures occurs over-the-counter and no national securities association incurs Section 31 liability for such trading.

2. Additional Terms Defined in Proposed Rule 31

One of the primary sources of data on covered sales and covered round turn transactions under the proposed rule would be the ''designated clearing agencies.'' Paragraph (a)(9) of proposed Rule 31 would define ''designated clearing agency'' to mean any clearing agency registered under Section 17A of the Exchange Act[35] that clears and settles covered sales or covered round turn transactions. Presently, there are two entities that would be designated clearing agencies under the proposal: NSCC and OCC.

The Commission believes that clearing data obtained from the designated clearing agencies would provide a sound basis for the calculation of Section 31 fees for the covered exchanges. Market participants have a strong incentive to ensure the accuracy of the trade data reported to the clearing agencies; without accurate data, the clearing agencies cannot move the correct amount of funds and securities between participant accounts to settle transactions. The Commission anticipates that the vast majority of covered sales occurring on the covered exchanges would be captured by the clearing data available from the designated clearing agencies.

In situations where clearing agency data is incomplete (in the case of trades reported to a designated clearing agency by a QSR) or nonexistent (in the case of ex-clearing trades), the Commission would have to rely on other sources. One such source would be a covered SRO's ''trade reporting system.'' Paragraph (a)(16) of proposed Rule 31 would define ''trade reporting system'' to mean an automated facility of a covered SRO used to collect or compare trade data. Only automated facilities fall within the definition; a predominantly paper-based system for collecting or comparing trade data, such as the reporting system currently used by NASD members to report their odd-lot transactions to the NASD, would not be considered a ''trade reporting system.'' A covered SRO might have more than one trade reporting system.[36]

Paragraph (e) of Section 31 stipulates that fees and assessments are due twice each year: (1) March 15, for sales and transactions ''occurring'' during the period beginning on the preceding September 1 and ending at the close of the preceding December 31; and (2) September 30, for sales and transactions ''occurring'' during the period beginning on the preceding January 1 and ending at the close of the preceding August 31. A securities transaction can take several days to complete, from the day that a binding contract to trade is established to the day that funds and securities move between accounts to settle the transaction. Section 31 does not identify on which date during the process a transaction ''occurs,'' although the statute suggests that a single date must be selected in order to assign every transaction to one of the billing periods. For example, liability for a sale that is negotiated on August 30 but does not

[27] *See* NASD Rule 6110(d).

[28] Nasdaq has submitted an application to register as a national securities exchange. *See* Securities Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 (June 13, 2001). If the Commission approves this application, Nasdaq would separate from the NASD.

[29] *See* NASD Rule 6110 Series. However, NASD rules do not require that odd-lot trades be reported to ACT.

[30] *See* NASD Rule 6140 (describing four methods by which ACT will attempt to match the trade information submitted by the reporting parties).

[31] An internalized trade occurs, for example, when a broker-dealer, to satisfy a customer order to buy, transfers securities between its proprietary account and the account that it holds on behalf of the customer. Because an internalized trade results in no net change in the position of the broker-dealer's NSCC account, there is no reason to report it to NSCC.

[32] *See* NASD Rule 5400 Series.

[33] Section 31(c) of the Exchange Act, 15 U.S.C. 78ee(c). A national securities association would, however, incur a liability for the exercise of an OTC option if the exercise resulted in the sale of a security that is ''registered on a national securities exchange or subject to prompt last sale reporting pursuant to the rules of the Commission or a registered national securities association.'' *See infra* Section D(3)(a).

[34] *See* 15 U.S.C. 78f(h)(1).

[35] 15 U.S.C. 78q–1.

[36] For example, ACT and TRACS, operated by the NASD, would both be considered trade reporting systems under the proposal.

settle until September 2 must be assigned to only one billing period.

Proposed Rule 31 introduces the concept of the ''charge date'' to clarify this issue. Paragraph (a)(3) of proposed Rule 31 would define the charge date as the date on which a covered sale or covered round turn transaction occurs for purposes of determining the liability of a covered SRO pursuant to Section 31 of the Exchange Act. The charge date could be either the trade date or the settlement date; as discussed below, the date to be used would depend on the manner in which the trade is reported and cleared. The charge dates set forth in proposed Rule 31 would largely codify the existing practices of the SROs.

3. Proposed Form R31

Paragraph (b)(1) of proposed Rule 31 would require covered SROs to submit to the Commission proposed Form R31 within ten business days after the end of each month.[37] The form would require a covered SRO to report data on all of its covered sales having a charge date in the month of the report. This data would be derived from different sources. The dollar amounts of sales captured by each separate source would be added to provide a single figure for the aggregate dollar amount of the SRO's covered sales for the month. Paragraph (b) of proposed Rule 31 also would require covered SROs to provide the total number of its covered round turn transactions having a charge date in the month of the report.

Proposed Form R31 would be organized as follows:

a. Part I

In Part I of proposed Form R31, a covered exchange would be required to report the aggregate dollar amount of the covered sales that: (1) occurred on the exchange; (2) have a charge date in the month of the report; and (3) the exchange itself reported to a designated clearing agency. The form would require covered exchanges to make separate entries for sales of equities and sales of options. Each covered exchange also would be required to report the total number of covered round turn transactions that: (1) occurred on the exchange; (2) have a charge date in the month of the report; and (3) the exchange reported to a designated clearing agency.

In addition, paragraph (b)(3)(i) of proposed Rule 31 would require a covered association to report in Part I the aggregate dollar amount of covered sales that: (1) occurred by or through any of the association's members; (2) have a charge date in the month of the report; and (3) resulted from an exercise[38] of a ''physical delivery exchange-traded option.''[39] The Commission acknowledges that this arrangement would represent a departure from current practices. Presently, Section 31 fees attributable to sales of securities resulting from the exercise of physical delivery exchange-traded options are paid to the Commission by OCC, through a voluntary arrangement between OCC and the options exchanges. When OCC receives notice that an option held in the account of one of its participants is being exercised, OCC instructs NSCC to move funds and securities between NSCC accounts to effect the exercise. OCC also deducts the corresponding Section 31 fees from participant accounts held at OCC.[40] OCC combines the fees that it collects for sales of securities resulting from exercises of physical delivery exchange-traded options and includes this sum as part of its aggregate payment to the Commission of Section 31 fees. However, OCC does not and has informed Commission staff that it currently is not able to attribute these exercises to any particular exchange.

The Commission believes that it is not appropriate for Section 31 fees on sales of securities resulting from the exercises of physical delivery exchange-traded options to be combined into a single payment that obscures the SRO on whose behalf the payment is being made. Therefore, proposed Rule 31 would clarify that the covered association by or through the members of which such sales occur—presently the NASD—would be required to report data on such covered sales and pay the corresponding Section 31 fees.

The Commission believes that this approach is consistent with paragraphs (b) and (c) of Section 31. Paragraph (b) requires a national securities exchange to pay Section 31 fees on ''sales of securities * * * transacted on such national securities exchange,'' while paragraph (c) requires a national securities association to pay fees on ''sales transacted by or through any member of such association otherwise than on a national securities exchange.'' The Commission does not believe that a sale of a security resulting from the exercise of a physical delivery option can be viewed as being ''transacted on [a] national securities exchange.''[41] As noted above, the terms of the sale are not negotiated on or through the facilities of an exchange, but rather through the terms of the previously agreed options contract. Nor is the sale executed on or through the facilities of an exchange, since the sale is effected through instructions communicated by the holder of the option to OCC and by OCC to NSCC. The Commission believes, rather, that such sales occur ''otherwise than on a national securities

[37] In light of the billing cycle established by paragraph (e) of Section 31, the Commission preliminarily believes that ten business days would be an appropriate length of time to allow covered SROs to complete and submit proposed Form R31. One of the billing dates established by paragraph (e) of Section 31 is September 30, covering the period January 1 to August 31. There are only 30 calendar days in the month of September and, depending on when the weekends fall, perhaps only 19 to 21 business days. In addition, a federal holiday—Labor Day—always falls in the month of September. The Commission believes that covered SROs should have at least a few business days between the receipt of their Section 31 bills and the September 30 due date in order to process their payments. In addition, the Commission must have at least a few business days to calculate the total amounts due from the covered SROs under Section 31 and prepare the bills. For the Commission to perform these calculations in a timely manner, it would need the data to be supplied in proposed Form R31 by roughly the middle of September (i.e., ten business days after August 31, the close of the billing period).

[38] The sale of an option must be distinguished from the exercise of an option. Each event could separately lead to a liability being created under Section 31 of the Exchange Act.

[39] Paragraph (a)(15) of proposed Rule 31 would define ''physical delivery exchange-traded option'' as a securities option that is listed and registered on a national securities exchange and settled by the physical delivery of the underlying securities. Options are of two general types: cash-settled and physical delivery. Only the exercise of an option settled by physical delivery could result in a covered sale. Upon the exercise of such an option, one party must sell to the other party (at the strike price) the underlying securities to fulfill the option contract. Such sale could create liability for an SRO pursuant to Section 31 of the Exchange Act. With a cash-settled option, however, there is no sale of securities upon exercise. The option is settled by payment of the difference between the strike price and the market price of the underlying security or security index. Such payment is not subject to Section 31.

[40] For example, assume that X is long 10 put options and Y is short 10 put options, and that both X and Y hold accounts at OCC and NSCC. The security underlying the options is ABC, the strike price is $20, and the options are settled through physical delivery. X elects to exercise the put options and the exercise is assigned to Y. Y now must buy from X 1000 shares of ABC (10 puts × 100 shares underlying each put) for a price of $20,000 ($20/share × 1000 shares). OCC instructs NSCC to move $20,000 from Y's NSCC account to X's NSCC account and to move 1000 shares of ABC from X's NSCC account to Y's NSCC account. OCC also deducts a fee from X's OCC account in the amount of $20,000 times the Section 31 fee rate in effect when the exercise occurs.

[41] 15 U.S.C. 78ee(b). The party required to sell shares as a result of the exercise (the holder in case of a put or the writer in case of a call) might have to purchase the underlying securities to have sufficient inventory to perform its obligations under the option contract. This purchase could occur on a national securities exchange and be subject to fees under paragraph (b) of Section 31. Nevertheless, the exercise itself (*i.e.*, the transfer of shares between the writer and the holder of the option) is a separate transaction for purposes of Section 31.

exchange'' within the meaning of paragraph (c) of Section 31, thereby creating liability on the part of the NASD. Therefore, the Commission is proposing to require the NASD to report in Part I of proposed Form R31 the aggregate dollar amount of covered sales resulting from the exercise of physical delivery exchange-traded options.[42]

Paragraph (a)(4) of proposed Rule 31 would provide that, for a covered sale or covered round turn transaction included in the data reported in Part I by a covered exchange, the charge date would be the settlement date. Part I data would be supplied by a designated clearing agency, the primary function of which is to clear and settle securities transactions and which will, of course, know the settlement date of a transaction. By contrast, a designated clearing agency might have to develop new procedures to track and record transactions by trade date. Accordingly, the Commission believes that it would be more practical for the designated clearing agencies to provide data on covered sales and covered round turn transactions based on the settlement date.

However, paragraph (a)(4) also provides that a covered sale resulting from the exercise of a physical delivery exchange-traded option would use the trade date as the charge date. In this case, the trade can be viewed as occurring when OCC sends an instruction to NSCC to move funds and securities between NSCC participant accounts to effect the exercise. The Commission believes that the alternative—for OCC to build systems to monitor when settlement at NSCC is complete—would be impractical. Therefore, the Commission believes that trade date should be used in this instance for the charge date.

b. Part II

In Part II, a covered exchange would be required to provide the aggregate dollar amount of the covered sales that: (1) occurred on the exchange; (2) have a charge date in the month of the report; and (3) it captured in a trade reporting system but does not report to a designated clearing agency.[43] For example, a covered exchange that permits ''ex-clearing'' trades would report such trades—provided they meet the definition of ''covered sale''—in Part II.[44] Ex-clearing trades are, by definition, not reported to a designated clearing agency and thus would not be captured in the Part I data. However, these trades should be captured by an exchange's trade reporting system and the aggregate dollar amount of such trades would be reported in Part II.

In addition, a covered exchange that permits its members to report trades directly to NSCC through a QSR would be required to report in Part II the aggregate dollar amount of any such trades that constitute covered sales.[45] The Commission does not believe that NSCC itself would be an appropriate source of data for such transactions, because QSRs may report net changes in positions to NSCC rather than each separate transaction. However, these transactions should still be captured by the exchange's trade reporting system. Therefore, the Commission believes that the data captured by an exchange's trade reporting system would be the best source of data for these covered sales.[46]

Finally, a covered association (*i.e.*, the NASD) would be required to provide in Part II the aggregate dollar amount of *all* covered sales that it captures in a trade reporting system, regardless of whether the association forwards this data to a designated clearing agency. This approach differs from that being proposed for the covered exchanges. In most cases, OTC covered sales are reported to NSCC by the NASD itself (through ACT), just as most exchanges forward their trade data to a designated clearing agency. However, a significant number of OTC covered sales are reported to NSCC directly by QSRs. The Commission could propose that the NASD, like the covered exchanges, be required to report in Part I data on covered sales that it forwards to NSCC for clearance and settlement and report in Part II the data on the covered sales that it captures in a trade reporting system but does not itself report to NSCC. However, the Commission believes that this approach would be difficult for the NASD's systems to accommodate and would significantly increase the possibility of data being miscounted. Therefore, the Commission is proposing instead that the NASD provide in Part II data on all of the covered sales that it captures in its trade reporting systems, even though the NASD itself forwards most of its transactions to NSCC for clearance and settlement.

Paragraph (a)(4) of proposed Rule 31 would provide that, for any covered sale included in the data reported in Part II, the charge date would be the trade date. The trade date is one of the most important pieces of information captured by a trade reporting system. By contrast, a trade reporting system is likely to have little if any information about the settlement of transactions that are reported to it. Therefore, the Commission believes that the charge date for these covered sales should be the trade date.

c. Part III

Part III would require every covered SRO to provide the aggregate dollar amount of covered sales that: (1) Occurred on the exchange (or, in the case of a covered association, by or through any member of the association otherwise than on a national securities exchange); (2) have a charge date in the month of the report; and (3) it neither reported to a designated clearing agency nor captured in a trade reporting system. For example, some OTC odd-lot transactions are not reported to ACT.[47] In addition, sales of securities resulting from the exercise of a non-exchange-listed option are not captured by ACT or any other SRO's trade reporting system. As the NASD's trade reporting systems have no record of these transactions, the NASD must rely on its members to ''self-report'' them under the current arrangements for payment of Section 31 fees.

The Commission believes that self-reporting is currently the only viable method of capturing certain transactions for purposes of calculating Section 31 fees. However, the Commission

[42] However, as discussed below, OCC would be obligated by proposed Rule 31 to provide the NASD with the data in its possession needed by the NASD to complete this portion of Form R31.

[43] No covered round turn transactions would be reported in Part II because all transactions in security futures are reported to a designated clearing agency (OCC) and, thus, should be reported in Part I.

[44] Question 9 of proposed Form R31 would require a covered exchange to provide the aggregate dollar amount of covered sales that: (1) Occurred on the exchange; (2) had a charge date in the month of the report; (3) the exchange captured in a trade reporting system; and (4) were ex-clearing transactions.

[45] Question 8 of proposed Form R31 would require a covered exchange to provide the aggregate dollar amount of covered sales that: (1) Occurred on the exchange; (2) had a charge date in the month of the report; (3) the exchange captured in a trade reporting system; and (4) were reported to a designated clearing agency by a QSR.

[46] At the time this proposal was issued, NSX was the only exchange that permitted QSRs to report exchange transactions to NSCC. Although QSR trades currently constitute the majority of NSX's volume, this volume results from the trading activity of only two NSX members. Consequently, at this time, the Commission believes that it would be appropriate to require NSX to report in Part I data, provided by a designated clearing agency, on all of its non-QSR covered sales.

[47] NASD rules require a member to report an odd-lot transaction to ACT only if the transaction is to be compared, locked in, and forwarded to NSCC for clearing. *See* NASD Rule 6130(a). Most odd-lot transactions are internalized trades (*i.e.*, the NASD member fills the odd-lot order out of its own inventory). If an NASD member internalizes an odd-lot customer order, no NSCC report would be necessary and the member would not have to report the transaction to ACT.

anticipates that the amount of self-reported data on which it would base its fee calculations under proposed Rule 31 would be very small.

Paragraph (a)(4) of proposed Rule 31 would provide that, for any covered sale included in the data reported in Part III, the charge date would be the trade date. Because a trade included in Part III would occur outside the normal trade reporting processes, a covered SRO would have great difficulty in determining the settlement date for such a trade. Therefore, the Commission believes that the only feasible charge date for these covered sales would be the trade date, as self-reported by SRO members.

d. Reporting for Months With a Fee Rate Change

For those months in which the Commission is required to adjust the Section 31 fee rate, proposed Form R31 would require covered SROs to report the aggregate dollar amount of covered sales in two parts.[48] The first part would consist of the aggregate dollar amount of covered sales having a charge date in that month before the date of the fee rate adjustment; the second part would consist of the aggregate dollar amount of covered sales having a charge date in the month on or after the date of the fee rate adjustment.[49] Separate reporting would be necessary because the Commission would have to multiply the different dollar amounts by the different fee rates to determine the correct total of Section 31 fees owed by each covered SRO.

4. Exempt Sales and Transactions

Not every sale of a security is subject to Section 31 fees, and not every transaction in a security future is subject to Section 31 assessments. The statute itself exempts certain sales and round turn transactions, and the Commission has exempted others pursuant to the authority granted to it by paragraph (f) of Section 31.[50] Paragraph (a)(11) of proposed Rule 31 would set forth a comprehensive list of all sales of securities (other than security futures) that are exempt from Section 31 fees (''exempt sales''). These provisions would not grant new exemptions from Section 31 for any types of securities sales but merely would consolidate the existing exemptions.

Paragraphs (a)(11)(i) to (v) would restate exemptions set forth in paragraphs (a) to (e) of existing Rule 31–1.[51] Paragraph (a)(11)(vi), for any sale of an option on security index (including both a narrow-based security index and a non-narrow-based security index), would combine an exemption granted by statute (for a sale of an option on a non-narrow-based security index) with an exemption granted by rule (for a sale of an option on a narrow-based security index).[52] The net result is that the sale of an option on any security index—be it narrow-based or non-narrow-based—is exempt from Section 31 fees. Paragraph (a)(11)(vi) of proposed Rule 31 would clarify this point. Paragraph (a)(11)(vii) would incorporate language from the statute that specifically exempts sales of bonds, debentures, and other evidences of indebtedness.

Currently, one type of security future transaction is exempt from assessments under Section 31: A round turn transaction in a future on a narrow-based security index.[53] This exemption would be incorporated directly into the definition of ''covered round turn transaction'' in paragraph (a)(7) of proposed Rule 31.

5. Obtaining Data From the Designated Clearing Agencies

Although the duty to submit proposed Form R31 would lie with the covered SROs, paragraph (b)(4) of proposed Rule 31 also would impose a duty on each designated clearing agency to provide a covered SRO, upon request, with the data in the possession of the designated clearing agency needed by the covered SRO to complete Part I of proposed Form R31.

Paragraph (b)(5) of proposed Rule 31 would provide that a covered SRO shall provide in Part I of Form R31 only the data supplied to it by a designated clearing agency. If a covered SRO were to submit its own data in Part I of the form rather than the data supplied by a designated clearing agency, the covered SRO would be in violation of proposed Rule 31. If a covered SRO did not submit its Form R31 in a timely manner but the delay was caused by a designated clearing agency, the designated clearing agency, rather than the covered SRO, would be in violation of proposed Rule 31.

Because the data of the designated clearing agencies may include exempt sales, the Commission would expect the covered SROs and the designated clearing agencies to collaborate in establishing procedures to filter out such sales before the data are reported on Form R31.[54] The Commission also anticipates that, to fulfill its obligations under paragraph (b)(4) of proposed Rule 31, the designated clearing agencies would have to ensure that reversals are handled properly to avoid double-counting of the same sale, ensure that covered sales that result in no net change of position in any NSCC account are still tabulated, and present the data to the covered SROs in a manner that can easily be reported on proposed Form R31. The Commission's Office of Compliance Inspections and Examinations would periodically review the Section 31 fee process, including the procedures of the covered SROs and the designated clearing agencies.

E. Calculation and Billing of Section 31 Fees

Under paragraph (c)(1) of proposed Rule 31, the amount due from a covered SRO for a billing period, as reflected in its ''Section 31 bill,''[55] would be the sum of the monthly amounts due for each month in the billing period. Each covered SRO would be required to provide on its monthly Form R31 the aggregate dollar amount of covered sales for the month as well as the total number of covered round turn transactions for the month. The Commission would multiply the former number by the ''fee rate'' (as defined in paragraph (a)(12) of proposed Rule 31)[56] and the latter number by the

[48] *See* Section 31(j) of the Exchange Act, 15 U.S.C. 78ee(j). The Commission is not required to adjust the assessment charge on transactions in security futures, so covered SROs would be required to report only a single number for the total of such transactions on each monthly form.

[49] For example, if the fee rate changes on October 16, a covered SRO would be required to report on proposed Form R31 the aggregate dollar amount of its covered sales having a charge date from October 1 to 15 and separately from October 16 to 31.

[50] 15 U.S.C. 78ee(f).

[51] 17 CFR 240.31–1(a)–(e).

[52] *See* Securities Exchange Act Release No. 45371 (January 31, 2002), 67 FR 5199 (February 5, 2002).

[53] *See* 17 CFR 240.31–1(g).

[54] OCC and the NASD already perform this filtering function under the current arrangements for the calculation and payment of Section 31 fees. For example, OCC has procedures to prevent sales of options on security indexes from being included in the calculation of Section 31 fees. The NASD has procedures to prevent members from being charged for various transactions that are reported to ACT but not subject to Section 31 fees (*e.g.*, sales of foreign securities that are neither registered on a national securities exchange nor subject to last sale reporting pursuant to the rules of the Commission or a registered national securities association). Under the proposed rule, NSCC would have to develop procedures to filter exempt sales out of the data provided to the covered exchanges.

[55] Paragraph (a)(16) of proposed Rule 31 would define ''Section 31 bill'' to mean the bill showing the total amount due from a covered SRO for a billing period, as calculated by the Commission based on the data submitted by the covered SRO on its Form R31 submissions for the months of the billing period.

[56] ''Fee rate'' would mean the fee rate applicable to covered sales under paragraphs (b) and (c) of Section 31 of the Exchange Act, as adjusted from time to time by the Commission pursuant to paragraph (j) of Section 31.

''assessment charge'' (as defined in paragraph (a)(1) of proposed Rule 31).[57] This would yield an amount due from each covered SRO for each month.[58] The Commission would add the monthly amounts due to obtain the total amount due from the covered SRO for the billing period.

Paragraph (c)(3) of proposed Rule 31 would require each covered SRO to pay by the due date the entire amount due for the billing period, as reflected in its Section 31 bill. An SRO that paid an amount different from that stipulated in its Section 31 bill would be in violation of proposed Rule 31.[59]

F. Special Provisions Relating to Initial Implementation

Whether or not the Commission adopts this proposal, national securities exchanges and national securities associations have an obligation to pay fees and assessments pursuant to Section 31 of the Exchange Act. This obligation for fiscal year 2004 began on September 1, 2003, and the initial billing period concluded on December 31, 2003. The due date for Section 31 fees incurred in that period is March 15, 2004. The second billing period began on January 1, 2004, and will continue until August 31, 2004.

If the Commission adopts this proposal, it would determine the amount of fees and assessments owed by the covered SROs using the new procedure described above for the entire fiscal year 2004 (*i.e.*, for covered sales and covered round turn transactions having a charge date between September 1, 2003, and August 31, 2004, inclusive). The Commission believes that this approach is more reliable and would be consistent with its obligations under the Accountability Act. To accomplish this, however, the Commission would have to adopt an additional rule to cover the months in fiscal year 2004 prior to the month that proposed Rule 31 would become effective. For example, if Rule 31 were to become effective in March 2004, the first Form R31 would be due from the covered SROs on the tenth business day of April 2004 (covering March 2004). The Commission would still need a mechanism to obtain data on all covered sales and covered round turn transactions with charge dates from September 1, 2003, to February 29, 2004, inclusive.

Therefore, the Commission is also proposing temporary Rule 31T. Rule 31T would require every covered SRO, within one month of the effective date of proposed Rule 31, to submit to the Commission a Form R31 for each month from September 2003 to the month immediately before the initial month for which Rule 31 would require the SRO to submit a Form R31. For example, if Rule 31 were to become effective in March 2004, temporary Rule 31T would require a covered SRO to make Form R31 submissions for each of the months from September 2003 to February 2004, inclusive. Rule 31 itself would require Form R31 submissions for March 2004 and every month thereafter.

III. Solicitation of Comments

The Commission requests comment on all aspects of the proposal. In particular:

1. Are data of the designated clearing agencies an appropriate source for the aggregate dollar amount of covered sales and the total number of covered round turn transactions occurring on the covered exchanges? If not, is there a more appropriate source for this data?

2. Do the exchanges report to a designated clearing agency every transaction that occurs on the exchange, even if the transaction does not result in a net change of position in any participant account of the clearing agency? Do the clearing agencies have the means to be able to tabulate these transactions? If not, what would be an appropriate means to ensure that these transactions are counted by the Commission under proposed Rule 31?

3. Are there any trades (except for trades reported to a designated clearing agency by a QSR) occurring on a national securities exchange that are reported to a clearing agency on a net basis rather than on a transaction-by-transaction basis? If so, would clearing data still be an appropriate basis for the Commission's calculation of Section 31 fees? If not, what source would be more appropriate?

4. Would data from the consolidated tape or an SRO's trade reporting system be a more feasible or reliable source of all of a covered exchange's covered sales? If so, why? Are there sufficient incentives for market participants to correct data that were incorrectly reported to the consolidated tape?

5. Are ACT and TRACS an appropriate source of data for the aggregate dollar amount of covered OTC sales of equity securities? Should proposed Rule 31 and Form R31 allow the NASD to report all covered sales reported to ACT and TRACS in Part II of proposed Form R31? Would the Commission obtain more accurate information by requiring the NASD to report in Part I all covered sales that the NASD itself reports to NSCC and the remainder in Part II?

6. Should the NASD be required to report and pay Section 31 fees on sales of securities resulting from exercises of physical delivery exchange-traded options? If not, which covered SRO should have that duty? Why?

7. Aside from ex-clearing transactions, are there any types of covered sales occurring on a covered exchange that are not reported to a designated clearing agency? If so, what are they and how frequently do they occur? How could the Commission obtain accurate data about them?

8. Is it appropriate to require the covered SROs to submit data on all of their covered sales even though proposed Rule 31 would require them to obtain data on the majority of those sales from one or more designated clearing agencies? Should the Commission obtain this data directly from the designated clearing agencies?

9. Is it appropriate to require covered exchanges to provide data from their trade reporting systems for trades that are reported by a QSR to NSCC? If not, what would be an appropriate source?

10. The Commission has been informed that the number of ex-clearing trades on the exchanges is extremely small. Is this understanding correct? Would it be appropriate for proposed Rule 31 and Form R31 to include a *de minimis* exception, such that a covered exchange would not have to tabulate and report the aggregate dollar amount of such covered sales provided that the exchange certified that the dollar amount was below a certain threshold? If so, what should that threshold be? What amount of Section 31 fees would the Commission be foregoing if the *de minimis* threshold were established at that level?

11. Is ten business days a reasonable time period to give covered SROs to

[57] ''Assessment charge'' would mean the amount owed by a covered SRO for each covered round turn transaction pursuant to paragraph (d) of Section 31.

[58] The Commission believes that it is appropriate to recognize and record on its financial statement accounts receivable for Section 31 fees on a monthly basis. Generally accepted accounting principles require federal government agencies to follow accrual-based accounting. One principle of accrual-based accounting is that an entity must recognize and match revenue and expenses in the same period that those revenues are earned and expenses are incurred. By contrast, in cash-based accounting, revenues are based on amounts collected during a specific period regardless of when the revenues were earned.

[59] The Commission also believes that a covered SRO, in order to satisfy proposed Rule 31, itself must pay the Section 31 bill in a single payment. Paragraph (c)(3) of proposed Rule 31 would not permit a covered SRO to request a designated clearing agency to pay all or part of its Section 31 bill on its behalf. The Commission believes that the proposed rule would be more difficult to administer if it had to track multiple payments made by or on behalf of each covered SRO.

prepare and submit Form R31? If not, what is a reasonable period of time?

12. Are the charge dates proposed by the Commission appropriate? If not, how should the charge dates be determined?

13. Are there additional means to reduce Commission reliance on data self-reported by SRO members?

14. Should the Commission allow covered SROs to request a designated clearing agency to pay Section 31 bills on their behalf? Why or why not?

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

Section 3(f) of the Exchange Act[60] requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. In addition, Section 23(a)(2) of the Exchange Act[61] requires the Commission, when promulgating rules under the Exchange Act, to consider the impact any such rules would have on competition. Section 23(a)(2) further provides that the Commission may not adopt a rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission preliminarily believes that proposed Rules 31 and 31T and Form R31 would not have any adverse effect on efficiency, competition, or capital formation. The duty imposed on covered SROs to pay Section 31 fees does not arise from Commission rulemaking, but from the Exchange Act itself. The Commission's proposal would establish a process for calculating and collecting Section 31 fees. The Commission preliminarily believes that proposed Rule 31 would promote efficiency, competition, and capital formation by establishing a transparent process whereby the Commission would calculate and collect Section 31 fees.

The Commission further believes that the proposal would promote efficiency, competition, and capital formation by making more accurate the fee rate adjustments made by the Commission pursuant to paragraph (j) of Section 31.[62] For example, paragraph (j)(2) requires the Commission to adjust the fee rate if it estimates—by March 1 of the fiscal year, based on the actual aggregate dollar volume of sales during the first five months of the fiscal year—that the amount that it would collect using the base fee rate set forth in paragraphs (b) and (c) of Section 31[63] is ''reasonably likely'' to be 10% more or less than the ''target offsetting collection amount'' stipulated in paragraph (*l*) of the Exchange Act.[64] The data received on proposed Form R31 should provide the Commission with more complete and more precise data on which to base these estimates.

Commenters are invited to present their views on the proposal's effect on efficiency, competition, and capital formation. Empirical data and other factual support for these views should be provided, if possible.

V. Paperwork Reduction Act

This proposal contains ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA''). Accordingly, the Commission has submitted this proposed rulemaking to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507 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 control number.[65] The titles of the collections of information are ''Rule 31, Section 31 Transaction Fees''; ''Rule 31T, Temporary Rule Regarding Fiscal Year 2004''; and ''Form R31, Form for Reporting Covered Sales and Covered Round Turn Transactions Under Section 31 of the Exchange Act.''

A. Summary of Collection of Information

Proposed Rules 31 and 31T and Form R31 would require covered SROs to provide the Commission data on all of their covered sales and covered round turn transactions. The proposed form, due on a monthly basis, would consist of three parts. Part I would require each covered exchange to provide the aggregate dollar amount of the covered sales with a charge date in the month of the report that it reported to a designated clearing agency. Part I also would require each covered exchange to provide the total number of covered round turn transactions in security futures having a charge date in the month of the report that it reported to a designated clearing agency. Finally, Part I would require a covered association to provide the aggregate dollar amount of covered sales that: (1) occurred by or through any member of the association; (2) had a charge date in the month of the report; and (3) resulted from the exercise of a physical delivery exchange-traded option. Paragraph (b)(4) of proposed Rule 31 would require the designated clearing agencies to provide the covered SROs, upon request, with the data in their possession needed by the covered SROs to complete proposed Form R31.

Part II would require each covered exchange to provide the aggregate dollar amount of the covered sales having a charge date in that month that it captures in a trade comparison system but does not report to a designated clearing agency. Separate entries would be required for covered sales that: (1) were reported to a designated clearing agency by a QSR; and (2) were ex-clearing transactions. Part II also would require a covered association to provide the aggregate dollar amount of any covered sales that: (1) occurred by or through any member of the association; (2) had a charge date in the month of the report; and (3) that it captures in a trade comparison system—regardless of whether it reported some of those transactions to a designated clearing agency.

Part III would require each covered SRO to provide the aggregate dollar amount of the covered sales that: (1) occurred on the exchange (or, in the case of a covered association, by or through any member of the association otherwise than on a national securities exchange); (2) had a charge date in that month; and (3) it neither captured in a trade comparison system nor reported to a designated clearing agency.

For any month in which the Commission is required to adjust the Section 31 fee rate, a covered SRO would have to separate the data on the aggregate dollar amount of covered sales into two parts. The first part would consist of the aggregate dollar amount of covered sales having a charge date in that month before the date of the fee rate adjustment; the second part would consist of the aggregate dollar amount of covered sales having a charge date on or after the date of the fee rate adjustment.

B. Proposed Use of Information

The Commission would use the information obtained on proposed Form R31 to calculate the fees and assessments owed by each covered SRO

[60] 15 U.S.C. 78c(f).

[61] 15 U.S.C. 78w(a)(2).

[62] 15 U.S.C. 78ee(j).

[63] 15 U.S.C. 78ee(b) and (c).

[64] 15 U.S.C. 78ee(*l*). Paragraph (j)(1) of Section 31 also requires the Commission to adjust the fee rate ''to a uniform adjusted rate that, when applied to the baseline estimate of the aggregate dollar amount of sales for such fiscal year, is reasonably likely to produce aggregate fee collections under [Section 31] (including assessments collected under subsection (d)) that are equal to the target offsetting collection amount for such fiscal year.'' 15 U.S.C. 78ee(j)(1).

[65] 44 U.S.C. 3501 *et seq.*

to the Commission pursuant to Section 31 of the Exchange Act. Although such fees and assessments are due only twice a year (on March 15 and September 30), the Commission would use this data to calculate and record a receivable on its financial statements every month.

C. Respondents

There are currently 12 covered SROs that would be subject to the collection of information requirements of this proposal. In addition, there are currently two entities—NSCC and OCC—that would be designated clearing agencies required by paragraph (b)(4) of proposed Rule 31 to provide the covered SROs with the data in their possession needed by the covered SROs to complete Part I of proposed Form R31. Therefore, there would be 14 respondents in total.

D. Total Annual Reporting and Recordkeeping Burden

1. Development Burden for System Modifications

Under proposed Rule 31, each covered SRO would have a duty to provide on proposed Form R31 the aggregate dollar amount of all of its covered sales and the total number of its covered round turn transactions having a charge date in the month of the report. To comply with this collection of information requirement, the covered SROs would incur one-time burdens to develop new systems capabilities and procedures to collect and tabulate the necessary data. The designated clearing agencies also would incur burdens in configuring their systems to enable them to meet their obligations under paragraph (b)(4) of proposed Rule 31.

a. Options and Security Futures

Currently, the options exchanges and security futures exchanges have arrangements with OCC whereby OCC calculates, collects, and pays all of the Section 31 fees and assessments on behalf of the exchanges. OCC already has procedures, therefore, to prevent exempt sales from being included in the calculation of Section 31 fees. However, OCC makes payments to the Commission in one lump-sum on behalf of these seven exchanges without stipulating the amount being paid on behalf of each exchange. Under proposed Rule 31, OCC would have to provide each options exchange with the aggregate dollar amount of its covered sales in options and each security futures exchange with the total number of its covered round turn transactions in security futures. Therefore, OCC would need to develop procedures to allocate each covered sale or covered round turn transaction to a specific exchange. Based on conversations between Commission staff and OCC, the Commission preliminarily estimates this development time to be 180 staff hours.

In light of the fact that all covered sales in options and covered round turn transactions in security futures are cleared and settled by OCC, and that OCC would bear the primary burden for making systems changes to accommodate the proposal, the Commission preliminarily believes that the initial development burden on the five options exchanges and two security futures exchanges would be minimal. The Commission preliminarily estimates that the total initial burden on these seven exchanges would be 10 staff hours per exchange for a total of 70 hours (7 exchanges × 10 hours/exchange). Thus, the Commission preliminarily concludes that OCC, the options exchanges, and the security futures exchanges together would incur burdens for initial development of new systems and processes of 250 staff hours (180 + 70).

b. Exchange-Traded Equities

NSCC does not currently perform any functions with respect to Section 31. Therefore, NSCC is likely to incur more initial development burdens than OCC. To provide the data to the covered SROs required by the proposal, NSCC would need to configure its systems to accurately tabulate the aggregate dollar amount of covered sales forwarded to it by the equities exchanges. Such configuration would include, among other things, handling reversals appropriately to avoid double-counting of the same transaction, designing a method to filter exempt sales out of the clearing data, ensuring that covered sales that result in no net change of position in any NSCC account are still tabulated, and presenting the data to the covered SROs in a manner that can be easily reported on proposed Form R31.

Based on conversations between Commission staff and the proposed respondents, the Commission preliminarily estimates that NSCC and the eight exchanges that trade equities would collectively incur an aggregate burden of 1000 staff hours to develop new systems and processes to fulfill their obligations under proposed Rule 31.

c. OTC Equities

The NASD would be the only covered association that would be required to report on proposed Form R31 covered sales occurring otherwise than on a national securities exchange. Under the current arrangements for the payment of Section 31 fees, the NASD calculates the aggregate dollar amount of sales reported to ACT after filtering out sales that are exempt from Section 31 fees. The NASD also administers a paper-based system whereby NASD members report and pay fees on odd-lot sales as well as sales of securities resulting from the exercise of non-exchange-listed options, neither of which are reported to ACT. The Commission anticipates that these NASD procedures would continue unchanged under the proposal. In addition, however, the proposal would require the NASD to tabulate and report all of the covered sales occurring in the ADF, although TRACS, the trade reporting system for the ADF, currently is not configured to provide such data. Finally, the proposal would require the NASD for the first time to report and pay Section 31 fees on covered sales resulting from exercises of physical delivery exchange-traded options.

Based on conversations between Commission staff and the NASD, the Commission preliminarily estimates that the necessary configurations to TRACS would require 50 hours of NASD staff time. In addition, the Commission preliminarily believes it would require 25 hours of OCC and NASD staff time to develop a process whereby OCC would convey, and the NASD would receive and report on its Form R31, data on covered sales resulting from exercises of physical delivery exchange-traded options. This burden estimate does not include any time spent by OCC in compiling this data, because OCC already does so in levying and paying to the Commission Section 31 fees on behalf of the options exchanges collectively. Thus, the estimate of 25 burden hours includes only the burden of developing a process for conveying that data in a regular and reliable manner to the NASD. Finally, in light of the NASD's existing processes to pass Section 31 fees to its members based on transaction volume (as reflected in ACT) and to collect data on sales of certain securities self-reported by its members, the Commission preliminarily estimates that it would require only 15 staff hours to adapt to these processes to the requirements of the proposal.

In sum, the Commission preliminarily estimates that the initial development burden on the NASD and OCC to comply with the proposal would be 80 staff hours (50 + 25 + 15).

d. Total Development Burden

In sum, the Commission preliminarily believes that the 14 respondents to the proposed collection of information

would incur a total one-time development burden of 1330 staff hours (250 hours for OCC and the options and security futures exchanges + 1000 for NSCC and the equities exchanges + 80 for the NASD and OCC).

2. Ongoing Compliance Burden

On an ongoing basis, covered SROs would be required to submit to the Commission proposed Form R31 within ten business days after the end of every month. Proposed Rule 31 would require a designated clearing agencies to furnish to the covered SROs the data in its possession needed by the SROs to complete Part I of proposed Form R31.

a. Designated Clearing Agencies

Presently, NSCC clears transactions occurring on eight national securities exchanges and OCC clears transactions occurring on seven exchanges.[66] Equities trading volume is far larger than options trading volume. Therefore, the Commission believes that NSCC's monthly burden in tabulating the necessary data and providing it to the exchanges would be larger than OCC's burden. Based on conversations between Commission staff, NSCC, and OCC, the Commission preliminarily estimates that NSCC would incur an average monthly burden of 4 staff hours and OCC an average monthly burden of 2 staff hours to provide the exchanges with the data for Part I of proposed Form R31. In addition, the Commission preliminarily estimates that, once the initial processes have been developed, OCC would incur an additional monthly burden of 1 staff hour to provide the NASD with the aggregate dollar amount of covered sales resulting from exercises of physical delivery exchange-traded options.

In addition, the Commission anticipates that proposed Rule 31 would impose additional financial resource burdens on NSCC. These resources would be needed to provide, among other things, CPU time, data storage, power, and systems maintenance. Based on conversations between Commission staff and NSCC, the Commission preliminarily estimates that this burden would be $1000 per month.

b. Covered Exchanges

The covered exchanges themselves also would incur burdens in fulfilling the requirement imposed by paragraph (b) of proposed Rule 31 to complete and submit to the Commission proposed Form R31 on a monthly basis. The Commission believes that an exchange's burden would increase slightly if it trades both equities and options, since the exchange would have to coordinate inputs from both NSCC and OCC. Furthermore, the Commission believes that an exchange that trades only options or security futures would incur slightly less burden than an exchange that trades only equities, because all data on covered sales of options should be obtainable from OCC and reported in Part I of proposed Form R31. By contrast, a covered exchange that trades equities is more likely to have covered sales for which it would have to rely on sources other than a designated clearing agency and that must be reported in Parts II or III. Thus, the Commission preliminarily estimates that the ongoing monthly burden for the covered exchanges to complete and submit to the Commission proposed Form R31 would be as follows:

- two exchanges that trade only security futures and one exchange that trades only options: 0.5 hours/form
- four exchanges that trade only equities: 1.0 hours/form
- four exchanges that trade both equities and options: 1.5 hours/form

Thus, the Commission preliminarily concludes that covered exchanges would incur a total of 11.5 burden hours—(3 OCC-only exchanges × 0.5 hour/exchange = 1.5 hours) + (4 NSCC-only exchanges × 1.0 hour/exchange = 4.0 hours) + (4 dual exchanges × 1.5 hours/exchange = 6 hours)—to complete the Form R31 submissions required in a given month.

c. Covered Associations

The Commission preliminarily estimates that one covered association, the NASD, would incur a monthly burden of 1 staff hour to receive, confirm, and report in Part I of proposed Form R31 the data provided to it by OCC on the aggregate dollar amount of covered sales having a charge date in the month of the report resulting from exercises of physical delivery exchange-traded options. Furthermore, the Commission preliminarily estimates that 2 NASD staff hours would be required to produce monthly reports from ACT and TRACS of all covered sales having a charge date in that month and to record those data on proposed Form R31. Finally, the Commission preliminarily estimates that 1 NASD staff hour would be required to aggregate and record in Part III of proposed Form R31 data on covered sales that are self-reported by NASD members. The Commission preliminarily concludes that the monthly burden imposed on the NASD by proposal would be 4 staff hours (1 + 2 + 1).

d. Total Ongoing Monthly Burden

In summary, the Commission preliminarily believes that the total burden on the 14 respondents for completing Form R31 for a single month would be 22.5 staff hours (7 hours for two designated clearing agencies + 11.5 hours for 11 covered exchanges + 4 hours for one covered association), or 270 staff hours per year (22.5 hours/month × 12 months). In addition, the Commission preliminarily believes that one designated clearing agency, NSCC, would incur additional financial burdens of $1000 per month or $12,000 per year.

3. Proposed Rule 31T

Proposed temporary Rule 31T would require every covered SRO, within one month of the effective date of proposed Rule 31, to submit to the Commission a Form R31 for each of the months September 2003 to the month that Rule 31 becomes effective. This would enable the Commission to obtain data on all covered sales and covered round turn transactions occurring in fiscal year 2004, regardless of the effective date of proposed Rule 31. The Commission notes that national securities exchanges and national securities associations have a duty to pay fees and assessments pursuant to Section 31 regardless of whether the Commission adopts this proposal.

The Commission preliminarily estimates that, if the proposal is adopted, temporary Rule 31T would require each covered SRO to provide six additional Form R31 submissions. In Section V(D)(2)(d) above, the Commission estimated that the total burden on the 14 respondents to complete one month's worth of Form R31 submissions would be 22.5 staff hours. Therefore, the Commission estimates that proposed Rule 31T would impose a total burden of 135 staff hours (6 forms × 22.5 hours/form) on the 14 respondents.

E. Request for Comments

The Commission requests comment in order 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;

[66] Currently, four exchanges—BSE, CHX, NSX, and NYSE—trade only equity securities, which are cleared and settled by NSCC. Three exchanges—ISE, NQLX, and OneChicago—trade securities that are cleared and settled only by OCC. Four exchanges—Amex, CBOE, PCX, and PHLX—trade both equities and options, thus requiring the clearance and settlement services of both NSCC and OCC.

• evaluate the accuracy of the Commission's estimates of the burden of the proposed collection of information;

• determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected;

• evaluate whether there are ways to minimize the burden of the collection of information on the respondents, including through the use of automated collection techniques or other forms of information technology; and

• evaluate whether the proposed amendments would have any effect on any other collection of information not previously identified in this section.

Any member of the public may direct to the Commission any comments concerning the accuracy of these burden estimates and any suggestions for reducing the burdens. Persons who desire to submit comments on the collection of information requirements should direct their comments to the OMB; Attention: Desk Officer for the Securities and Exchange Commission; Office of Information and Regulatory Affairs; Washington, DC 20503; and send a copy of the comments to Jonathan G. Katz; Secretary; Securities and Exchange Commission; 450 Fifth Street, NW.; Washington, DC 20549–0609, with reference to File No. S7–05–04. Requests for materials submitted to the OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–05–04, and be submitted to the Securities and Exchange Commission; Records Management; Office of Filings and Information Services; 450 Fifth Street, NW.; Washington, DC 20549. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication of this notice.

VI. Consideration of Costs and Benefits

The Commission is considering the costs and benefits of proposed Rules 31 and 31T and Form R31, as described below. The Commission encourages comments that address this analysis, as well as additional costs or benefits that we may not have considered. Empirical data and other factual support should be provided, if possible.

A. Costs

Proposed Rule 31 and Form R31 would require covered SROs to provide the Commission on a monthly basis data on their covered sales and covered round turn transactions. Proposed temporary Rule 31T would require covered SROs to provide the Commission with Form R31 submissions for the months of September 2003 until the month that Rule 31 becomes effective. As discussed above in Section V, the proposal would cause the covered SROs and designated clearing agencies to incur certain paperwork costs in tabulating and reporting to the Commission the data required by Form R31. The Commission preliminarily estimates that the covered SROs and designated clearing agencies would incur a burden of 1330 staff hours of initial development costs, 270 staff hours per year to submit proposed Form R31 on a monthly basis, and 135 staff hours to comply with proposed temporary Rule 31T. The Commission also preliminarily estimates that one designated clearing agency, NSCC, would incur a monthly financial cost of $1000 for systems maintenance to comply with proposed Rule 31.

In addition, the Commission believes that certain covered SROs may incur additional costs to develop new methods for allocating Section 31 fees among their members if the Commission adopts proposed Rule 31. Currently, the covered SROs generate the funds to pay Section 31 fees to the Commission by passing these fees on to their members. The NYSE and Amex require their members to self-report the aggregate dollar amount of their sales of securities and the corresponding Section 31 fees due based on that amount. Every other equities exchanges imposes fees on their members based on the sales of securities that the exchange reports to the consolidated tape. If the Commission adopts a rule that would base the calculation of Section 31 fees largely on clearing data, either or both of the existing methods for allocating Section 31 fees among members of the equities exchanges could yield an amount that differs from that calculated by the Commission pursuant to proposed Rule 31.

Therefore, a covered exchange might wish to develop new procedures to subdivide Section 31 fees among its members if the proposal is adopted. Paragraph (b)(4) of proposed Rule 31 would require a designated clearing agency to provide covered SROs, upon request, with the data in its possession needed by the SROs to complete Part I of Form R31. A covered SRO could also request that the designated clearing agency subdivide the data by SRO member so that the SRO could impose fees on each member for these covered sales or covered round turn transactions. While subdividing the data in this manner would not be required by proposed Rule 31, the Commission anticipates that covered SROs may elect to establish such processes so that they collect from their members only the precise amount that the Commission bills them under proposed Rule 31. A covered SRO that wishes to establish a new procedure for dividing its Section 31 fees among its members might be required to propose a rule change pursuant to Section 19(b) of the Exchange Act [67] in order to do so.[68]

The Commission notes that this proposal would not impose new costs on covered SROs in the form of higher Section 31 fees. The rate at which an SRO incurs liability to the Commission for covered sales and covered round turn transactions is set by the statute; the proposal would merely establish a procedure for the Commission to obtain a reliable measure of the aggregate dollar amount of covered sales and the total number of covered round turn transactions and, using that information, to calculate the appropriate amount of fees and assessments due from each covered SRO pursuant to Section 31.

B. Benefits

A primary benefit of this proposal is that the means by which the Commission derives a large source of its revenue would become more transparent and more easily subject to verification. The Commission believes that the proposal would allow it to obtain the most complete and reliable data available on the aggregate dollar amount of covered sales and total number of covered round turn transactions occurring in the U.S. securities markets. This data would be provided on a simple and easy-to-use form. The Commission believes that requiring the data to be reported in this manner would greatly facilitate an auditor's understanding of the source and calculation of the Section 31 fee receivables on the Commission's financial statements. The Commission further believes that the public interest benefits when the Commission can demonstrate that it is collecting the correct amount of Section 31 fees and properly carrying out the fiscal responsibilities assigned to it by Congress.

A related benefit of this proposal is that the fee rate adjustments made by

[67] 15 U.S.C. 78s(b).

[68] In considering a proposed rule change submitted by an exchange to create a new method for allocating its Section 31 fees among its members, the Commission would examine the proposal's consistency with Section 6(b) of the Exchange Act, 15 U.S.C. 78f(b), particularly the requirement that dues, fees, and other charges imposed by the exchange be allocated equitably among the exchange's members.

the Commission pursuant to paragraph (j) of Section 31[69] would be more precise. For example, paragraph (j)(2) requires the Commission to adjust the fee rate if it estimates—by March 1 of the fiscal year, based on the actual aggregate dollar volume of sales during the first five months of the fiscal year—that the amount that it would collect using the base fee rate set forth in paragraphs (b) and (c) of Section 31[70] is ''reasonably likely'' to be 10% more or less than the ''target offsetting collection amount'' stipulated in paragraph (l) of the Exchange Act The data received on proposed Form R31 should provide the Commission with more complete and more precise data on which to base these estimates.

C. Request for Comments

The Commission requests comments on how any aspect of the proposal would create benefits or impose costs on market participants. In particular:

- Would covered SROs have to propose rule changes to implement new procedures for allocating Section 31 fees among their members? How much would it cost to submit such a filing pursuant to Section 19(b) of the Exchange Act?
- Are there other ways in which the Commission could carry out the Section 31 fee collection process in a manner consistent with generally accepted accounting principles as they apply to federal agencies?
- Are there other costs or benefits to this proposal?
- Do the benefits justify the costs?

VII. Regulatory Flexibility Act

The Commission hereby certifies, pursuant to the Regulatory Flexibility Act (''RFA''),[71] that proposed Rules 31 and 31T and Form R31, if adopted, would not have a significant economic impact on a substantial number of small businesses. Proposed Rule 31 and Form R31 would establish a formal procedure for the calculation and payment of Section 31 fees. Twelve entities—the 11 national securities exchanges and the NASD—would be required to provide the Commission with data on their covered sales and covered round turn transactions. None of these entities is a ''small business'' for purposes of the RFA.[72] In addition, two designated clearing agencies—NSCC and OCC—would be required to provide the covered SROs with the data in their possessions needed by the covered SROs to complete Part I of proposed Form R31. Neither clearing agency is a ''small business'' for purposes of the RFA.[73] No other entities would incur obligations directly from proposed Rules 31 and 31T. Accordingly, the Commission certifies that proposed Rules 31 and 31T and Form R31 would not have a significant economic impact on a substantial number of small businesses.

The Commission requests written comments regarding this certification. The Commission requests that commenters describe the nature of any impact on small businesses and provide empirical data to support the extent of the impact.

VIII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[74] 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 effects on competition, investment, or innovation.

The Commission requests comment on the potential impact of the proposal on the economy on an annual basis. Empirical data and other factual support should be provided, if possible.

IX. Statutory Authority

Proposed Rules 31 and 31T under the Exchange Act would be adopted pursuant to 15 U.S.C. 78a *et seq.*, particularly Sections 6, 15A, 17A, 19, 23(a), and 31 of the Exchange Act (15 U.S.C. 78f, 78o–3, 78q–1, 78s, 78w(a), and 78ee).

List of Subjects in 17 CFR Parts 240 and 249

Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule

For the reasons set out in the preamble, the Commission 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

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, 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, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

2. Section 240.31–1 is revised to read as follows:

§ 240.31 Section 31 transaction fees.

(a) *Definitions.* For the purpose of this section, the following definitions shall apply:

(1) *Assessment charge* means the amount owed by a covered SRO for a covered round turn transaction pursuant to section 31(d) of the Act (15 U.S.C. 78ee(d));

(2) *Billing period means*, for a single calendar year:

(i) January 1 to the close of August 31 (''billing period 1''); or

(ii) September 1 to the close of December 31 (''billing period 2'').

(3) *Charge date* means the date on which a covered sale or covered round turn transaction occurs for purposes of determining the liability of a covered SRO pursuant to section 31 of the Act. The charge date is the settlement date with respect to a covered sale or a covered round turn transaction that a covered exchange reports to a designated clearing agency. The charge date is the trade date with respect to a covered sale occurring on a covered exchange that the exchange does not report to a designated clearing agency, and with respect to any covered sale occurring otherwise than on a national securities exchange.

(4) *Covered association* means any national securities association by or through any member of which covered sales or covered round turn transactions occur otherwise than on a national securities exchange.

(5) *Covered exchange* means any national securities exchange on which

[69] 15 U.S.C. 78ee(j).

[70] 15 U.S.C. 78ee(b) and (c).

[71] 5 U.S.C. 605(b).

[72] *See* 17 CFR 240.0–10(e). Paragraph (e) of Rule 0–10 states that the term ''small business,'' when referring to an exchange, means any exchange that has been exempted from the reporting requirements of Rule 11Aa3–1 under the Exchange Act, 17 CFR 240.11Aa3–1, and is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in Rule 0–10. The Commission also has found that the NASD is not a small business.

[73] *See* 17 CFR 240.0–10(d). Paragraph (d) of Rule 0–10 states that the term ''small business,'' when used with reference to a clearing agency, means a clearing agency that: (1) compared, cleared, and settled less than $500 million in securities transactions during the preceding fiscal year (or in the time that it has been in business, if shorter); (2) had less than $200 million of funds and securities in its custody or control at all times during the preceding fiscal year (or in the time that it has been in business, if shorter); and (3) is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in Rule 0–10.

[74] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

covered sales or covered round turn transactions occur.

(6) *Covered sale* means a sale of a security, other than an exempt sale or a sale of a security future, occurring on a national securities exchange or by or through any member of a national securities association otherwise than on a national securities exchange.

(7) *Covered round turn transaction* means a round turn transaction in a security future, other than a round turn transaction in a future on a narrow-based security index, occurring on a national securities exchange or by or through a member of a national securities association otherwise than on a national securities exchange.

(8) *Covered SRO* means a covered exchange or covered association.

(9) *Designated clearing agency* means a clearing agency registered under section 17A of the Act (15 U.S.C. 78q–1) that clears and settles covered sales or covered round turn transactions.

(10) *Due date* means:

(i) March 15, with respect to the amounts owed by covered SROs under section 31 of the Act (15 U.S.C. 78ee) for covered sales and covered round turn transactions having a charge date in billing period 2; and

(ii) September 30, with respect to the amounts owed by covered SROs under section 31 of the Act (15 U.S.C. 78ee) for covered sales and covered round turn transactions having a charge date in billing period 1.

(11) *Exempt sale* means:

(i) Any sale of a security offered pursuant to an effective registration statement under the Securities Act of 1933 (except a sale of a put or call option issued by the Options Clearing Corporation) or offered in accordance with an exemption from registration afforded by section 3(a) or 3(b) of the Securities Act of 1933 (15 U.S.C. 77c(a) or 77c(b)), or a rule thereunder;

(ii) Any sale of a security by an issuer not involving any public offering within the meaning of section 4(2) of the Securities Act of 1933 (15 U.S.C. 77d(2));

(iii) Any sale of a security pursuant to and in consummation of a tender or exchange offer;

(iv) Any sale of a security upon the exercise of a warrant or right (except a put or call), or upon the conversion of a convertible security;

(v) Any sale of a security that is executed outside the United States and is not reported, or required to be reported, to a transaction reporting association as defined in § 240.11Aa3–1 and any approved plan filed thereunder;

(vi) Any sale of an option on a security index (including both a narrow-based security index and a non-narrow-based security index); and

(vii) Any sale of a bond, debenture, or other evidence of indebtedness.

(12) *Fee rate* means the fee rate applicable to covered sales under paragraphs (b) or (c) of section 31 of the Act (15 U.S.C. 78ee(b) or (c)), as adjusted from time to time by the Commission pursuant to paragraph (j) of section 31 of the Act (15 U.S.C. 78ee(j));

(13) *Narrow-based security index* means the same as in section 3(a)(55)(B) and (C) of the Act (15 U.S.C. 78c(a)(55)(B) and (C)).

(14) *Round turn transaction in a security future* means one purchase and one sale of a contract of sale for future delivery.

(15) *Physical delivery exchange-traded option* means a securities option that is listed and registered on a national securities exchange and settled by the physical delivery of the underlying securities.

(16) *Section 31 bill* means the bill sent by the Commission to a covered SRO pursuant to section 31 of the Act (15 U.S.C. 78ee) showing the total amount due from the covered SRO for the billing period, as calculated by the Commission based on the data submitted by the covered SRO in its Form R31 (§ 249.11 of this chapter) submissions for the months of the billing period.

(17) *Trade reporting system* means an automated facility operated by a covered SRO used to collect or compare trade data.

(b) *Reporting of covered sales and covered round turn transactions.* (1) Each covered SRO shall submit Form R31 (§ 249.11 of this chapter) to the Commission within ten business days after the end of each month.

(2) A covered exchange shall provide on Form R31 the following data on covered sales and covered round turn transactions occurring on that exchange that have a charge date in that month:

(i) The aggregate dollar amount of covered sales that it reported to a designated clearing agency, as reflected in the data provided by the designated clearing agency;

(ii) The aggregate dollar amount of covered sales that it captured in a trade reporting system but did not report to a designated clearing agency;

(iii) The aggregate dollar amount of covered sales that it neither captured in a trade reporting system nor reported to a designated clearing agency; and

(iv) The total number of covered round turn transactions that it reported to a designated clearing agency, as reflected in the data provided by the designated clearing agency.

(3) A covered association shall provide on Form R31 the following data on covered sales and covered round turn transactions occurring by or through any member of such association otherwise than on a national securities exchange that have a charge date in that month:

(i) The aggregate dollar amount of covered sales resulting from the exercise of a physical delivery exchange-traded option, as reflected in the data provided by a designated clearing agency;

(ii) The aggregate dollar amount of covered sales that it captured in a trade comparison system;

(iii) The aggregate dollar amount of covered sales that it did not capture in a trade comparison system; and

(iv) The total number of covered round turn transactions that it reported to a designated clearing agency, as reflected in the data provided by the designated clearing agency.

(4) A designated clearing agency shall provide a covered SRO, upon request, the data in its possession needed by the covered SRO to complete Part I of Form R31.

(5) A covered SRO shall provide in Part I of Form R31 only the data supplied to it by a designated clearing agency.

(c) *Calculation and billing of section 31 fees.* (1) The amount due from a covered SRO for a billing period, as reflected in its Section 31 bill, shall be the sum of the monthly amounts due for each month in the billing period.

(2) The monthly amount due from a covered SRO shall equal:

(i) The aggregate dollar amount of its covered sales that have a charge date in that month, times the fee rate; plus

(ii) The total number of its covered round turn transactions that have a charge date in that month, times the assessment charge.

(3) By the due date, each covered SRO shall pay the Commission the entire amount due for the billing period, as reflected in its Section 31 bill.

3. Section 240.31T is added to read as follows:

§ 240.31T Temporary rule regarding fiscal year 2004.

(a) Within one month of the effective date of § 240.31, each covered SRO shall submit to the Commission a completed Form R31 (§ 249.11 of this chapter) for each of the months September 2003 to the month immediately before the month that § 240.31 became effective, inclusive.

(b) This temporary section shall expire [six months after the effective date of § 240.31].

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

4. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

5. Section 249.11 and Form R31 (referenced in § 249.11) are added to read as follows:

§ 249.11 Form R31 for reporting covered sales and covered round turn transactions under section 31 of the Act.

This form shall be used by each national securities exchange to report to the Commission within ten business days after the end of every month the aggregate dollar amount of sales of securities that occurred on the exchange, had a charge date in the month of the report, and are subject to fees pursuant to section 31(b) of the Act (15 U.S.C. 78ee) and § 240.31 of this chapter; and the total number of round turn transactions in security futures that occurred on the exchange, had a charge date in the month of the report, and are subject to assessments pursuant to section 31(d) of the Act and § 240.31 of this chapter. This form also shall be used by a national securities association to report to the Commission within ten business days after the end of every month the aggregate dollar amount of sales or securities that occurred by or through a member of the association otherwise than on a national securities exchange, had a charge date in the month of the report, and are subject to fees pursuant to section 31(c) of the Act and § 240.31 of this chapter; and the total number of round turn transactions in security futures that occurred by or through any member of the association otherwise than on a national securities exchange, had a charge date in the month of the report, and are subject to assessments pursuant to section 31(d) of the Act and § 240.31 of this chapter.

Note: The text of Form R31 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM R31

OMB APPROVAL
OMB Number: 3235–0000
Expires: xxxx, 2006
Estimated average burden hours per form: 1.6

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM FOR REPORTING COVERED SALES AND COVERED ROUND TURN TRANSACTIONS UNDER SECTION 31 OF THE SECURITIES EXCHANGE ACT OF 1934

FORM R31 INSTRUCTIONS

A. EXPLANATION OF TERMS USED IN THIS FORM

CHARGE DATE—The date on which a covered sale or covered round turn transaction occurs for purposes of determining the liability of a covered SRO pursuant to Section 31 of the Securities Exchange Act of 1934 (''Exchange Act'') (15 U.S.C. 78ee). The charge date is the settlement date with respect to a covered sale or covered round turn transaction that a covered exchange reports to a designated clearing agency. The charge date is the trade date with respect to a covered sale occurring on a covered exchange that the exchange does not report to a designated clearing agency, and with respect to any covered sale occurring otherwise than on a national securities exchange.

COVERED ASSOCIATION—Any national securities association by or though any member of which covered sales or covered round turn transactions occur otherwise than on a national securities exchange.

COVERED EXCHANGE—Any national securities exchange on which covered sales or covered round turn transactions occur.

COVERED SALE—A sale of a security, other than an exempt sale or a sale of a security future, occurring on a national securities exchange or by or through any member of a national securities association otherwise than on a national securities exchange.

COVERED ROUND TURN TRANSACTION—A round turn transaction in a security future, other than a round turn transaction in a future on a narrow-based security index, occurring on a national securities exchange or by or through a member of a national securities association otherwise than on a national securities exchange.

COVERED SRO—A covered exchange or a covered association.

DESIGNATED CLEARING AGENCY—A clearing agency registered under Section 17A of the Exchange Act (15 U.S.C. 78q–1) that clears and settles covered sales or covered round turn transactions.

EX-CLEARING TRANSACTION—A sale of a security that clears and settles otherwise than through a designated clearing agency.

EXEMPT SALE—(i) Any sale of a security offered pursuant to an effective registration statement under the Securities Act of 1933 (''Securities Act'') (except a sale of a put or call option issued by the Options Clearing Corporation) or offered in accordance with an exemption from registration afforded by Section 3(a) or 3(b) thereof (15 U.S.C. 77c(a) or 77c(b)), or a rule thereunder; (ii) any sale of a security by an issuer not involving any public offering within the meaning of Section 4(2) of the Securities Act (15 U.S.C. 77d(2)); (iii) any sale of a security pursuant to and in consummation of a tender or exchange offer; (iv) any sale of a security upon the exercise of a warrant or right (except a put or call), or upon the conversion of a convertible security; (v) any sale of a security that is executed outside the United States and is not reported, or required to be reported, to a transaction reporting association as defined in 17 CFR 240.11Aa3–1 and any approved plan filed thereunder; (vi) any sale of an option on a security index (including both a narrow-based security index and a non-narrow-based security index); and (vii) any sale of a bond, debenture, or other evidence of indebtedness.

FEE RATE—The fee rate applicable to covered sales under paragraphs (b) or (c) of Section 31 of the Exchange Act (15 U.S.C. 78ee(b) and (c)), as adjusted from time to time by the Commission pursuant to paragraph (j) of Section 31 of the Exchange Act (15 U.S.C. 78ee(j)).

NARROW-BASED SECURITY INDEX—Has the same meaning as in Section 3(a)(55)(B) and (C) of the Exchange Act (15 U.S.C. 78c(a)(55)(B) and (C)).

PHYSICAL DELIVERY EXCHANGE-TRADED OPTION—An option that is listed and registered on a national securities exchange and that is settled by the physical delivery of the underlying securities.

QUALIFIED SPECIAL REPRESENTATIVE—A member of a designated clearing agency that operates, has an affiliate that operates, or clears for a broker-dealer that operates, an automated execution system where the designated clearing agency member is on the contra-side of every transaction.

TRADE REPORTING SYSTEM—An automated facility operated by a covered SRO used to collect or compare trade data.

B. GENERAL INSTRUCTIONS

1. Covered exchanges shall use Form R31 to report to the Commission, pursuant to Section 31 of the Securities Exchange Act of 1934 (''Exchange Act'') and 17 CFR 240.31, data regarding all covered sales and covered round turn transactions that: (1) occurred on the exchange; and (2) have a charge date in the month for which this form is being submitted.

2. Covered associations shall use Form R31 to report to the Commission, pursuant to Section 31 of the Exchange Act and Rule 31 thereunder, data regarding all covered sales that: (1) occurred by or through any member of the association otherwise than on a national securities exchange; and (2) have a charge date in the month for which this form is being submitted.

3. Form R31 shall be submitted within ten business days after the end of every month, and such other times as stipulated in 17 CFR 240.31T.

4. A covered SRO must obtain the data necessary to complete Part I of this Form R31 from a designated clearing agency. Pursuant to Rule 31, a designated clearing agency is required, upon request, to provide a covered SRO with the data in its possession needed by the covered SRO to complete Form R31. A covered SRO shall provide in Part I of this Form R31 only the data supplied to it by a designated clearing agency.

5. For any item that requests the aggregate dollar amount of covered sales, enter responses ''A'' and ''B'' as follows. For any month in which the Commission does not adjust the fee rate, enter the aggregate dollar amount of covered sales for the entire month in ''A'' and leave ''B'' blank. For any month in which the Commission adjusts the fee rate, enter in ''A'' the aggregate dollar amount of covered sales having a charge date in that month before the date of the fee rate adjustment, and enter in ''B'' the aggregate dollar amount of covered sales having a charge date in that month on or after the date of the fee rate adjustment. The total number of covered round turn transactions should be provided in a single entry.

6. **CONTACT EMPLOYEE**—The individual listed on the Execution Page (Page 1) of Form R31 as the contact employee must be authorized to represent on behalf of the covered SRO that the information provided on this Form R31 is complete and accurate.

7. **FORMAT**—A covered SRO must file this Form R31 with the Commission in paper. Please type all information. Use only the current version of Form R31 or a reproduction. Attach an Execution Page (Page 3) with an original manual signature.

8. **WHERE TO FILE AND NUMBER OF COPIES**—Submit one original and two copies of Form R31 to: Securities and Exchange Commission; Attention: Form R31; Office of Economic Analysis; 450 Fifth Street, NW.; Washington, DC 20549–1105.

9. **PAPERWORK REDUCTION ACT DISCLOSURE**

- Form R31 requires covered SROs to provide data regarding all covered sales and covered round turn transactions having a charge date in the month for which this form is being submitted.

- 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. Sections 3(a)(1), 5, 6(a), and 23(a) of the Exchange Act (15 U.S.C. 78c(a)(1), 78e, 78f(a), and 78w(a)) authorize the Commission to collect information on this Form R31.

- Form R31 is designed to enable the Commission to determine the amount of fees and assessments that are due from every covered SRO under Section 31 of the Exchange Act.

- The Commission has estimated that each respondent will spend, on average, approximately 1.6 hours completing this Form R31. This average includes designated clearing agencies as respondents.

- Any member of the public may direct to the Commission any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden.

- No assurance of confidentiality is given by the Commission with respect to the responses made in Form R31. The public has access to the information contained in Form R31.

- This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. 3507. The applicable Privacy Act system of records is SEC–2 and the routine uses of the records are set forth at 40 FR 39255 (August 27, 1975) and 41 FR 5318 (February 5, 1976).

Form R31 Page 1	**U.S. SECURITIES AND EXCHANGE COMMISSION** **WASHINGTON, DC 20549** **FORM FOR REPORTING COVERED SALES AND COVERED ROUND TURN TRANSACTIONS UNDER SECTION 31 OF THE SECURITIES EXCHANGE ACT OF 1934**	Date filed (MM/DD/YYYY)

WARNING: INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS

1. State the name of the covered SRO:

2. State the month and year for which this Form R31 is being filed:

3. Provide the following information for the contact employee:

   Name:
   Title:
   Telephone Number:
   E-mail Address:
   Street Address:

PART I

QUESTIONS 4–6 TO BE COMPLETED BY COVERED EXCHANGES

4. Provide the aggregate dollar amount of covered sales of equity securities that: (a) occurred on the exchange; (b) had a charge date in the month of this report; and (c) the exchange reported to a designated clearing agency, as reflected in the data provided by a designated clearing agency:

   (A)
   (B)

5. Provide the aggregate dollar amount of covered sales of options that: (a) occurred on the exchange; (b) had a charge date in the month of this report; and (c) the exchange reported to a designated clearing agency, as reflected in the data provided by a designated clearing agency:

   (A)
   (B)

6. Provide the total number of covered round turn transactions that: (a) occurred on the exchange; (b) had a charge date in the month of this report; and (c) the exchange reported to a designated clearing agency:

QUESTION 7 TO BE COMPLETED BY COVERED ASSOCIATIONS

7. Provide the aggregate dollar amount of covered sales of equity securities that: (a) occurred by or through any member of the association; (b) had a charge date in the month of this report; and (c) resulted from the exercise of a physical delivery exchange-traded option, as reflected in the data provided by a designated clearing agency:

   (A)
   (B)

DO NOT WRITE BELOW THIS LINE—FOR OFFICIAL USE ONLY

Form R31 Page 1	**U.S. SECURITIES AND EXCHANGE COMMISSION** **WASHINGTON, DC 20549** **FORM FOR REPORTING COVERED SALES AND COVERED ROUND TURN TRANSACTIONS UNDER SECTION 31 OF THE SECURITIES EXCHANGE ACT OF 1934**	Date filed (MM/DD/YYYY)

PART II

QUESTIONS 8–9 TO BE COMPLETED BY COVERED EXCHANGES

8. Provide the aggregate dollar amount of covered sales that: (a) occurred on the exchange; (b) had a charge date in the month of this report; (c) the covered exchange captured in a trade reporting system; and (d) were reported to a designated clearing agency by a qualified special representative:

(A)
(B)

9. Provide the aggregate dollar amount of covered sales that: (a) occurred on the exchange; (b) had a charge date in the month of this report; (c) the exchange captured in a trade reporting system; and (d) were ex-clearing transactions:

(A)
(B)

QUESTION 10 TO BE COMPLETED BY COVERED ASSOCIATIONS

10. For each trade reporting system of the association, provide the aggregate dollar amount of covered sales that: (a) occurred by or through a member of the association otherwise than on a national securities exchange; (b) had a charge date in the month of this report; and (c) the association captured in a trade reporting system:

Name of Trade Reporting System:

(A)
(B)

Name of Trade Reporting System:

(A)
(B)

PART III

QUESTION 11 TO BE COMPLETED BY COVERED EXCHANGES

11. Provide the aggregate dollar amount of covered sales that: (a) occurred on the exchange; (b) had a charge date in the month of this report; and (c) the exchange neither captured in a trade reporting system nor reported to a designated clearing agency:

(A)
(B)

QUESTION 12 TO BE COMPLETED BY COVERED ASSOCIATIONS

12. Provide the aggregate dollar amount of covered sales that: (a) occurred by or through a member of the association otherwise than on a national securities exchange; (b) had a charge date in the month of this report; and (c) the association did not capture in a trade reporting system:

(A)
(B)

DO NOT WRITE BELOW THIS LINE—FOR OFFICIAL USE ONLY

Form R31 Page 1	**U.S. SECURITIES AND EXCHANGE COMMISSION** **WASHINGTON, DC 20549** **FORM FOR REPORTING COVERED SALES AND COVERED ROUND TURN TRANSACTIONS UNDER SECTION 31 OF THE SECURITIES EXCHANGE ACT OF 1934**	Date filed (MM/DD/YYYY)

EXECUTION:

The undersigned has executed this form on behalf of, and with the authority of, the covered SRO. The undersigned and the covered SRO represent that the information and statements contained herein are current, true, and complete.

MM/DD/YY:

Name of Covered SRO:

BY:

Signature:

Print Name and Title:

This page must be completed in full with original, manual signature.

DO NOT WRITE BELOW THIS LINE—FOR OFFICIAL USE ONLY

By the Commission.
Dated: January 20, 2004.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–1605 Filed 1–26–04; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Tuesday,
January 27, 2004

Part V

Securities and Exchange Commission

17 CFR Parts 270, 275 and 279
Investment Adviser Codes of Ethics; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 270, 275 and 279

[Release Nos. IA–2209, IC–26337; File No. S7–04–04]

RIN 3235–AJ08

Investment Adviser Codes of Ethics

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing for comment a new rule and related rule amendments under the Investment Advisers Act of 1940 that would require registered advisers to adopt codes of ethics. The codes of ethics would set forth standards of conduct expected of advisory personnel, safeguard material nonpublic information about client transactions, and address conflicts that arise from personal trading by advisory personnel. Among other things, the rule would require advisers' supervised persons to report their personal securities transactions, including transactions in any mutual fund managed by the adviser. The rule and rule amendments are designed to promote compliance with fiduciary standards by advisers and their personnel.

DATES: Comments must be received on or before March 15, 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 hardcopy should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may instead be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–04–04; if e-mail is used, this file number should be included on the subject line. Comment letters 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 also will be posted on the Commission's Internet Web site (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: Robert L. Tuleya, Attorney-Adviser, or Jennifer Sawin, Assistant Director, at 202–942–0719, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'' or ''SEC'') is requesting public comment on proposed rule 204A–1 [17 CFR 275.204A–1] under the Investment Advisers Act of 1940 [15 U.S.C. 80b] (''Advisers Act'' or ''Act'') and proposed amendments to rule 204–2 [17 CFR 275.204–2] and Form ADV [17 CFR 279.1] under the Advisers Act and to rule 17j-1 [17 CFR 270.17j-1] under the Investment Company Act of 1940 [15 U.S.C. 80a] (''Company Act'').[2]

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I. Background

Advisers are fiduciaries that owe their clients a duty of undivided loyalty.[3] The Commission has become concerned that the obligations attendant to this duty were lost on the growing number of advisers we see each month on our enforcement calendar. Recently, we have brought actions against advisory personnel who divulged portfolio information about their mutual funds, permitting favored clients to exploit the funds' investors,[4] and against an adviser we allege failed to take adequate steps to detect and deter its portfolio managers' short-term trading in affiliated funds.[5] There have been too many other cases in which we have had to bring enforcement actions against advisers or their personnel alleging violations of their fiduciary obligations to their clients.[6]

In order to educate their employees, protect the reputation of the firm, and guard against violating the securities laws, many advisers have adopted codes of ethics, establishing standards of conduct to which their employees must adhere. Codes of ethics often remind employees that they are in a position of trust, which requires them to act at all

[1] We do not edit personal or identifying information, such as names or e-mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

[2] Unless otherwise noted, when we refer to rule 17j-1 or any paragraph of the rule, we are referring to 17 CFR 270.17j-1 of the Code of Federal Regulations in which the rule is published; and when we refer to rule 204–2 or any paragraph of the rule, we are referring to 17 CFR 275.204–2 of the Code of Federal Regulations in which the rule is published.

[3] *SEC* v. *Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 181–82 (1963).

[4] *See, e.g., Gary L. Pilgrim, Harold J. Baxter, and Pilgrim Baxter & Associates, Ltd,* Litigation Release No. 18474 (Nov. 20, 2003) (alleged disclosure of nonpublic fund portfolio information by adviser's principal permitted certain investors to exploit mispricing of the mutual fund's net asset value); *In the Matter of Alliance Capital Management, L.P.,* Investment Advisers Act Release No. 2205 (Dec. 18, 2003) (disclosure of material nonpublic information about certain mutual fund portfolio holdings permitted favored client to profit from market timing).

[5] *In the Matter of Putnam Investment Management LLC,* Investment Advisers Act Release No. 2192 (Nov. 13, 2003).

[6] Other recent enforcement actions against advisers and advisory personnel include *In the Matter of Paul Joseph Sheehan dba Paul J. Sheehan & Associates,* Investment Advisers Act Release No. 2207 (Dec. 29, 2003) (investment adviser alleged to have ''cherry picked'' millions of dollars of profitable trades for his own accounts); *In the Matter of Robert T. Littell and Wilfred Meckel,* Investment Advisers Act Release No. 2203 (Dec. 15, 2003) (portfolio manager of hedge fund made misrepresentations to investors and potential investors concerning performance, management oversight, and risk management practices); *SEC* v. *Heartland Advisors et al.*, Litigation Release No. 18505 (Dec. 12, 2003) (adviser and employees allegedly engaged in fraudulent pricing, misrepresentation, insider trading and other violations of fiduciary duties); *In the Matter of Zion Capital Management LLC and Ricky A. Lang,* Investment Advisers Act Release No. 2200 (Dec. 11, 2003) (in allocating securities trades, investment adviser favored an account in which its principal had a financial interest over account of client); *In the Matter of George F. Fahey,* Investment Advisers Act Release No. 2196 (Nov. 24, 2003) (president of investment adviser made misrepresentations to clients as to risk of investment strategy and value of investments); *In the Matter of Wendell D. Belden,* Investment Advisers Act Release No. 2191 (Nov. 6, 2003) (associate of adviser defrauded clients by misleading them about their investment options and the security of their invested principal and by investing their money in a manner calculated to enrich himself at their expense); *In the Matter of Marshall E. Melton and Asset Management & Research, Inc.,* Investment Advisers Act Release No. 2151 (Jul. 25, 2003) (investment adviser made material misrepresentations to its clients to induce them to invest their funds in limited liability companies controlled by adviser's principal).

times with the utmost integrity. Many impose ethical obligations that exceed those imposed by law, for example, requiring personnel to avoid even the *appearance* of a conflict with clients. Codes of ethics also establish procedures for employees to follow so that the adviser may determine whether the employee is complying with the firm's principles. In addition, the procedures laid out in a code of ethics can offer employees guidance and certainty as to whether certain actions are, or are not, permissible. Codes of ethics ultimately protect the interests of both clients *and* advisers by demanding that advisory personnel perform their duties with complete propriety and do not take advantage of their position.

Recently we adopted rules designed to deter and detect violations of the Act,[7] proposed to require better disclosures by mutual funds,[8] and proposed safeguards against late trading.[9] Today we are proposing a rule under the Investment Advisers Act of 1940 requiring each adviser registered with us to adopt and enforce a code of ethics applicable to its supervised persons. The rule is designed to prevent fraud by reinforcing fiduciary principles that must govern the conduct of advisory firms and their personnel.

II. Discussion

The Commission is proposing for comment new rule 204A–1, and related rule amendments, that would require advisers to adopt codes of ethics. Each adviser's code of ethics would be required to (i) set forth standards of conduct expected of advisory personnel (including compliance with the federal securities laws), (ii) safeguard material nonpublic information about client transactions, and (iii) require advisers' ''access persons'' to report their personal securities transactions, including transactions in any mutual fund managed by the adviser. The code of ethics would also have to require access persons to obtain the adviser's approval before investing in an initial public offering (''IPO'') or private placement. The code of ethics would have to require prompt reporting, to the adviser's chief compliance officer or another person designated in the code of ethics, of any violations of the code.[10] Finally, the code of ethics would have to require the adviser to provide each supervised person with a copy of the code and any amendments, and require the supervised persons to acknowledge, in writing, their receipt of these copies.

The rule would apply to each adviser registered with the Commission, although as we discuss below firms with only one employee would be exempt from some provisions.[11] We have drafted the rule broadly so that each adviser will be able to develop a code that takes into consideration the nature of its business, as it does when drafting its procedures under section 204A of the Act.[12]

The proposed rule, would not, of course, preclude an adviser from adopting a code of ethics covering additional matters. We encourage advisers to adopt broader codes, and request comment on whether we should require advisers to adopt them. What matters should they address?

A. Standards of Conduct and Compliance With Laws

We propose that each code of ethics set forth a standard of business conduct that the adviser requires of all its supervised persons.[13] This standard must reflect the adviser's fiduciary obligations and those of its supervised persons, and must require compliance with the federal securities laws. These obligations are imposed by law, and thus would establish a minimum requirement for a code of ethics complying with the rule. Advisers would be free, however, to require higher standards such as those we described above.

We request comment on these requirements. Is our formulation of the business conduct element of the code of ethics appropriate? Should we specify a particular standard of conduct that all codes of ethics must incorporate? What standard should we adopt? Should the code of ethics require supervised persons to comply with all applicable laws and regulations, rather than only the federal securities laws?

B. Protection of Material Nonpublic Information

Tight controls on access to sensitive client information are a first line of defense against misuse of that information.[14] Therefore, we also propose that each code of ethics include provisions reasonably designed to prevent access to material nonpublic information about the adviser's securities recommendations, and client securities holdings and transactions, unless those individuals need the information to perform their duties.[15] The proposed rule would require advisers to restrict access to client information on a ''need to know'' basis, but would not preclude the adviser from providing necessary information to persons providing services to the adviser or the account, *i.e.*, brokers, accountants, custodians, and fund transfer agents.[16]

- Are these criteria adequate? Are there alternative formulations we should use?
- Some advisers' codes of ethics require that computer files containing nonpublic information be identified and segregated. Should we require all

[7] Compliance Programs of Investment Companies and Investment Advisers, Investment Advisers Act Release No. 2204 (Dec. 17, 2003) [68 FR 74714 (Dec. 24, 2003)] (''Compliance Adopting Release'').

[8] Disclosure Regarding Market Timing and Selective Disclosure of Portfolio Holdings, Investment Company Act Release No. 26287 (Dec. 11, 2003) [68 FR 70402 (Dec. 17, 2003)].

[9] Amendments to Rules Governing Pricing of Mutual Fund Shares, Investment Company Act Release No. 26288 (Dec. 11, 2003) [68 FR 70388 (Dec. 17, 2003)].

[10] Congress recently required public companies to disclose whether (and if not, why not) they have adopted codes of ethics for their senior financial officers. ''Codes of ethics'' in section 406 of the Sarbanes-Oxley Act of 2002 are standards reasonably necessary to promote honest and ethical conduct, compliance with regulations, and full and fair disclosure. Pub. L. 107–204, 116 Stat. 745 (2002). The Commission's rules adopted under section 406 also refer to standards to promote avoidance of conflicts of interest as well as prompt reporting of any violations of the code of ethics. 17 CFR 229.406. Investment advisers that are themselves public companies are subject to the Sarbanes-Oxley Act and the Commission's rules under section 406.

[11] The rule would thus not apply to an adviser not registered with us in reliance on an exemption in section 203(b) of the Act [15 U.S.C. 80b–3(b)], nor to an adviser that is registered with state authorities and prohibited by section 203A of the Act [15 U.S.C. 80b–3a] from registering with us.

[12] Section 204A of the Advisers Act [15 U.S.C. 80b–4a], requires that each adviser take into consideration the nature of its business when establishing and enforcing procedures reasonably designed to prevent misuse of material nonpublic information by the investment adviser or any person associated with the investment adviser. *See also* H.R. Rep. No. 100–910, at 21–22 (Sep. 9, 1988) (recognizing that policies and procedures to prevent insider trading may reasonably differ among investment advisers, depending on the firm's operations, business structure, and the nature and scope of its business); Report of the Division of Investment Management, SEC, *Personal Investment Activities of Investment Company Personnel* at 4 (Sep. 1994) (''PIA Report'') (noting that rule 17j–1 allows funds to tailor personal trading restrictions and procedures to the funds' circumstances because that flexibility puts the funds in the best position to oversee access persons' investment activities).

[13] Proposed rule 204A–1(a)(1).

[14] Section 204A of the Act both requires advisers to establish policies to prevent misuse of material nonpublic information, and gives us authority to adopt rules requiring advisers to adopt specific policies and procedures to prevent nonpublic information from being misused.

[15] Proposed rule 204A–1(a)(3). We would expect many advisers would incorporate, into their code of ethics, their written policies and procedures to guard against misuse of material nonpublic information required by section 204A.

[16] *Cf.* sections 248.13 and 248.14 of Regulation S–P [17 CFR 248.13 and 248.14] (permitting financial institutions to share, with nonaffiliated third parties, without providing the consumer an opt out, information about the consumer in order to permit the third party to provide services to the financial institution or to the consumer's account).

advisers to incorporate this safeguard into their codes of ethics?

• Advisers' required procedures under section 204A usually contain a summary of the law on insider trading and procedures for determining whether information has become public. Should we require these to be integrated into the code of ethics?

C. Personal Securities Trading

Investment advisers and their personnel face inherent conflicts of interest when they trade in securities for their own accounts. They have access to information about their clients' securities transactions, which they can exploit for their own benefit.[17] In several of our enforcement cases involving personal trading, advisers profited from ''front-running'' client trades.[18] More recently, our enforcement cases have involved advisory personnel profiting unfairly through short-term trading in funds they managed, or alerting friends to do likewise.[19]

Misuse of client information violates the adviser's fiduciary duty as well as the Act's prohibitions against fraud and other provisions of the federal securities laws that prohibit insider trading. *See, e.g.*, section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78j] and rule 10b–5 thereunder [17 CFR 240.10b–5], section 17(j) of the Company Act [15 U.S.C. 80a–17(j)] and rule 17j–1 thereunder, and section 206 of the Advisers Act [15 U.S.C. 80b–6]. *See also, e.g., In the Matter of Gintel Asset Management, Inc., Gintel & Co. LLC, Robert M. Gintel, and Stephen G. Stavrides,* Investment Advisers Act Release No. 2079 (Nov. 8, 2002) (adviser violated rule 17j–1 by permitting principal to make repeated personal trades in securities to be acquired by fund and other advisory clients; adviser violated section 204A and affiliated broker-dealer violated section 15(f) of Securities Exchange Act in connection with misuse of material nonpublic information about planned trades for client accounts).

To prevent the personal securities trading of advisers' personnel from harming clients, each adviser's code of ethics would have to require personal trading reports from ''access persons'' of the adviser. The rule would, however, contain an exception for an adviser with only one employee (*i.e.*, the adviser himself); the sole employee would not be required to make reports of personal securities transactions and holdings, but would be required to maintain records of his personal trades and provide them to our examiners upon request.[20] These small advisers would be subject to the other provisions of the rule, including the requirements to adopt a code of ethics and safeguard material nonpublic client information.

• Are there other advisers we should exempt from provisions of the rule?

Our proposed requirements for reporting of personal securities trading are modeled largely on rule 17j–1 under the Company Act, which we adopted in 1980.[21] Rule 17j–1 requires that advisers to investment companies have procedures in place to prevent their personnel from abusing their access to information about the fund's securities trading, and requires ''access persons'' to submit reports periodically containing information about their personal securities holdings and transactions.[22] These procedures are an important part of these advisers' efforts to deter fraudulent personal trading by their personnel.

We have, however, made a number of changes to better apply the provisions on personal securities reporting to the many smaller advisory firms registered with us that do not advise an investment company. Appendix A to this Release contains a table comparing our proposal with rule 17j–1. We request comment on whether the differences, the most significant of which we describe below, make sense. Are there provisions in rule 17j–1 that we have omitted from proposed rule 204A–1 but that should be included? Conversely, are there changes we are proposing that should be extended to rule 17j–1? Is there a significant need for rule 204A–1 and rule 17j–1 to be as uniform as possible—in the event we adopt rule 204A–1 with changes from this proposal, should we make parallel changes to rule 17j–1?

The code of ethics would have to require the adviser's ''access persons''—generally, its personnel who have access to nonpublic information regarding client securities recommendations, trading and holdings—to periodically report their personal securities transactions and holdings to the adviser's chief compliance officer.[23] As discussed in more detail below, these reports would allow advisers as well as the Commission's examination staff to identify trades or patterns of trading by access persons that may be improper.

1. Personal Trading Procedures

In order to give advisers flexibility to adopt codes appropriate for their businesses, we are not proposing specific provisions regarding personal trading, other than pre-clearance of certain investments as discussed below. Firms that have already adopted a code of ethics, however, commonly include many of the following elements, or address the following issues, which we believe all advisers should consider in crafting their own procedures for employees' personal securities trading.

• Prior written approval before access persons can place a personal securities transaction (''pre-clearance'').[24]

[17] In most cases, an advisory firm and its personnel have access to such information because they have investment discretion to effect trades on behalf of their clients, including the investment companies (''funds'') that the adviser manages. Approximately 80% of the advisers registered with the Commission manage client securities portfolios on a discretionary basis, and another 10% manage them only on a non-discretionary basis.

[18] *See, e.g., In the Matter of Roger W. Honour*, Investment Advisers Act Release No. 1527 (Sept. 29, 1995). *See also SEC* v. *Capital Gains, supra* note at 181–82 (''scalping'' operates as a fraud or deceit on advisory clients).

[19] *See supra* notes 4 and 5.

[20] Proposed rule 204A–1(d). These advisers would also be excused from pre-clearing investments in IPOs and private placements. *Id.* It would make little sense to require the sole employee to make reports to himself or to pre-clear investments with himself.

[21] Prevention of Certain Unlawful Activities With Respect to Registered Investment Companies, Investment Company Act Release No. 11421 (Oct. 31, 1980) [45 FR 73915 (Nov. 7, 1980)] (adopting rule 17j–1) (''Rule 17j–1 1980 Adopting Release'').

We have also required advisers registered with us to keep records of transactions in which the firm or certain personnel have a beneficial ownership interest. Advisers Act rule 204–2(a)(12) and (13). As discussed in more detail below, we propose to modify these recordkeeping rules.

[22] Rule 17j–1(c)(1) and (d) under the Investment Company Act. Most investment companies, and therefore most advisers to investment companies, must have codes of ethics under rule 17j–1. Money market funds and funds that invest only in certain non-covered securities, however, are not required to adopt codes of ethics. Rule 17j–1(c)(1)(i). As of December 10, 2003, approximately 1500 advisers, or 18–19% of the firms registered with us, reported that they manage portfolios for investment companies.

[23] Proposed rule 204A–1(a)(4).

[24] In some organizations, all personnel must pre-clear all trades with the firm's compliance personnel. In other firms, only access persons must pre-clear, or only certain types of transactions must be pre-cleared. Some advisers have begun using compliance software to pre-clear personal trades on an automated basis, rather than have compliance personnel process the requests.

Pre-clearance procedures may also identify who has authority to approve a trade request, the length of time an approval is valid, and procedures for revoking an approval, as well as procedures for verifying post-trade reports or duplicate

• Maintenance of ''restricted lists'' of issuers of securities that the advisory firm is analyzing or recommending for client transactions, and prohibitions on personal trading in securities of those issuers.

• ''Blackout periods'' when client securities trades are being placed or recommendations are being made and access persons are not permitted to place personal securities transactions.[25]

• Reminders that investment opportunities must be offered first to clients before the adviser or its employees may act on them, and procedures to implement this principle.[26]

• Prohibitions or restrictions on ''short-swing'' trading and market timing.[27]

• Requirements to trade only through certain brokers, or limitations on the number of brokerage accounts permitted.

• Requirements to provide the adviser with duplicate trade confirmations and account statements.

• Procedures for assigning new securities analyses to employees whose personal holdings do not present apparent conflicts of interest.[28]

We request comment on whether the rule should require that any of the above ''best practice'' procedures regarding personal securities trading be in advisers'' codes of ethics.

• Are there other common elements or procedures, in addition to the above, that all advisers should consider as best practices, and, if so, should we include these in our adopting release? Commenters favoring additional policies and procedures should give specific recommendations.

• Should advisers be required to document the factors they considered in developing their procedures?

2. Persons Subject to the Reporting Requirements

Under proposed rule 204A–1, the adviser's code must require certain supervised persons, called ''access persons,'' to report their personal securities transactions and holdings.[29] An access person is a supervised person who has access to nonpublic information regarding clients' purchase or sale of securities, is involved in making securities recommendations to clients or who has access to such recommendations that are nonpublic.[30]

Access persons would include portfolio management personnel.[31] In some organizations, they would also include client service representatives who communicate investment advice to clients. These employees have information about investment recommendations whose effect may not yet be felt in the marketplace; as such, they may be in a position to exploit their inside knowledge. Administrative, technical, and clerical personnel may also be access persons if their functions or duties make them privy to nonpublic information. Organizations where employees have broad responsibilities, and where information barriers are few, may see a larger percentage of their staff subject to the reporting requirements. In contrast, organizations that keep strict controls on sensitive information may have fewer access persons.

Persons who are not ''supervised persons'' of the investment adviser would not be access persons under the proposed rule. Thus, employees of other organizations, including affiliated organizations such as broker-dealers, custodians, and banks that may acquire information about client securities transactions in the course of their duties, would not be subject to reporting requirements.[32] It may be impractical to apply the adviser's code of ethics to these persons, who may in any event be subject to ethical restrictions imposed by their own employers.[33] As discussed earlier, proposed rule 204A–1 would require advisers' codes of ethics to safeguard material nonpublic information, so that the number of persons outside the firm who have access should be few.[34] Moreover, advisers' fiduciary duty of care already requires them to exercise caution when disclosing client information to third parties, even those who are affiliates. Should the rule require advisers to undertake specific safeguards in this regard, and if so, what should they be?

We request comment on the scope of the definition of access person under the proposed rule:

• Is the definition too broad? Are there additional persons who should be excluded?

• Is the definition too narrow ''are there personnel at advisory firms who would not be access persons but who may be in a position to misuse nonpublic information?

confirmations against the log of pre-clearance approvals.

[25] Advisers may use blackout periods to guard against employees trading ahead of clients or on the same day as clients' trades are placed. *See Roger Honour, supra* note 18. Prohibiting personal trading at the same time as client trading can also serve as a measure to prevent personnel from allocating trades in a manner that defrauds clients. *See, e.g., In the Matter of Nicholas-Applegate Capital Management,* Investment Advisers Act Release No. 1741 (Aug. 12, 1998) (adviser's senior trader placed personal trades alongside trades for employee plan, allocating profitable trades to his personal account and unprofitable ones to the employee plan's account); *SEC* v. *Moran*, 922 F.Supp. 867 (SDNY 1996) (advisory principal allocated shares to his family and personal accounts even though additional shares would need to be purchased for client accounts on the following day at higher prices). The Commission has previously indicated its approval of blackout periods for advisory personnel. *See* Report of the Securities and Exchange Commission on the Public Policy Implications of Investment Company Growth (1966) (''PPI Report'') at 196 (noting with approval that the staff's 1962–63 Special Study of the Securities Markets had concluded that all investment companies and advisers should have policies precluding certain insiders from buying and selling securities at the same time as a fund they manage).

[26] In several of our enforcement cases involving personal trading, advisory personnel took investment opportunities for themselves (or for an account in which they had an interest) instead of for clients, even where the investment became available only because of the client's other securities purchases. *See In the Matter of Joan Conan*, Investment Advisers Act Release No. 1446 (Sept. 30, 1994); *In the Matter of Kemper Financial Services, Inc.*, Investment Advisers Act Release No. 1494 (June 6, 1995).

[27] Advisers that prohibit short-term trading generally mandate disgorgement of any profits if an employee effects a short-term trade.

[28] Our proposal to have codes of ethics require initial and annual holdings reports would facilitate an adviser's assessment of whether an individual's personal securities holdings present a conflict of interest.

[29] Proposed rule 204A–1(a)(4). Section 202(a)(25) of the Advisers Act [15 U.S.C. 80b–2(a)(25)] defines the term ''supervised person.'' An adviser's supervised persons are its partners, officers, directors (or other persons occupying a similar status or performing similar functions) and employees, as well as any other persons who provide advice on behalf of the adviser and are subject to the adviser's supervision and control.

[30] Proposed rule 204A–1(e)(1). A supervised person who has access to nonpublic information regarding the portfolio holdings of affiliated mutual funds would also be an access person. *See* discussion *infra* at Section II.C.4 of this Release.

[31] Proposed rule 204A–1(e)(1)(i)(B).

[32] Our recordkeeping rules have required advisers to keep records of personal securities transactions of employees of companies affiliated with the adviser, if those employees have access to prior information about the adviser's clients' trades. Rule 204–2(a)(12)(iii)(A). We amended our recordkeeping rule to include personal securities transactions of these persons in 1975, in recognition that they may possess inside knowledge that could lead to ''scalping'' or front-running. Revised Definition of Term ''Advisory Representative'' and Limitation of Record-Keeping Requirements for Certain Persons, Investment Advisers Act Release No. 436 (Feb. 21, 1975) [40 FR 8548 (Feb. 28, 1975)].

[33] Advisers are currently subject to detailed rules that may require them to keep records of the personal securities transactions of some of these persons. Because we believe requiring advisers to monitor the personal securities trading of employees of other firms may not be practical, we believe it may be more effective to eliminate these recordkeeping requirements. *See* Section II.I of this Release, below. Instead, our proposed rule would encourage tighter controls on material nonpublic information by imposing a general requirement that the adviser safeguard access to such information.

[34] Proposed rule 204A–1(a)(3).

• Should access persons include employees of companies that control or are controlled by the adviser?

Whether directors and partners of an adviser have access to client securities information may vary significantly between organizations. In some large organizations with multiple lines of business, not all officers may have access to the type of information the proposed rule is designed to protect. Rule 17j–1 creates special rules for advisory firms that are ''primarily engaged'' in a business other than advising funds or advisory clients, and sets out a test based on the firm's sources of revenue.[35] In order to achieve the same result, proposed rule 204A–1 would create a legal presumption that, if the firm's primary business is providing investment advice, then all of its directors, officers and partners are access persons.[36] If the firm has another primary business, then whether a director, officer or partner is an access person would turn on whether the individual has access to nonpublic client information.

• Is there a continuing need for the rule to specify a test for the adviser's ''primary'' business? If so, should the new rule use the revenue-based test currently in rule 17j–1 or is there another measure that would be more effective?

• Should we amend rule 17j–1 to create a legal presumption rather than using the current revenue-based test?

3. Reportable Securities and Beneficial Ownership

Several types of securities would appear to present little opportunity for the type of improper trading that the access person reports are designed to uncover. Money market instruments '' bankers'' acceptances, bank certificates of deposit, commercial paper, repurchase agreements and other high quality short-term debt instruments—and direct obligations of the Government of the United States would be exempt from reporting requirements.[37] Shares of money market funds would also be exempt.[38] Transactions and holdings in shares of other types of mutual funds would not be reportable unless the adviser or a control affiliate acts as the investment adviser or principal underwriter for the fund.[39]

• Are there other types of mutual funds, in addition to money market funds, that we should exempt from access persons' holdings and transactions reporting requirements—for example, should reporting on transactions in index funds be required? Should investments in variable annuity contracts be excluded from reporting requirements?

Access persons would be required to report holdings and transactions in securities in which they have beneficial ownership. In 1999, we clarified that beneficial ownership under rule 17j–1 should be interpreted in the same manner as for purposes of rule 16a–1(a)(2) under the Securities Exchange Act of 1934 in determining whether a person has beneficial ownership of a security for purposes of section 16 of that Act. [40] We are proposing to include that same provision in rule 204A–1.[41] Because it is the same as the standard under rule 17j–1, advisers to investment companies will not have to apply two different standards.[42]

4. Reporting of Investment Company Shares

Proposed rule 204A–1 would require access persons of an adviser to report their holdings and transactions in shares of investment companies managed by the adviser or a control affiliate (''reportable funds'').[43] We are proposing these reporting requirements in order to close a regulatory gap under the Company Act.

Section 17(j) of the Company Act authorizes us to adopt rules preventing fraud or deceptive practices in connection with the purchase or sale of ''any security held or to be acquired'' by an investment company. As a result, rule 17j–1 does not require access persons of investment companies to report personal securities trades in mutual funds they manage. Moreover, the exclusion of mutual funds reflects an assumption that trading in mutual fund shares posed little risk of abuse, because those shares are priced at net asset value daily.[44]

Our enforcement actions against fund managers who we allege to have engaged in market timing of their funds based upon their knowledge that portfolio securities were mispriced indicates that this assumption was false.[45] Therefore, we propose to require all advisers' codes of ethics to call for reporting of holdings and transactions in affiliated mutual funds.[46]

• Should the proposed rule require reporting of transactions and holdings in all mutual fund shares, rather than only affiliated funds? Does the proposed rule draw an appropriate line regarding which funds should be covered, and if not, where should that line be drawn?

• Proposed rule 204A–1 would include, as access persons, individuals who obtain information about the existing securities holdings in the adviser's investment companies. Should these individuals be considered access persons? Should we amend rule 17j–1 under the Investment Company Act to conform the definitions?

• Should supervised persons who have information about the holdings of non-fund clients also be included as access persons?

5. Initial and Annual Holdings Reports

Proposed rule 204A–1 would require a complete report of each access

[35] Rule 17j–1(a)(1)(i) (A) and (B). *See also* rule 204–2(a)(13)(iii)(D).

[36] Proposed rule 204A–1(e)(1)(ii).

[37] Proposed rule 204A–1(b)(1)(i)(A) and (e)(10) (i) and (ii). The Commission interprets ''high quality short-term debt instrument'' to mean any instrument having a maturity at issuance of less than 366 days and which is rated in one of the highest two rating categories by a Nationally Recognized Statistical Rating Organization, or which is unrated but is of comparable quality. Personal Investment Activities of Investment Company Personnel and Codes of Ethics of Investment Companies and Their Investment Advisers and Principal Underwriters, Investment Company Act Release No. 21341 (Sept. 8, 1995) [60 FR 47844 (Sept. 14, 1995)] (proposing amendments to rule 17j–1) at note 66.

[38] Proposed rule 204A–1(e)(10)(iii).

[39] Proposed rule 204A–1(e)(9) and (10)(iv). Transactions and holdings in shares of closed-end investment companies would be reportable regardless of affiliation.

[40] *See* Personal Investment Activities of Investment Company Personnel, Investment Company Act Release No. 23958 (Aug. 20, 1999) [64 FR 46821 (Aug. 27, 1999)] (''Rule 17j–1 1999 Adopting Release''). *See also* rule 204–2(a)(12)(iii)(B).

[41] Proposed rule 204A–1(e)(3).

[42] As under rule 17j–1, any report required under rule 204A–1 would be permitted to contain a disclaimer of beneficial ownership by the person making the report.

[43] A fund is a ''reportable fund'' under proposed rule 204A–1(e)(9) if the adviser acts as investment adviser to the fund, or if certain control affiliates of the adviser serve as either investment adviser or principal underwriter to the fund. Those control affiliates are persons who control the adviser, who are controlled by the adviser, or who are under common control with the adviser. For many advisers to investment companies, their reportable funds will be only those they manage, because these advisers have no control affiliates that are other advisers or broker-dealers. A large financial services complex with multiple advisory and brokerage firms under common control will have a greater number of reportable funds.

[44] *See* Rule 17j–1 1980 Adopting Release, *supra* note 21 (the Commission exempted shares of mutual funds from the rule's reporting requirements because they ''present very little opportunity for the type of improper trading that the rule is intended to cover'').

[45] *See supra* note 5.

[46] In addition, we would expand the definition of ''access person'' from that in rule 17j–1. Access persons under rule 17j–1 include advisory personnel who make trading recommendations or decisions for the fund or have information about the fund's purchases and sales of securities. Access persons under rule 204A–1 would also expressly include supervised persons who have nonpublic information about a reportable fund's portfolio securities *holdings*.

person's securities holdings.[47] Holdings reports would be required at the time the person becomes an access person and at least once a year thereafter.[48] We require similar holdings reports under rule 17j–1.[49]

• Should we require holdings reports to be more frequent?

• If we require holdings reports more often than annually, should we make parallel changes to rule 17j–1?

6. Periodic Transactions Reports

Proposed rule 204A–1 would require quarterly reports of all personal securities transactions by access persons.[50] The reports would be due no later than 10 days after the close of the calendar quarter. In the event an access person had no personal securities transactions during the quarter, the report would contain a statement to that effect and would still be required.

• We request comment on the required timing of these reports.

• If we require more frequent transaction reports or a shorter deadline for reporting, should we make parallel changes to rule 17j-1?

Transactions effected pursuant to an automatic investment plan would not have to be reported.[51] Automatic investment plan participants must determine, well in advance, what their investments will be, and that pre-determined schedule does not leave the individual in a position to time their own trades against clients' trades, or to act on newly discovered confidential information. Often, however, a participant in an automatic investment plan will effect a transaction that overrides the pre-set schedule or allocations of the plan; such transactions would have to be reported in a quarterly transaction report.

• Are there other types of transactions that should be exempt from quarterly transactions reports? For example, some advisers that have overall pre-clearance requirements permit employees to purchase securities pursuant to an exercise of rights issued *pro rata,* or certain corporate actions such as stock splits, without pre-clearing the purchase. Should those transactions also be exempt from quarterly transactions reports? Commenters are requested to specify which corporate actions should qualify for any exemption.

• Should small transactions be exempt if the issuer has a large market capitalization? If so, what should be the thresholds for the size of the transaction and for the size of the issuer?

• Should transactions pursuant to automatic investment plans, or other types of transactions, also be exempt from quarterly reporting under rule 17j–1?

7. Duplicate Broker Confirms and Statements

Many advisory firms already receive copies of their employees' trade confirmations or account statements covering personal securities transactions. Proposed rule 204A–1 would not require access persons to submit transaction reports that would duplicate information contained in trade confirmations or account statements that the adviser holds in its records. A duplicate trade confirmation or account statement would be required to be received by the adviser within 10 days after the end of the quarter in which the transaction takes place.

• The proposed rule does not require all of the information required in a transaction report to appear in the duplicate trade confirmation or account statement. That is, some of the required information could appear in the confirm or statement, and the remainder could appear elsewhere in the adviser's records. Is this clear in the proposed rule, or should the rule contain an express provision on this point? Does this practice fragment the information such that a complete picture of the access person's securities trades is harder to obtain?

D. Initial Public Offerings and Private Placements

The code of ethics would have to require that access persons obtain the adviser's approval before investing in an initial public offering (''IPO'') or private placement.[52] We added a similar provision to rule 17j-1 in 1999.[53] Because most individuals rarely have the opportunity to invest in these types of securities, an access person's IPO or private placement purchase may, for example, raise questions as to whether the employee is misappropriating an investment opportunity that should first be offered to eligible clients, or whether a portfolio manager is receiving a personal benefit for directing client business or brokerage.[54]

• Many advisers prohibit their employees from participating in initial public offerings and private placements.[55] Should the rule prohibit access persons from making these investments for their personal accounts?

E. Reporting of Violations

The code of ethics would have to require prompt internal reporting of any violations of the code.[56] Reports of violations would have to be made to the adviser's chief compliance officer or to another person designated in the code of

[47] In contrast, our current recordkeeping rules require only that advisers retain records of certain personal securities transactions of their employees. Rule 204–2(a)(12)(i) and (13)(i). The rules do not require reports on holdings acquired before the employee joined the adviser, nor do they require reports showing cumulative holdings in securities. Both the adviser and our examiners, however, may also need to see a complete picture of all securities held by the access person in order to identify potential or actual conflicts of interest. Without knowledge of all those securities, including securities acquired *before* the person became an access person, it would, for example, be difficult for an adviser to determine whether the access person is recommending purchases for clients based solely on the clients' best interest or based on the securities that the access person holds in his or her own portfolio.

[48] Proposed rule 204A–1(b)(1)(ii).

[49] Rule 17j–1(d)(1)(i) and (iii). We recognize that some persons may already be reporting their securities holdings and brokerage accounts to the adviser. We believe that, as under rule 17j–1, an access person would satisfy the initial holdings report requirement and would not have to submit a separate report, if the adviser maintains a composite record of the information required to be disclosed in the initial report and the access person confirms in writing (which writing may be electronic) the accuracy of the record within 10 days after becoming subject to this provision. *See* Rule 17j–1 1999 Adopting Release, *supra* note *40, at n. 34.* The proposed rule would not, however, permit an access person to avoid filing an initial holdings report simply because all information has been provided over a period of time in various transaction reports. One reason for requiring a holdings report is so that the adviser's compliance personnel and our examiners have ready access to a ''snapshot'' of the access person's holdings and are not required to piece the information together from transaction reports.

[50] Proposed rule 204A–1(b)(2).

[51] Proposed rule 204A–1(b)(3)(ii).

[52] Proposed rule 204A–1(c).

[53] *See* Rule 17j–1 1999 Adopting Release, *supra* note 40.

[54] *See, e.g., In the Matter of Monetta Financial Services, Inc., Robert S. Bacarella, and Richard D. Russo,* Investment Advisers Act Release No. 2136 (Jun. 9, 2003) (investment adviser to mutual funds improperly allocated IPO shares in which funds could have invested to certain access persons of the funds without adequate disclosure or approval); *In the Matter of Ronald V. Speaker and Janus Capital Corporation,* Investment Company Act Release No. 22461 (Jan. 13, 1997) (portfolio manager made a profit on same day purchase and sale of debentures in which fund could have invested, and failed to disclose transactions to the fund or obtain prior consent of the fund); *U.S.* v. *Ostrander,* 999 F.2d 27 (2d Cir. 1993) (affirming conviction of portfolio manager for accepting unlawful compensation where she purchased privately offered warrants of a company whose securities she acquired for the fund).

[55] Guidelines on personal investing endorsed by the Investment Counsel Association of America recommend prohibiting advisory personnel from acquiring securities in an IPO. Investment Counsel Association of America, Inc., *Guidelines on Personal Investing* (Feb. 1995). Similarly, the advisory group to the Investment Company Institute recommended prohibiting investment personnel from acquiring IPO shares. Investment Company Institute Report of the Advisory Group on Personal Investing at 32 (May 9, 1994). Of course, the proposed rule would not require an adviser that prohibited these transactions to include provisions in its code of ethics requiring their pre-clearance.

[56] Proposed rule 204A–1(a)(5).

ethics.[57] The sooner the adviser learns of a violation by a supervised person, the sooner the firm can take corrective measures.[58] But no compliance officer can be everywhere within the firm at all times. Reports may come from violators themselves, as would be likely in the case of inadvertent and some technical violations of the code of ethics, or may come from others within the firm who learn of a fellow employee's inappropriate actions.

We ask for comment on this provision of the proposals. Should advisers identify at least two persons to whom reports of violations can be submitted, in case one of the designated persons is involved in the violation?

• Should the code of ethics require reporting of apparent violations as well?

F. Acknowledged Receipt of Code of Ethics

The code of ethics would have to require the adviser to provide each supervised person with a copy of the code of ethics and any amendments, and require each supervised person to acknowledge, in writing, his receipt of those copies.[59] An investment adviser's procedures for informing its employees about its code of ethics are critical to obtaining good compliance and avoiding inadvertent violations of the code.

• Advisers' codes of ethics often contain procedures for the firm to educate employees about the code of ethics, including the reporting requirements, and to advise employees periodically of changes made to the code.[60] Should we mandate that all adviser codes of ethics contain such procedures?

• Advisers' codes also often require employees to certify that they have read and understood the code of ethics, and require annual recertification that the employee has re-read, understands and has complied with the code. Should rule 204A–1 expressly impose these requirements?

G. Other Code of Ethics Provisions

As discussed above, advisers that have adopted codes of ethics often include a variety of provisions designed to guard against impropriety and conflict, and designed to ensure that the firm can implement the code it has adopted.[61] They may include other provisions such as:

• Limitations on acceptance of gifts.

• Limitations on the circumstances under which an access person may serve as a director of a publicly traded company.

• Detailed identification of who is considered an access person within the organization.

• Procedures for the firm and its compliance personnel to review periodically the code of ethics as well as to review reports made pursuant to it.

• Discussion of penalties for violating the code of ethics.[62]

Should any of these be required elements of an adviser's code of ethics?

H. Adviser Review and Enforcement

Proposed rule 204A–1 would require that advisers maintain and enforce the provisions of their codes of ethics.[63] Enforcement of the code would include reviewing the securities holdings and transaction reports of the adviser's access persons.[64] We expect that the responsibility for enforcing the adviser's code of ethics will lie substantially with the adviser's chief compliance officer, to whom personal trading reports must be submitted.[65]

I. Recordkeeping

We are also proposing to amend rule 204–2 under the Advisers Act to reflect the codes of ethics that advisers would adopt under rule 204A–1 and to eliminate details that rule 204A–1 would make unnecessary. As a result, advisers should find it easier to understand and meet their recordkeeping obligations.

Currently, rules 204–2(a)(12) and (13) lay out fairly complex requirements for the information that advisers must keep regarding personal securities transactions.[66] Our proposed amendments would simplify recordkeeping by, instead, relying on and referring to the adviser's required code of ethics. Advisers would have to keep copies of their code of ethics and their supervised persons' written acknowledgment of receipt of the code. They would have to keep records of violations of the code, and records of action taken as a result of violations.[67] In addition, advisers would have to keep a record of the names of their access persons under rule 204A–1, holdings and transaction reports made by access persons, and records of decisions approving access persons' acquisition of securities in IPOs and limited offerings.[68]

• We ask comment on whether the proposed recordkeeping requirements are appropriate.

• Should the rule require advisers to keep records of any code of ethics waivers or exemptions they grant to a supervised person?

We propose to require that records of access persons' personal securities reports (and duplicate brokerage confirmations or account statements in lieu of those reports) be maintained electronically in an accessible computer database.[69] In all but the smallest advisory organizations, it may be impractical for the adviser or our examiners to review paper trading reports for patterns that may indicate abuse. [70] Electronic records need not be costly or burdensome to maintain. In a small firm, a spreadsheet may be sufficient. Larger firms may monitor

[57] As we discussed in adopting a similar provision under section 406 of the Sarbanes-Oxley Act, *see supra* note 10, the person to whom violations are reported should not be a person involved in the matter giving rise to the violation, and if the person is not the adviser's chief compliance officer, should have sufficient status within the organization to engender respect for the code of ethics. *See* Disclosure Required by Sections 406 and 407 of the Sarbanes-Oxley Act of 2002, Securities Act Release No. 8177 (Jan 23, 2003) [68 FR 5109 (Jan 31, 2003)] at n.45.

[58] As discussed below at Section II.I of this Release, advisers would be required to keep records of violations of the code of ethics and of actions taken as a result of the violation.

[59] Proposed rule 204A–1(a)(6).

[60] Some advisers may hold orientation sessions periodically for new or existing employees to remind them of the requirements of the firm's code of ethics.

[61] *See* PPI Report, *supra* note 25 at 199 (noting that failure to adopt appropriate procedures for implementing codes to prevent insider trading, or to fix responsibility for such implementation, ''impairs the value of even the most carefully drafted code'').

[62] Our understanding is that penalties for violations vary from one firm to another, and depend on the type of violation involved. Employees may be required to cancel trades, disgorge profits or sell positions at a loss, and may face internal reprimands, fines, or firing.

[63] Proposed rule 204A–1(a).

[64] Proposed rule 204A–1(a)(4).

[65] Proposed rule 204A–1(b)(1) and (2). We recently adopted rule 206(4)–7 under the Advisers Act [17 CFR 275.206(4)–7], which, among other things, requires every adviser registered with us to appoint a chief compliance officer. Compliance Adopting Release, *supra* note 7. Under our proposal, reports of violations of the code of ethics would also go to the chief compliance officer or to another person designated in the code. Proposed rule 204A–1(a)(5).

[66] Rule 204–2(a)(13) repeats virtually all of rule 204–2(a)(12), but applies specifically to investment advisers who are primarily engaged in a business other than advising funds or other advisory clients.

[67] Proposed amended rule 204–2(a)(12).

[68] Proposed amended rule 204–2(a)(13). Advisers would be required to maintain the records required under proposed amended rule 204–2(a)(12) and (13) in an easily accessible place for five years, the first two years in an appropriate office of the investment adviser. These are the standard retention requirements for books and records under rule 204–2.

[69] These records would be subject to the special safeguards and other requirements for electronic storage contained in rule 204–2(g).

[70] Under current rule 204–2(a)(12) and (13), duplicate confirmations and account statements can substitute for transaction reports otherwise required, so long as any paper copies are organized so as to allow easy access to and retrieval of any particular confirmation or statement.

employees' trading by opening up ''client'' accounts for each employee so that the firm's existing portfolio analysis programs can track the employees' trades.

• We ask comment on our understanding that requiring these records to be kept electronically would not be burdensome. Is there a need to exempt some smaller firms from the electronic recordkeeping requirement, or to modify the electronic recordkeeping requirement for these firms?

J. Amendment to Form ADV

We are proposing to amend Part II of Form ADV to require advisers to describe their codes of ethics to clients and, upon request, to furnish clients with a copy of the code of ethics.[71] We emphasized the importance of disclosure in 1999 when we amended rule 17j–1 to require funds' codes of ethics to be filed with us electronically and thus available to the public.[72] This disclosure would help clients understand the ethical culture and standards at the advisory firm, how the adviser controls sensitive information and what steps it has taken to prevent employees from misusing their inside positions at the expense of clients. Clients would be able to select advisers whose ethical commitment meets their expectations. Disclosure should also serve to encourage advisers to implement more effective procedures.[73]

• Is a general disclosure requirement adequate? Commenters urging that more specific disclosure be required should provide sample text.

K. Investment Company Advisers

Approximately 19 percent of the advisers registered with us advise registered investment companies and are therefore also subject to rule 17j–1. We would not want those advisers to be subject to conflicting responsibilities under that rule and our new proposals.

Currently, access persons under rule 17j–1 need not make a quarterly transaction report under that rule if ''all of'' the information in the report would duplicate information required to be recorded under Advisers Act rules.[74] We are proposing to revise that to state that no report would be required under rule 17j–1 ''to the extent that'' the report would duplicate information required under the Advisers Act recordkeeping rules, because the reports we propose to require under the Advisers Act are not identical to those that rule 17j–1 would require. To avoid duplicative reports, some advisers to investment companies may require their access persons to provide reports that cover all information required under rule 17j–1 and all information required under the Advisers Act code of ethics ''for example, an access person's quarterly report might include information on new securities accounts (required under rule 17j–1) as well as on transactions in affiliated mutual funds (required under rule 204A–1).

• We ask comment on whether there are alternative approaches to better reconcile this issue.

III. General Request for Comment

The Commission requests comment on the rule and amendments proposed in this release, suggestions for other additions to the rule and amendments, and comment on other matters that might have an effect on the proposals contained in this release. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission also requests information regarding the potential impact of the proposed rule and amendments on the economy on an annual basis. Commenters should provide empirical data to support their views.

IV. Cost-Benefit Analysis

We are sensitive to the costs and benefits that result from our rules. Proposed rule 204A–1 would require investment advisers to establish, maintain, and enforce codes of ethics for their supervised persons. These codes of ethics would establish standards of business conduct reflecting the fiduciary obligations of the adviser and its personnel and impose measures designed to prevent supervised persons from abusing their access to information about clients' securities transactions. We are also proposing related recordkeeping and client disclosure amendments.[75] We have identified certain costs and benefits, which are discussed below, that may result from these proposed rules. We request comment on the costs and benefits of the proposed rules. We encourage commenters to identify, discuss, analyze, and supply relevant data regarding these or any additional costs and benefits.

A. Benefits

We anticipate that advisory firm clients and the firms themselves would benefit from the proposed rules, though these benefits are difficult to quantify. Codes of ethics under proposed rule 204A–1 would impress upon supervised persons the significance of the fiduciary aspects of their professional responsibilities, formulating these into standards of conduct to which their employers will hold these individuals accountable. Codes of ethics would also be an important part of advisers' efforts to prevent fraudulent personal trading by their supervised persons. As a result, these codes should increase investor protection by forestalling supervised persons from engaging in misconduct that defrauds clients. In addition, requiring advisers to describe their codes of ethics to clients and to furnish copies to clients upon request should put clients in a better position to evaluate whether their advisers' codes of ethics meet their expectations. If a client is not confident that an advisory firm has taken appropriate measures to prevent its personnel from placing their own interests ahead of their clients' interests, the client would be able to seek a different adviser whose measures he approves.

Proposed rule 204A–1 would reinforce existing measures that require investment advisers to guard against employee misconduct. It would go beyond section 204A of the Advisers Act, which focuses on policies and procedures to prevent misuse of material nonpublic information by advisory firm personnel, and expand advisers' policies to address other situations in which such personnel could potentially benefit at the expense of firm clients. It would also go beyond Company Act rule 17j–1, which focuses on fraud in connection with securities held or to be acquired by an investment company advised by an adviser, and expand advisers' policies to address advisory personnel's holdings and transactions in shares of investment companies managed by the adviser. Codes of ethics should also assist advisers in meeting their obligations under Advisers Act rule 206(4)–7 to adopt policies and procedures reasonably designed to prevent their

[71] We are proposing to amend Item 9 of Form ADV Part II, which asks whether the adviser or a ''related person'' (that is, a person that controls the adviser, is controlled by the adviser, or is under common control with the adviser) participates or has an interest in client transactions. In April 2000, we proposed a new version of Part 2 that called for a narrative disclosure brochure, and which moved this disclosure topic to Item 10.

[72] *See* Rule 17j–1 1999 Adopting Release, *supra* note 40.

[73] The provisions of section 206 of the Advisers Act would be applicable to an investment adviser that disclosed its policies and procedures but then materially deviated from them.

[74] Rule 17j–1(d)(2)(iv).

[75] We are proposing amendments to Advisers Act rule 204–2, the adviser recordkeeping rule, to address documentation of advisers' compliance with rule 204A–1. We are also proposing to amend Part II of Form ADV, which specifies certain information investment advisers must disclose to their clients, to require advisers to include a discussion of their codes of ethics and make copies available to clients upon request.

supervised persons from violating the Advisers Act.

Proposed rule 204A–1 would benefit investment advisers by diminishing the likelihood their firms will be embroiled in securities violations, Commission enforcement actions, and private litigation. For an adviser, the potential costs associated with a securities law violation may consist of much more than merely the fines or other penalties levied by the Commission or civil liability. The reputation of an adviser may be significantly tarnished, resulting in lost clients. Advisers may be denied eligibility to advise funds.[76] In addition, advisers could be precluded from serving in other capacities.[77]

Our proposal to revise advisers' recordkeeping obligations for personal securities transactions should also benefit investment advisers. The proposed rules are easier to understand than the complex provisions currently contained in Advisers Act rule 204–2(a)(12) and (13). In addition, by requiring investment advisers to maintain information about their access persons' personal securities transactions electronically in an accessible database, we would make it more likely that firms could detect patterns that may indicate abuse. In all but the smallest advisory organizations, it may be impractical to try to identify such patterns by reviewing paper records. The requirement that each access person provide initial and annual holdings reports will allow investment advisers to better monitor conflicts that may arise when an access person participates in investment decisions involving securities the access person holds in his or her portfolio, and to assess whether access persons are filing accurate quarterly transaction reports.

B. Costs

The proposed rules would result in some additional costs for advisers, and advisers may pass these costs along to their clients in the form of advisory fees. However, since advisers are already required to maintain various policies and procedures that would constitute core elements of their codes of ethics, many of these costs are already reflected in fees clients currently pay. Advisers are required to maintain written policies and procedures reasonably designed to prevent the misuse of material nonpublic information under section 204A of the Advisers Act. Also, the approximately 1,500 advisers who advise registered investment companies currently have codes of ethics to prevent their ''access persons'' from abusing their access to information about the fund's securities trading, pursuant to Company Act rule 17j–1.[78] In addition, advisers are required under Advisers Act rule 206(4)–7 to adopt policies and procedures reasonably designed to prevent their supervised persons from violating the Advisers Act. Accordingly, we believe requiring codes of ethics will impose few new costs on advisers.

Similarly, our proposals to require access persons to report personal securities transactions should cause only minor cost increases. Advisers are already required to maintain records of their advisory representatives' personal securities transactions on a quarterly basis under Advisers Act rule 204–2(a)(12) and (13). The additional reporting required of access persons under our proposed rules ''routine quarterly reports indicating that no transactions were effected, and an annual report of securities holdings '' should impose only minor additional costs. Because most SEC–registered investment advisers have so few employees, we believe the cost of these additional reports will be minor. As of December 2003, 49% of investment advisers registered with us reported that they had five or fewer non-clerical employees, and another 18% reported that they had only six to ten non-clerical employees.[79] The majority of larger SEC-registered advisers are already subject to Company Act rule 17j–1 because they advise investment companies, and consequently obtain annual reports from their ''access persons'' that contain virtually the same information as would be required under our proposals. These larger firms are also in a position to limit the number of supervised persons subject to the reporting requirements, by imposing stringent controls on who obtains access to client securities information.

Our proposal to require advisers to maintain information about their access persons' personal securities transactions electronically in an accessible database would be new. However, we do not expect advisers would be required to acquire new computer equipment or software to implement this approach. We understand that all but the smallest firms currently use client portfolio management software platforms that could easily be used by access persons to report their holdings and transactions under proposed rule 204A–1. Smaller firms could also easily require access persons to submit their reports in common electronic spreadsheet formats.[80]

We expect only minor cost increases from our proposals to require access persons to obtain their advisers' approval before investing in an initial public offering or private placement. Our experience administering the same requirement under Company Act rule 17j–1 has been that such proposals are infrequent, even at larger advisory firms.

Finally, we expect only minor cost increases from our proposal to require advisers to describe their codes of ethics to clients and provide copies on request. Advisers would include the description in the disclosure brochure they are already required to provide to clients. The description should be sufficient for most clients, and it should not impose substantial costs to provide a copy of the code of ethics to the few clients that request it.

C. Request for Comment

We request comment on the potential costs and benefits identified in the proposal and any other costs or benefits that may result from the proposed rules. Commenters are requested to identify, discuss, analyze, and supply relevant data to support their views.

V. Effects on Competition, Efficiency and Capital Formation

Section 202(c) of the Advisers Act [15 U.S.C. 80b–2(c)] mandates that the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

As discussed above, the proposed rule would require investment advisers to

[76] Section 9(a) of the Investment Company Act [15 U.S.C. 80a–9(a)] prohibits a person from serving as an adviser to a fund if, within the past 10 years, the person has been convicted of certain crimes or is subject to an order, judgment, or decree of a court prohibiting the person from serving in certain capacities with a fund, or prohibiting the person from engaging in certain conduct or practice.

[77] *See, e.g.*, 29 U.S.C. 1111(a) (prohibiting a person from acting in various capacities for an employee benefit plan, if within the past 13 years, the person has been convicted of, or has been imprisoned as a result of, any crime described in section 9(a)(1) of the Investment Company Act [15 U.S.C. 80a–9(a)(1)]).

[78] Based on our records of information submitted to us by investment advisers in Part 1 of Form ADV through December 10, 2003, approximately 1,500 advisers report that they manage portfolios for investment companies.

[79] This is based on Form ADV data (under Item 5.A of Part 1A) submitted to us by 8,019 SEC-registered investment advisers through December 9, 2003.

[80] Firms could also require access persons to conduct their personal securities activities through the same broker-dealers from which the firm obtains electronic reporting of client transactions, and obtain access persons' information electronically from the broker-dealers.

adopt codes of ethics applicable to their supervised persons. These codes of ethics would establish standards of business conduct reflecting the fiduciary obligations of the adviser and its personnel and impose measures designed to prevent supervised persons from abusing their access to information about clients' securities transactions. We expect that the proposed rule may indirectly increase efficiency. These codes of ethics should increase efficiency by forestalling supervised persons from engaging in misconduct that defrauds clients and harms the advisory firm, or by facilitating the adviser's early intervention to protect its clients. In addition, the existence of an industry-wide code of ethics requirement may enhance efficiency further by encouraging third parties to create new informational resources and guidance to which industry participants can refer in establishing and improving their codes.

Since the proposed rule would apply equally to all registered advisers, we do not anticipate that it would introduce any competitive disadvantages. We expect that the proposed rule may indirectly foster capital formation by bolstering investor confidence. To the extent that investors know that advisory firms have taken measures designed to prevent their supervised persons from placing their interests ahead of their clients' interests, clients are more likely to make assets available through advisers for investment in the capital markets.

VI. Paperwork Reduction Act

The proposed rule and amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995.[81] One of the collections of information is new. The Commission has submitted this new collection to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title of this new collection is ''Rule 204A–1;'' OMB has not yet assigned it a control number. The other collection of information takes the form of amendments to two currently-approved collections titled ''Rule 204–2'' under OMB control number 3235–0278, and ''Form ADV'' under OMB control number 3235–0049. The Commission has also submitted the amendments to these collections to the 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 control number.

The collection of information under rule 204A–1 is necessary to establish standards of business conduct for supervised persons of investment advisers and to facilitate investment advisers' efforts to prevent fraudulent personal trading by their supervised persons. The collection of information is mandatory. The respondents are investment advisers registered with us, and certain of their supervised persons who must submit reports of their personal trading activities to their firms. These investment advisers use the information collected to control and assess the personal trading activities of their supervised persons. Responses to the reporting requirements will be kept confidential to the extent each investment adviser provides confidentiality under its particular practices and procedures.

The collection of information under rule 204–2 is necessary for the Commission staff to use in its examination and oversight program. This collection of information is mandatory. The respondents are investment advisers registered with us. Responses provided to the Commission in the context of its examination and oversight program are generally kept confidential.[82] The records that an adviser must keep in accordance with rule 204–2 must generally be retained for not less than five years.[83]

The collection of information under Form ADV is necessary to provide advisory clients and prospective clients with information about an adviser's code of ethics. This collection of information is mandatory. The respondents are investment advisers registered with us. Clients of these investment advisers use the information collected to assess measures the adviser has taken to prevent its supervised persons from placing their own interests ahead of their clients' interests. Responses to the disclosure requirements are not kept confidential.

A. Rule 204A–1

Rule 204A–1 would require SEC-registered investment advisers to establish a written code of ethics for their supervised persons. These codes of ethics would establish standards of business conduct reflecting the fiduciary obligations of the adviser and its personnel and impose measures designed to prevent supervised persons from abusing their access to information about clients' securities transactions.[84] We estimate that each adviser would be required to spend six hours annually, on average, documenting its code of ethics. In preparing this estimate, we have taken into account that investment advisers currently maintain certain policies and procedures that could serve as the core of their codes of ethics. Advisers are required to maintain written policies and procedures reasonably designed to prevent the misuse of material nonpublic information, and to keep records of their advisory representatives' personal securities transactions.[85] Also, the approximately 1,500 advisers who advise investment companies currently have codes of ethics pursuant to Investment Company Act rule 17j–1.[86] In addition, investment advisers are required to adopt policies and procedures reasonably designed to prevent their supervised persons from violating the Advisers Act.[87] We further estimate that 8,019 investment advisers will incur this burden, for a total of 48,114 hours.[88]

Rule 204A–1 would also require each adviser's code of ethics to include provisions under which the adviser's ''access persons'' report their personal securities transactions and holdings to the adviser.[89] ''Access persons'' are supervised persons of the adviser who have access to certain client securities information or recommendations.[90] For purposes of estimating the paperwork burden for access persons under proposed rule 204A–1, we assume that advisers will treat all their non-clerical

[81] 44 U.S.C. 3501 to 3520.

[82] *See* section 210(b) of the Advisers Act [15 U.S.C. 80b–10(b)].

[83] *See* rule 204–2(e) [17 CFR 275.204–2(e)].

[84] Proposed rule 204A–1(a). Some firms have already adopted a code of ethics. These codes typically remind employees that they occupy positions of trust requiring them to act with the utmost integrity and include measures to restrict personal trading in securities being recommended to or traded for clients and to limit access to material nonpublic information. They also include reporting and other measures for the firm to monitor employees' personal securities transactions.

[85] *See* section 204A of the Advisers Act and Advisers Act rule 204–2(a)(12)–(13).

[86] Based on our records of information submitted to us by investment advisers in Part 1A of Form ADV through December 10, 2003, approximately 1,500 advisers report that they manage portfolios for investment companies. Under Investment Company Act rule 17j–1, advisers to investment companies generally must have a code of ethics to prevent their ''access persons'' from abusing their access to information about the fund's securities trading. Access persons must also submit reports containing information about their personal securities transactions and holding.

[87] Rule 206(4)–7 under the Advisers Act.

[88] As of December 9, 2003, there were 8,019 investment advisers registered with the Commission. 8,019 advisers × 6 hours = 48,114 total annual hours.

[89] Proposed rule 204A–1(a)(4).

[90] Proposed rule 204A–1(e)(1). *See* notes 29–30, *supra,* and accompanying text.

employees as access persons.[91] We estimate that investment advisers have 84 non-clerical employees on average, although this estimate overstates the number of such employees at the majority of advisory firms.[92] Based on this average, we estimate that 673,596 access persons would be subject to the collection of information under the proposed rule.[93]

These access persons would be required to file an initial report of their personal securities holdings upon becoming access persons, and an annual holdings report at least once a year thereafter.[94] We estimate access persons would spend 0.7 hours on average completing each such report. These access persons would also be required to file transaction reports once each quarter stating whether the access person had any personal securities transactions that quarter and giving basic information about any such transactions.[95] We estimate access persons would spend 0.6 hours on average completing such reports each year.[96] Thus, the total annual burden hours for all access persons under the proposed would be 875,675 hours.[97]

Rule 204A–1 would also require each adviser's code of ethics to include provisions under which the adviser provides each supervised person with a copy of the code of ethics and any amendments, and obtains written acknowledgment of receipt from the supervised person. We estimate that each investment adviser has 100 supervised persons on average, although this estimate overstates the number of supervised persons at the majority of advisory firms.[98] We further estimate that each adviser will be required to provide a copy and obtain an acknowledgment 55 times each year, on average. This is based on our estimate that advisers will amend their codes every other year and hire five new supervised persons each year.[99] We further estimate each iteration will take an investment adviser 0.05 hours on average, for an annual burden of 2.75 hours per adviser and a total burden increase of 22,052.25 hours for all advisers.[100]

Based on these estimates, the total annual burden for advisers and access persons under proposed rule 204A–1 would be 945,841.25 hours.[101]

B. Rule 204–2

In addition, the proposal would amend rule 204–2, the adviser recordkeeping rule. The currently-approved annual aggregate information collection burden under rule 204–2 is 1,651,324.2 hours. This approved annual aggregate burden was based on estimates that 7,790 advisers were subject to the rule, and each of these advisers spends an average of 211.98 hours preparing and preserving records in accordance with the rule. Based upon the most recently available data, there are 8,019 registered investment advisers. The increase in the number of registered investment advisers increases the total burden hours of current rule 204–2 from 1,651,324.2 to 1,699,867.6 hours.[102]

The proposed amendments would reduce the burden of collection under rule 204–2. The 211.98 hour burden estimate for the currently-approved collection includes a requirement that investment advisers retain records relating to the personal securities transactions of ''advisory representatives.''[103] Advisers must record the personal securities transactions of their advisory representatives no later than ten days after the close of the quarter in which the transactions takes place. The proposed amendments to rule 204–2 would eliminate this requirement and instead require the adviser to retain the personal securities transaction information reported to it by its access persons under proposed rule 204A–1. We estimate this will reduce the burden on investment advisers under rule 204–2 by an average of 0.3 hours for each of the 84 access persons we estimate are at each firm.[104] The annual hour burden estimate for rule 204–2 would correspondingly be reduced to 186.78 hours .[105]

The proposed amendments to rule 204–2 would also increase the types of information collected under the rule. We estimate these new collections would increase the annual burden by 5 hours on average, to 191.78 hours. Advisers would be required to retain the personal securities holdings and transaction information submitted by their access persons under proposed rule 204A–1 and maintain it electronically in an accessible

[91] This may overestimate the number of access persons to the extent investment advisers prevent some of their employees from having access to client securities information, or may underestimate the number of access persons to the extent clerical employees of some advisers have access to such information. On the basis of data submitted to us by SEC-registered investment advisers in Part 1 of Form ADV, it is difficult to estimate how many supervised persons of an investment adviser would be access persons; in addition, the internal controls on sensitive information will vary among advisers. We are aware that many investment advisers currently elect to treat all employees as ''advisory representatives'' or ''access persons'' for purposes of personal securities reporting under Advisers Act rule 204–2(a)(12) and Company Act rule 17j–1, respectively.

[92] This average is based on Form ADV data (under Item 5.A of Part 1A) submitted to us by 8,019 advisers through December 9, 2003. If we exclude the top 100 advisers who reported the greatest number of nonclerical employees, the average for the remaining 7,919 advisers (who report their employees by range) is only 31 employees. Moreover, half of these advisers reported that they had five or fewer nonclerical employees.

[93] 84 access persons x 8,019 investment advisers = 673,596. Access persons of a firm with only one supervised person would generally be exempted from submitting personal securities activity reports. Proposed rule 204A–1(d). We have not attempted to exclude these access persons in preparing this estimate. On the basis of information submitted to us by SEC-registered investment advisers in Part 1A of Form ADV, it is difficult to estimate how many of the 8,019 advisers registered with us have only one supervised person.

[94] Proposed rule 204A–1(b)(1). These reports require basic information about securities in which the access person has a beneficial ownership interest (subject to exceptions for certain categories of securities) and the name of any broker, dealer or bank with which the access person maintains accounts to hold interests in securities.

[95] Proposed rule 204A–1(b)(2).

[96] In preparing this 0.6 hour annual estimate, we assumed advisory persons would have no transactions to report for three quarters each year (at 0.1 hours to complete each report affirming no activity) and one transaction to report one quarter each year (at 0.3 hours to complete such report listing the transaction). Although some access persons make frequent personal securities transactions, we are aware that many trade infrequently. *See* PIA Report, *supra* note 12, at 2 (noting that 43.5% of fund managers whose 1993 personal securities transactions the Commission examined in the study did not buy or sell securities at all).

[97] (0.7 hours holdings report + 0.6 hours transactions report) x 673,596 access persons = 875,675 hours.

[98] This estimate is based on the same Form ADV data we use to estimate the average number of non-clerical employees, as discussed in notes 91–92, *supra.* Since Form ADV does not require advisers to submit data about their clerical employees, we assume advisers have 16 clerical employees on average (or approximately one clerical employee for every 5 non-clerical employees). 16 clerical employees + 84 non-clerical employees = 100 employees.

[99] Over any two-year period, 100 copies of amendments in year 1 + 10 copies of complete code for new supervised persons in year 1 through 2 = 110 copies, divided by 2 years = 55 copies.

[100] 0.05 hours per copy x 55 copies per year = 2.75 hours. 2.75 hours x 8,019 investment advisers = 22,052.25 hours total.

[101] 48,114 hours by advisers to record their codes of ethics + 875,675 hours for reporting by access persons + 22,052.25 hours for advisers to deliver copies of codes and amendments = 945,841.25.

[102] 8,019 advisers x 211.98 hours = 1,699,867.6 aggregate hours.

[103] Rule 204–2(a)(12)–(13).

[104] As we discuss in note 96, *supra,* we estimate that access persons would make an average of one personal securities transaction each year. We estimate that it would take the adviser the same time to record the transaction as we estimate it would take the access person to report it under proposed rule 204A–1, *i.e.* 0.3 hours. As we discuss in notes 91–92, *supra,* we estimate advisers registered with the Commission have an average of 84 access persons.

[105] 0.3 hours per access person x 84 access persons per firm = 25.2 hours—per firm. 211.98 hours—25.2 hours = 186.78 hours.

database.[106] Advisers would also be required to retain copies of their codes of ethics required under proposed rule 204A–1, and copies of the written acknowledgments they receive from supervised persons confirming their receipt of the code of ethics or amendments. In addition, advisers would be required to maintain a record of the names of their access persons, make a record of any violation of their codes of ethics and any action taken, and make a record of any decision under proposed rule 204A–1 to permit an access person to invest in an initial public offering or private placement.

Accordingly, we estimate the proposed changes to rule 204–2 would decrease the annual aggregate information collection burden under the rule by 161,983.8 hours, from 1,699,867.6 hours to 1,537,883.8 hours.[107]

C. Form ADV

The proposal would also amend Part II of Form ADV, which specifies certain information investment advisers must disclose to their clients.[108] The amendment would require advisers to describe their codes of ethics to clients and, upon request, furnish clients with a copy of their code of ethics. The currently-approved burden of the collection of information in Form ADV is 46,921 hours. We estimate that each investment adviser would spend 0.25 hours preparing a description of its code of ethics for Form ADV. We further estimate that each investment adviser has 670 clients on average,[109] and 90 percent of such clients will find this description sufficiently informative, so at most 10 percent, or 67 clients on average, would request a copy of the adviser's code of ethics. We estimate it would take advisers 0.1 hour per client to deliver copies of their codes of ethics, or 6.7 hours on average per adviser. Accordingly, we estimate the proposed amendments would increase the annual aggregate information collection burden under Form ADV to 102,653 hours.[110]

D. Request for Comment

We request comment whether these estimates are reasonable. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

- evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;
- evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information;
- determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and
- determine whether there are ways to minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 3208, Washington, DC 20503, and also should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609 with reference to File No. S7–04–04. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives the comment within 30 days after publication of this release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–04–04, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

VII. Initial Regulatory Flexibility Analysis

The Commission has prepared the following Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with section 3(a) of the Regulatory Flexibility Act.[111] It relates to proposed rule 204A–1 and proposed amendments to rule 204–2 and Form ADV under the Advisers Act and to proposed amendments to rule 17j–1 under the Company Act.

A. Reasons for Proposed Action

Section I of this Release describes the background and reasons for the proposed new rule and rule amendments. As we discussed in detail above, these proposals are designed to promote compliance with fiduciary standards by advisers and their personnel.

B. Objectives and Legal Basis

Section II of this Release discusses the objectives of the proposed new rule and rule amendments. As we discuss in detail above, these objectives include requiring SEC-registered investment advisers to adopt codes of ethics for their supervised persons, requiring advisers to retain certain records relating to their codes of ethics, and requiring advisers to disclose information about their codes of ethics to clients. Section VIII of this Release lists the statutory authority for the proposed new rule and rule amendments.

C. Small Entities Subject to Rule

The proposed new rules and rule amendments under the Advisers Act would govern all advisers registered with the Commission, (and the amendments to rule 17j–1 would govern all investment companies,) including small entities. Under Commission rules, for purposes of the Regulatory Flexibility Act, an investment adviser generally is a small entity if it: (i) has assets under management having a total value of less than $25 million; (ii) did not have total assets of $5 million or more on the last day of its most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had $5 million or more on the last day of its most recent fiscal year.[112] The Commission estimates that as of December 10, 2003, there were approximately 545 investment advisers registered with us that were small entities that might potentially be affected by the proposed new rules and

[106] We do not expect advisory firms would incur costs for computer hardware or software under this requirement. Although some larger firms have developed special software to obtain and review personal securities transactions data, we understand that all but the smallest firms currently use client portfolio management software platforms that could easily be used by firm access persons to report their holdings and transactions under proposed rule 204A–1. Smaller firms could also easily require access persons to submit their reports in common electronic spreadsheet formats. Firms could also require access persons to conduct their personal securities activities through the same broker-dealers from which the firm obtains electronic reporting of client transactions, and obtain access persons' information electronically from the broker-dealers.

[107] 191.78 hours per adviser x 8,019 advisers = 1,537,883.8 hours.

[108] Form ADV and Advisers Act rule 204–3 [17 CFR 275.204–3].

[109] *See* Custody of Funds or Securities of Clients by Investment Advisers, Investment Advisers Act Release No. 2044 (July 18, 2002) [67 FR 48579 (July 25, 2002)].

[110] (0.25 hours + 6.7 hours) x 8,019 advisers = 55,732 hours. 46,921 hours (existing total) + 55,732 hour increase = 102,653 hours.

[111] 5 U.S.C. 603(a).

[112] 17 CFR 275.0–7(a).

rule amendments.[113] We request comment on the effect and costs of the proposed new rules and rule amendments on small entities.

For purposes of the Regulatory Flexibility Act, a registered investment company (''fund'') is a small business or small organization (collectively, ''small entity'') if the fund, together with other funds in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[114] Of approximately 5,124 registered investment companies, we estimate that approximately 204 are small entities.[115] As discussed above, the proposed amendment to rule 17j–1 would allow advisers to rely on a reporting exception in the rule if the adviser already maintains duplicate information under records required by certain Advisers Act rules. Whether this proposed amendment to rule 17j–1 would affect small entities would depend on whether the small entities rely on the reporting exception in rule 17j–1. We request comment on the effect and costs of this proposed amendment on small entities.

D. Reporting, Recordkeeping, and other Compliance Requirements

The proposed amendment to Form ADV would impose a new reporting requirement on advisers, requiring that they make an additional disclosure statement in their brochures describing their codes of ethics and noting that copies of the codes are available from the adviser upon request. Although the proposed rule and rule amendments would impose no other new reporting requirements on registered advisers themselves, proposed rule 204A–1 would require that advisers' codes of ethics impose a new reporting requirement on advisers' access persons by requiring certain new personal securities holdings and transaction reports. The proposed rule and rule amendments would also create certain new recordkeeping and compliance requirements. The proposed rule amendments would impose new recordkeeping requirements by requiring that advisers maintain certain records pertaining to their codes of ethics and requirements of such codes (including records of personal securities holdings and transaction reports).[116] The proposed rule would impose new compliance requirements by requiring that SEC-registered investment advisers adopt codes of ethics, obtain written acknowledgments of their supervised persons' receipt of copies of the code and any amendments, review personal securities holdings and transaction reports filed by their access persons, and pre-approve investments by their access persons in IPOs and limited offerings.

Small entities registered with the Commission as investment advisers would for the most part be subject to these new reporting, recordkeeping and compliance requirements to the same extent larger advisers would be. With regard to reporting of securities holdings and transactions and to pre-approvals of certain investments, however, certain small advisers, possibly including some that are small entities, would not be subject to the new requirements. Additionally, we anticipate that most advisers would very rarely need to address violations to their codes of ethics and, similarly, should infrequently be asked by an access person to consider pre-approval of an investment in an IPO or limited offering. Small advisers would likely deal with violations or IPO and limited offering pre-approvals on an even more limited scale due to the smaller size of their operations. Furthermore, it is important to note that some of the proposed reporting, recordkeeping and compliance requirements replace, clarify or simplify existing requirements to which advisers, including those that are small entities, are already subject. To the extent that such requirements clarify or simplify existing requirements, the proposed rule and amendments may actually alleviate reporting, recordkeeping, or compliance burdens on advisers, including those that are small entities.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission believes that there are no rules that duplicate or conflict with the proposed rule. Proposed rule 204A–1 and the proposed amendments to rule 204–2 overlap with provisions of rule 17j–1 under the Company Act to some extent. Rule 17j–1 requires certain investment advisers to adopt codes of ethics, review personal securities holdings and transaction reports of certain access persons, and pre-approve certain investments by access persons. The provisions of rule 17j–1 do not apply to all investment advisers registered with us, but only to those investment advisers that advise registered investment companies. Furthermore, our proposed rule and rule amendments are designed to coordinate with, rather than duplicate or conflict with, the obligations of an investment adviser subject to both rules.

F. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objectives, while minimizing any adverse impact on small entities. In connection with the proposed rule, the Commission considered the following alternatives: (i) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the rule, or any part thereof, for such small entities.

The Commission has drafted proposed rule 204A–1 to permit each firm subject to the rule to design and structure its own code of ethics in light of the firm's operational structure and the particular types of conflicts encountered by the firm in connection with its business and clients. In the same way, the proposed amendments to rule 204–2 would permit each firm to develop its own system for capturing and retaining the requisite information. In connection with considering whether to establish differing reporting, compliance or recordkeeping requirements or timetables for small entities, as well as whether to use performance rather than design standards, the Commission believes at this time that the flexibility already built into the proposal adequately addresses these alternatives.

In considering whether to attempt to further clarify, consolidate, or simplify the reporting, compliance and recordkeeping requirements under the rule for small entities, the Commission believes at this time that the proposal achieves the appropriate balance between simplicity and investor protection. The compliance requirements, which are integral to the effectiveness of the rule, are not

[113] This estimate is based on the information submitted by SEC-registered advisers in Part 1A of Form ADV.

[114] 17 CFR 270.0–10.

[115] This estimate, which is current as of June 2003, is derived from analyzing information from Form N–SAR and various databases including Lipper. Some or all of these entities may contain multiple series or portfolios. If a registered investment company is a small entity, the portfolios or series it contains are also small entities.

[116] These records are: copies of the codes of ethics, records of violations of the codes of ethics, records of personal securities transactions and holdings reports, records of persons subject to reporting under the codes of ethics, records of decisions relating to approvals of investments in IPOs or limited offerings, and records of supervised person acknowledgments of the code of ethics. Advisers are generally required to retain these records for five years.

technical or complex in any sense. The minimum criteria specified for codes of ethics (including provisions for establishment of standards of business conduct, protection of information, personal securities reporting and review of such reporting, and pre-approval of certain transactions) under proposed rule 204A–1 are designed to further adherence by advisers and their personnel to their fiduciary obligations and to prevent misuse of material nonpublic information. At this time, we believe elimination of some or all of these criteria, which are designed to ensure that advisers address these issues in a systematic fashion and actively oversee supervised persons' conduct, would potentially impede achievement of that objective. The proposed disclosure requirements would provide advisory clients with information about the adviser's code of ethics. Different disclosure requirements would leave some advisory clients without the requisite information to assess their adviser's ethical practices. Similarly, in establishing the categories of records to be retained under the proposed amendments to rule 204–2, the records described by the rule are designed to provide the Commission with sufficient information to be able to evaluate advisers' compliance with proposed rule 204A–1 as part of its inspection program.

The proposed rule would, to the greatest extent possible, incorporate performance rather than design standards. The rule enumerates few elements required for codes of ethics, allowing all firms, including small firms, to tailor the remainder of their codes of ethics to the nature and scope of their business.

Finally, the Commission believes at this time that it would be inconsistent with the purposes of the Advisers Act to entirely exempt small entities from the proposed rule and rule amendments. The proposed codes of ethics are designed to promote advisers' fulfillment of their fiduciary duty to clients and to guard against personal securities trading by advisers' access persons that may be contrary to clients' interests. Since the protections of the Advisers Act are intended to apply equally to clients of both large and small advisory firms, it would be inconsistent with the purposes of the Act to specify different requirements for small entities. To the extent we were able, however, the Commission has excepted certain small advisers, potentially including some small entities, from the requirements that access persons make personal securities reports and that access persons obtain pre-approval before making certain investments.

G. Solicitation of Comment

We encourage written comments on matters discussed in the IRFA. In particular the Commission seeks comment on:

- the number of small entities that would be affected by the proposed rule and rule amendments; and
- whether the effects of the proposed rule and rule amendments on small entities would be economically significant.

Commenters are asked to describe the nature of any effect and provide empirical data supporting the extent of the effect.

VIII. Statutory Authority

We are proposing amendments to rule 17j–1 pursuant to our authority set forth in sections 17(j) and 38(a) of the Investment Company Act [15 U.S.C. 80a–17(j) and 80a–37(a)] and sections 206(4) and 211(a) of the Advisers Act [15 U.S.C. 80b–4 and 80b–11(a)].

We are proposing amendments to rule 204–2 pursuant to our authority set forth in sections 204 and 206(4) of the Advisers Act [15 U.S.C. 80b–4 and 80b–6(4)].

We are proposing new rule 204A–1 pursuant to our authority set forth in sections 202(a)(17), 204A, 206(4) and 211(a) of the Advisers Act [15 U.S.C. 80b–2(a)(17), 80b–4a, 80b–6(4) and 80b–11(a)].

We are proposing amendments to Form ADV under section 19(a) of the Securities Act of 1933 [15 U.S.C. 77s(a)], sections 23(a) and 28(e)(2) of the Securities Exchange Act of 1934 [15 U.S.C. 78w(a) and 78bb(e)(2)], section 319(a) of the Trust Indenture Act of 1939 [15 U.S.C. 77sss(a)], section 38(a) of the Investment Company Act of 1940 [15 U.S.C. 78a–37(a)], and sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–3(c)(1), 80b–4, and 80b–11(a)].

Text of Proposed Rules and Form Amendments

List of Subjects in 17 CFR Parts 270, 275 and 279

Investment companies, Reporting and recordkeeping requirements, Securities.

For reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

* * * * *

2. Section 270.17j–1 is amended by revising paragraph (d)(2)(iv) to read as follows:

§ 270.17j–1 Personal investment activities of investment company personnel.

* * * * *

(d) * * *

(2) * * *

(iv) An Access Person to an investment adviser need not make a separate report to the investment adviser under paragraph (d)(1) of this section to the extent the information in the report would duplicate information required to be recorded under § 275.204–2(a)(13) of this chapter.

* * * * *

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

3. The general authority citation for Part 275 is revised to read in part as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(F), 80b–2(a)(17), 80b–3, 80b–4, 80b–4a, 80b–6(4), 80b–6a, and 80b–11, unless otherwise noted.

* * * * *

4. Section 275.204–2 is amended by revising paragraphs (a)(12), (a)(13), and (e)(1) to read as follows:

§ 275.204–2 Books and records to be maintained by investment advisers.

(a) * * *

(12)(i)A copy of the investment adviser's code of ethics adopted and implemented pursuant to § 275.204A–1 that is in effect, or at any time within the past five years was in effect;

(ii) A record of any violation of the code of ethics, and of any action taken as a result of the violation; and

(iii)A record of all written acknowledgments as required by § 275.204A–1(a)(6) for each person who is currently, or within the past five years was, a supervised person of the investment adviser.

(13)(i)A record of each report made by an access person as required by § 275.204A–1(b), including any information provided under paragraph (b)(3)(iii) of that section in lieu of such reports, all such information, whether from a report made by an access person or from information provided in lieu of

a report, to be maintained electronically in an accessible computer database;

(ii) A record of the names of persons who are currently, or within the past five years were, access persons of the investment adviser; and

(iii) A record of any decision, and the reasons supporting the decision, to approve the acquisition of securities by access persons under § 275.204A–1(c), for at least five years after the end of the fiscal year in which the approval is granted.

* * * * *

(e)(1) All books and records required to be made under the provisions of paragraphs (a) to (c)(1)(i), inclusive, and (c)(2) of this section (except for books and records required to be made under the provisions of paragraphs (a)(11), (a)(12)(i), (a)(12)(iii), (a)(13)(ii), (a)(13)(iii), (a)(16), and (a)(17)(i) of this section), shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in an appropriate office of the investment adviser.

* * * * *

5. Section 275.204A–1 is added to read as follows:

§ 275.204A–1 Investment adviser codes of ethics.

(a) *Adoption of code of ethics.* If you are an investment adviser registered or required to be registered under section 203 of the Act (15 U.S.C. 80b–3), you must establish, maintain and enforce a written code of ethics that, at a minimum, includes:

(1) A standard (or standards) of business conduct that you require of your supervised persons, which standard must reflect your fiduciary obligations and those of your supervised persons;

(2) Provisions requiring your supervised persons to comply with applicable federal securities laws;

(3) Provisions reasonably designed to prevent access to material nonpublic information about your securities recommendations and your clients' securities holdings and transactions, by persons who do not need such information to perform their duties;

(4) Provisions that require all of your access persons to report, and you to review, their personal securities transactions and holdings periodically as provided below;

(5) Provisions requiring supervised persons to report any violations of your code of ethics promptly to your chief compliance officer or to another person you designate in your code of ethics; and

(6) Provisions requiring you to provide each of your supervised persons with a copy of your code of ethics and any amendments, and requiring your supervised persons to provide you with a written acknowledgment of their receipt of the code and any amendments.

(b) *Reporting requirements.* (1) *Holdings reports.* The code of ethics must require your access persons to submit to your chief compliance officer a report of the access person's current securities holdings that meets the following requirements:

(i) *Content of holdings reports.* Each holdings report must contain, at a minimum:

(A) The title and exchange ticker symbol or CUSIP number, type of security, number of shares and principal amount (if applicable) of each reportable security in which the access person has any direct or indirect beneficial ownership;

(B) The name of any broker, dealer or bank with which the access person maintains an account in which any securities are held for the access person's direct or indirect benefit; and

(C) The date the access person submits the report.

(ii) *Timing of holdings reports.* Your access persons must each submit a holdings report:

(A) No later than 10 days after the person becomes an access person, and the information must be current as of the date the person becomes an access person.

(B) At least once each 12-month period thereafter on a date you select, and the information must be current as of a date no more than 30 days prior to the date the report was submitted.

(2) *Transaction reports.* The code of ethics must require access persons to submit to your chief compliance officer quarterly securities transactions reports that meet the following requirements:

(i) *Content of transaction reports.* Each transaction report must contain, at a minimum, the following information about each transaction involving a reportable security in which the access person had, or as a result of the transaction acquired, any direct or indirect beneficial ownership:

(A) The date of the transaction, the title and exchange ticker symbol or CUSIP number, the interest rate and maturity date (if applicable), the number of shares and the principal amount (if applicable) of each reportable security involved;

(B) The nature of the transaction (*i.e.*, purchase, sale or any other type of acquisition or disposition);

(C) The price of the security at which the transaction was effected;

(D) The name of the broker, dealer or bank with or through which the transaction was effected; and

(E) The date the access person submits the report.

(ii) *Timing of transaction reports.* Each access person must submit a transaction report no later than 10 days after the end of each calendar quarter, which report must cover, at a minimum, all transactions during the quarter. A report must be submitted even if the access person had no securities transactions during the period.

(3) *Exceptions from reporting requirements.* Your code of ethics need not require an access person to submit:

(i) Any report with respect to securities held in accounts over which the access person had no direct or indirect influence or control;

(ii) A transaction report with respect to transactions effected pursuant to an automatic investment plan;

(iii) A transaction report if the report would duplicate information contained in broker trade confirmations or account statements that you hold in your records so long as you receive the confirmations or statements no later than 10 days after the end of the applicable calendar quarter.

(c) *Pre-approval of certain investments.* Your code of ethics must require your access persons to obtain your approval before they directly or indirectly acquire beneficial ownership in any security in an initial public offering or in a limited offering.

(d) *Small advisers.* If you have only one supervised person (*i.e.*, yourself), you are not required to submit reports to yourself or to obtain your own approval for investments in any security in an initial public offering or in a limited offering, if you maintain records of all of your holdings and transactions that this section would otherwise require you to report.

(e) *Definitions.* For the purpose of this section:

(1) *Access person* means:

(i) Any of your supervised persons:

(A) Who has access to nonpublic information regarding any clients' purchase or sale of securities, or information regarding the portfolio holdings of any reportable fund, or

(B) Who is involved in making securities recommendations to clients, or who has access to such recommendations that are nonpublic.

(ii) If providing investment advice is your primary business, all of your

directors, officers and partners are presumed to be access persons.

(2) *Automatic investment plan* means a program in which regular periodic purchases (or withdrawals) are made automatically in (or from) investment accounts in accordance with a predetermined schedule and allocation. An automatic investment plan includes a dividend reinvestment plan.

(3) *Beneficial ownership* is interpreted in the same manner as it would be under § 240.16a–1(a)(2) of this chapter in determining whether a person has beneficial ownership of a security for purposes of section 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78p) and the rules and regulations thereunder. Any report required by paragraph (b) of this section may contain a statement that the report will not be construed as an admission that the person making the report has any direct or indirect beneficial ownership in the security to which the report relates.

(4) *Federal securities laws* means the Securities Act of 1933 (15 U.S.C. 77a–aa), the Securities Exchange Act of 1934 (15 U.S.C. 78a—mm), the Sarbanes-Oxley Act of 2002 (Pub. L. 107–204, 116 Stat. 745 (2002)), the Investment Company Act of 1940 (15 U.S.C. 80a), the Investment Advisers Act of 1940 (15 U.S.C. 80b), Title V of the Gramm-Leach-Bliley Act (Pub. L. No. 106–102, 113 Stat. 1338 (1999), any rules adopted by the Commission under any of these statutes, the Bank Secrecy Act (31 U.S.C. 5311—5314; 5316—5332) as it applies to funds and investment advisers, and any rules adopted thereunder by the Commission or the Department of the Treasury.

(5) *Fund* means an investment company registered under the Investment Company Act.

(6) *Initial public offering* means an offering of securities registered under the Securities Act of 1933 (15 U.S.C. 77a), the issuer of which, immediately before the registration, was not subject to the reporting requirements of sections 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)).

(7) *Limited offering* means an offering that is exempt from registration under the Securities Act of 1933 pursuant to section 4(2) or section 4(6) (15 U.S.C. 77d(2) or 77d(6)) or pursuant to §§ 230.504, 230.505, or 230.506 of this chapter.

(8) *Purchase or sale of a security* includes, among other things, the writing of an option to purchase or sell a security.

(9) *Reportable fund* means: (i)Any fund for which you serve as an investment adviser as defined in section 2(a)(20) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(20)) (*i.e.*, in most cases you must be approved by the fund's board of directors before you can serve); or

(ii) Any fund whose investment adviser or principal underwriter controls you, is controlled by you, or is under common control with you. For purposes of this section, *control* has the same meaning as it does in section 2(a)(9) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(9)).

(10) *Reportable security* means a security as defined in section 202(a)(18) of the Act (15 U.S.C. 80b–2(a)(18)), except that it does not include:

(i) Direct obligations of the Government of the United States;

(ii) Bankers' acceptances, bank certificates of deposit, commercial paper and high quality short-term debt instruments, including repurchase agreements;

(iii) Shares issued by money market funds; and

(iv) Shares issued by open-end funds other than reportable funds.

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

6. The authority citation for Part 279 continues to read as follows:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b–1, *et seq.*

7. Form ADV (referenced in § 279.1) is amended by:

In Part II, at the end of Item 9 add ''Describe, on Schedule F, your code of ethics, and state that you will provide a copy of your code of ethics to any client or prospective client upon request.''

Note: The text of Form ADV does not and this amendment will not appear in the Code of Federal Regulations.

Dated: January 20, 2004.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

Note: Appendix A to the preamble will not appear in the Code of Federal Regulations.

Appendix A

KEY DISTINCTIONS BETWEEN EXISTING AND PROPOSED RULES

Advisers Act Proposed Rule 204A–1	Investment Company Act Rule 17j–1
• Code of Ethics Required for each investment adviser registered with the Commission..	• Code of Ethics Required for each investment adviser of a registered investment company.
• Standards of Conduct Required element of code of ethics.	• Standards of Conduct Not required.
• Compliance with Laws Required element of code of ethics.	• Compliance with Laws Not required in code of ethics.
• Limited Access to Material Nonpublic Information Required element of code of ethics.	• Limited Access to Material Nonpublic Information Not required.
• Internal Reporting of Code Violations Required element of code of ethics.	• Internal Reporting of Code Violations Not required in code of ethics.
• Employee Acknowledgment Employee must receive copy of code of ethics and acknowledge in writing..	• Employee Acknowledgment Not required.
• Personal Securities Trading Reports Required element of code of ethics.	• Personal Securities Trading Reports Required by rule.
• Reporting Personnel	• Reporting Personnel

KEY DISTINCTIONS BETWEEN EXISTING AND PROPOSED RULES—Continued

Advisers Act Proposed Rule 204A–1	Investment Company Act Rule 17j–1
''Access Persons''—partners, officers, directors, employees, and certain controlled persons of adviser, who have access to non-public information about client securities transactions or recommendations, or holdings of affiliated mutual funds.. For advisers primarily in the business of providing advice, *all* of an adviser's directors, officers and partners *are presumed* to be Access Persons..	''Access Persons''—*any* directors, Officers, general partners of the adviser. ''Advisory persons''—employees and certain control persons (and their employees) who obtain information regarding fund securities transactions or recommendations. For advisers not primarily in the business of advising funds or advisory clients, access persons *only* include directors, officers, general partners, or advisory persons, *who make* or *who obtain information concerning, recommendations* made to fund.
• Reportable securities exclude: ■ Direct obligations of the U.S. government; ..... ■ Money market instruments; ..... ■ Shares issued by unaffiliated open-end funds and money market funds..	• Reportable Securities exclude: ■ Direct obligations of the U.S. government; ■ Money market instruments; ■ Shares issued by open-end funds.
• Personal Securities Reports ■ Initial and Annual Holdings Reports ..... ■ Quarterly Transaction Reports	• Personal Securities Reports ■ Initial and Annual Holdings Reports ■ Quarterly Transaction and New Account Reports
• Pre-Approval of Trades Required for IPO and Limited Offering.	• Pre-Approval of Trades Required for IPO and Limited Offering.
• Recordkeeping ■ Copies of codes of ethics; ..... ■ Employee acknowledgments; ..... ■ Records of violations of code and responses to violations; ..... ■ List of access persons; ..... ■ Holdings and transactions reports (electronically) ..... ■ Record of adviser's approval of investments in IPOs and limited offerings..	• Recordkeeping ■ Copies of codes of ethics; ■ Records of violations of code and responses to violations; ■ Record of all persons required to make or review reports; ■ Holdings and transactions reports; ■ Record of adviser's approval of investments in IPOs and limited offerings.

[FR Doc. 04–1669 Filed 1–26–04; 8:45 am]

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Saab; comments due by 2-4-04; published 1-5-04 [FR 04-00031]

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Airbus Model A300 B4-600, -B4-600R, -F4-600R, A310-200 and -300 series airplanes; comments due by 2-5-04; published 1-6-04 [FR 04-00239]

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Note: The List of Public Laws for the first session of the 108th Congress has been completed. It will resume when bills are enacted into public law during the next session of Congress. A cumulative List of Public Laws for the first session of the 108th Congress will appear in the issue of January 30, 2004.

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